# Preface

This volume is the result of the combined efforts of a number of individuals and organisations across the African continent, and beyond. It represents the continuation of a collaborative effort by the African Centre for Technology Studies (ACTS) and the Institute for Security Studies (ISS) to explore and promote understanding of the complex dimensions and causes of conflicts in Africa, with a focus on environmental aspects of conflict.

ACTS is an inter-governmental policy research and training organization located in Nairobi, Kenya. The centre's mission is to strengthen the capacity of African countries and institutions to harness science and technology for sustainable development. As part of its programme on biodiversity and environmental governance, ACTS promotes better understanding of the links between biodiversity, livelihoods, resource rights, gender and conflicts, as well as effective prevention and management of conflicts involving natural resources.

The ISS is a regional applied policy research institute with offices in Pretoria and Cape Town with a mission to conceptualise, inform and enhance the security debate in Africa. The Institute undertakes research and analysis; supports policy formulation; awareness-raising; collecting, interpreting and disseminating information at national, regional and international levels, and capacity-building.

The publishers would like to thank Chris Huggins for coordinating this research; the country study researchers, Herman Musaraha, Prisca Kamungi-Mulemi, Johnstone Summit Oketch, and Koen Vlassenroot for their invaluable expert input; and Johan Pottier for so generously donating his time to the project. We would also like to recognise the contributions of numerous staff members at ACTS, especially Benson Mak' Ochieng who, as a researcher, lent his experience to one of the chapters, Joan Kariuki who was the research assistant on this project, Mary Muthoni and Harrison Maganga of the publications and outreach department, and Elvin Nyukuri for logistical assistance. We also appreciate the input of the peer reviewers for three chapters, Makumi Mwagiru, Arnaud Royer, and Kizito Sabala; as well as John Katunga, civil servants of the government of Rwanda, and an international land tenure specialist who were especially helpful informants. Most of all, we are thankful for the many men and women who provided information, views and opinions during fieldwork in Burundi, eastern Democratic Republic of Congo, and Rwanda.

At ISS we would like to thank Jenny Clover and Jean-Marie Gasana for their input into the field research in Burundi, and to João Porto for his generous donation of time and expertise in overseeing the editing. Furthermore, we wish to thank the civil society organizations and individuals in Angola who provided information, guidance and support during the course of field research, as well as peer review of the completed chapter.

Some of the chapters in the book have been presented in draft form at various seminars and conferences, especially a conference on *Land Tenure and Conflict in Africa* held at ACTS in December 2004, and we thank all those who participated and provided comments, especially the Burundian, Congolese, and Rwandan diplomats and civil servants who attended.

Given the dynamic nature of African politics, it is important to point out that much of the research was completed in mid-2004, though the chapters have been updated to reflect changes since that time.

Finally, we would like to thank the United States Agency for International Development's Regional Economic Development and Services Office for Eastern and Southern Africa (REDSO/ESA) for its generous support. We particularly appreciate the intellectual and administrative support of Andy Sissons, Diana Putman, Walter Knausenberger, Mary Hobbs, Peter Ewell, Steve Smith, Njeri Karuru, Wangeci Chege, David Kinyua and the other personnel who have assisted in one way or another.

It should be recognized that the contents of this book are wholly attributable to the authors and do not in any way represent the views of the individuals and institutions acknowledged.

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# Introduction

CHRIS HUGGINS AND JENNY CLOVER

## 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 fieldwork 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 precolonial 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.

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# Paradigms, Processes and Practicalities of Land Reform in Post-Conflict Sub-Saharan Africa

CHRIS HUGGINS AND BENSON OCHIENG

## INTRODUCTION

Over the last decade, many African countries have engaged in processes of land tenure policy and legislation reform. While the aims and assumptions of land tenure reform efforts differ widely, all purport to increase land tenure security for the rural poor.[1] Land law reform is at an advanced stage in at least 17 countries in the continent (Angola, Burkina Faso, Cote d'Ivoire, Eritrea, Ethiopia, Mauritania, Mozambique, Namibia, Niger, Tanzania, Rwanda, Senegal, South Africa, Sudan, Tanzania, Uganda and Zanzibar), while new national land policies have been drafted or are under discussion in another eleven countries (Benin, Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Swaziland, Togo, Zambia and Zimbabwe).[2]

Land tenure insecurity is a major issue not just in Africa but elsewhere in the developing world, where agricultural land constitutes the basis of income and status for half a billion people, about 50% of whom experience acute land tenure insecurity, either because they are tenants or landless labourers, or have insecure individual rights or questionable collective rights.[3] In Africa, key sources of tenure insecurity include the 'clash' of customary and statutory tenure regimes, and the increasing commodification of land through various processes, which are often 'embedded' in struggles over valuable mineral and biological resources, often tied to globalisation.[4] In some countries, notably in North and Central Africa, scarcity of land exacerbates these problems.[5]

Land tenure reform is, even in the most stable of countries, a volatile and politically challenging process. This is even more the case in post-conflict situations. A number of African countries recently or currently involved in land tenure reform have been affected by conflict; either wars of liberation (which, in the case of South Africa, continued into the 1990s); civil wars (sometimes linked to Cold War struggles); direct international conflicts (though these are few); or 'proxy' cross-border wars, involving support for armed groups in neighbouring countries. In many cases, conflicts have been multi-level, with local manifestations being to a large degree based around local issues, such as struggles for land.

While the situation in individual countries, and indeed in different regions within countries is often unique, there are some general patterns that characterize post-conflict situations. In post-conflict environments,

access to land may be fundamentally altered. The most visible aspect of this is population displacement; often due to systematic ethnic cleansing. However, the direct use of force to alter patterns of land access is only one of a number of processes involved. Land tenure is a system of rights and responsibilities – essentially, a social contract between people. Conflict changes social relationships in profound ways, and perceptions of mutual rights and responsibilities between individuals, social groups and the state are altered due to changes in perceived legitimacy of institutions and obligations.[6]

Specific difficulties often encountered in post-conflict situations include: the inequities posed by gender issues, as widowed women and orphaned children tend to face increased responsibilities as heads-of-household but lack access to land; the return of refugees and internally displaced persons (IDPs), often without titles or other proof of ownership; the protection of environmentally sensitive areas, especially where there is land pressure due to sudden refugee returns; and the need for management of local inter-communal relations where civilian populations have often been the victims of violence, and where land claims have an inherently 'communal' nature. Despite all these problems, it is often recommended that post-conflict land reform is done rapidly – or even built-into peace negotiations – in order to avoid problematic issues 'festering' over time and triggering more conflict at a later date.[7]

Policy-making, especially on environmental issues, is generally dominated by technical experts: civil servants, many of whom may remain in place even as politicians come and go, draft policy documents. Very often, despite the waxing and waning of particular political ideologies, central narratives remain surprisingly similar; though solutions may be couched in different terminology depending on which political shade is in vogue.[8] However, there are a number of reasons why policy-making and policy implementation (especially in the case of land policy), is inherently 'political' and has to be understood within the particular institutional context of the time, making post-conflict policy-making something of a special case.

The first reason is that there is rarely, if ever, a neat dividing line between 'war' and 'peace', and the end of hostilities is often marked by a period of emergency reconstruction. During this time, it may not yet be clear whether the threat of violence is in fact over. The authorities that are in place are forced to make urgent decisions, often related to the physical needs of displaced and war-affected people: shelter, food, water, firewood and other such 'land-based' necessities. Very often, executive decisions are made (often in terms of Presidential or Ministerial statements) which affect the movements of large numbers of people, or the settlement or cultivation of areas under multiple access claims. A key concern of post-conflict governments, for example, is often the return of refugees, who may be seen either as a resource for national reconstruction, or alternatively a potential threat to stability. The (re) settlement of IDPs is also an urgent issue. Due to the sheer practical

difficulty of reversing such decisions, they often become de facto policy, and are legally ratified at a later date, during the transition process. Therefore, the political and technical capacity of the authorities in the aftermath of war may be crucial to long-term land policy.

Second, the sensitive and politically complex nature of land issues, even during peacetime, is abundantly clear from the case studies in this volume, as well as other research. For example, any changes in the role of customary leaders in local land administration has a very direct bearing on the political fortunes of local politicians, as traditional leaders often wield great power over constituents. For such reasons, politicians are generally willing to intervene in land policy reform to a far greater degree than is found in other policy processes, or may seek short-term political capital through drawing attention to controversial aspects. However, due to the long-term nature of policy development and the potential volatility of the issues at stake, they may be unwilling to publicly champion a policy and see it all the way through from conceptualization to implementation, due to the political risks involved.

Third, the policy process often starts prior to the involvement of technocrats – the timing of policy processes, and the agenda which is set, are largely the result of political decision-making at ministerial level.

Fourth, patterns of control over land often change dramatically during periods of conflict. This may be in terms of the structures for land administration or land management (especially in long-standing conflict, where the roles of customary or 'modern' institutions are distorted) or in terms of actual physical land use. In Sudan, for example, parts of the Southern Blue Nile and Nuba Mountains regions have seen increases in mechanized agriculture or grazing by 'Northerners'; while in Western Upper Nile, oil exploration expanded during the war and was associated with massive population displacement and disruption to customary grazing, agriculture and fishing rights.

The policy-formulation process will differ greatly depending on the nature of the government in power. In some cases, peace negotiations (frequently resulting from a stalemate between warring parties and a realization that military victory is impossible) result in power-sharing governments, often of a transitional nature and with a limited lifespan pending elections. This is, of course, the case in the DRC, Burundi, Côte d'Ivoire and other countries. Power-sharing can take many different forms, such as integrative power sharing, which relies on the formation of political coalitions, or power sharing based on 'autonomous' groups, often in a federal arrangement.[9]

The latter situation prevails in Ethiopia, for example, where the Ethiopian Peoples Revolutionary Democratic Front, a coalition of armed opposition groups including the Oromo Liberation Front (OLF) and the Tigrai People's Liberation Front (TPLF), took over power upon the collapse of the Derg regime in 1991. The new transitional government, which was politically dominated by the TPLF, initiated a federal system constructed along ethnic lines. The OLF, which had been formed in 1975

with the goal of independence for 'Oromiya' (the territory where most of the various communities coming under the 'Oromo' umbrella reside), agreed to a federal arrangement.[10] Nine regional states were created (one for each major ethnic group), based on "nations, nationalities and peoples". A multi-party political system was put in place and in 1995, and again in 2000, federal parliamentary and regional elections were held.[11] Research has demonstrated that regional differences (for example, in political outlook, connections to the centre, and access to resources) have great significance on policy debates. Keeley and Scoones argue that,

> *"following regionalization, the relationship between national and regional policy debates has become increasingly significant. In many areas the federal level has become less important, and it is in the regions that policy agendas are set, decisions taken, and projects implemented."*[12]

Some researchers argue that regional governments are, to a large extent, directed by representatives of the TPLF, who may hold no formal decision-making position, but have considerable political weight.[13] This is directly linked to the outcome of the war against Mengistu's government, as the political space to debate or (re)interpret policy is highly dependent on the relationship between regional politicians and bureaucrats and the ruling party. The ruling party was in many ways spawned by the TPLF, and indeed the first administrations were military-dominated and composed exclusively of Tigrayans.[14] The confidence enjoyed by the TPLF due to its role in decisively heading the coalition of rebel groups, translated into a lack of political, economic and other forms of support for some other regions. This has resulted in policy-makers in Tigray Region developing a highly localized interpretation of policy, while in the Southern Nations, Nationalities and People's Region, policy is scarcely debated and implemented in a highly mechanical manner, "reflecting perhaps an insecure and uncertain political positioning."[15] In Borana region, some important land-related issues were not discussed at regional level; for example, the federal government decided to allocate control of land along the border to Somali communities.[16] This has provoked considerable resentment amongst some stakeholders.

Often, policy-making in such contexts is a highly political affair, with parties forming fragile alliances and seeking to make gains through political horse-trading. It is particularly difficult to accomplish policy-making for long-term goals when power-sharing governments incorporate parties who are unlikely to remain in power after the transition period (for example, due to lack of popular support or association with war crimes). In such a situation, short-term political and economic gains are likely to be higher on the agenda. However, in some countries, a government which is ostensibly formed to 'share power' may actually be dominated by one or two parties, and participation of others may be limited for various reasons. This was the case in the years immediately following genocide in Rwanda, for example.[17]

In contrast to the power-sharing model, certain conflicts may put one party firmly in control, often through decisive military victory. This was the case in terms of Eritrea's war of independence, for example. In another context (and at the time of writing) the peace process in Sudan seems likely to result in the Sudan People's Liberation Movement (SPLM) administering Southern Sudan, with little organized, legitimate opposition. In these circumstances, the main challenge is not to balance the views of several parties, but rather to move away from the highly militarized structures that are in place. Organisations like the SPLM, for example, were formed not to govern, but to wage war – originally along Marxist or Maoist models – and the 'civil administration' aspects of these movements were secondary to the main goal of military victory. In the case of southern Sudan, most of the high level administrators – former military officers – are hand-picked by the SPLM leadership, rather than being elected. Their authority in relation to the military hierarchy has in practice been questionable, especially during recruitment drives. [18]

Given this highly militarized background, and the small number of civil society organisations in the country with the capacity and ability to influence policy, the formulation and interpretation of policy in a post-conflict scenario will depend heavily on other actors – such as the many civil society organisations (CSOs) in the diaspora; and the influence of customary chiefs. The chiefs, greatly influential over their communities, were incorporated under the SPLM military structure; but customary law was recognized, and the customary chiefs courts have contributed greatly to the rule of law.[19] Current indications are that confidential land policies have been drafted by SPLM commissions. CSOs have great difficulty in accessing the draft, and have not been consulted. It remains to be seen to what extent they, or the chiefs (who are likely to have a greater role), will be able to influence policy in future.[20]

This chapter will examine the paradigms and processes involved in drafting or reforming land policies and laws in two very different African countries: Eritrea and Zimbabwe. Whereas Rwanda, Burundi and some parts of north-eastern DRC have very high population densities – the highest in the continent, in Rwanda's case – the countries examined in this chapter have lower population densities, and different challenges. The paper does not attempt to offer a comprehensive or definitive analysis of land policy on the two countries, but instead looks at the rationale for the reforms, including the role of development partners in recommending particular kinds of reform. It will also examine the processes of policy- and law-making, especially in terms of consultation and negotiation between stakeholders. Finally, the chapter will look at the practicalities of implementation, particularly in regard to local participation in decision-making and dispute-resolution.

## POST-CONFLICT LAND REFORM IN ERITREA: CHANGE OR CONTINUITY?

Like virtually all African countries, Eritrea has a dual system of land tenure comprising both customary and Western models.[21] The traditional land rights structures are diverse and complex, but can be categorized into two main types: pastoral/agro-pastoral or sedentary land tenure. Much of the sedentary population resides in the highland areas, which are predominantly inhabited by Christians, and have been historically under the rule of the Ethiopian monarchy.[22] Much of the pastoral/agro-pastoral population resides in an arc around the central highlands, and many follow Sunni Islam. Twenty-five to thirty percent of the total population of more than 4.2 million, are nomadic or semi-nomadic.[23] These cultural, religious and livelihoods differences, while offering benefits in terms of valuable national diversity, also pose challenges to national unity. In the past, conflicts have taken place around issues of land access, as in the case of clashes between the Kunama ethnic group and Tigre, Hedareb and Nara people in the 1940s and 1950s, largely a result of the regional tendency towards 'reciprocal destabilisation', as well as neighbouring Sudan's policy of encouraging Islamic fundamentalism in the region.[24]

### *Customary Tenure Regimes*

Within the sedentary land tenure structures, there are several customary systems. These include forms of land rights which are focused on the family (*Risti*) and the village (*Deissa*). *Risti* land is owned by the extended family group, called *enda*, which traces its rights to a common founding father who first settled in the area.[25] A rightful claimant of *Risti* is entitled for his/her lifetime to a share of land in the land allocation process. He/she can also claim land in different areas simultaneously by virtue of descent. *Risti* land can be leased out or transferred to children through inheritance. However, individual ownership of *risti* land is not absolute when it comes to selling or mortgaging to individuals outside the *enda*. Only after an offer to other members of *enda*, can *risti* land be sold to others, becoming *meriet-werki*, literally meaning land of gold or land purchased with money.[26] Yet, sale to outsiders was very difficult due to the *enda's* pride in keeping foreigners excluded from owning land. All pasture was available for communal use.[27]

The *deissa* landholding system relies less heavily on blood ties, and refers to collective ownership of land by a village community.[28] In the *deissa* system, access to land depends not just on descent but also residence in a village for a specified period of time. A local village council called *baito-adi* is responsible for decision-making over land, which is classified into three categories: residential, forest and grazing, and farmland. Land is distributed among member households in such a way that every eligible member has access to a farmland of similar value in terms

of fertility and proximity of the land to a homestead. A household holds many parcels that are scattered in different parts of the village farmland. Each household is able to use these parcels for five to seven years, after which time the *baito-adi* will again distribute the village's farmland. As in the *risti* system, all pasture was available for communal use.[29]

In a similar way to many customary systems, indigenous land tenure systems provided rights to women only in terms of their status in relation to men: as wives, daughters or widows.[30] In general, though Eritrean communities paid taxes (in cash, kind or labour) to feudal overlords, they had practical ownership rights over land, so that feudal relationships were not generally overly exploitative.[31]

## Colonial interventions

These indigenous land rights systems were disrupted through different colonial interventions. The Italian colonial administration (1890–1945) declared large tracts of land as public property in order to settle poor immigrant Italian farmers, in total disregard of indigenous land right lands. [32] Under legislation passed in 1926, all land – except for specific indigenous customary rights with a particularly visible history – in the Eritrean colony belong to the state, creating *domeniale* land. By the end of 1893, the colonial state had expropriated about 20% of arable land for commercial agriculture.[33] All grazing land was declared state land or, in areas not under the control of the colonial regime, was administered by local landlords, so that pastoralists had to pay rent for grazing land.[34] Agricultural production in riverine parts of pastoral ecosystems began a process that continues today.[35] Land previously owned by the chiefs and the church was also expropriated and distributed to new chiefs and missionary institutions in exchange for political support.[36] State land was given to Italian settlers and investors on a grant basis and some to Eritrean cultivators on a concession basis. Of the estimated 75,000 hectares of cultivable land, the Italian authorities had expropriated 28,000 hectares by 1945.[37] The expropriation of land led to armed revolts in some areas.[38] In addition, some forms of land tenure such as *tsilmi*, which was more exclusive than *deissa* as it was based on extended family units rather than villages, were converted to *deissa* by the colonialists, a pattern that was continued under the Derg.[39]

The densely populated highland areas were the most affected in this expropriation process, as its temperate climate and fertile soils were considered favourable to Italian settlers.[40] The immediate effect of the expropriation was that customary rights holders were confined to small and marginally suited areas. Traditional systems of shifting cultivation were largely abandoned due to growing shortage of land. Together with population growth, this had set up a process of serious land degradation as agricultural land, particularly grazing land, grew scarcer over time.[41] Conflicts over access to land had grown, partly due to uneven distribution of land among *enda*s and partly due to scarcity of land

caused by Italian expropriation policy.[42] Consequently, in some places, at the request of local peasants, *risti* land was converted into *deissa*, in order to redress the uneven distribution of land among the *enda*s.[43]

The British military administration that replaced the Italian administration after the defeat of the latter in World War II did very little to change the *status quo* created by the Italians. In fact, the British alienated additional land for distribution to Italian fruit and vegetable growers, but did not have a land policy for improving traditional agricultural production systems.[44] Another feature of British policy towards Eritrea, which was to have divisive repercussions, was that the Muslim lowlands and Christ*i*an highlands were seen as naturally different. The British envisaged that the lowlands would become a part of Sudan, whilst the highlands were destined to be part of Ethiopia.[45] The British also altered the provincial (*awraj*) borders, a policy that was also used by the Derg to 'divide and rule'.

## *Land reform under the EPLF*

In 1952, Eritrea became a federation of Ethiopia. Relations were extremely strained, and in 1962, Ethiopia formally annexed Eritrea, leading to open conflict. A remarkable aspect of land reform in Eritrea is that it commenced during the war of liberation, which lasted thirty years. The land reforms started by the two competing liberation movements, the ELF (Eritrean Liberation Front) and EPLF (Eritrean People's Liberation Front) in the areas under their control were strongly socialist in orientation: their stated aim was to make existing tenure more equitable. The ELF, partly because of the nature of its support base, was (in contrast to its rival) supportive of nomadic pastoralism. However, changes implemented by the ELF are less significant, due to the demise of the organisation after 1981, hence this section's focus on the EPLF.

Like many other rebel groups of the period, the EPLF (founded in 1970 after a split in the ELF) espoused a doctrine of socialist democratic centralism, heavily influenced by Maoism.[49] Unlike many other guerrilla organisations, however, it actually managed to implement many of its principles, and in many ways, the movement operated as a government in the areas that it controlled. EPLF cadres used social surveying methods to categorise village populations into "poor", "middle" and "rich" strata, and, though working through village structures, formed associations for each social group. These associations would then be represented in village assemblies, according to their proportional size within the village, and enabled assistance to be better targeted to the poor.[50] The main duties of the village and 'district' (*wereda*) assemblies (called *baitos*) included land administration. The EPLF also put in place local mechanisms for dispute resolution, which were very important due to the great number of land-related disputes related to generalized land scarcity. Importantly, the *baitos* combined executive, judicial and legislative functions, which was to have implications for post-conflict governance.[51] The

EPLF controlled the North-eastern part of the country for almost two decades, and hence changes to governance were widespread and thorough: by 1988, 85% of villages in the country had EPLF structures in place. Land tenure regimes were regulated and formalized through a Civil Code, essentially aimed at making traditional forms of tenure more equitable. In general, the effect was to increase the influence of the *deissa* system, and also, according to analysts, to increase land fragmentation in many areas through redistribution.

In the southern territories, EPLF reforms included the introduction of wider entitlements of women to land.[52] However, in general, the EPLF was more cautious in implementing reforms in Muslim-dominated areas, because of the sensitivities around Islamic property laws, and the fact that the ELF, which was in armed opposition to the EPLF as well as the government, was essentially a Muslim organisation.[53] However, where possible, the EPLF encouraged pastoralists to settle and adopt sedentary lifestyles.[54]

The 1975 attempt by the Ethiopian Derg government to reform the land tenure system in the areas under its control was also socialist in orientation. In rural areas, land was confiscated from the church and the aristocracy, and distributed to peasants on the basis of family size. However, the policy was only minimally effective in Eritrea, as highland areas' traditional institutions were too influential to be altered, and the Derg had little effective control over communities in lowland areas.[55]

## *The immediate post-conflict period and post-Independence land reform*

The EPLF became the *de facto* government in May 1991, though it was not formally instated until 1993. Unlike many other conflict-affected countries, the social structure, which had been weakened by successive colonial and Ethiopian interventions, was in many ways strengthened by the years of armed struggle.[56] However, the country's social, cultural and political strength contrasted with its wrecked economy, severe food insecurity, decimated forests and rusting infrastructure. 150,000 Eritreans were killed during the war, as was 70% of the livestock. By 1993, over three-quarters of the population were reliant on food aid.

By the time of the second EPLF National Congress in 1987, the movement had already dropped its Marxist paradigm and moved towards a "broad-based national democratic programme", albeit with a strong thread of equity and unity. In the first years of independence, the government (which was initially a provisional government) reformulated its policies, especially in terms of macro-economic development, and aimed for an "outward-looking private sector-led market economy, with government playing an active role to stimulate private economic activities".[57]

One of the main challenges to the new government, which in the early years combined executive and legislative roles, was a profound lack of

experience of national policy-making. Moreover, the judicial and administrative sector had been ruined by the Derg, who had inculcated bureaucracy, corruption and the appointment of unqualified and unmotivated personnel. In order to counter its lack of experience, extensive public consultations were held. To establish better governance, administrators were elected from the *Baito* level upwards, and village judges were empowered to preside over civil cases and petty offences. However, the lack of access to education during the war meant that capacity was limited.[58]

The formulation of land legislation, the Eritrean Land Proclamation (Proclamation No. 58/1994), was among the earliest policy-related tasks assumed by the independent government. This followed a number of activities by a land commission (established in September 1992), including examination of the history and evolution of Eritrean land tenure systems, and review of a number of potential institutional foundations for the new policy, with the geographical extension of a slightly adapted form of *deissa* tenure emerging as a strong possibility. The Commission also held consultations with concerned ministries, local administration authorities and land specialists, and conducted study visits to most provinces.[59] However, these were not comprehensive enough to prevent the far-reaching consequences of the Land Proclamation causing 'shock waves' throughout society.[60] The issue of civil society participation in the policy-making process, outside of the consultations that were organized by government, does not really arise. The emphasis on 'unity', within society as well as government, and the pervasive, centralizing nature of the state apparatus that is a legacy of the war, constrained the rise of an organized civil society with the ability to lobby on policy issues.[61] The government's organisational 'culture' was still essentially military, and there was little political will for civil society to be nurtured.[62] The Proclamation contains elements of the Ethiopian Civil Code, Italian colonial legislation and the Common Law, as well as some innovative aspects. The law's effect was to vest all rights to land in the state. This implies that the village now has no collective claim to its former farmland, although it is allowed to continue exercising control over its pasture, woodland and water resources. Every Eritrean is entitled to land usufruct with regard to agricultural and/or residential land regardless of sex, belief or origin, provided they have completed military service. The population hence become 'usufructuaries'. The law refers to indigenous land tenure systems as obsolete, as impediments to progress and incompatible with the contemporary demands of the country. This view was justified by arguments that the rotational access to land under the *deissa* system, for example, is a disincentive for investment.[63]

### *Some other salient features of the law are as follows:*

- The law created a land administration body (LAB) consisting of a representative of the government's land commission (LC), members from village assemblies and various government bodies of the

localities. This body was tasked with classifying land and distributing it to eligible people by virtue of the proclamation and to those who make a living by farming;
- In distributing rural land for residential, agricultural and farming purposes, the LAB gives priority to permanent village residents;
- Taking into account the differences between fertile and poor land, the LAB distributes land in an equitable and balanced manner to the eligible;
- Usufructuaries who intend to farm collectively or who intend to utilize their farm equipment collectively, upon prior notice to the LAB, may be allotted land in the same area;
- Usufructuaries on farmland must be dependent on agriculture;
- Land allotted according to the proclamation shall be registered and granted in the name of the recipient of the usufructuary; the usufructuary shall use the land for his/her lifetime and shall have the right to fence it;
- A usufructuary may, in exchange for a fixed quantity of agricultural products, grant the right to use part or all of her/his land to any person who would contribute labour, oxen, or both, for farming implements;
- A usufructuary may lease his/her usufruct right over land in whole or in part and duration of contract shall be determined by an agreement to be made between the parties;
- A usufructuary may not transfer land, except as provided for in the law;
- Usufruct can be converted into leasehold, on request, essentially for purposes of capital investment. Leasehold can be between ten and 60 years in duration and is contingent on regulations related to land zoning and terms of use;
- To prevent farms being reduced to economically non-viable sizes, the law prohibits further parcelling of land through inheritance;
- The President or appropriate government body delegated authority by the President shall have the right to expropriate land for purposes of development and capital investment projects aimed at national reconstruction or similar purposes. A government body that expropriates land in this manner shall pay compensation to the holder of the right who leaves the land; and,
- Village boundaries may be altered.

## *Analysis of the Eritrean Land Proclamation*

After the law was promulgated, the Land Commission carried out a three month-long dissemination exercise, with seminars held in eight of the ten provinces of Eritrea. Officials and employees of the various government ministries and provincial administrations were particularly targeted. Due to funding constraints, the exercise was largely conducted in urban areas, in eight of the ten provinces.[64] This was especially necessary because of the surprise that many people felt over aspects of

the Proclamation, particularly in terms of the state's radical title to land, and the gender equality aspects. In each of the public meetings, the government representatives were asked why the government did not consult the people on the precise nature of the Proclamation's contents.[65] The answer provided by some Eritrean analysts – that the government could not have consulted on key clauses, as they would have been rejected by the people – is hardly reconcilable with the 'people-based' principles espoused by the government. These were later captured in the National Charter of Eritrea (1997), which states that, "the people should participate in all decisions that touch their lives and their country, from the inception to the implementation of ideas."[66] It seems clear that several aspects of the Proclamation would have been opposed by a large section of the population, if presented to them. The issue of women's rights, for example, has been identified in consultations on the constitution as the most controversial issue at stake in the process of 'harmonising' customary laws and international human rights laws.[67]

In contrast to Eritrea's strong culture of independence, several aspects of the Land Proclamation seem to echo colonial precedents, which give the state great levels of control over property rights and land use. The type of usufruct provided for in the Proclamation, for example, is prescriptive and restrictive. The control enjoyed by the state (for example, the ability to expropriate land) has few checks and balances, which makes effective implementation of the laws dependent on a principled government.[68] The right to legal appeal in cases of land expropriation, for example, should be considered. Considering that the government has yet to implement the constitution, developed and ratified by a referendum in 1997, this is problematic.[69]

Furthermore, the government's attitude towards customary tenure systems has been interpreted by some as not merely the result of adoption of a particular development paradigm – in this case, a kind of market approach, albeit with heavy government regulation – but as a matter of politics. Control of land by customary social institutions represents, in many ways, a 'threat' to the dominance of the state – a dominance which the Land Proclamation is clearly intended to consolidate.[70]

Checks and balances are also missing from the mechanisms for appointment of the land administration organs, such as the LABs. In a time of regional tension, and official clampdown on internal dissent, it is possible that local land officials could be selected more on the basis of loyalty to the political centre, than experience in land matters or responsiveness to local needs. In contrast to the highly participatory governance model developed and implemented during the liberation struggle, post-independence governance reforms have made local administrators more accountable to their superiors close to the centre of power, rather than to their local constituents.[71]

The issue of women's land rights remains problematic, as in many other countries, due to the gap between policy and practice. Customary prohibitions remain highly influential in rural areas and Muslim women

are legally bound by Shar'ia rather than the statutes of the Land Proclamation.[72]

More technical issues also pose constraints. For example, the Proclamation envisages the registration of land rights – with the mode of registration essentially unchanged from colonial times, except for the type of technology that would be used for surveying. However, surveying all plots in the country with modern 'high-tech' methodologies would be prohibitively expensive, and the attempt was, in any case, shelved due to the war with Ethiopia (which started in May 1998 and continued until December 2000) and continuing tension between the two countries.

Surprisingly, given the importance of grazing land, woodlands and other natural resources, common property rights are only mentioned once in the Proclamation (Article 28), in the form of woodland and pasture in village lands. The issue of customary grazing areas outside of village lands is not mentioned at all in the policy. This is, of course, hugely problematic in a country where, as previously mentioned, at least a quarter, and possibly almost a third, of the population is nomadic or semi-nomadic, and almost three-fifths of the total land area is used for grazing.[73] The EPLF historically had a policy of attempting to encourage pastoralists to settle, and the government does not mention pastoralism as a potential source of economic growth or development: instead, agriculture is prioritized.[74] This is a fairly common characteristic of countries in the Horn of Africa and beyond, where pastoralist interests are marginalized. Lack of concern for pastoralist land rights was also a striking feature of colonialist policy in Eritrea.

This de-prioritisation of pastoralist livelihoods has already had negative impacts. In the aftermath of the liberation war, many thousands of the half-million people who had fled the country during the war returned to Eritrea. Some of these people, as well as many IDPs, settled in Gash-barka region, home of the Kunama, an agro-pastoralist group. The land policy has undermined the powers of clan-based land management systems, and encouraged commercial farming in the region. Much agricultural development in the region is viewed locally as encroachment upon Kunama land rights, and specifically as part of a policy of settling people from the densely populated highlands in the drier lowlands.[75] Many farms are owned by people of Tigrinya origin, which tends to reinforce this view, provoking tensions.

Some Kunama – who, as a community, were generally opposed to both the ELF and the EPLF during the liberation war – have declared their opposition to the Eritrean government and joined armed resistance groups, which are part of the Alliance of Eritrean National Forces.[76] The Kunama were affected by the war with Ethiopia, and some have been accused of supporting Ethiopia.

## THE CASE OF ZIMBABWE

At independence in 1980, Zimbabwe inherited a highly skewed pattern of land distribution, with 1% of farmers – mostly of white (British) origin – holding nearly half the available agricultural area and the bulk of the fertile land. This dynamic has been a crucial factor in post-colonial history, and despite experiencing relative stability from independence until the start of this century, it is clear that the structural conflict within the Zimbabwean economy, society and agricultural sector was not adequately addressed, leading to the current state of crisis.

### *Historical background*

The events that led to such inequitable patterns of land ownership had their roots in the country's colonial history and are traceable particularly to the 1890s, when the "pioneer column" of Cecil John Rhodes crossed North of the Limpopo in search of gold fields. The explorations penetrated far inland to the Zimbabwe highlands where gold was indeed discovered.

The company responsible for the explorations, the British South Africa Company, used its rights acquired under concessions obtained from the British Crown to sponsor settlement of Europeans at Fort Salisbury (now Harare), where land was alienated and pegged out as farms. But soon after, when the company was unable to make profits from mining, it encouraged white settlement farming as an alternative means of generating income. This marked the beginning of massive dispossession of indigenous peoples of more land, which continued throughout the colonial period.

The policy of dispossession was given impetus through a 1923 referendum, which voted for the establishment of Rhodesia (now Zimbabwe) as a British colony. Shortly after the referendum, the Morris-Carter Commission was set up (in 1925) with the express mission of setting out a framework for ensuring the emergence of Rhodesia as a self-sustaining white colony. Not surprisingly, the Commission proposed land holding patterns along racial lines. The Commission's report was soon after given legal backing through the Land Apportionment Act of 1930, which prohibited certain race groups from acquiring land in areas designated for other races.

The Land Apportionment Act reserved 50% of land for white settlers, virtually all the arable central highlands. The majority indigenous African population was allocated 30% of the land, mainly in the plateau sloping down to the Zambesi valley and the mountainous escarpment regions. This was then designated as African Reserve Areas, and is now termed 'communal areas'. The remaining 20% of the land was either owned by commercial companies, the Crown (Crown Land), or was reserved for conservation areas. A further small area of 0.05% constituted the Native Purchase areas where acquisition was allowed, through leasehold or freehold, by richer Africans or minority groups.

While the need to address the unequal system described above was at the very heart of the struggles that led to independence in 1980[77], Zimbabwe's dual agrarian structure remained in place after independence. The white minority – as well as a number of foreign-owned multinationals – continued to dominate the commercial farming sector, and the economy in general.[78] In 1980, over 90% of marketed agricultural output came from white or foreign-owned farms.[79] The importance of commercial agriculture to the macro economy was more significant than the 13–18% contribution to GDP, because of various synergistic linkages with other sectors.[80]

## *Post-colonial dynamics*

Although the white minority was adept at influencing many members of the post-colonial government at different levels, it has nevertheless been characterised as an "undefeated settler state", which was "defiant and antagonistic to the political programme of the new regime".[81] Indeed, the vast majority of whites voted for the Ian Smith-led Rhodesian Front at the independence elections in 1980. Policy-making in Zimbabwe must be seen in the context of ethnic and social tension, not just in terms of black-white relations, but also relations between the majority Shona population, which dominated ZANU during the war, and the minorities, especially the Ndebele who supported the more moderate ZAPU during the war. Ethnic conflicts continued after independence.[82]

The Lancaster House Agreement put in place a "willing seller, willing buyer" system, and the original package suggested by the British Government in the 1970s (75 million pounds sterling to buy out the white farmers) was dropped by the new British government in 1979. Instead, the government would fund half the costs of a resettlement programme. ZANU was under considerable pressure to accept, not least from neighbouring independent states, which had supported it during the war of liberation.

It is not surprising, therefore, that post-independence land policy emphasized the promotion of equitable access to land, with the main aims being as follows:

- creating political stability and acceptable property rights regimes;
- promoting economic growth through wider equity and efficiency gains from land distribution; and
- promoting national food security, self-sufficiency and agricultural development through labour intensive small farmer production, optimal land productivity, and returns to capital invested.

These policy objectives were pursued through the market-based Land Reform and Resettlement Programme of Zimbabwe and state-led and legally backed legislative reforms. Although backed by the Lancaster Constitution, which prohibited compulsory acquisition of land by the state, the market based programme was short-lived and had little impact.

By 1989, 52,000 families had been settled, less than a third of its target of 162,000 families.[83] The land transferred by 1990 represented less than 3.5% of total rural land. However, over a million ha of land (of the total agricultural area of 33 million ha) was sold directly into private hands – mostly of the new political elite – as the Government decided that it had "no present interest" in purchasing the land for resettlement.[84]

The first decade of the resettlement programme concentrated on two main types of villagisation: one based on a model of communal agriculture; and the other based on individual household production.[85] The first was hardly implemented, in practice. The second, which comprised 80% of resettlement during the 1980s, amounted to a plan for improved subsistence agriculture. With an emphasis on improved land husbandry, and small-scale commercialization, these village schemes had many aspects in common with the colonial models. Indeed, for peasants to engage in agriculture, pastoral production or construction, a separate permit had to be issued for each land-use. Utilized land could be expropriated by the government at any time, leading to land tenure insecurity.[86]

There are a number of reasons for the relatively slow progress of resettlement during the 1980s. One of these, according to many analysts, was a lack of political will for large-scale land redistribution. This was because of the lesson learnt from Mozambique (from where ZANU had fought the Rhodesian government), which had seen its commercial class of Portuguese origin leave the country upon independence: and suffered economic decline as a result.[87] The white farming sector, well-accustomed to dealing with politicians, and highly influential in the technocratic sections of the government, supported the limited resettlement that was going on, but lobbied strongly against a more rapid distribution, arguing that it would undermine investor and farmer confidence, and cripple production.[88] In comparison, due to historical inequities in education and other opportunities, including trade union membership, poor black interests were less forcefully articulated.

Another disincentive for rapid redistribution was the perceived threat from Apartheid-era South Africa, Zimbabwe's powerful neighbour, which it feared might intervene if white interests were substantially threatened. Indeed, South Africa had a policy of destabilizing Zimbabwe and, for example, supported the Ndebele uprisings of the mid-1980s.[89] This analysis would suggest that the terms of the Lancaster House Agreement in fact became, "a convenient excuse for government inaction".[90]

Other external pressures were also significant: in the face of rising balance of payments deficits, government economic policies after 1986 were similar to many of the prescriptions recommended by the IMF, and emphasis shifted from land redistribution to improved productivity of communal areas.[91] Many of the arguments behind the latter course of action rested on assumptions which had been key to colonial policies, including narratives of environmental decline, which necessitated better land husbandry (and hence implied that lack of knowledge amongst poor farmers was one major cause). Arguments related to land

management were central to the colonial domination of agricultural policy and also to the expropriation of land: "there had to be a Land Husbandry Act to justify the Land Apportionment Act (1930)".[92]

In the decades following independence, few changes were made from the colonial model, either in terms of legislation, or in terms of the state mindset. The Communal Land Act of 1982, for example, can be seen as one in a long line of legal instruments to increase the control of the state over rural communities.[93] Another interesting aspect of post-independent governance relates to the state's relationship to the customary chiefs and headmen. Generally, they were seen as conservative and associated with 'backwardness'. The resettlement process was perceived as a way of creating new socio-political spaces, free from the control of customary authorities, where traditional agricultural practices could be discarded in favour of 'modern' methods.[94]

Finally, there were vested interests involved: some members of the government and armed forces were able to rent land, which had been acquired at nominal rates, and hence were in no hurry to see it re-distributed to peasants.[95]

First, a number of wealthy black Zimbabweans, apparently including ten Ministers, had purchased large farms and were now members of the white-dominated Commercial Farmer's Union. There had been a convergence of interest between the old white elites and the new black elite. This further reduced political will amongst the leadership to redistribute resources to the poor.[98]

All the same, with an election due in 1990, ZANU (PF) felt that the land issue would help them in the polls. The Lancaster House Agreement was due to expire the same year, and the government of Zimbabwe, feeling that it had been extremely conciliatory thus far, planned to make changes to the terms of land acquisition. In the face of mounting calls by politicians for a radical programme of land reform, representatives of the British government made several interventions which made it clear that they wanted, as much as possible, a continuation of the spirit of Lancaster House. This position is perceived to stem not just from ethnic affiliation with the white farmers (most of whom are of British origin) but also from an aversion to those policies which remain, in terms of their call for equality and communal production, reminiscent of socialist ideas.

Predictably, especially in terms of the strong backlash against the British Government position, Zimbabwe put legislation in place to enable a faster land acquisition programme, through the 1992 Land Acquisition Act and the identification of priority farms. However, mistakes were made in the lists drawn up. Some have characterized the selection process as politically-motivated, while others put the blame on bureaucratic errors and red-tape.[99] Others have put this phase of Zimbabwe's history into the wider political context: Zimbabwe had embraced the neo-liberal market-led development paradigm, and the political will for redistribution was less significant than the political elite's desire for black entrepreneurial development. The most

important criteria for resettlement ceased to be poverty and landlessness, and were increasingly 'capability' and 'productivity'.[100] However, despite the technical nature of much official discussion around land reform, and the suggestions made by Zimbabwean and foreign land specialists, for example, as part of the Land Tenure Commission in 1994, land remained essentially a political issue, and therefore outside of the realm of 'participation' that had started to become influential in Zimbabwe, to some degree, in the 1990s.[101]

As a result, despite much rhetoric, land distribution did not proceed rapidly. In the face of this, land occupations increased.[102] It is important to note that land occupation did not start in the late 1990s. It has been a consistent phenomenon throughout Zimbabwe's post-independence history. These were mostly tolerated by the state as long as they only affected vacant land that had been abandoned by the former owners, or marginal land not under freehold. However, occupations that threatened commercial agriculture were not tolerated. The waxing and waning of state support depended on changes in the political climate. In 1990, for example, occupations on state land were tolerated in order to gain support during the elections.[103]

In the mid to late 1990s, the incomes of the poor majority fell dramatically, and 50,000 war veterans received state money in 1997, further squeezing the government budget for social welfare, and part of the costs were passed on to the public in the form of increased sales tax. In 1997, the economy went into a general decline.

At the same time, land occupations occurred on a larger scale than previously, with rural people moving en masse onto commercial farms; some owned by senior party officials. The motivations for occupation included poor relations with the commercial farmers and/or other local peasant communities, unsettled land claims, and lack of local consultation in previous resettlement programmes, and (related) dissatisfaction that some beneficiaries of resettlement on adjacent land had originated from further away.[104] One leader of a group of 'squatters', a war veteran, stated that in order to encourage others to join the movement, "we told them that the government had failed to deliver its promise".[105] The first occupations were not supported by any government encouragement: indeed, occupations were criticized by government officials and some 'squatters' were forcibly removed from the farms.[106]

However, the invasions coincided with a severe loss of legitimacy on the part of government, and in particular, the rejection of the draft Constitution was interpreted as a refusal on the part of the opposition to compulsory land acquisition. The draft Constitution included several clauses representing amendments to legal and policy frameworks. Section 56 stated that, "Everyone's right to own property and to use and enjoy their property must be protected, though this right may be subordinated in the public interest." Section 57 asserts that,

> *"i) the former colonial power fails to pay compensation for agricultural land compulsorily acquired for resettlement, through a fund established for this purpose; ii) if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land acquired for resettlement."*

Partly in response to rejection of the draft Constitution, the state moved to support the occupations and initiate a 'fast-track' acquisition process. The fast-track land reform aimed to redistribute 80% of all commercial farm property, mostly to poor beneficiaries (160,000 were targeted), but also to 50,000 small to medium scale black farmers. Laws were amended to legalize the occupations, including the Constitution, and the Land Acquisition Act. The Rural Land Occupiers (Prevention from Eviction) Act, passed in July 2001, freed the state from the responsibility of abiding by previous legal decisions.

Whereas the original actors involved in occupations were mostly the landless, poor peasantry, and some commercial farm workers, the later occupations (especially from 2000 onwards) included a wider range of actors, including war veterans, district and provincial representatives of the state, traditional leaders and ZANU-PF supporters more generally. During the 1990s, the government had reinstated the traditional rights of customary chiefs, for example, to allocate land in communal areas. This was due to realization that despite legislative and political attacks by the state, the chiefs retained significant influence at the local level, and should be accommodated rather than marginalized.[107]

The occupations became more politicized in the run up to general elections in June 2000, with battles occurring between ZANU-PF and Movement for Democratic Change (MDC) youth around the occupied farms, which had become *de facto* 'ZANU-PF zones', from which attacks could be launched against opposition supporters.[108] War veterans, who had just received a pay-out from the government, were particularly central to political violence, which often coalesced around the land issue. The language of occupation became increasingly related to violence, especially the violent struggle for liberation: *jambanja*, meaning violence, was used frequently, alongside *hondo yeminda* (land war) while senior ZANU-PF leadership made frequent allusions to a "third liberation".[109] 'Squatters' supported themselves on the farms by poaching, stealing cattle, cutting down trees, demanding food from farmers and looting property. The idea of the chaos in and around the farms (in terms of uncertainty around legal issues as well as violence) is succinctly captured in the war veteran's statement that when they entered farms, they were "going into the DRC".[110] This reflects the dominant international opinion: that the land invasions were utilized as a means to create organized chaos. It has increasingly come to be realized that disorder can reap more returns (for a powerful few) than order, and as early as 1999, analysts noted that many politicians in Zimbabwe were "active participants in the informalization of politics".[111]

While the political aspects, and the instrumentalisation of disorder, are highly important to understanding the wider role of the land occupations, it is important to also examine the elements of occupation that were, by contrast, highly organized. Many 'squatters', who were often led by 'base commanders' with a hierarchical command structure, were 'allocated' land, which was surveyed using tape measures and pegged out. Legal regulations – concerning cultivation adjacent to watercourses, for example, were often adhered to, despite the 'chaos'. This has been interpreted as a means of legitimizing the occupations and drawing attention to the land requirements of the 'squatters', rather than the political issues surrounding the occupations. When government surveyors arrived to formally survey land, they were under pressure from government-imposed deadlines, meaning that accurate surveying was not always possible, and indeed, in some cases the squatters significantly influenced the surveying process, with one surveyor stating that, "we tend to just ratify existing plots".[112]

By the end of 2002, the government claimed to have allocated land to 384,000 families; however, these figures are exaggerated. Such claims were used to gain political support during the 2002 Presidential elections, and many of those listed as having received plots have never received official confirmation.[113] In fact, many of those directly involved in the occupations have not benefited as a result, while politically connected figures have received huge areas of land. Some customary chiefs, as well as politicians and other key members of the regime, have been implicated in irregular land allocation. According to reports, President Mugabe's wife received an estate (complete with mansion) worth US$100 million, while the lands commission chairman allegedly allocated himself six farms.[114] The people of Svosve community, for example, who had occupied a farm in the expectation of receiving land, were evicted from the farm, which was then taken over by the commander of the Zimbabwean Airforce.[115] Corruption at the level of district administration – where many decisions over land allocation are made – is reportedly rife.

The accelerated economic decline, acute food insecurity and governance crisis affecting the country has been well-documented elsewhere, and only a few facts need be repeated here. For example, the annual inflation rate, amongst the highest globally, rose from 400% in August 2003 to 622.4 % in February 2004.[116] Spending power of the average family has drastically declined: the monthly expenditure basket for a low income urban household of six is about 436% more than in June 2003. Between May and June 2004, the cost of maize meal went up by 44%, that of sugar by 21%, tea by 14% and flour 12%.[117] In terms of political relations, the main opposition party, the MDC has been accused of being a puppet of foreign – especially British – interests, which is partly related to the way in which it has lobbied on the land issue. The MDC has been under legal and physical attack by ZANU-PF and its supporters. The land issue is one of a number of factors that has polarized domestic politics in the country.

The extent to which the acquisition of commercial farms is a cause of the economic crisis is disputed, though many argue that the decline in commercial production, and the loss of jobs in this sector, had major secondary effects on the wider economy.

The international community is divided over strategies to address the problems affecting Zimbabwe. The Commonwealth countries, in particular, seemed to divide along racial lines in their views. South Africa, Zimbabwe's powerful neighbour, has remained in many ways supportive of ZANU-PF, due to complex reasons related to its own internal politics (including the very slow progress of its own land reform programme) and its perception of international motivations.[118]

A number of important issues tend to be overshadowed by the black-white dynamic that dominates much of the discussion, especially in the media. One issue (which has been raised by several NGOs) is the fate of 300,000 commercial farm workers, many of whom are refused land in resettlement areas because they worked for whites; and have since become landless and unemployed.[119] Others relate to the land rights of women: almost all of those allocated land are male heads of households. Widows or unmarried women with dep*enda*nts qualify to receive land, but married women use land to which their husband has the title. In cases of divorce, their land rights are, therefore, extremely insecure.[120] Generational rivalries are also significant, with political affiliations running along generational lines in some areas, with ZANU-PF representing the 'old guard' and the younger generation supporting the opposition MDC.[121]

One of the most problematic aspects of government policy, especially from a land tenure security viewpoint, is that many policies were passed with retroactive effect, in order to legalize a situation that clearly contravened the Constitution and several pieces of legislation which recognized private property rights.[122] The Supreme Court, on 10 May 2000, in fact instructed the government to halt the fast-track programme, as it had no legal basis. The government countered that the judge involved was biased, and since then, the independence of the judiciary has been under sustained attack through various means, including intimidation and violence. Such a precedent is a major disincentive to investment in land, or indeed in any kind of capital intensive venture.

## CONCLUDING THOUGHTS

Despite the great differences between the two countries, in terms of their colonial past, land use patterns and policy processes, some similarities can be identified.

First, both the Eritrean and Zimbabwean war of independence demonstrate the importance of land access to liberation movements. Inequality in land ownership was one of the stimuli for conflict in Zimbabwe, whilst in Eritrea, changes in land use, and adaptations to mechanisms for resolution of land disputes, were implemented even as the war raged.

Second, comparison of the stated objectives – as well as many of the actions – of ZANU and the EPLF during the wars of liberation with their actions after they came to power, reveal discrepancies. These can be interpreted as accommodation of elite interests and marginalization of those outside of the politically connected 'circle'. In Zimbabwe, despite numerous public statements about the need to dismantle inequitable economic power structures and redistribute land, the post-independence government essentially failed to do so and hence by default allowed the land issue to become openly conflictual. The reasons for this were many, as noted in this chapter. In Eritrea, the people-driven approach of the EPLF, which was actually practiced in many ways during the liberation war, has arguably been abandoned in the last few years. In particular, despite its avowed aim to be inclusive and address the needs of all Eritreans, the Land Proclamation was drafted and ratified by the government without public consideration of its content, leading analysts to conclude that there had essentially been no consultation on the issue.[123] Given the lack of mention of communal resource rights in the Proclamation, it seems that the livelihoods of pastoralist communities are given secondary importance, for a variety of 'technical' and 'political' reasons. It seems that the government of Eritrea has not managed to shake off some militaristic elements, particularly those related to centralized decision-making, and has not managed to broaden its support base to include some of the dryland communities who were associated with its wartime rival, the OLF, and this has implications for land access in these areas.

Third, the case studies reveal some interesting aspects of relationships between the state and customary authorities. In Eritrea, customary authorities were supported during the liberation conflict by the EPLF, although aspects of custom, which were particularly inequitable, were altered. During the land policy formulation process, the geographical extension of a slightly adapted form of *deissa* tenure was seriously considered as an option. However, after the Land Proclamation had been promulgated, customary authorities were in many ways seen as a threat to the power that the government could wield over control of land. In Zimbabwe, in contrast, the post-colonial government started off with a very negative attitude towards the traditional chiefs and headmen, as they did not fit within its modernization paradigm. They were stripped of some of their powers over the land, in order that they did not impede agricultural progress. In the 1990s, however, as the struggle over arable land became more visible, their powers were reinstated, and they became a tool for elites to gain access to land through manipulation and corruption of the land allocation programme. It can be seen that the fortunes of customary leaders *vis-à-vis* the state fluctuate according to political expediency, amongst other reasons.

Fourth, it is clear that the role of external actors cannot be ignored, even if land policy is framed as a domestic issue. In Zimbabwe, the attitude and actions of South Africa first limited government freedom to

implement radical change (prior to 1994); and later, during the 'fast-track' period, provided quiet diplomatic support to ZANU-PF and hence acted as a buffer against international pressure. President Mugabe's relations with Britain have also been an important and deciding factor in how the land question is dealt with. The British government may indeed be accused of allowing ethnic alliances to get in the way of diplomatic pragmatism.

In Eritrea, conflict with Ethiopia has contributed to land-related conflicts in areas inhabited by the Kunama, and have of course contributed to increased internal displacement. The internal repression, which has been noted, is also likely to have had a negative impact on relations between the state and local customary institutions, which it perceives as a source of potential competition. This is particularly unfortunate as customary leaders have important roles, in practice, in resolving land disputes.[124]

Finally, it is clear that despite avowed 'breaks with the past', which are associated with liberation, government policies in both Zimbabwe and in Eritrea represent continuities as well as changes. In Zimbabwe for example, the modernization paradigm, and the characterization of peasant agriculture, was essentially inherited from colonial times and not fundamentally questioned. In Eritrea, the post-colonial government has continued the trend of extreme control by the state over land. Few checks and balances have been put in place, which is highly problematic, especially in a country where political opposition and civil society organisations are not well developed.

## ENDNOTES

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# ‘Customary Land Tenure’ in Sub-Saharan Africa Today: Meanings and contexts

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## PREAMBLE

This short chapter is structured around a single question: today, what exactly do we (and others) mean by the term ‘customary land tenure’? Simple though it may sound, the question stands central to any discussion on land and land rights in relation to conflict. Now that land scarcity and conflict over land are increasing in Sub-Saharan Africa a clear understanding of what stakeholders mean by ‘customary land tenure’ becomes compelling. The case for reflections on the term is enhanced by the fact that concepts like ‘custom’ and ‘customary practice’ are currency in contemporary policy debates – even though their users may not always be clear on what exactly these concepts denote; [1] after all, their appropriateness has been the subject of animated debate for over four decades.[2]

My starting point is that much of what we know about customary land tenure has come to us via ‘native courts’ in the colonial era; courts that were not ‘equipped to deal with the perplexing array of customary land rights, and the flexibilities embedded in them’.[3] The colonial courts simplified by removing all reference to flexibilities and ambiguities, and ignored that negotiation was part and parcel of local ways of allocating and using land. Today, crucially, contemporary policy arenas also embrace simplification, which they do by espousing *evolutionary models* of customary land law. These models miss out on the ongoing dynamic of contemporary claims and counterclaims.

How then should we approach the concept of ‘customary land tenure’ in deliberations on land and conflict? To appreciate the ongoing dynamic of contemporary claims and counterclaims to land, we need to develop, amongst other things, an understanding of the trajectory the concept of ‘customary land tenure’ has travelled since the onset of colonialism. What needs examining is the intellectual status of our knowledge base concerning customary rules and practices. Such an examination implies paying attention to *the context* in which the term ‘customary land tenure’ has emerged and been used. Equally important, examining our knowledge base is likely to make us aware that codifications of customary law – static though they are – do not mean that customary claims today have lost their ‘flexibilities’ and emphasis on negotiation.

One specific challenge I shall address is how to understand land rights. Whatever 'customary land tenure' has meant in the past and still means today, caution is advised when reading 'rights' into customary rules and practices. The issue matters, because many land-related conflicts originate from agreements made long ago, agreements made either in the name of tradition or on the assumption that they would not harm the subsistence and security of the granting group. Against this backdrop we need to ask to what extent customary law dealt/deals with rights in the legal sense. I begin this chapter with a longitudinal reflection on land rights, one that goes back to pre-colonial times.

## THE NATURE OF (PRE-COLONIAL) CUSTOMARY LAND RIGHTS

The realization that land is socially embedded should invite us to think of land as a site of complex, interlocking tenurial rights.[4] Such rights frequently have to do with the rights of individuals to particular plots, but also with rights to land held collectively. Crucial to our deliberations on land tenure and conflict is Fiona Mackenzie's (documented) assertion for Murang'a district, Kenya, that rights 'allocated according to custom' are not necessarily free of struggle. This has been the case for quite some time. Struggles were very intense in colonial times, partly because 'custom' was being written up (and sometimes invented), and even pre-colonial land allocations were not devoid of tension. Mackenzie spells out the details:

> *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) … 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".*[5] *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.*[6]

One of the better known examples showing how recourse to customary law has ambiguities or loopholes prone to result in struggle is the Jahaly-Pacharr irrigation scheme in The Gambia. Following the launch of this supposedly 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.[7]

Examples like the Jahaly-Pacharr scheme have led some anthropologists to argue that analysts must not over-celebrate the agency or initiative of subordinate groups. As Pauline Peters[8] 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'. 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.[9] Responsible for this uneven appropriation are 'local and national elites, some [working] in collaboration with transnational networks' or international development agencies.[10] It makes one wonder what meanings those involved in the struggle attribute to 'communal land' and 'our tradition'. Whatever the answer, a range of meanings, some contradictory no doubt, is likely to emerge.

Contested meanings today stem from the fact the concepts like 'customary law' and 'customary tenure' do not refer to a pre-colonial culture and time when every land-related issue was clear-cut. These concepts, rather, have been produced out of colonial encounters (often misunderstandings) that promoted politically expedient appropriations of land.[11] Peters reminds us of

> *Elizabeth Colson's incisive critical assessment*[12] *of the creation of 'customary law' (up through the 1930s), [which] 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.* [13]

The colonial encounter in Congo, Central Africa, provides us with ample examples of outsider confusion, as Koen Vlassenroot and Chris Huggins demonstrate in their contribution to this volume.

In pre-colonial Africa, land was mostly conceived of as an unbounded resource to be used; not as a commodity to be measured, plotted, subdivided, leased, pawned or sold.[14] Using land – as opposed to holding it – implied the absence of strict boundaries and landlord-type authorities. Ritual leaders might have had responsibility for the correct spiritual management of land, but they were 'leaders of ritual and not allocators of land or rulers of men'.[15] It was only later, under the impact of European colonialism that ritual leaders were made 'into landlords on the grounds that they were community leaders and therefore holders of the land rights of the community'.[16] It was a terrible misreading, a reasoning wholly absent from the pre-colonial scene.

For most of pre-colonial Sub-Saharan Africa, with its low population densities and relatively limited population movements, land was a resource that all community members should have access to in order to subsist. Community members had a ritual relationship to land, and did not differentiate between land for agricultural and 'other' purposes. Likewise, land use was the concern of the living and the dead, as well as the unborn. Colson quotes a Nigerian chief at the beginning of the twentieth century: 'I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn'.[17] Under these conditions (ample land, low population rates and movements), *land rights were rarely defined since they were rarely questioned*.[18] The exceptions were some densely populated, economically vibrant areas in West Africa, and areas of high agricultural fertility in East and Central Africa. The absence of clearly defined rights persuaded anthropologist Paul Bohannan that the term 'tenure' – a Western concept – should not be applied to pre-colonial Africa. [19]

Whatever the range of regional variations on the ground, pre-colonial land systems were run on two basic principles: first, that

> *each citizen should have the right of direct access to the resources of the territory controlled by the political unit to which he belonged*. [20]

The second principle, which Colson referred to as 'probably equally ancient',

> *recognized an individual's right to anything he had created, whether this be an office, a pot, a homestead, or a field. Such a right could be inherited according to the regular rules of inheritance of private property. Rights in improved land could thus become the particular rights of an individual or of a small family corporation which might also be a section of the political community if descent groups had a political function. The originator of such a right could transfer it during his lifetime to another person, either as a gift or for some consideration*.[21]

Colson maintained that the two principles – of general rights based on citizenship and of particular rights based on creative pre-emption – did not clash as long as land was plentiful, and, we should add, as long as subsistence remained the main motive for accessing land. Disputes about land boundaries were insignificant. This is also suggested by the lack of violence associated with expansion of land claims by particular groups in Ituri, eastern DRC, prior to colonial times, as discussed by Vlassenroot and Huggins later in this volume.

## COLONIAL IMPACTS: THE (SIMPLIFYING) CODIFICATION OF COMPLEX APPROACHES TO LAND ACQUISITION AND USE

Even where they pledged to respect and preserve existing customs and rights, colonial governments did impinge upon land rights. They did so

by encouraging a modicum of economic development that diverted some land to new uses, and by stimulating an appetite for imported goods that could be met only by the exploitation of land in cash cropping. These changes 'had an impact on local systems of land rights as men began to evaluate the land they used in new ways. They also led to an increasing number of legal battles over land; for men were encouraged to establish long-term rights in particular holdings either for immediate use or for subsequent gain'.[22] Coupled with rapid population growth, these changes of vision resulted in the emergence of a flurry of court activity directed at considering land claims. Colson makes a crucial observation here:

> *Land claims … came to be tested in the courts, where adjudication encouraged the rapid development of fairly comprehensive bodies of customary, though untraditional, law which governed the allocation and use of land. This drive to formulate more precise rules … occurred spontaneously as soon as men became aware of a clash of interests. But once the colonial period had begun, the resulting formulations rarely reflected only local decisions. Even customary courts were under the ultimate jurisdiction of colonial officers who expected the courts to enforce long-established custom rather than current opinion. Common official stereotypes about African customary land law thus came to be used by colonial officials in assessing the legality of current decisions, and so came to be incorporated in 'customary' systems of tenure.*[23]

The consequences are still with us. When today we refer to customary land tenure, we may be referring in part to a feat of social engineering that allowed western legal concepts to slip in through the backdoor of so-called 'native courts'. European concepts of legal tenure, assumed to be universal, became central to the land laws of every colony. In particular, the colonial authorities assumed that the European concept of proprietary ownership covered the full range of customary land rights in Africa. The implications were huge: 'If no private person appeared to hold such rights over a given area, then they assumed that the rights must vest in the political unit whose members used the region. Failing this, they belonged to the newly created [colonial] government which could then alienate the land on its own terms to commercial corporations or to European settlers'.[24]

Where colonial regimes accepted to rule indirectly through traditional authorities, their officers ended up recognizing chiefs and rulers where none had existed before. It is a phenomenon generally described as 'the invention of Africa'.[25] Colson:

> *The official search for the owners of all land encouraged the confusion of sovereignty proprietary ownership and the creation of systems of communal tenure came into being with precisely defined rules. (…) The newly created system was described as resting on tradition and presumably derived its legitimacy from immemorial custom. The degree to which it was a reflection of the contemporary situation and the joint creation of*

> *colonial officials and African leaders, more especially of those holding political office, was unlikely to be recognized.* [26]

The colonial context demanded that custom should have clear rights and clear authorities over land. What also changed in the process was that social groups came to be regarded as essentially territorial units. Paul Bohannan put it thus:

> *Man-man relationships in space, with concomitant rights to exploit the environments are being replaced by legally enforceable man-thing units of the property type, the man becoming a legal entity and the thing a surveyed parcel of land. Rights of people are being made congruent with rights in specific pieces of land so as to accord with surveys and legal procedure. Property and contract are becoming the basis of social life in places that were once governed by considerations of status.*[27]

The concept of customary 'rights' in land must thus be seen for what it is: a corruption (read: excessive standardization and some misreading) of basic African approaches to land and people; approaches in which 'rights' were attributes of persons against other persons.[28] Regarding the colonial experience in Malawi and Zambia, Martin Chanock[29] has this clear statement on the changes wrought by colonialism:

> *In pre-colonial society, (…) people were linked to land through their membership of groups. It was their group standing which gave them access to land and consequently their concern was with maintaining their position linked to other persons rather than with rights in land. (…) Links to and rights in persons through whom land was acquired and by whom it could be used were crucial, not rights to land as such. But [during the colonial period], rights in people as a resource were becoming less enforceable and negotiable, which meant that rights in property had gradually to be differentiated from rights in persons.* [30]

Even in territories governed on the basis of indirect rule (colonial Britain, the Belgian Congo), colonial development policy converted 'use' into 'ownership', 'users' into 'owners', and 'rights as persons' into 'rights to specific pieces of land'. The Belgian Congo can serve as an example of how 'ownership' was routinely misread. In colonial Congo, where administrators were often conscious of the excesses of King Leopold's Free State, owners had to be found for all land, including vast stretches of empty land. Before empty land with no apparent owner could be claimed as waste land for state or private exploitation, it had to be assigned. Usually this meant assigning the land to a political community.

The colonial desire/policy to assign all land resulted in political communities becoming owners in a Western legal sense. Being in charge of 'native affairs', the colonial power could then declare that all land was collectively owned. The Congo illustrates this well. By the end of colonial rule it was a known 'fact' (which we now regard as a misreading) that

> *According to Congolese native law, individual land ownership does not exist; there is only collective ownership. The land belongs to the clan, a community made up of family groups consisting of all the descendants – living and dead – of a common ancestor, and in theory, all the generations to come.*[31]

It is a view adopted also by Daniel Biebuyck, who has written: 'Vacant land or land without title-holders is unknown, although vast tracts may be uninhabited and only very extensively used'.[32]

Colonial policy, however, also dictated – and crucially so – that it was desirable for (certain) communally owned lands to be used for the profit of the colony where this was commercially feasible. Landowners – i.e., often former ritual leaders vested with powers previously unknown - were now 'permitted to dispose of their rights to government either by sale or by lease'.[33] The outcome was that

> *the possibility of profit from sale or lease [and the influence of new religious authorities]… rapidly changed men's views of the nature of land. Communities sought to extend the boundaries of their holdings and sued one another over land that both had formerly ignored. Members of a community found themselves bound to their fellows in a new fashion, since they now had an hereditary interest in the cash to be derived from the land of the community.* [34]

That colonial intervention resulted in the creation of a new type of local authority, with unprecedented powers and little need for accountability, has been documented by historians and anthropologists alike. James Fairhead [35] gives us this (unpublished) account for Eastern Congo. In 1918, Belgium radically altered the political scene in eastern Congo through the creation of a ruthless 'traditional' structure capable of extorting labour at very low rates of pay. Some existing chiefs were endowed with vastly enhanced powers, others appeared to come from nowhere. This policy regime of invented tradition resulted in the creation of powerful Bami (kings) throughout the region. Some of these new kings

> *were able to sell not only the land of their own people, but also land previously under the jurisdiction of chiefs whom the Belgian authorities did not favour. Thus Ndeze II, who came to rule all of Bwisha following his elevation to mwami in 1929, saw fit to colonize Bwito. He ousted Bwito's Bahunde chiefs and installed his own Bahutu delegates. To protect Bwisha and destroy his enemies in Bwito, Ndeze II asserted vacancy and sold large areas of Bwito for personal gain.*[36]

To facilitate the state-sponsored migration and settlement of tens of thousands of Rwandans into Eastern Congo, the Belgian authorities obtained signed lease agreements from 'autochthonous' chiefs, who were *personally* financially rewarded. The arrangement was

> *not too problematic in the less densely populated areas, including Masisi, but it was more difficult in Rutshuru, where the older plantations were*

*located. Here there was 'confusion of land rights between plantations and the new immigrants'[37]; a confusion aggravated by the influx of Bwisha highlanders who were seeking to be relocated. (…)*

The crisis [had] its first climax in the deregulatory aftermath of Congo's independence, when autochthones voted with their feet and entered the Banyarwanda settlements to reclaim their 'inheritance'. Throughout Kivu, those who considered themselves to be the rightful inheritors of land began to (re?)claim what they considered to be inalienable, ancestral land.[38] The outcome was that the Rwandan immigrants and their descendants, who believed they had been allocated land on an inheritable basis, came to be 'redefined as "imposters" who had no long-term rights'. [39] Banyarwanda migrants thus became targets for confrontation because of their [remembered!] 'foreignness'. [40]

In eastern DRC, the complex interlinkage between *land, identity and memory* came into play following Mobutu's announcement in April 1990 that the country was to be democratised. At this point, as Vlassenroot and Huggins show, local politicians were forced to build for themselves strong power bases, which they routinely did by playing the ethnic card and turning economic struggles over land into ethnic struggles. For example, the Hunde chiefs who had sold off customary land to immigrant groups of Rwandan origin were quick to turn popular frustration over growing landlessness into ethnic hatred towards the (prosperous) immigrants.[41] And just like these 'immigrants' were suddenly reminded of their foreign status, so people without a strong historical interest in land ownership were told by groups with a different history that they should forget their rights in land. The ethnic discourse sharpened. Thus in South Kivu, ethnic tension increased between Babembe and Babuyu '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'. [42]

It is important to note here that land-related arrangements are mostly 'secured through verbal contracts and testimony through neighbours and customary leaders, and titles generally do not exist' (see Vlassenroot and Huggins, this volume). Under these conditions, sharecroppers and tenants are easily 'relabelled' at a later stage, and existing arrangements overturned. The same fate has befallen the Banyamulenge, who despite living in South Kivu for over a century, came to be re-labelled as ungrateful immigrants from Rwanda before being chased off their lands. Whether it happens in the Kivus or in Rwanda (see Musahara and Huggins, this volume) the re-labelling of social identities is a powerful devise for economic exclusion and political domination. Power-hungry politicians never encounter great problems when the 'ethnic other' needs to be reconfigured for the sake of political and economic reward.

In sum, what we call customary land tenure is in fact 'customary' tenure, i.e. codified and untraditional. Rules of access and use, as they

existed in pre-colonial times, had principles but no rigid rules or rights; codified tenure, imposed during colonialism, had rigid (and occasionally invented) rules to suit the opportunistic climate of modern times.

Martin Chanock[43] provides several illustrations from East Africa to show how corrupt notions of 'our tradition' took shape at the very point where land became an important source of wealth.

> *Iliffe observed of developments in the coffee-growing areas of North Tanganyika that Chagga customary law on the subject of land was 'vague, contentious and mutable'. But as the land hunger of the commercial farmers grew, so land disputes multiplied in local courts, as did claims that freehold tenure was traditional. People in Kenya, Kitching writes, had by the early 1930s come to conceptualise past and current use of land in terms of ownership, purchase, sale and tenancy.*[44]

In more recent times, as just seen for eastern DRC, communities and individuals have reminded themselves of the artificiality of customary law as upheld by the courts. They have done this especially by questioning the legality of certain land transactions in colonial times. The troubles in North Kivu in the early 1990s, for which Vlassenroot and Huggins provide conclusive data, reveal how so-called autochthonous ('indigenous') people (which is not an unproblematic category) were made exceedingly aware that certain leases or sales involving the colony and 'fake' local authorities had been violations of tradition.

## RETURN TO THE CUSTOMARY: RIGHTS-BASED DISCOURSES ON LAND REFORM

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.*[45]

Nonetheless, policy discourses that advocate land reform – whether they come from the World Bank or Oxfam GB or the London-based IIED institute – increasingly envisage that custom can be 'modified' through appropriate intervention. A 'modified customary system' 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.* [46]

While the two policy approaches differ to some extent, 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*.

In their chapter on Rwanda, Musahara and Huggins offer a taste of this emerging consensus where they reveal that certain policymakers have recently claimed that Rwanda does not know any absolute landlessness 'in the true sense of the word'. Landless people, these policymakers argue, 'can still operate a plot of land from the extended family through the traditional mutual help schemes'. A range of customary practices are invoked (*kwatisha*, *ingaligali*, etc.) to make the point that custom provides some kind of safety net for the poor, albeit a not very reliable one (on *ingaligali*, for example, see Pottier and Nkundabashaka).[47] Other evidence of a 'return to the customary' exists in the way international policymakers in Rwanda (from FAO and the World Bank) have recuperated the 'traditional' concept of patrimony (Musahara and Huggins, this volume).

The 'harnessing' of so-called customary systems of land tenure may sound like a fine 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. What they created and sustained was later passed on to post-colonial states (see e.g. Okoth-Ogendo[48]; Berry[49]; Shipton and Goheen[50]; Moore and Vaughan[51]). The result was a perception that customary law was coherent, static and overly legal. In other words, distinct meanings in Western law were used to describe the 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 [Western] law'.[52]

It is this kind of perception that some influential policymakers and policy-making bodies are rediscovering today. They are hunting for clear principles and clear rights, but refuse to face those aspects of customary land use – the ambiguities, the negotiations – that the simplified, colonial readings of past practice chose to disregard. Contemporary policymakers in Rwanda, along with the country's politicians, are firm in this refusal: 'one should avoid being trapped by cultural considerations,' they claim (see below).

In contrast to the simplifying, overly legalistic approach to customary land tenure in some policy circles today, anthropologists and historians acknowledge that many diverse practices exist regarding land and access to land, and appreciate their built-in plasticity and scope for negotiation. 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. … 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 bases. 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*[53]*. )*

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.[54] This explains their scepticism when policy advocates use a 'rights language' to describe land claims in 'indigenous' systems.

'Rights' in customary law need to be seen in context, i.e. no precise legal meanings were attached, and existing rules and practices occurred mostly in situations where land was plentiful. Sally Falk Moore[55] illustrates this with reference to West Africa's long tradition of welcoming 'strangers' into local, so-called autochthonous communities. Moore:

> *Under conditions of land plenty and an absence of land markets, villagers were often generous. There are many communities in West Africa where 'strangers' who asked to settle locally were offered a plot to cultivate. It is seldom clear, [however,] under precisely what 'legal' conditions these loans or gifts of land were made. (… )*
>
> *One often hears it said that in the past the moral precepts of African culture presupposed that everyone had a right to the use of a piece of cultivable land. (…) Under the same principle, 'strangers' or migrants' who ask for permission to cultivate should not be refused if there is sufficient land to share with them. (… ) But the question whether this was a matter of right remains. Was there ever such a right in the rule-minded, legal, human rights sense of today? Or are we talking about the frequent practice of generosity in the presence of land plenty, the helping of strangers having been at one time an affordable moral ideal?* [56]

Today, under changed conditions – dramatic population increase, disputed land boundaries, in-migrants outnumbering the original population, land degradation, drought, etc. – autochthonous groups are reclaiming lands previously made available to in-migrants. Mostly, however, the situation poses an intractable problem: 'who has the greater right, the original inhabitant or the needy migrant? Do both have legitimate claims? Who is to decide that question and who is to enforce the decision?[57] Knowing that rival populations claiming the same land may both have good grounds for their claims, Moore recognises that matters may need to be 'resolved by supervised negotiation'.[58] Differently put: 'Agencies are needed which can ascertain the legitimacy of claims, and then address them without being confined to a legalistic, adversarial, either/or solution'.[59] What Moore describes for the West African Sahel region has also occurred in eastern Congo, as we have seen above.

Another contested 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. As others have argued, however, such a view is restrictive: 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.*[60]

Those who view women's claims to land as invariably weak make the following assumptions: first, 'traditional' land holding systems universally prioritised the rights of male household heads over the rights of women; second, these 'traditional' systems are now evolving into individualized tenure arrangements with private transfers being made exclusively by and to male household heads.[61] This kind of evolutionary thinking, now adopted in the rhetoric of a diverse range of policymaking bodies, has rendered women's customary land claims invisible (see Whitehead and Tsikata 2003 for a review). Evolutionary theories of landholding are 'blind' to women's *struggles and successes* as they attempt to maintain access to land.

To explain this gender blindness, Ingrid Yngstrom argues that the evolutionary thinking on customary land practices, as propagated by Jean-Philippe Platteau[62], for example, has overly relied on a narrow reading of Fiona Mackenzie's historical study of land titling in Murang'a. Platteau holds that customary tenure systems are invariably male dominated and 'geared towards increased individualisation of tenure rights and increased transferability of land'.[63] Yngstrom comments:

> *Platteau's argument draws principally on studies of titling which took place in Kenya in the 1950s, including that of Fiona Mackenzie. In Mackenzie's historical study of land in Central Province of Kenya, debates over what constitutes "custom" had been intense over the course of this century and have been profoundly shaped by colonial attempts to codify "customary law" in the 1920s. In the codification process, male right to allocate land "pre-empted the previous visibility and legal significance of rights to usufruct" held by women.*[64] *Drawing on this "historical" precedent of custom, men found they were able to manipulate "custom" in order to exercise greater control over land to the detriment of women.* [65]

Mackenzie's study, however, also provided ample evidence to challenge the idea that women only had "secondary" rights as wives. Even though they were unable to inherit land, Murang'a women acquired strong

usufruct rights upon marriage; rights secure enough for women to maintain considerable control over subsistence production and its products.[66] In a later publication, Mackenzie (1998) addressed the issue of male and female rights in land under customary law. She concluded:

> *'Both (male) rights to allocate land and (female) rights of access … had legal visibility under customary law'.*[67] *The (male) right to allocate was subject to the economic functions of (female) rights to cultivate it. This ensured that 'women's "proprietary position" in an economy that relied so heavily on their labour was a strong one'.*[68]*;* [69]

Context is all-important here. As Yngstrom demonstrates by drawing from a wide range of illustrations, including her own research in Tanzania, the problem with the (evolutionary) argument that private claims on land will eventually replace those made on the basis of kinship is that,

> *in many parts of Africa, this does not appear to be occurring. Although increased commercialisation may have provoked private claims on land, evidence shows that these processes simultaneously provoke a proliferation of customary claims and counter-claims over land, and struggles over how "custom" is defined. Thus, even in areas of commercial agriculture where there is evidence of land markets, landholding systems remain tightly bound up with kinship structures.*[70]

The all important point is that we – analysts and policymakers alike – must get beyond the currently popular, but excessively restrictive view that women's customary claims to land are always "secondary" to men's. Without in any way diminishing the severe insecurities that women face, it must be recognised that the notion of a gradual weakening or extinction of women's rights in land is by no means inevitable. We must abandon such evolutionary thought, and instead pay full attention to the proliferation of claims and counter-claims that can be made – and are being made – in the name of custom. Like the colonial courts, contemporary policy arenas that espouse evolutionary models of customary land law are missing out on the ongoing dynamic of claims and counterclaims.

## DIRECTIONS OF CHANGE: CUSTOMARY LAND TENURE TODAY

Drawing upon her field research in Tanzania's Dodoma region, Yngstrom argues most persuasively that 'to understand changing tenure systems, we need to look at the organisation of land holding within kinship institutions and their processes of integration into wider markets. Gender is critical to understanding how these processes unfold'.[71] If analysts are to avoid the trap of an approach that hides behind stereotyped views of household organisation and ignores local power dynamics, they must

come to grips with wider contexts. This includes an appreciation of historical developments in gender relations. In particular, more attention must be given to the way land and labour intersect. Yngstrom:

> *In a context where labour is frequently a key limiting factor of production, and where women can and do provide a significant share of this, especially in terms of household food provisioning, the obligation by men to acknowledge their wives' contribution and to provide land for food is critical to the farming and household enterprise. Particular circumstances can nevertheless create conditions for these claims to be weakened and ultimately lost, as Fiona Mackenzie's study from Kenya shows.*[72]

The land-labour interface can be so important to members of a community that lineage authorities may override decisions made by uncooperative husbands, as Kevane and Gray[73] demonstrate for Burkina Faso. Here, should husbands be unwilling to provide wives with land, members of the husbands' lineage may come to the rescue. This situation exists because

> *women's rights are considerably more complex than the simple right to fields from their husbands. First [and foremost], women's rights to property obtained from men may be coupled with other rights and obligations. In many ethnic groups [in Burkina Faso] women have share rights to the harvests of their husbands.*[74]

Crucially in this respect, research has shown that 'norms about rights and duties are shaped at the extra-household level'.[75] They reveal that

> *women are typically not "owners of land" but "owners of crops." … Women's ultimate rights to use land are associated with their position towards men – as mothers, wives, sisters and daughters.*[76]

It is this recognition of women's multiple positions and roles that entitles them to help from their husbands' lineage should husbands fail to provide access, as Jean-Yves Marchal has also shown for some of Burkina's Mossi communities.[77] Moreover, new institutions may arise that, unexpectedly perhaps, strengthen women's ability to access land. The research Kevane and Gray conducted in south-western Burkina Faso, for example, has shown that where land scarcity makes the value of land rise, thus creating a market for land, some women may see their ability to obtain land strengthened.[78]

Another example of the need/benefit of analysing women's claims in a broad, extra-household context can be found in Ghana, where the Intestate Succession Law (1985) has strengthened women's traditional claims. On the basis of her extensive, long-term fieldwork, Agnès Quisumbing 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'.[79] The situation, she argues, is currently changing in women's favour:

> *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-eight to the surviving parent, and one-eight 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.*[80]

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.* [81]

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'.[82] To understand meanings of 'customary land tenure' today, which are always localized, we need to appreciate that circumstances do change over time. Yngstrom provides the conceptual tools:

> *In terms of institutional arrangements regarding rights and responsibilities in land and production, the conjugal unit needs to be understood in the context of wider sets of relationships among groups organized on the basis of descent and the gender ideologies implied therein. As landholding systems have been integrated into wider economic systems, women and men have worked both within and around the constraints of these institutions in order to exercise claims both on land and on each other for the means to work it. In the process, these institutions have transformed, as have the rights and claims that individuals and groups can exercise through them.* [83]

These various reflections on the continuing relevance of customary rights to land have taken us quite some distance beyond the essentialist view that women are invariably to be regarded as members of household who command "secondary" rights at best, diminishing "secondary" rights more likely. Above all, we need to appreciate that women and men continue to negotiate claims – albeit as non-equals. Sometimes women lose out, as in Dodoma, where a historically situated decline in livestock first resulted in 'a decline in access to labour for senior men', which in turn led to men underplaying women's historical claims on

lineage land.[84] Impoverished men sometimes behave that way, but not necessarily so.[85] In other contexts, changing economic circumstances and new institutions have strengthened women's claim to land, as documented for Ghana and Burkina Faso.

What should matter to us/researchers is not what *really* happened in the past (in many situated contexts we shall never find out), but how customary institutions function *within* the modern state. Thankfully, we do have a few studies that show that statutory law and so-called customary laws are more interconnected than is generally realized. What emerges, Mackenzie tells us, is 'a complex picture in which *people contest rights to land by drawing … on which ever legal resource they can*'. [86] (Emphasis added). 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'.[87] The outcomes do not always favour women, since there is much gender bias in legal cultures and statutory law, but other outcomes, as seen above, are also possible. It deserves emphasizing that we need to learn more about how claims are made with reference to both 'systems' simultaneously.

## ACKNOWLEDGING MEMORY

Despite the colonial codification exercise during which certain aspects of land tenure were re-written, i.e. written up with a (male) bias or even invented, the concept of customary land tenure lives on and testifies to the 'negotiation' and 'flexibility' found in pre-colonial approaches to land allocation and use. Moreover, although we shall probably never know the finer details of the scope for negotiation that existed in pre-colonial times, people today have memories – and they can be extremely imaginative in what they *choose* to remember. This observation is critically important to situations like Eastern Congo (as seen) or in Rwanda, where a Land Policy and Land Law have been long in the making.

The role of memory warrants a final reflection. In Rwanda, as elsewhere in Africa, much of what we know about history has come to us through the filter of 'collective memories' (Huggins and Musahara, this volume). In modern times, there are two episodes during which 'collective memory' played a key role in the creation of perceptions of the past. Firstly, the 1950s, when scholarly research created a romantic, socially harmonious image of pre-colonial relations based on the 'collective memory' of aristocratic Tutsi; secondly, the early 1990s, when 'Hutu Power' resurrected the 'collective memory' of Tutsi privilege to suit their own brutally selfish aims.[88] Today, ten years down the line, we see the awesome power of 'collective memory' at work in Rwanda's Land Policy where it 'glosses over the important issues of inequality and imposition of tenure regimes through conquest, describing the land system as stable and harmonious' (Musahara and Huggins, this volume); a harmony later shattered by European colonial rule.

Among the reform measures proposed in Rwanda's Land Policy is land registration. The measure has already produced widespread anxiety and controversy, because, as Musahara and Huggins point out, 'tenure security' means different things to different people. What peasant farmers want is 'security from land disputes'; what Government has in mind is security through land registration. Worryingly, the poor fear 'that those with land holdings smaller than 1ha, or unable to afford the [registration] fee, [will] not be able to register, and [will] be forced to give up land for consolidation'. Knowing how fear can be manipulated, and was manipulated in the run-up to the 1994 genocide, I agree with the authors that popular fears surrounding land registration need to be addressed by the authorities as a matter of urgency.

Equally worrying, and here we touch on a research issue of enormous magnitude, is that the Land Law will abolish customary sytems. Essentially, the Land Law

> *abolishes the dual nature of the Rwandan land tenure. Due to the restriction on subdivisions, the long practised system of inheritance will cease and access by lineage ubukonde will also be abolished.*

The architects of the Land Policy and Land Law have taken the view that cultural aspects of land access are insignificant – "One should avoid being trapped by cultural considerations" – and that, in any case, those cultural aspects are the same throughout Rwanda. This is a serious misreading of the pre- and early colonial situations, when the north-west and the rest of the country were governed by regionally/culturally distinct approaches to land access. Two comments are in order. First, the history of Rwanda's cultural/regional difference is well documented. Policy makers must not ignore this. Second, while no one suggests that this difference has remained static (and there is a lack of recent research), *the memory of that difference lives on* and can be reactivated and distorted for specific, possibly harmful political purposes.

While not many people in Rwanda today will have a clear picture of what 'remains' of the pre-1920s difference, 'from a conflict point of view, the cultural aspects of land access [remain] highly significant' (Musahara and Huggins, this volume). My point, which is also a deep concern, is that *remembered* land systems (*igikingi*, *isambu*, *ubukonde*) can be used to forge or exaggerate social difference *today*. The Land Policy gives us a rosy, homogenous picture of the pre-colonial past, claiming that 'in the pre-colonial period, "the ruler of the time accorded plots to any who acquired one". This significantly understates,' as Musahara and Huggins point out, 'the class-based social differentiation which governed land access'. I fully agree: 'some aspects of customary practices will continue to have an influence.' What matters, too, and here I would go further than the authors have done, is that such a watering down of pre-colonial complexities may become an invitation for political opponents of the present government to launch an accusation of cultural insensitivity. The Land Policy should not give demagogues ammunition to exaggerate the importance of past differences.

## CONCLUSION

In the early 1960s, when social scientists still stood close to the colonial era, anthropologists already pointed out that the colonial discourse on customary land tenure was muddled because wrong assumptions had been made and imposed. Paul Bohannan was explicit: 'there exists no good analysis of the concepts habitually used in land-tenure studies, and certainly no detailed critique of their applicability to cross-cultural study'.[89]

The critique that has now emerged, and which I have reviewed in this chapter, contains conclusive evidence to argue that pre-colonial land rights never were 'rights' in a clearly defined, legal sense. But they came to be regarded as such following codification (simplification, standardization) in colonial times. Despite the vast impact that codification has had, and despite evidence that contemporary policy making continues in the same simplifying/standardizing manner, 'customary land tenure' is alive and well, and changing. It takes many shapes, allows for the re-writing (and even invention) of past practices, and remains open to hard bargaining. It is this dynamic quality of customary land tenure – with its implicit recognition that there is nothing static about 'custom' – which, analytically speaking, should be valued above overly facile, legalistic interpretations. An appreciation of the dynamic quality of 'customary land tenure' should include an acknowledgement that customary law as practised today – i.e. as practised through the 'small talk' and actions of millions of farmers – is not only closely entwined with statutory law, but needs to be understood in the context of recent changes in the realm of kinship and descent organization.

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

JENNY CLOVER

## INTRODUCTION

Human concerns about the environment and the relationship between nature and society have manifested themselves in various ways over the centuries. An historical perspective shows environmentalism to be an elusive concept that has given rise to a complex of different social movements concerned with humankind's unending search for new methods of co-existence with nature.

The idea of an overarching order within which humanity, nature and God were inextricably bound characterised pre-modern cosmology. The pre-Socratic Greek philosophers probably invented the first documented singular and abstracted idea of nature, personified as *Gaia* (Goddess). However, this concept of nature was not seen as all-embracing, but was used to determine its relationship with humans and with God. In medieval times nature was seen as singular, abstract and at times was personified; it was God's creation. Nature and humans had their own distinct places in the greater scheme of life – but were both part of an all inclusive cosmological order.

It was with the development in the sixteenth and seventeenth century of the new sciences – physics, astronomy and mathematics – that nature and society were firmly separated. The study of nature became the study of how nature is materially constituted and the 'state of nature' became a set of laws and conventions discoverable through inquiry, a set of passive objects to be used by people.[1] The laws of nature became the laws of physics, and since these were God's laws, physical interference came to represent the continuation of God's creation – humankind's interference in and on nature was an unquestionable God-given right. Naïve forms of realism still hold that nature is a directly perceptible entity available to all regardless of experience, cultural context or motivation.[2]

The conscious juxtaposition of nature and society reached its apogee in the West in the mid 19th century, as it came to be seen as something that needed to be managed, subdued and controlled by humans. Indeed, progress came to be equated with humankind's ability to dominate nature. The main impact of Western environmental concern in nineteenth century Africa, for example, grew from the hunting which accompanied the expansion of European trade and missionary work.

Concerns with nature preservation and conservation found expression in the many national parks that were established in the late nineteenth century, the division between nature and society taking on increasingly a spatial form. The exceptionalism of humankind was consistent with this belief. The alternative (Romantic) conception of nature that had emerged by this time was more escapist than visionary. Nature sustained 'her' separation, as 'the other', to be found on the margins, or in the background, of society.

Until the late nineteenth century human-induced disturbances of the biosphere had been relatively limited. But about a century ago, humans crossed the threshold of minor influences upon the biosphere, irrevocably distorting the structure of its internal relations. The biosphere made the transition to a permanently disturbed state, and the epoch of global ecological crisis had begun. With the simultaneous growth of the science of ecology, close links were forged between ecologists and conservationists and the doctrine of environmental realism was developed further. Ecology served the purpose of both providing data, and as a model for ecological managerialism, for the practical application of development. Social practises played almost no role in such analysis – they were reduced to the superficial and transitory patterns of daily life. This is when we see the early beginnings of the conservation movement[3], informed by two ideological and divergent themes that arose at this time and that reflect the contradictions of modern environmentalism – ecocentrism and technocentrism. Ecocentrism rests "upon the supposition of a natural order in which all things moved according to natural law, in which the perfect balance was maintained up to the point at which man entered with all his ignorance and presumption";[4] technocentrism is based on the belief that mans actions are *anthropocentric*, on an arrogant assumption that man is supremely able to understand and control events to suit his purposes.

Until the 1960s most environmental problems were seen to be confined within state borders and were most often defined in scientific and technical terms, with little attention to political, social or economic impacts. Environmentalists hardly questioned issues of development; they were concerned instead with species conservation and rational resources management in line with the overall development paradigm. This area of inquiry was referred to variously as "human ecology" or "conservation ecology". Much (though not all) of the empirical work within these two traditions has been conducted in social and physical environments that might in some sense be called "marginal." Wilderness and wildlife conservation, maritime pollution and issues related to possible nuclear disaster were the main concern. Work in these environments has been concerned to understand the main forces determining how finite resources are used, the strategies that people use to manage those resources, and the possibilities for finding alternative resource management strategies to address, variously, problems of poverty, environment or (less so) growth. But with scientific developments and

growing public anxiety about environmental degradation and its impacts, along with a sense of planetary crisis, the number and scope of environmental concerns began to rise on the international agenda.

## EARLY RESEARCH LINKING THE ENVIRONMENT WITH SECURITY CONCERNS

The early 1960s saw the emergence of the environmental movement into broader public consciousness. Environmentalism was, however, still "synonymous with a rather narrow concept of conservation – the protection of nature, and the major threat was pollution." [5] Scientific and economic analysis continued to drive environmental thinking. Pre-dating this period, research gave 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. In the 1960s, for the first time, the links between the environment and security were explored and articulated (*albeit* implicitly) with the identification of the problem of human-generated environmental degradation. Many of these early debates were based on the widely perceived prevalence of phenomena such as overgrazing, desertification, the wood-fuel crisis, and soil erosion, generally thought to be the consequence of rapidly growing populations. A new understanding of the relationship between population density and environmental degradation was first suggested in 1965 by Ester Boserup, who argued that population increase in rural communities resulting in growing pressures on land would lead to an indigenous response in which new techniques were applied:

> *Provided the rate of population growth is not too rapid, rural populations will over time adapt their environment and cultivation strategies such that increased yields can be obtained without any significant degradation or the resource base.*[6]

Technological progress, the argument went, "counters the effects of diminishing returns", [7] leading to income growth through the discovery, and more efficient use, of new resources. This viewpoint has since been effectively challenged.

## FROM CONSERVATIONIST ECOLOGY TO POLITICAL ECOLOGY

The importance attributed to science and the role of scientific governance had important consequences. Scientists, claiming for themselves the mandate to determine how nature "works" and should be managed, on the basis that environmental problems are strictly technical and scientific, marginalised the social, political and more recently, economic, connotations of environmental degradation. A utilitarian, orderly and

avowedly scientific exploitation of resources, supposedly for the good of humankind, was an approach that made no demands for accountability to the public, and, for all its supposed carefulness, led to exceptional levels of exploitation and degradation of the biosphere. The values of rationality, managerial efficiency, optimism and faith in humankind have since come to be regarded increasingly as more than just an impediment to harmonious environmental management.

The United Nations Conference on the Human Environment, known as the Stockholm Conference of 1972, was a watershed period. The "Limits to Growth" policy document argued for the imperatives of cutting back on resource-intensive industrial activity based on resource carrying-capacity predictions arising from their global-systems computer modelling. The equation is closely linked to Malthusian notions of environmental change, offset by more optimistic Bosrupian thinking (that stresses the ability for technological innovation and adaptation to allow apparent limits to be exceeded) and is also closely linked to Hardin's "Tragedy of the Commons" model. (It is such thinking that informed the Bruntland Commission's Report in 1987 for World Commission on Environment and Development.)

The advent of the Green movement in the 1970s introduced new arguments which contributed to the replacement of conservationist ecology with political ecology. Spearheaded by writers such as Piers Blaikie[8], who believed environmental problems in the Third World to be less a problem of poor management, overpopulation or ignorance, than of social and political-economic constraints – political ecology is an exploration of holistic links between humans and nature at large, allowing for a more complete understanding of the nature of marginal environments and comparisons of causative processes and relationships across those environments.

Scientific understandings of nature, including ecological interpretations, have often been accused of being mechanistic. In response, and arising from a critique of the sustainable development doctrine, a new wave of thinking developed, involving a more socio-culturally embedded analysis of nature. Over the last two decades, as environmental problems became politicised and more prominent, forms of inquiry within this tradition have led to the substitution of conservation ecology with "political ecology".

Numerous different approaches have developed over the years; prominent amongst these are the "Deep Greens" and their critique of modernity and capitalism, and the "Red Greens" who base their debates on Marxist arguments about materialism, justice, and nature in capitalist societies. Most of these debates focussed on the social justice of environmental disputes and resource struggles in developing countries. Whereas 'shallow' ecologists (an ecocentric approach) consider that humans and nature are separate and humans are most important, deep ecologists fundamentally reject the dualistic view of humans and nature as separate and different. They hold that "humans are intimately a part

of the natural environment: they and nature are *one*." Of course, such thinking resonates with certain traditional indigenous viewpoints in developing countries, though the idea of nature in Africa and elsewhere has always been conceived in pragmatic ways, with the acute awareness that day to day life depends upon use of that environment. Debates refer to the social and political conditions surrounding the causes, experiences and management of environmental problems.

## INTEGRATION OF ENVIRONMENTAL AND DEVELOPMENT THINKING

Globalism, which became the major feature of environmentalism in the late twentieth century, was a critical factor in the integration of environmental and development thinking, and by extension in the formulation of the concept of Sustainable Development. This is a common way of conceptualising the challenges for environmental politics. The report of the Brundtland Commission of 1987 states clearly that,

> *In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*[9]

But the term sustainable development – like those of 'equity' or 'environmental security' which also express wide-ranging and possibly deep concerns -- also suggests itself as a grand solution. Philosophically the report draws on a Western model - dualism of humans and nature and on pragmatic technocentric responses, involving technical and implementable steps for reforming development practise. Technocentrism recognises environmental problems but places considerable faith in the usefulness of classical science and technology, believing that:

- People will find ways to solve them and achieve unlimited growth. Through interventions such as genetic modification or investment in clean technologies society can and should modernise itself out of the environmental crisis. "Interventionists see environmental considerations as *incidental* to economic and social concerns". [10]

or

- At least by careful economic and environmental management they can be negotiated, i.e. use the laws of nature to exploit the environment.

However, early conceptions were somewhat diffuse and vague about political economy, unclear about how to express these concerns. Another theme within most approaches to political ecology was the assumption that environmental politics could be separated from the principles and laws of environmental science, thus avoiding the politics inherent in the creation of the science itself. This tension between the social and physical sciences tends to frustrate effective environmental management, and begs the question of whether it is possible to deconstruct scientific

"laws" built on orthodox frameworks of science, yet still achieve a biophysically grounded form of explanation that is still socially relevant. From its inception, political ecology recognised the importance of management, but not merely in a technical sense – regulatory systems, local knowledge systems, and the importance of civil society, community or resource user groups, were all interpreted in ways which reflected the belief that injustices were being committed against both local peoples and environmental resources. Political ecology is concerned with imbalances in power between actors, and in problematizing discourses which exclude or ignore certain viewpoints.

Over the last decade alternative thinking and research about nature and the environment has developed, that reflects a more socio-culturally embedded analysis of nature. A political philosophy of environmental science has emerged that indicates how social and political framings are woven into both the formulation of scientific explanations of environmental problems, and the solutions proposed to reduce them. It blends the realists' biophysical predictions with social and political constructions, integrating political ecology with debates concerning the construction of science. In questioning western concepts of biodiversity, Escobar highlights how knowledge is embedded in societies and behaviours, and not as an abstractable 'commodity',

> *Although 'biodiversity' has concrete biophysical referents, it must be seen as a discursive invention of recent origin. This discourse fosters a complex network of actors, from international organisations and northern NGOs to scientists, prospectors, and local communities and social movements. This network is composed of sites with diverging biocultural perspectives and political stakes.*[11]

## THE DISCOURSE OF ENVIRONMENTAL SECURITY

Such changing frameworks of analysis have also led to a rethinking of environmental history – a rethinking which in turn has profound implications for contemporary understandings of the environment and the links between environment, development and security.

"Security is complex cultural politics of defining danger": the concept of security, however, seldom makes explicit who is endangered and by what.[12] "Environmental security", which has become one of the critical areas on the security agenda since the late 1980s, reflects a common concern for the implications of environmental change. It is a relatively new term, and one that has generated considerable confusion and contentious debate about how the environment and security are linked, most particularly what it is that is to be secured.

In the field of security, as it was then generally considered, the general perception was that the environment was a negligible factor in the study of conflicts; references to such linkages were limited to showing how environmental destruction was used as a premeditated

instrument, or emerged as a consequence, of war. During the Cold War a small number of scholars began to argue that the concept of security should encompass more than military threats and associated vulnerabilities. Dangers of technological violence from nuclear warfare emphasised the insecurity of all humanity in the face of the supposed provision of security provided by nuclear weapons. A new consciousness that the supposed providers of security frequently rendered their own populations insecure in many ways began to grow.[13] In 1977 an article entitled "Redefining Security" by Lester Brown of the Worldwatch Institute[14] sparked debate about the links between the environment and scarcity on the one hand, and conflict on the other, a policy issue that has since increasingly been of concern.

## ENVIRONMENTALLY RELATED CONFLICTS

Growing awareness that a great deal of environmental change is directly and indirectly affected by human activities and conflicts resulted in many of the discussions on environmental security focussing on environmentally driven conflicts, analyses of the environmental effects of war and violent conflict, as well as the impact of conflict refugees, on the environment emerged. Questions of whether environmental problems are really 'security' problems – that is, whether they are to be understood as matters of international politics or of potential security concern – came to the fore. The 'oil crisis' of the 1970s was one reason for this widening of the discussion; the Brundtland report of was also a major influence. The answers came from research focussing mainly on the competition for scarce resources (water, land, forests), believed to lead to poverty, degradation and violent conflict. In the wake of the genocide in Rwanda in 1994, greater attention came to be given to discerning the patterns of such conflicts.

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.

While these debates provided valuable new insights, they remained narrow and limited. There are documented cases where the link between competition for scarce resources and conflict is explicit, but the nexus is not always straightforward: environmental stress alone rarely leads to conflict and confident predictions about resource scarcity and environmental degradation as proximate causes of conflict or war have increasingly been challenged.[15] With the growing recognition that environmental factors are enmeshed in a complex web of social,

economic and political factors that function together, there is need to examine ways in which environmental stress interrelates with other drivers of conflict or other factors that determine whether conflict is likely to arise. Furthermore, a focus only on conflict as an outcome overlooks the broad range of human impacts from the degradation of the natural environment, such as those pertaining to food security or economic security.[16]

Implicit in these "greed or grievance" debates is the idea 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.[17] Such an approach is consistent with conventional notions of national security, which do not necessarily guarantee the security of individuals and communities. It is critical, therefore, that a more comprehensive approach is adopted to the links between environment and scarcity that takes into account the wide range of causal factors of such conflicts – these include the erosion of natural resource-based livelihoods, lack of incentives for sustainable development, excessive resource dependence, weak governance, corruption, and lack of economic opportunities. It also calls for an attempt to understand 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. By way of example, 'social' causes of conflict may too easily be mistaken for effects of environmental change, whereas in fact it may be that social changes that contribute to conflict also simultaneously contribute to environmental decline. Identification of causes of events is always problematic, especially in the context of weak states, poor governance, or ethnic divisions that are expediently used to mask conflicts over resources. The impacts of globalisation, capitalist penetration of subsistence or customary modes of economy, and the role of Western development aid interventions may also have negative affects on environmental change,[18] structural scarcity[19], unequal growth and development, resulting in growing inequity in access to resources.

Furthermore, a more nuanced understanding of the concept 'scarcity' is needed – while it may appear to be perfectly straightforward, its meaning is contentious.[20] Determining what is 'normal' and how that norm has evolved is, in fact, highly problematic. Scarcity is a relative, not an absolute, concept, and a social construct. 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 physical limitations of a natural resource; rather it is frequently

determined by specific political, socio-economic and cultural contexts. "Defining 'scarce' resources also requires a rethinking of what resources are determined to be 'strategic' and therefore important not only to national security, in traditional discourse, but also to the security of peoples and communities."[21] Scarcity may also be determined by a society's technological capacity, organisational and institutional capabilities and the knowledge base available to counteract resource shortages.[22]

Standing in stark contrast to the 'statist'[23] approach, is the argument for a more interdisciplinary and integrative method that sees environmental security as a crucial component of the broader concept of 'human security' which identifies the individual and, by extension, the collectivity, as the referent object. Nevertheless, though offering promise, this approach 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 a complex one in which many factors play a role: the causes and effects of tensions and vulnerabilities are multi-dimensional, and the links between the various components may be direct or indirect. The vibrant debate also reflects arguments about different concepts of nature and what gets counted as environmental. What is viewed as unnatural or environmentally damaging in one era or one society is not necessarily viewed as such in another. The essential problem with many approaches, however, is that they still run the conceptual risk of 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. Such viewpoints apply the term environment as if it encompasses the part of 'nature' that provides a mere backdrop to human matters. Yet this appears to be a false dichotomy. 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. It also acknowledges that the ways we use the environment are historically, socially and politically constructed. Jane Lubchenco appositely 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."

> *The relationships between the environment and human security are certainly close and complex. A great deal of human security is tied to peoples' access to natural resources and vulnerabilities to environment change – and a great deal of environmental change is directly and indirectly affected by human activities and conflicts.*[24]

Khagram, Clark and Raad argue for a broader emphasis on sustainable security and sustainable development: "while work in the field of 'sustainable development' has been fundamental in capturing the emergent scientific and social understanding of the intimate coupling of nature and society…" efforts to better the lives of people will fail if they fail to conserve, if not enhance, essential resources and life support systems." In this paper, the issue of land is used to support this argument.

## AN EXAMINATION OF LAND-RELATED CONFLICTS

> *For most of the world, security tensions centre less on boundaries and external might, but more on internal conflict that stems from poverty, social exclusion, dispossession and marginalisation, as well as economic instability and competition over shares resources, such as water and arable land.*[25]

As a principal source of natural capital and for earning a living, land has been a central element in the evolution of African societies. It potentially provides the most basic livelihood security for the majority of Africa's people both in terms of farm and non-farm activities, and the interaction between them, and it is a central component in rural poverty reduction. In rural sub-Saharan Africa, where opportunities to obtain profitable off-farm incomes are limited, access to land and associated biological resources plays a key role as a determinant of economic and non-economic benefits and opportunities.

Rural people, especially, need both secure individual rights to farm plots and secure collective rights to common resources, their rights to land (freehold or communal) providing a basic and durable solution to poverty, a base from which to secure a more sustainable livelihood. Land is not just a primary means of both subsistence and income generation, but of diversification generally taking place from an agricultural starting point. Land can be loaned, rented or sold, providing some financial security as a heritable asset, acting as a basis for the wealth and livelihood security for future generations. In addition it provides a range of environmental services, such as water, biodiversity, and wildlife products, which are of considerable value.

For rural as well as urban or semi-urban dwellers, the value of land is not merely economic: it also represents an important source of identity and is typically seen in a holistic perspective, its value embedded in the social structure and history of a community. As the hub around which customs, culture and traditions revolve, it holds very high symbolic – even emotional – values. A recent statement by Tanzanian President Benjamin Mkapa captures this feeling most appositely:

> *[T]o us as Africans, land is much more than a factor of production. We are spiritually anchored in the lands of our ancestors. We are truly sons and daughters of the soil. To dispossess us of land is not only to consign*

> *us to perpetual economic deprivation, it is also an affront to our spirit, to our sociological sense of being, to our very humanity and our inalienable right to dignity as a people.*[26]

As a strategic resource, we have tended to think of land as being in plentiful supply. However, it is not much a case of land scarcity, but soil quality and access to water that is problematic in Africa. In addition, there has been a 'settled, agricultural' bias to much analysis and policy-making across the continent. Governments have failed to adequately understand and account for the livelihood strategies of pastoralists and agro-pastoralists. The extensive use of land resources, which varies across seasons and which is differentiated according to the location of certain 'key resources' (such as salt licks, dry season grazing areas, and seasonal rivers), has often been undermined by the alienation of some areas by non-pastoralists, including for the conservation of wildlife.

> *[L]and, particularly arable land, is under increasing pressure from environmental degradation, including deforestation, desertification, climate change and over-use....there seems little doubt that arable land will continue to become an increasingly scarce resource, on absolute and per capita figures, a scarcity that is likely to occur predominantly in those parts of the world which are already poor and where land is under increasing environmental pressure.*[27]

The outcomes of this are food insecurity, and growing poverty.

## LIVELIHOODS IN CRISIS

> *The increasing numbers of African countries facing water stress and scarcity, and land degradation, are major environmental issues in the region. The rising costs of water treatment, food imports, medical treatment and soil conservation measures are not only increasing human vulnerability and health insecurity but are also draining African countries of their economic resources. The expansion of agriculture into marginal areas and clearance of natural habitats such as forests and wetlands has been a major driving force behind land degradation. The loss of biological resources translates into loss of economic potential and options for commercial development in the future.*[28]

Africa entered the 21st 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 years to 46 since 1990 and in most of sub-Saharan Africa one in 10 children die before the age of five.[29] Africa, which has changed from being a key exporter of agricultural commodities into being a net importer,[30] has the highest percentage of undernourished people and has shown the least progress on reducing the prevalence of undernourishment in the last 30 years. Chronic food insecurity now affects some 28 percent of the population – that is

nearly 200 million people who are suffering from malnutrition. Africa is also 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. We are now also beginning to understand the insidious impact of HIV/AIDS on rural livelihoods: with 67% of sub-Saharan Africa's population living in rural areas and dependent on agriculture as the main source of their livelihood, the impact of HIV/AIDS on farming, farming systems, rural livelihoods and nutrition is increasingly being looked at. All dimensions of food security – availability, stability, access and use of food – are affected where the prevalence of HIV/AIDS is high.

## LINKING POVERTY AND ENVIRONMENT AS CAUSES OF CONFLICT

It is commonly agreed that there are close links between the environment and poverty, though there is no consensus on the precise nature of the relationship. Simplistic debates in the past have reduced it to the claim that the poor caused environmental damage, and the counter assertion that it was the poor who bore the brunt of negative environmental management.[31] Understanding the multifaceted links between poverty and the environment requires an exploration of the close and complex interconnections between people, the environment and livelihood opportunities, (in terms of access to natural resources), and vulnerabilities to environmental threats. It is only by exploring these that a more comprehensive understanding of environmental security can be reached.

Central to any approach seeking to understand the complex dynamics of environment, land and conflict, is an analysis of the political and economic power relations that affect society-nature interconnections – of how people gain access to and control over resources for their livelihoods, of who is doing what to whom and why. Without this, it is not possible to challenge the issues of who benefits from, and sustains, conflicts, and to understand issues of powerlessness and vulnerability.

Barring the unlikely event of a structural transformation of the poor economies of sub-Saharan Africa, land will remain an indispensable asset for most of the rural poor in their attempts to solve the livelihoods crisis. Migration to the urban areas offers little prospect of transforming peasants into workers; indeed, urbanisation often leads to greater impoverishment.

Poverty is a common denominator in many of the conflicts that have plagued Africa. While it may be endemic to many societies, it is the loss of livelihoods – the rapid process of change resulting in a sudden fall into poverty – which, in turn, are often caused or exacerbated by environmental degradation that creates the potential for conflict.[32] Environmental problems, addressed from a broader perspective using the sustainable livelihoods framework, include issues of poverty and equity, and do not reveal poverty as a uni-dimensional and static

concept, but one that is multi-dimensional and dynamic. Poverty levels may be a key criterion in the assessment of livelihoods, but it has been long recognised that measures must be far broader that those using a 'poverty datum line' that is based on income or consumption levels. "Poverty is not the only determinant of vulnerability: those who lack power are unable to safeguard their basic political, economic and social rights and may find it difficult to protect themselves from violence." [33]

## THE 'SUSTAINABLE LIVELIHOODS' FRAMEWORK

Because livelihoods vulnerability is an important factor in the causal chain leading to social disruptions and conflict, a Sustainable Livelihoods framework serves as a valuable analytical tool. The framework shows how, in different contexts, sustainable livelihoods are achieved through access to a range of livelihood resources (natural, economic, human and social capitals) which are combined in the pursuit of different livelihood strategies (agricultural intensification or extensification, livelihood diversification and migration).

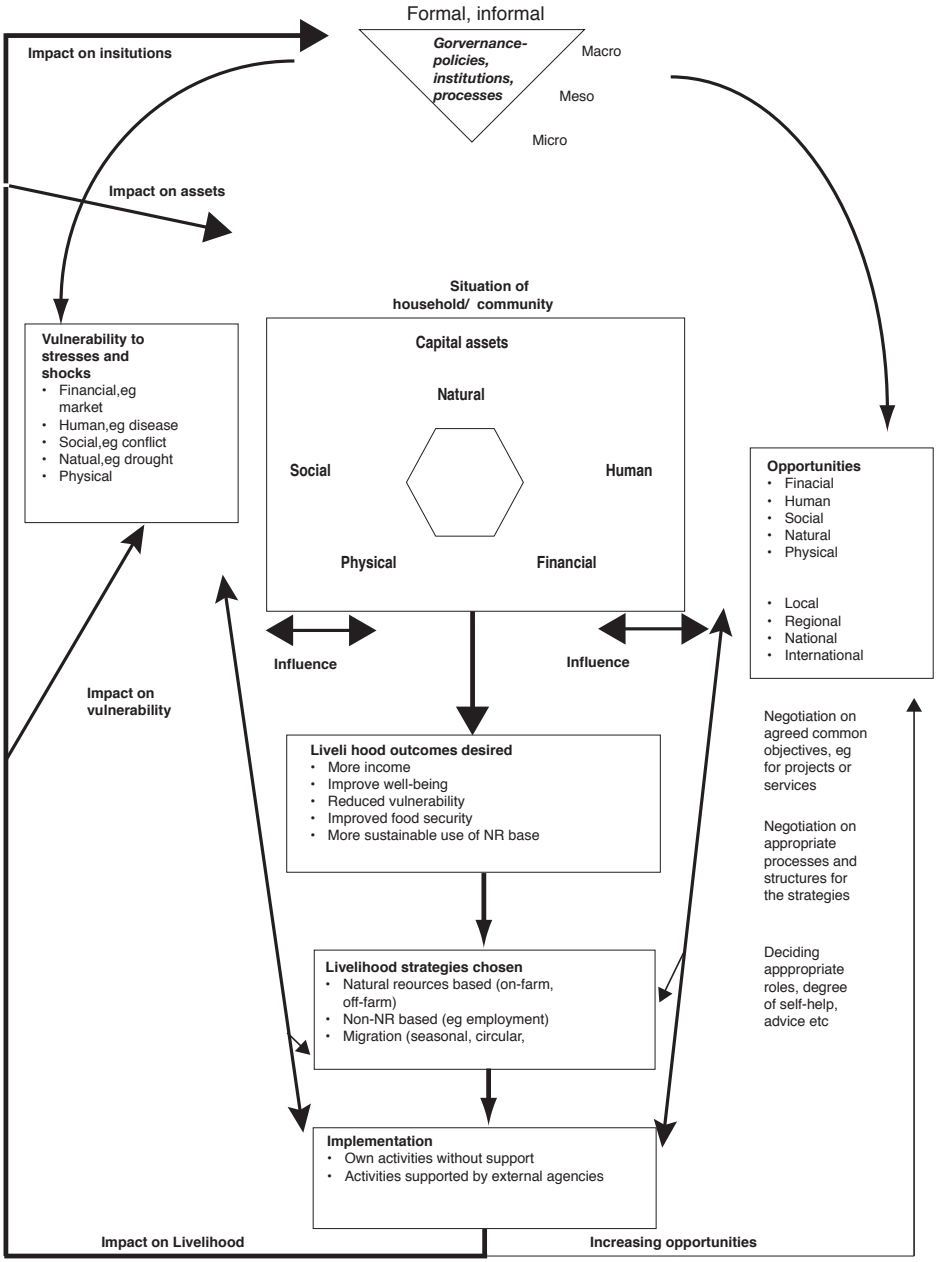
Assessing the nature of linkages between the environment and security is challenging because of the complexity of multiple interactions and feedbacks – the environment is background to tensions, sometimes a channel leading to tensions, and sometimes it triggers tensions. Understanding and managing land conflicts is particularly complex; there can be no single theory of land conflict. The challenge is to locate the source of the grievances, the conditions that shape the emergence and the character of conflict, the levels of conflict, the stakeholders involved, the legal and organisational framework, and the local and historical differences that intervene.

It is only through a more comprehensive approach to conflict analysis that we see that the outbreak of conflict is usually "triggered by the interaction of economic motives and opportunities with long-standing grievances over poor economic governance (particularly the inequitable distribution of resource wealth), exclusionary and repressive political systems, inter-ethnic disputes, and security dilemmas further exacerbated by unaccountable, weak states." [34] Triggers of conflict may also arise from environmental variability, which is felt at different timescales – from the seasonal, to the multi-year cycles of drought and flood experienced in many areas, to the slow-moving but seemingly irreparable impacts of anthropomorphic climate change. This has led to calls to look more closely at two main research shortcomings, empirical and theoretical, as much of the research has been seen to be speculative, particularly as it relates to environmental change and conflicts.

The Chambers and Conway definition adopted in the early 1990s underpins many of the livelihood frameworks currently in use:

> *A livelihood comprises the capabilities, assets (stores, resources, claims and access) and activities required for a means of living: a livelihood is*

**Figure 1 Khanya version of Sustainable Livelihoods Framework**



> *sustainable which can cope with and recover from shocks and stresses, maintain and enhance its capabilities and assets and provide sustainable livelihood opportunities for the next generation and which contributes net benefits to other livelihoods at the local and global levels in the long and short term.* [35]

The concept, which is way of thinking about the objectives, scope and priorities of development issues in which the livelihoods of poor people are put at the forefront of analysis and action, finds application in a wide variety of development fields such as poverty reduction, environmental and natural resource management, land and tenure reform, disaster risk reduction, and local economic development. It is designed to promote four essential characteristics: economic efficiency, social equity, ecological integrity and resilience.

An exploration of the philosophies and principles that make up the Sustainable Livelihoods approach serves to explain the benefit of applying this approach to understanding the dynamics of environmental security, and in particular conflicts and tensions around access to and tenure of land.

The approach avoids Malthusian perceptions[36] of population pressure on finite resources by developing a more accurate and dynamic picture of people in their environment, recognising the role of multiple actors and also looking at national and international linkages. It helps to identify critical interventions to support the way in which people pursue their livelihoods, linking holistic analysis and a strategic focus on intervention. As a strategy designed to work with people (using participatory methods) to support them to build upon their own strengths, it thereby corrects the inevitable biases introduced by outsiders deciding what is best for poor people.

An important component of a sustainable livelihood framework is the concept of resilience, the counterpart of vulnerability (the lack of ability to cope with stress or shocks). Vulnerability is determined by the interplay of a combination of several factors, including hazard awareness, the condition of human settlements and infrastructure, public policy and administration, the wealth of a given society, social capital,[37] organised abilities in all fields of disaster and risk management and the lack of social adaptive capacity. There is little appreciation that social vulnerability to disasters is a function of human action and behaviour; the specific dimensions of social, economic and political vulnerability are also related to inequalities, often related to gender relations, economic patterns and ethnic or racial divisions. To be sustainable, livelihood systems must be resilient, and this depends on the assets and entitlements that can be mobilized in the face of hardship. The framework demonstrates the intricate inter-connection of human, social and environmental systems by providing a conceptual framework for understanding how people live, the interplay of various factors that determine behaviour, strategies and outcomes. It also helps identify the

trends and factors in the micro, meso and macro environments that enhance or undermine people's entitlements to goods, services and resources, and how vulnerability is affected by the structure and performance of the overall economy.

Adopting a livelihoods analysis that is complementary to a political economy approach emphasises that vulnerability is based not only on poverty but also on powerlessness. It is the crucial concepts of social and political capital, and of differentiation, applied in a livelihood framework that provide 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. It 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."[38]

Livelihoods are determined to a large degree by contextual factors operating at different levels, from local to global, that are either enabling or create vulnerabilities depending on the dynamic interplay between these various factors: economic, institutional, political, social, natural and the built environment. Acknowledging this allows for attention to those issues of rights and responsibilities that act at all levels.

Ratner sums up the importance of environmental rights as a matter of survival:

> *While the concept may have gained prominence in the context of industrialized countries, highlighting the rights of individuals and communities to be protected from environmental "bads" such as toxic dumping and industrial pollution, it applies equally to rural communities struggling to maintain access to the environmental "goods" that underpin their livelihoods. Both aspects of the environmental rights agenda are fundamentally concerned with health, whether the threats stem from a polluted environment or from loss of access to the natural resources that families need to sustain themselves. Both are also concerned with equity, as it is those groups already marginalized politically and economically whose rights are most consistently transgressed. Whether focused on issues "green" (natural resources-related) or "brown" (industrial and pollution-related), the assertion of collective environmental rights is most difficult, and most risky, in a country where other elements of the human rights agenda are not firmly established.*[39]

## THE SOCIAL, POLITICAL AND ECONOMIC FACTORS THAT SHAPE LAND POLICY

Because land is one of the most important natural resources for the African continent's economic development, one might assume that the policies affecting land would reflect the importance of well-thought-out economic

and developmental considerations: the reduction of poverty, the promotion of farm productivity and general economic development. Land laws and policies have a profound effect on the growth of a country, the levels of income inequality and well-being of its people; they impact on sustainable growth and the economic opportunities of most people in Africa, most particularly the poor. Land policies should also act as catalysts for social and economic change. But colonial-era laws and institutions, which continue to structure control of land today, were based on a one-dimensional understanding of land, and modern reforms to land laws and policies often fail to reflect these important considerations.

It is in exploring who the stakeholders are – who will benefit, who will decide, who will be affected and what tradeoffs and hidden agendas there may be – that the real intent of the law on land is disclosed. Stakeholder interests and hidden agendas reveal the extent to which land laws are a product of politics that have little or no bearing on those whose livelihoods depend on the land itself. 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, because the problem is often not so much one of resource endowments or geography, but also a problem of institutions and governance. A closer exposition of land policies, therefore, is critical because of its implications for the management and mitigation of social and political conflict.

## LAND POLICIES IN SOUTHERN AFRICA

An analysis of the socio-political and historical forces that have shaped the political economy of southern Africa and given rise to systems of power that marginalise certain groups, reveals how these factors have profiled the contours of resource exploitation, defining and shaping the legal and institutional framework that has largely determined the issues of access.

The use of land in southern Africa during the colonial period is a clear example of one-sided stakeholder interest: the way land was viewed, managed and used resulted in racially skewed land distribution, dual tenure systems and severe degradation of communal areas. Such events occurred elsewhere in Africa, but the intensity and scale were unique to this region, in southern Africa's 'settler' states of Namibia, Zimbabwe and South Africa in particular. Although the settler states of Angola and Mozambique share a history of Portuguese occupation, it was the political instability after independence and decades of war that uprooted and dislocated populations, destroyed assets, and created widespread trauma, that have had the greatest impact.

Land issues in the 'non-settler' states (Botswana, Lesotho, Swaziland and Zambia), on the other hand, were related more to landlessness, environmental degradation, and loss of land to peri-urban settlement, high population growth, unsustainable land use and weak systems of land administration.

But common to all southern African countries are the dual economies that developed, where access to resources and markets remains historically segmented: between 'white' and 'black', rich and poor, socially advantaged and socially disadvantaged. One of the main aims of the liberation struggles in southern Africa was the redistribution of land to redress historical and racially based inequities. However, achievements since independence in most of these countries have fallen far short of expectations. The reality is that land reform has been slow: for political reasons, because of the complexity of land issues, and because the benefits of policy improvements have tended to accrue to people who are politically advantaged. In some cases, agreements between colonial powers and the incoming post-colonial governments ensured that the direction of land policies and law was already pre-determined, and foreign governments retained a direct influence over policy. Even when governments have been willing to take the address such potentially explosive issues, they have also failed to allocate the financial and human resources needed to address the land situation in their countries.

In recent years there has been controversy around issues of equity (or poverty focus) versus productivity, which have become competing objectives, and have become antagonistic in practice.[40] For example, the belief in the greater efficiency of large farms became a key constraint to progressive land policy in non-settler states before and after independence. "A cyclical element is evident in land reform policy in the southern African region. An initially strong political commitment to land redistribution or confirming the land rights of local people has been followed by a switch of emphasis to so-called economic goals, rather than the eradication of landlessness and/or poverty."[41] This belief has also discouraged land reform, even though rising land ownership imbalances exacerbated land shortages and land degradation, and rural poverty followed in its tracks.

Donors and relief agencies too have found it increasingly difficult to justify the allocation of aid resources to land reform in the region, partly because of the lack of viable policies and programmes, and partly because of policy trends away from the pro-poor agenda that donors feel should be the focus of land reform policies. The land question is now resurfacing as a legitimate item on the poverty reduction agenda of the World Bank, in part because of the failure of the Bank-initiated Structural Adjustment Programmes to live up to the promise of rural development. In addition to this there is a revival of calls by civil society, including organised bodies, on their governments to redeem their liberation promises. In the last five years especially, land reform has become the most controversial issue to come out of southern Africa because of Zimbabwe's efforts to terminate the colonial division of land. The confrontation in Zimbabwe in particular (where land inequality was amongst the worst in the world) has shifted the perception of the redistribution of land as primarily a development issue, to that of a need for restitution and justice.

In sub-Saharan Africa the impetus for land tenure reform, in addition to land redistribution, is growing through increased calls for the reform of both legal and administrative aspects of land rights.[42] Several countries in eastern, central and southern Africa are currently reforming their land policies and laws. Within the SADC, new national land policies and in some cases draft laws have been adopted in Malawi, Lesotho, Swaziland, South Africa and Zimbabwe. These involve both land administrative issues, and the way in which private property – formal land titling - is viewed. Important new land tenure laws have been promulgated in the last decade and are in the early stages of implementation.

These reforms are addressing fundamental issues, such as land policy principles, land tenure and distribution. The process of reforming land laws includes looking for a redefinition of how property rights in land are allocated and who can use what resources and for how long. Also important are the issues of the legal recognition of customary tenure rights and the strengthening of the rights of tenants, as well as land management and use, land administration, and overall legal structures. The more recent impetus for substantive change, as opposed to merely 'tinkering' with the system, comes from many quarters – environmentalists, market forces, communities wanting to accelerate entitlement programmes and those wishing to redress racially discriminatory laws.

But as salient as contentious land redistribution issues are, the most pressing issue is that of 'opportunistic' land grabbing by elite groups, which has become equally pressing across the region, even where new legal frameworks protect existing local land rights. In her paper entitled "Design for Equity: Linking Objectives with Practice in Land Reform", Ruth Hall poses the question of why land reform policies in Africa aiming at equity regularly result in inequitable outcomes. Hall concludes that what we see too often is that efforts to redistribute rural land to the rural landless have tended to reinforce existing forms of inequality, and in cases have given rise to new forms of inequality within beneficiary communities.[43] As Mbaya[44] has highlighted, land grabbing and the enclosure of customary lands by powerful indigenous elites and corporations, often in alliance with international capital, that are acquiring land and property at the expense of the poor, is on the rise in most countries in southern Africa.[45] Evidence of this is seen in the tendency for land concentration among families belonging to the elites in power or foreign companies. José Negrão comments:

> *[T]he land which is being sought for buying by large capital is that which is earmarked as having indigenous forests, wildlife, and those suitable for summer holidays: hence, there is much resistance in making the connection between the utilisation of those resources and the social and economic development of the African poor. On the arable lands, instead of the desired national economic and business oriented efficiency, it has been ascertained that land concentration is not accompanied by investment: the landowners are absent and lease their land to the poorest who remained landless.*[46]

These challenges have often been based on the putative economic efficiency of "privatised" resources, which provides a pretext for the powerful, politically well-connected to exclude marginal groups of the population.

## POLICY AS DISCOURSE

Land policy formulation is a complex and dynamic process characterised by an intricate array of actors and relationships and in which knowledge is established in different ways: as a reflection of structured political interests, as a product of the actors involved, and as part of the knowledge that frames practices in particular ways. Discourses and interests shape each other, and both are additionally influenced by the actions of actor-networks. Policy cannot be challenged without an understanding of these dynamic processes, requiring action on all these fronts – and it requires strong advocacy that draws on a wide base of different actors.

Historically, much of environmental policy has been prescriptive and top down, premised upon a conception of environmental change as a linear process, gradually departing from the ideal. More recently there has been a widening of the range of actors involved and increasingly policy has become a process of negotiation and bargaining. The question, however, has remained whether broader participation is successfully challenging remaining received wisdoms based in structural issues of politics and power, or is merely limited to renegotiations over technical knowledge. This calls for an understanding of how socio-political and historical forces which give rise to systems of power are inadvertently manifested in the ways society constructs and enforces reality, and lead to the marginalisation of certain groups. By way of example, some theorists argue that scientific discourses of the environment may be no more true than any other discourse, except that as an organising discourse they are often more powerful. Scientists are often allowed to by-pass political procedures in the name of Nature.

Alternative approaches to policy are beginning to evolve that utilize decentralisation of responsibilities to empower the poor. They are rooted in a more in-depth analysis of the relationship between power, knowledge and policy that informs how environmental discourses are created: how and why particular types of knowledge become established in policy, why reality is framed and dealt with in certain ways, the importance of political dynamics.

Discourse theorists such as Foucault and Derrida hold that the concept of nature is socially mediated, "an entwinement of reason and power", [47] in other words the role of language is in the construction of social reality - not as a reflection of "reality" but as constitutive of it. Notions of the environment cannot be seen as "hard fact" because they are produced in particular social, political, historical and economic contexts. We should not seek objective truths about the environment or its effects, but seek to understand the ways in which it is socially

constructed and in turn constructs its subjects. Understanding the epistemologies of the environment therefore involves an examination of the historical, social or political contexts in which they are produced. They demonstrate that the concept of nature is socially mediated, and offer a critique of how power manifests itself inadvertently in the ways society constructs and enforces reality – the entwinement of reason and power. By deconstructing the notion of the environment, its subjective and culturally produced nature is revealed. Discourse theory serves to explain how 'received wisdoms' – problems expressed as a given, without adequate interrogation of their underlying assumptions – are reproduced and have persisted in holding such influence and for so long. Received wisdom is, by and large, a product of the actors and their interests. A critical issue is the link between institutions and the way that issues are presented and debated. This is most evident in the policy arena, which is characterised by discourse coalitions between a range of different actors and organisations, and their perception of a problem is expressed as a given. Scientists promote their findings through a network that has an unquestioning, and often arrogant, belief in its superiority; politicians and administrators give shape to research through policy, which in turn again shapes research. Through engagements between scientists, policy makers, international donors, the media and others, this process contributes to the mutual construction of science and policy.

In exploring the relationship between discourse and policy we see also that policy is itself a 'political technology' – it involves categorising the world into different sectors and areas for the purposes of management and the maintenance of social order. Because the notion of governance is not value-free, it asks who is being governed by whom, to what ends and with what effects. The message contained within scientific theories is underpinned by concepts of an external environment, separate from society, and theories are embedded with notions of equilibrium. Environmental problems are presented as being universally applicable – humans once lived in harmony with nature, but humans have changed that harmony, and calamities will surely result without dramatic intervention. The language is heavily imbued with Western cultural values of development. In traditional African societies such artificial distinctions between nature and society do not exist.

Environmental policies in developing countries are predicated on some highly questionable assumptions which raise questions of why reality is framed and dealt with in certain ways, why some of these discourses have been so persistent, and the centrality of political conflict over distribution of power and resources. The reason is that their promotion has served the interests of various institutions, political or economic groups. Keeping discourses focused on the technical issues, has kept the more political issues of land management and modernisation of traditional practices off the agenda. Contrary to what that scientific community wishes to present, science is not value free –received ideas about environmental change have served the interests of certain groups and thus mar-

shalled to justify policies. By way of example, colonial authorities claimed that Africans were inadequate farmers or managers of natural resources, a 'fact' informed by modern science. This 'technical' information served a range of purposes - the moral justification for the seizure of fertile land, the control over rural populations, or the safeguarding of the food producing commercial sector. Participation of others has been viewed with circumspection, of dubious nature, and researchers have often 'failed' to see or acknowledge local farmers' investments in soil conservation or successful land management techniques.[48] Examples of policy being applied in the interests of controlling resources are, furthermore, reflected at a global level in the way resources are being developed by trans-national corporations for the use and profit of industrial nations.

## THE CHALLENGES OF 'GOVERNANCE'

Just as important as policy influences, in poor people's construction of livelihood, are the range of formal and informal organisational and institutional factors. Issues of governance are central to a sustainable livelihoods framework, which calls for an analysis of the structures and processes of institutions (that interact at various scale levels to shape the resource claims and management practices of different actors), as well as policy-making, judicial and administrative institutions, and the variety of institutions and organisations for natural resource management.[49] Such an analysis serves to highlight the power relations inherent in the governing structures and whether or not there can be achievement of greater efficiency and equity in access to resources. Looking at the issue of efficiency, we know that environmental change and resource depletion are facts of life, but we also know that societies have a remarkable capacity to adapt and overcome these challenges. However, partial explanation for why the level of 'technical ingenuity' (the stock of ideas applied to solve practical social and technical problems) required to overcome deteriorating environmental conditions is often inadequate, lies in the institutional and policy failures to innovate sufficiently. Here, Homer-Dixon's concept of 'ingenuity' or innovative capacity provides useful explanation.[50] He distinguishes between 'technical' and 'social ingenuity' (ideas for how we structure our society and our institutions), arguing that ideas for how to arrange people, their social relations and institutions, are ultimately more important than ideas for technologies or natural resources. In other words, whether a given situation degrades into conflict depends on societal capacity, because you can't get new technology (best understood in terms of 'hard' and 'soft' technologies) unless you have a well-functioning structure of social institutions in place.

As previously pointed out, a deterministic causality between the social and economic effects of environmental scarcity and degradation and conflicts cannot be assumed. Aspects such as degrees of political participation, legitimacy and the effectiveness of institutions in resolving problems in a peaceful manner often prove to be more impor-

tant determining factors in the outbreak of conflicts. Issues of 'good governance'[51] and the political processes and institutions through which actors cooperate to solve common environmental and economic problems are also important. It is, in fact, frequently the interactions between institutions which leads to conflicts over natural resources, or to competing bases for claims; likewise the effectiveness and legitimacy of institutions are relevant to determining whether tensions can be peacefully resolved. Discriminatory policies and lack of control are often more important than resource scarcity itself, just as the way that people deal with limited resources may be the cause of confrontation, and not the scarcity *per se*.

## ACCESS TO LAND AND THE LAND TENURE SYSTEMS WHICH CONTROL LAND RIGHTS

The main governance challenges in developing pro-poor land policy are: equitable access, especially for marginalised groups and women; secure tenure in land rights, including rights to common property and other forms of rights in land; and the administration of land rights.

A key component in building rural livelihoods that are dependent on natural resource use, is access to and the form of tenure on land.

> *People's rights to access land constitute basic building blocks for enhancing and sustaining their food security. Moreover, land-rights are an integral part of social capital, giving people the foundation on which to assert self-determination within their society, culture, agro-ecosystem and economic context*.[52]

Poor people have limited access to assets such as land, capital, labour and skills, so if economic growth is to benefit them it must increase the returns of the few assets they hold. For economic growth to reduce poverty, the benefits of such growth, and by extension access to and tenure of land, need to be distributed equitably within society. Providing the agrarian structure plays a positive role, agricultural growth can and does reduce poverty and inequality. This makes land fundamental to livelihood security for many people.

A sustainable livelihoods framework is most valuable for analysing the strengths and weaknesses of particular systems of land tenure, and their evolution, particularly 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 bring to the surface questions of who ultimately gets the effective command over making actual economic use of which natural resource products, goods and services – who are the winners and who are the losers. The emphasis is placed on both the social and economic dimensions of rural life and it recognises that overall land security, including security of access to land, resources, and markets is a pre-condition for investment in longer term environmental management strategies.

Tenure security is a precursor to generally reducing vulnerability and increasing the productivity of land and the incomes of those who depend on it. It is widely acknowledged as a precondition for intensifying agricultural production as it makes it possible for producers to gain access to credit and thereby improves the functioning of financial markets; it is also a prerequisite for better natural resource management and sustainable development. When property rights are clearly defined and formally registered there is an incentive to invest as they are easy to identify, enforce and exchange, and secured property rights facilitate efficient resource utilisation. The degree of security determines livelihood options, future plans and investment decisions. Investment requires credit, and a credit economy is strongly based on a system of registration and title of the land. Furthermore, the resilience of livelihoods – the capacity of households to absorb shocks and to adapt to stresses induced by climate, unemployment, political and economic instability – are determined to a large extent by the tenure system being used and conditions of tenure security.

Although customary land tenure systems are far more prevalent than formal systems in most African countries, covering more than 90 percent of the total land area[53], land tenure arrangements have not been static. Indigenous land practices reveal considerable flexibility, as argued in chapter three. Growing population pressure and increasing commercialisation of agriculture have given rise to gradual but meaningful changes in land tenure practices in the direction of enhanced individualisation of tenure, larger incidence of land sale transactions, increased use of money in connection with land loans, and a shift matrilineal to patrilineal inheritance patterns.[54] There is a vast amount of variation in the development of customary systems.

Colonisation had a devastating effect on land use patterns in some countries, most especially in southern African countries land relations have undergone several important changes as a result of colonial and post-colonial land policies and agrarian reform. Many of these changes have not been in response to purely economic forces, but have been driven rather by political interests, and are optimal from neither an economic nor a social perspective.

Before colonisation, landholdings were based on the laws and culture of different language groups and on dominant land use patterns. Such communal ownership or tenure implied a corporate entity (tribe, village, extended family), which exercised joint ownership over lands shared by multiple users for grazing and for gathering products. Colonial rule changed much of that. Under colonial rule, a minority held granted rights of occupancy in terms of a statutory land regime, while the majority held land under the deemed rights of occupancy, with marked difference in what these two interests offered their holders. In the process, existing land ownership systems were disrupted. In order to bring customary systems under the (indirect) control of the colonial powers, the role and responsibilities of customary leaders were often altered. Following

independence, many governments took formal ownership of land on the assumption that customary land tenure is inherently insecure. Like the colonial authorities before them, control over land was vested in the executive arm of government. However, although in many countries much customary land is held by the government, for the public good, the government has rarely consulted local communities in the management of the land, and the state has failed to retain the independence from private pressures which is necessary to defend the public interest. There has been widespread failure to separate the three arms of government –the executive, the judiciary, and the legislature, with many conflicts of interest resulting in negative outcomes for local communities. With varying degrees of success, the power of customary chiefs has been weakened as governments have tried to subsume their powers by setting up alternative systems of local government – decentralised bodies to administer and allocate land, but which have produced mixed responses.

In Malawi, by way of example, Cross[55] draws attention to the actions of the state during both the colonial and post-colonial period. They regarded customary land users as a residual group, "to be mobilised for labour purposes or more generally limited to the low-input low-output production of staple food crops." The resulting policies resulted in the shrinking and degrading of the material basis for production, the breaking down of social networks, and the reduction of social capital.

Where there is a history of a highly dualistic system of land rights, property rights are insecure, and access to institutions and information unequal, the implementation of a formal, market-based tenure system shifts power-relations towards those with a combination of knowledge, skills, contacts and wealth to benefit. Such a situation may easily result in land grabbing and alienation of land from those who use the land under multi-user arrangements. Furthermore, if institutions and land-related interventions are perceived to be in favour of specific groups, serious conflicts may arise especially if this tool is used to "legitimise" previous land-grabbing, or acquisition by other illegal means.

Today in all countries where there is a history of large-scale, historical expropriation of land rights, a dual, racially-based system of land rights introduced by colonial regimes continues to prevail. It is effectively a hybrid system of both private tenure and customary law, with elements of competing jurisdictions of customary and statutory systems constituting a critical divide. Formal tenure[56] covers only between 2 and 10 percent of the land,[57] while the vast majority of the land area is operated under various customary tenure arrangements, even in some peri-urban areas with high land values, although contempt for customary law remains common.

Until very recently, "Conventional wisdom about rural development in Africa has continued to argue in favour of replacing customary systems of land management with what are considered to be more secure forms of individual tenure, through the issue of land titles."[58]

There is now increasing awareness that such an emphasis does not benefit the poor. In the words of Anna Kajumulo Tibaijuka, Executive Director of UN-Habitat, "UN-HABITAT believes that conventional titling is not the easiest way to give people tenure security. Instead a range of options could be introduced. To challenge conventional thinking about land registration and cadastral approaches is at this stage very important. The land regulatory framework has to be innovative. Affordable tenures and pro-poor land management systems must be introduced."[59]

## LAND AND GENDER

The way that land is inherited is critical to the enhancement of women's ability to control land on their own. Women provide the majority of farm labour, yet their land rights, which are mainly acquired through husbands or male relatives, have generally been neglected. In most traditional systems, by way of example, widows have only indirect, and often insecure, access to land. Under both customary and statutory systems social, economic and cultural factors have served to disadvantage and marginalise women, relegating them to subordinate roles. It is for this reason that achieving equality involves more than just land tenure changes – socio-cultural attitudes are fundamental to change as are the strengthening of women's rights under the constitution, family and inheritance law.

An analysis of gender issues through the lens of a Sustainable Livelihoods framework highlights how entitlements are affected by lack of political constituency to advocate the reform of land laws. For the poor, and women in particular, options to obtain, regulate internally and defend access to common property resources and marginal lands against outsiders, are often limited against the challenges to existing land rights by well-connected bureaucrats or competing groups, which threaten to undermine the sustainability of resource access and use.

While most African cultures give men total control over property 'ownership' and inheritance (though this is mediated through a social system which gives a measure of security), the introduction of title deeds and private ownership has served to worsen the situation for women, and more recent adoption of land restitution and redistribution have failed to improve women's access to land in any meaningful way.[60] Governments have generally showed an unwillingness to make land policies that take women's needs into account. Where progressive policies have been developed, implementation has often been patchy, and this has ensured the persistence of discrimination against women.

## INSTITUTIONS FOR NATURAL RESOURCE MANAGEMENT

In areas where people are already extremely vulnerable and often have few options other than increased use of resources, the use of natural

resources – particularly common property resources – in sustainable ways is critical to the problem of resource degradation.

> *The environmental livelihoods perspective embraces the opportunities afforded by natural resources and highlights the social conditions required to maximise these opportunities….it provides a useful tool for linking environment and poverty and has been a major vehicle for innovation in both theory and practice. Implicitly and explicitly livelihood analyses of poverty focus on natural and social resources. This perspective offers a guide on how to mainstream poverty and environment concerns within the development agenda.*[61]

Implicit in a livelihoods approach is an appreciation of the role of institutions in relation to 'environmental entitlements'; these are people's 'legitimate' command over environmental goods and services – what people actually get *in practice* from the local resource base – and the ways they are shaped by diverse institutions. Recognition of this has found expression in community-based natural resource management. However, while this is an approach that has been adopted increasingly in response to the need for greater inclusivity, it has not always been successful. The reasons put forward are that it rests on certain common assumptions about community, environment and the relationship between them: the simple acceptance that 'communities' are homogenous and static, and the human-environment relationship is conceived of as a simple, linear one, affected only by such factors as level of technology. In these cases there is a lack of attention to the role of power. Failings of this approach are reflected in the treatment of recipients as passive receivers of projects; a short-term focus; the lack of criteria for establishing goals; and the consistent marginalisation of certain social groups.[62] The value of a livelihoods perspective also comes from the attention it draws to the means by which local environmental governance may be achieved, rather than the imposition of predefined "laws" about environmental degradation, which may also include constructive engagement with expert knowledge from outside localities. It differs from orthodox approaches to environmental management or environmental politics by allowing the local framing of problems and by acknowledging that concepts of 'community' include a variety of conflicts and social divisions that may be constantly experienced and negotiated.

Lack of local involvement in resource management has been recognised as one of the fundamental obstacles to sustainable development, so when it comes to finding solutions to equitable access to and sustainable management of common property resources, a decentralised approach which is inclusive of local scales is critical. Implicit in this is a participatory approach to examining environment–security linkages: local 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. This has implications for changes in communication around risks and hazards, and in the institutional structures for the production and management of hazards and the mitigation

of risk. The sustainable livelihoods framework provides a mechanism to enable the 'mapping' of both resources and relationships by households and communities, in a participatory process.

## THE REGULATION AND ADMINISTRATION OF LAND RIGHTS

The ways in which access to land is regulated, how land rights are defined and recorded, and how conflicts around access to land ownership and land utilisation are managed, play an important role in securing, or jeopardising, livelihoods, and in perpetuating power and property relationships. A legal framework goes some way towards minimizing conflicts, but what is also required is an effective and efficient administrative and judicial infrastructure. Inefficient land use and ineffective management of common property resources arise from lack of clarity over land rights. On the other hand, enhancing tenure security not only assures the value of land assets, and thus their earning potential, but also increases incentives for land-related investment, and increases bargaining power and the value of broader economic outcomes. Higher levels of tenure security furthermore induce better land management. When property rights are insecure the incentive to invest in long-term productivity of the land is compromised. The alternatives may well be to work the land in a way that degrades the natural resource base, or if economic instability becomes a further aggravating problem, the choice may be to migrate to the city. The former undermines environmental sustainability, the latter may fuel political instability

While there is general agreement about the need for tenure security, there is great debate over what mechanism should be used to increase security, particularly for the poor rural majority.

Titling (the tool of choice in the developed world) is a cumbersome and administratively demanding task, especially in the case of immensely complicated communal property rights systems. A major difficulty with titling is that cadastral surveys may be incomplete and record keeping inadequate, resulting in transfers going unregistered and data being unreliable. In a review of customary land tenure in rural Malawi, Cross points out that within southern Africa, where there has been considerable experimentation with various reforms of customary land tenure apparently favouring and protecting the interests of the small producer, reforms that have been proposed require an intensity of administration and skills that defy any likelihood of effective implementation. In Uganda for example, original plans for a decentralised land policy (supported by advocacy NGOs and many other stakeholders) would have had such huge financial costs that they were completely untenable.[63] Even where such favourable policy introduced in legislation, the actual implementation usually falls far short of the promise. "This reflects both low levels of capacity and prioritisation, and the operation of powerful vested

interests which can overturn promised security of tenure, deny access to services, and prevent the effective upholding of legal rights." [64]

The introduction of individualised titles has been known to benefit powerful private interests, opening up opportunities for the concentration of land in the hands of political and other elites, with few safeguards for the non-formalised land rights of rural communities, the more powerful taking advantage of new forms of land registration. Educated and politically connected people are in a better position to benefit from formalised procedures. It is thus the case that while accountability within a title-holding system at a local level may be better, possession of individual title does not necessarily mean that there is security of tenure; if administration systems and institutions are inefficient, poorly coordinated, or corrupt, the benefits of tenure security will not be realised and may even result in an increase in the number of informal transactions, disproportionately disadvantaging the poor. In customary systems, legal recognition of existing rights and institutions may be more effective than poorly established formalised structures especially if they are subject to codification or establishment of internal rules and mechanisms for conflict resolution.

The land crisis in Zimbabwe, which has captured so much international attention, is part of a wider crisis of governance and has also had major repercussions throughout the region.[65] This is because "Changes to land tenure do not just involve a change in legislation. They require a much broader view of how law relates to public attitudes and behaviour, as well as the institutions available to implement provisions of the new laws."[66] The key to understanding the failings of the land reform process and the resulting conflict lies in analysing the changing relationships between the key actors, such as the government, white commercial farmers, war veterans, supporters of opposition parties, residents of poor communal areas, the judiciary, and the security forces. The utility of specific outcomes from the process (whether peaceful or violent) to specific actors also sheds light on the grey area between politics and policy, as suggested by Benson Ochieng and Chris Huggins in this volume. Land reform to correct historical inequalities must also combine with other policies and reforms, for to be successful as a whole the productivity of agriculture, of sustainable rural livelihoods, must not be endangered. Land reforms can be a source of violence and frustration should expectations be raised but not met, or where economic performance deteriorates, or is perceived to deteriorate, as a result – directly or indirectly – of reforms. Such is the case when tenure reform acts to constrain local coping strategies: too often it has been assumed that a new land rights system will function by virtue of technical changes to land title-holding, whereas to be effective additional and complementary reforms must take place in the physical infrastructure, supply of agricultural inputs and services.

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 justification. Environmental differences add 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. In cases of political instability or conflict which increase the likelihood of a collapse of existing governance structures and failure to enforce the rule of law, the scope for acute situations to erupt into conflict is enhanced. Even minor conflicts can escalate over time into violent strife if the mechanisms for informal negotiation and impartial arbitration are lacking or institutional capacity to resolve conflicts is absent.

## CONCLUSION

For many of Africa's peoples, the State has long since ceased to be the provider of security, physical or social, if indeed it ever was.

Most African countries face a number of development difficulties – there are fault-lines in terms of social and political cohesion, capacity to govern effectively, and a lack of resources and/or a lack of equitable distribution channels or mechanisms – all of which are exacerbated by external penetration into these economies and the difficulties that emerge from globalisation. What is currently observed is that most states in sub-Saharan Africa have suffered from poor or weak governance over the past several decades and they are overburdened by growing poverty. In many countries we have nothing more than a choiceless democracy in which the role of patron-client relationships dominate and political disorder benefits an elite.[67]

In fact, weak governmental institutions appear to be a more important cause on the 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. The globalisation agenda is serving to ensure that the West garners a disproportionate share of the benefits at the expense of the developing world; as a consequence the concentration and centralisation of power has grown, and with it the geographic spread and degree of insecurity.[68] It must not be forgotten that globalisation implies exclusion as much as it does inclusion, as evidenced in the 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.

Responding to the question of what makes people in Africa secure calls for an adjustment to 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 than was once assumed – among them resource scarcity, diseases, global warming, or religious fundamentalism - has increasingly gained credibility. Traditional security institutions are beginning 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?*

The field of environmental security studies is still largely an emerging one. Yes, 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 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 a concern with social disruptions as the principal source 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 prioritises achieving freedom from fear and freedom from want *urgently.* It also implies moving beyond a needs-based focus, to a rights-based focus.

Core to most of the research on environmental security is that environmental change is negative. However, focussing only on threats overlooks the environmentally related opportunities available to improve human security.[69] This is the strength of the sustainable livelihood approach – it recognises the opportunities presented by the environment as positive aspects for livelihoods. Implicit is 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, 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. 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." [70]

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.

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# Land, migration and conflict in eastern DRC

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## 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 have died, making it the world's most deadly conflict since World War 2. 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 during June 2004, when opposing army factions battled in Bukavu, or in July 2004, when new clashes broke out between militia groups near Bunia. Even the Transitional Government itself came under serious threat in August 2004, after one of its members suspended its participation and Rwanda and Burundi sent a new warning to Kinshasa that it had to deal with Burundian and Rwandan militias operating on Congolese soil.

The interplay between local, national and regional dynamics in the DRC conflict has attracted much attention and has been illustrated in numerous reports. One of the key issues in these analyses is the competition for natural resources, which is presented as one of the dynamics that has shaped warfare in the DRC. It is argued that international competition for Congolese resources has prolonged the war and has shaped the power strategies pursued by the different belligerents. While most of these analyses tend to focus mainly on how 'greed' has become the dominant military strategy, they also tend to limit their scope to the macro-level structures and patterns of economic control and exploitation. One element that is often missing from the debate about the links between economic resources and violence, is the role of control over agricultural and pastoral land. Despite a relative lack of analytical attention, competition for land has played a dominant role in local disputes and can be pointed at as one of the root causes of violence and conflict in Ituri and the Kivu-provinces. Even more, since the start of the Congolese war, local disputes over land have become linked to the regional struggle for economic control and politico-military power.

This chapter examines the role of land and migration in the genesis and perpetuation of conflicts in the East of the DRC. The objective is to study how land issues have had an impact on the DRC conflict, either as a structural cause or as a dynamic of conflict. This analysis is based on a

number of arguments. The first argument is that although the conflict in the DRC is regional in scope, involving direct intervention of foreign powers on Congolese soil, internal and indeed local struggles are a very important part of the conflict system, allowing various actors to use them to their own advantage. The second argument is that the structural organization of land access and control is one of the root causes of local conflict. This organization, which is the result of a longer historical process of colonial land reforms and post-colonial patrimonial rule, has turned land into an asset of economic and political power and has marginalized large parts of the rural population. The consequent unequal access to land has intensified local competition. This competition was transformed into disputes and violence between ethnic communities when local elites from the early nineties started to mobilise entire communities on the basis of ethnic belonging and collective land rights. The third argument is that since the start of the DRC conflict, land has also become a 'resource', driving and sustaining conflict. Land has been turned into an asset to be distributed by local warlords, leading to additional levels of land insecurity and conflict.

Analysis of the land issue will demonstrate that land-related structural factors, which underpin some of the violence in eastern DRC, should be addressed if sustainable peace is to be achieved. If post-conflict recovery does not represent a fundamental structural shift in relationships between the government and the governed, then the result is likely to be a continuation of the status quo – inequality, dissatisfaction and cycles of political tension, as well as impoverishment of the Congolese people. For this reason, the analysis of the role of land access in the conflicts in Ituri and North Kivu – despite the geographical, historical and political particularities that mark these areas – holds lessons for other parts of the country. Customary land rights, which are the norm across some 97% of the country, are not adequately defined or protected in the land law.[2] Reform of land laws and land policies is vital, but in addition, the arguments presented in this chapter imply that the inequalities around land, which have indirectly contributed to the genesis of violent conflict in Eastern Congo, cannot be solved purely through legislative reforms. The structures – political, economic, and social – through which land access is mediated, must also be reformed. This is in addition to the improvements in regional relationships, particularly in regard to Rwanda and Uganda, which must be achieved if land-related sources of conflict are to be effectively addressed.

## THE SIGNIFICANCE OF THE HISTORICAL CONTEXT

As is now being demonstrated, the violence of recent years is not a historical anomaly. Instead, violence, the implicit threat of violence, and the manipulation of identity groups and political formations that make mass violence possible have been a continuous feature of Congolese life, since the very idea of 'the Congo' first emerged. From the first contacts

with European powers, the area has been seen as a bottomless source of valuable goods – rubber, copper, cobalt, diamonds, gold, timber and others. The extraction of these resources was accompanied by a horrifying degree of direct or indirect (structural) violence. It is estimated, for example, that during the first forty years of King Leopold II's ruthless plundering, ten million Congolese died in the process of rubber tapping and the construction of the Matadi-Leopoldville Railway.[3] The achievement of quotas for production of rubber was ensured through inhuman punishments for failure to deliver – such as the severing of hands of less productive workers. As elsewhere, the violence of the occupying European power was generally meted out through proxies, hence increasing tensions within and between indigenous identity groups.

The ripple effects of exploitative actions during the rule of King Leopold and the colonial era are still felt, often in terms of conflict between 'local' communities and 'immigrant' communities who were forced or encouraged to move for economic purposes. This is to some degree the case in North Kivu province, as will be described in this chapter, and was also the case in Kasai, where clashes between the 'local' Luala and the Luba people, who had originally been moved into the area to work in the diamond mines, became the first internal civil war.[4] Another example is the conflict between Luba-migrants from Kasaï and the autochtonous population in Katanga in the early nineties. Yet, these conflicts are not merely 'local' issues of competition between local and migrant populations. As will be demonstrated in detail in the following sections, the impact of colonialism on the local balance of power cannot be neglected.

From this perspective, the early years of independence (marked by civil unrest, the intervention of the UN, and the assassination of Patrice Lumumba) and the rule of Mobutu (1965–1997) can be seen as a continuation of existing norms and socio-political structures. These norms, which included bureaucratic centralism, repression and economic exploitation, were further consolidated as the guiding principles of Mobutu's rule through policies related to Zaireanisation. Control over natural resources, including agricultural and pastoral land, was an important currency in political transactions that aimed at 'buying in' local elites and preventing the formation of a counter-force. When economic inefficiency (the logical outcome of these norms) started to undermine the economic basis of Mobutu's patronage network, he operationalized a range of exit strategies, including political divide-and-rule tactics and the eventual decision to formalize '*geopolitique*', or the officialization of ethnicised local governance. The outcomes of this process, which were felt most in parts of the East, will be described in this chapter.

At the same time, it is arguable that just as in the pre-independence period, *external* factors emanating from Western metropoles remained a key focus of the regime. Zaire became, to the West, a bastion against communism and a loyal ally and business-partner, and hence gained access to massive amounts of foreign aid. This aid – which was siphoned

off into Mobutu's personal bank accounts and utilized to maintain a shifting network of patrimonial relations – allowed Mobutu to maintain his hold on power despite attempted uprisings and the near-collapse of the economy by the late 1970s.[5] The economic malaise, combined with the disempowerment of customary leaders and the intense competition between different potential beneficiaries of the Zaireanisation programme and other state-allocated benefits, all contributed to a situation where law and order was an extremely fluid concept. With public goods, including land, being blatantly 'personalised' for individual profit by government employees or local leaders, the state had lost legitimacy and hence the perception of a monopoly on violence.[6] With soldiers and governors using their connections and their power to enrich themselves through smuggling and extortion, others, abandoned by the state and peripheral to the economy, felt that they were also justified in doing so.[7] Historical evidence, then, suggests that structural violence – in terms of elite predation, lack of service provision, unaccountability and arbitrary governance – is to a large degree a 'normal' function of the Congolese state system.[8] In some respects, legal and policy instruments are the crux of the matter. As shown in this chapter, the lack of legal definition of 'customary' land effectively disenfranchised the Congolese rural masses and left them with insufficient legal protection against land expropriation by powerful elites. However, the exploitation of the legal and policy weaknesses occurred because of the political, economic and social relationships between communities, their customary and administrative leaders, and the provincial and national powerbrokers.

In this sense, parts of eastern DRC which have been particularly affected by violent conflict in recent years are not, as some would have us believe, 'unique' in terms of their governance context. They are often referred to dismissively as 'rebel areas' (which indeed have been hotbeds of dissent against central government, long before the 'first rebellion') and hence written out of national-level analysis for economic recovery. These areas are also seen as unique in terms of land access, because the high population densities found in pockets of the East (particularly parts of North Kivu Province and the region around Bukavu in South Kivu Province) are not typical of the country as a whole. While areas around Kinshasa, the coastal strip in Mayumbe region, and Bandundu are fairly densely populated, the vast majority of the country is very sparsely populated: average national density was estimated at just 19 people per sq km in 1997.[9] But the political structures which govern public life are not so fundamentally different from West to East. The exploitation of natural resources is inequitable and predatory across the country. The conflict experienced in the East is indicative of a difference in 'scale' of predation, not a difference in the 'type' of resource management regime.

## LAND, NATURAL RESOURCES AND CONFLICT

It may be asked why this chapter chooses to focus on access to agricultural and pastoral land, when other factors seem to be far more important sources of conflict in the DRC. In addition to various economic and political issues – ranging from the military and economic strategies of neighbouring countries, to the nature of the state in DRC (a classic case of a 'weak state') and the historical relationships between ethnic groups – there are natural resources of much greater value, and much more 'lootable' character, than agricultural or pastoral land. Many are found in the conflict zones of the DRC, including diamonds, gold, cobalt, cassiterite and coltan. Indeed, ACTS has already conducted research into the role of coltan in the DRC, which concluded that:

> *Natural resource wealth can generate as well as further perpetuate wars and conflicts… the illegal exploitation of coltan has added to the complexity of the war in the DRC… Measures must be taken in order to respect and implement the existing regulatory framework for the exploitation of natural resources in the DRC… a regional framework regulating the exploitation of natural resources wealth; and the equitable distribution of benefits must be put into place....*[10]

Other organisations, including the UN, have documented the important role of natural resources in fuelling violence – by paying for the operational costs of armed forces, and contributing to national or private coffers in those neighbouring countries who intervened in, or invaded, the DRC.[11] The wealth generated by the exploitation of the country's riches helped to sustain the war. In addition, control over these valuable resources is directly fought over between different armed groups. The various battles between Rwanda and Uganda in Kisangani are thought to have been a struggle over control of the diamond industry, for example, and the domination of natural resource-based industries by members of particular identity groups is a source of grievance to many, including Mayi-Mayi militia groups. A number of other mechanisms through which precious resources act as structural or proximate causes of conflict in the DRC have been identified by various researchers.[12]

Why then look at land? The reasons are several. Firstly, the 'causes' of conflict (which are numerous, and interlinked in dynamic relationships) may, for convenience, be categorized as either a) 'triggers' of violence, which are generally sudden and often unexpected events, and act as catalysts for a move from tension to overt violence; b) 'proximate' causes, which tend to be highly visible and are commonly identified as the reasons for violence; of conflict; or c) 'structural' or 'background' causes.[13] The latter are less visible, and generally provide a conducive environment in which conflict may take place. Insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, particularly in the areas examined in the case study. As mentioned previously, migration (both internal and external) has been a

feature of Congolese life over the last two centuries. Particularly through migration for industrial and commercial agricultural purposes under Leopold II and in the colonial period, thousands of people were moved permanently out of their indigenous rural sphere, without being satisfactorily or permanently incorporated in the industrial or urban sphere, or granted secure claims to land in their new milieu.[14] Also, as described later in this chapter, entire households lost the land access which was guaranteed them under custom. The reduced access to land in areas of North Kivu, for example, worked in concert with other socio-economic forces to produce a highly mobile population of young men with few economic opportunities, who were ready recruits for armed groups.[15]

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. As will be explained, these relatively recent controversies are by no means the first land issues to be cited as grievances that have undermined ethnic co-habitation in the area. However, the chapter situates these land-related factors within a wider context, which includes external (domestic and foreign) interference in local affairs, and competition for gold mines and other valuable 'point' resources.

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; and changes in the various social, economic and political structures that allow people to enjoy the benefits of agricultural and pastoral production (such as market access). Conflict is producing new competition for land, as part of a wider renegotiation of the local economic space and re-drawing of ethnic, class and other 'boundaries' between groups.[16] This is especially the case because land was turned from a source into a resource for the perpetuation of conflict.

Fourthly, as mentioned above, access to land (either as a productive resource, speculative investment or as a source of collateral for credit) has been one of the currencies of power. It is therefore important to an understanding of the political economy of the DRC. Control over land, as a resource with multi-dimensional aspects (as a community territory, as an economic resource, as a source of administrative revenue, as a social asset, for example) is significant in terms of ethnic identity-formation, the powers and revenue-streams of local customary leaders, and market penetration of rural economies. In areas such as the Kivu Provinces, for example, access to land is intimately bound up with perceptions of national identity. The stories of the 'Banyarwanda' and 'Banyamulenge' are, as we will see, to some extent stories of local struggles for land and the 'rents' accruing from land, yet at the same time point at structural roots of political exclusion. Examining land access therefore allows for a deeper understanding of the overall governance context within which the conflicts in the DRC have emerged.[17]

## ORGANISATION OF THE CHAPTER

The chapter is structured as follows. The following section looks at the local political economy of land-access. It describes customary land tenure in parts of eastern DRC and the ways in which the colonial regime created a statutory means of access, which resulted in a dual system – with the customary systems further divided according to colonial impressions of 'tribal' identity. The import of the post-independence land legislation is elucidated. This section also maps out the nature of migration in North Kivu and describes the processes by which rural capitalism emerged, and the impacts on the role of local customary authorities.

The third section, entitled *'From social fragmentation to conflict: the effects of land-alienation'*, looks at the ways in which the legal and political opportunities for land to be expropriated from the customary domain were acted upon by elite groups in the post-independence period. The impacts of land alienation on local communities are explained, with North Kivu providing an example of various effects, including an increase in renting or sharecropping arrangements, increased migration, impoverishment and food insecurity.

The fourth section provides two detailed case studies of the land dimension in two current conflicts, one from Ituri Territory and one from Masisi District, North Kivu Province. The conflicts in these two areas – which have their own individual dynamics – are also placed within the context of the wider Great Lakes conflict system.

The conclusion summarises the arguments and offers recommendations for national and international policy-makers.

## THE LOCAL POLITICAL ECONOMY OF LAND-ACCESS

### *Introduction*

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. As will be demonstrated in this historical overview, the links between land, ethnic identity and nationality were further instrumentalised for political gain during Mobutu's patrimonial rule. In conjunction with commercialisation of land access and wider political processes affecting the Great Lakes Region, these factors have led to regular outbursts of violence in different parts of eastern DRC.

Soon after their arrival, at the end of the nineteenth century, the Belgian colonialists discovered the potential that this extremely fertile soil offered for the development of plantation agriculture. Yet, in order to get access to local lands, an efficient power structure needed to be

instituted. The first problem the Belgian settlers were confronted with was how to stabilise their alien rule. Local ethnic communities were administratively formalised into proto-political entities. Given the fact that in some regions the fertile soil had already produced a well-developed consciousness of communal territorial ownership (in other words, higher potential areas had more well-developed tenure systems before colonialism), the way in which the colonial authorities dealt with the issue of indigeneity produced some catastrophic effects. It limited the access to customary land, consolidated the link between identity and land-access, provoked competition between 'autochthonous' and 'allochthonous' groups, made customary chiefs more powerful than traditionally was the case, and introduced a double system of ownership, which led to growing confusion about land-ownership.

In order to consolidate its rule, the Belgian colonial administration relied on existing rural structures, yet at the same time reshuffled this rural order to such extent that it set in motion an intensified struggle for land and, finally, also produced a number of local dynamics of conflict related to land-access. Before the colonial conquest, large parts of eastern Congo were characterised by markedly stratified patriarchal social structures. Under these systems, access to land was regulated by a hierarchical administration based on communal territorial ownership. Land was defined as a customary communal holding under control of customary chiefs. Every peasant had access to it, in return for the payment of tribute. The result was a well-defined rural order and political organisation both based on kinship and clientelism. The Belgian colonial power took notice of the existence of these indigenous systems and turned them into the backbone of the colonial political administration. These tributary states and chiefdoms were pushed into a new regime of customary law, which, consequently 'containerised' the local population.[18] The process of 'containerisation' involved a 'rigidification' and in some cases a re-definition of ethnic identities and a codification of customs. In some cases, imposition of customary chiefdoms was actively resisted by the local population.[19]

As had also happened under British rule elsewhere in Africa, every ethnic group was turned into a proto-political entity, but guarded its distinctive customary rules. A second characteristic of the land tenure system was the introduction of a double system of property rights. For the local population, a plural customary law was the legal basis for land access. Next to it, however, existed a 'modern' system for the white settlers enabling them to establish their plantations, through application to the central state. Only Europeans could own land through title. Under Article 2 of the Decree of 1st July 1885, King Leopold declared that, "vacant lands must be considered as belonging to the state". In common with many other countries, the central state often confused 'uninhabited' land with 'vacant land' – failing to recognise customary rights of use exercised over land.[20] Customarily, a lot of land which was not permanently cultivated or grazed belonged to customary authorities,

for allocation in times of need – such as future situations of land shortage. Access rights were also important for hunting, right-of-way, and collection of timber and lianas, for example.[21] During King Leopold's rule, a system of inquiry was established to determine if land was really vacant; however, decades later in places such as Masisi, many people lost lands to which they had customary rights, when it was allocated to Europeans by the *Comité National de Kivu* (CNKI) for commercial agriculture.[22]

After Independence, this led to confusion as it essentially provided two routes to land access, which were used opportunistically by those able to do so. As in many other cases, 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.

This confusion would never disappear and was even strengthened after the introduction of a 'modern' land law in 1973 by the independent Zairian state.[23] Even if this new law aimed at the destruction of the existing traditional customary rural order, this order became an integral part of new networks of land control based on alliances between new rural capitalists, politicians, administrators and representatives of the rural customary systems. It is the underlying hypothesis of this historical review that the entrance of new participants via the market and politics on the one hand eroded the existing customary social organisation; and on the other hand created processes of commercialisation of rural space and relationships, which altered the social and economic structure. These processes produced a political economy of social fragmentation, leading to land alienation and marginalisation of large parts of the rural population, and eventually to violent conflict for access to land. It is the aim of this part to demonstrate that the evolution of the organisation of the rural economic and social space created a high potential for conflict. Given the institutionalised character of ethnic identity, in eastern DRC these conflicts easily found their expression in terms of ethnicity rather than in terms of class identity. Local competition for economic resources were easily translated into ethnic terms, while at the same time ethnic antagonism was a result of a wider process of divide and rule practised by Mobutu.

## *The structuring consequences of customary land ownership*

Long before the colonial conquest, most parts of eastern DRC were characterised by a centralised political organisation.[24] Small tributary states and chiefdoms, headed by a *Mwami*, formed the institutional framework for a strongly stratified and patriarchal social structure.[25] In eastern DRC, the economic use of space traditionally reflected the social organisation. In fact, socio-political relations were determined by the way of

production. This explains why the control of access to productive land and animals was the core element of the power of these *Bami*. As the proverb '*Udongo ni mali ya mwami*'[26] said, the land was the property of the *Mwami*. Access to land was regulated by multiple political and social relations based on ethnic ties and clientelist relationships. In different parts of the Kivus, especially the most fertile regions such as the volcanic highlands in North Kivu and the Bushi region around Bukavu, different land-tenure systems formally organised these relationships. Although some differences could be noticed between these systems, the basic structure was the same: they all aimed at integrating everyone living within a well-defined territory into a network of dependent relationships.

Other land-tenure systems in eastern DRC, such as those developed by the Bafulero, Bavira and Babembe (South Kivu) or the Walendu (Ituri) were less hierarchical and much more flexible. One of the reasons for this was the availability of large tracts of land for agriculture, which strongly limited the power of the customary chiefs. Indeed, in some systems, lineage heads were significant political leaders, and higher-level leaders were relatively powerless.

Despite some differences however, in general, the use of land was granted to every subject in exchange for the payment of a tribute. The land tenure system in most regions was, like its administrative organisation, a three-tiered and complex power structure. In the Bushi-region, perhaps the best example of this structure, at the top came the *Mwami*, or the '*chef de collectivité*', followed in hierarchical order by the *Murhambo or Murhwali*[27] who exercised his power at the level of *Mulagiro*. At the lowest level, the '*chef de localité*' or *Mushamuka* was responsible for the distribution of land at the level of a hill, for which he was also called *Munabudaka* or '*chief of his land*'. Finally, the *Bagula* ('*pater familias*' with property) and the *Bashizi* ('subjects without any property') were subjects without any political authority of their own.

Land allocation was regulated by the payment of a principle tax. Each ethnic community had a different tax-system (*kalinzi* in the Bashi-community, *vusoki* in the Nande-community or *mutulo* for the Bahunde), although the general principle was similar for most groups. These taxes formed the structural basis of the local moral economy. According to this principle, access to land depended on an initial payment of tribute to the chief. Once this tribute was paid, the peasant obtained user rights over a part of the customary land - though, in practice, the peasant regularly had to pay tribute. Also, these user rights were non-alienable. No subject could legitimately gain full control over land through the existing land tenure system. Even if these user rights were hereditary, rights of alienation could never be obtained. Land remained customary, which put farmers in a relatively insecure position.

The main objectives of the system of *kalinzi*, *vusoki* or *mutulo* were to recycle the rents paid as tribute by those given access to land, and to enable the nobility to extract the surplus generated by the labour of farm households. The different rents paid by the producers and redistributed

to higher levels of the hierarchy had to guarantee the sustainability of the network of dependent relations and thus, of the existing social order. Even if these systems offered every peasant social integration and protection in exchange for the acceptance of the position of the customary authorities, at the same time it sustained his dependent position. For a farmer in the Bushi region for example, his "dependence on land ties him to his village, keeps him firmly subjected to his chiefs, and obliges him to pay illegal tribute".[28] The result of this system, thus, was

> *A complex structure of rights where nobody has complete property rights, but few –if any- have no rights at all: at the top the custodian of the tribal land (mwami) and at the bottom peasants that paid tribute without receiving any. For a peasant family, the system traded social integration and hence security for loyalty and tribute to the mwami, who received power in exchange for granting non-alienable use rights over the customary domain.*[29]

As Mugangu demonstrated[30], this taxation principle was some kind of a 'structuring structure'*:* not merely a mechanism for financial administration but a fundamental form of social control. The relationship between subject and patron was determined by the social identity one had within the hierarchy. Another consequence was that one's ethnic identity, or ethnic belonging, had a clear material basis: the right to use land as a source of livelihood. Since land in eastern DRC was a common good held by a community circumscribed by its ethnic identity, ethnicity became institutionalised as the main organising principle of society. For those not belonging to the ethnic community, it became extremely difficult to have access to land before being recognised as a 'client', i.e. having accepted the existing social order and traditional authority. Allochthonous members were only granted rights to land equal to those of the autochthonous population if they accepted the power position and rules of the traditional authorities. As the Mwami was in control of access to land, long before the colonial conquest, ethnicity came to be a very rigid principle of social division and exclusion.

## *The impact of colonialism*

What originally could be described as a customary system of land tenure controlled by traditional chiefs, evolved into a 'modernised' version of land control as a result of the impact of colonialism and the evolution of legislation after independence. Both dynamics had a considerable effect on the accessibility to land.

The Belgian colonial administration was the first to limit the extent of customary land when it introduced a normative duality in the social meaning of land. The pre-colonial system of communal territorial ownership practices formed the basis for the Belgian colonial administration's version of indirect rule. Because the extremely fertile soil of the Kivu highlands and some parts of Ituri (especially Irumu and

Djugu) offered the potential for the development of export-oriented plantation agriculture, the colonial administration introduced a second system of land control and ownership. In doing so, it initiated a dual system of property rights. The colonial powers declared all vacant land as property of the colonial state and introduced a system of land registration and private ownership, in order to regulate the access of the colonialist commercial class to these vacant lands so they could be turned into plantations. The legitimacy of the existing customary land tenure system was recognised only to the extent that land was already under the practical control of the traditional authorities, thus limiting any further expansion of customary lands. This expansion became even more limited with the confiscation of land for the institution of a system of wildlife parks and anti-erosion forests.[31] Land was also expropriated for settler-owned concessions, and while compensation was paid, this seems to have gone directly to the *Mwami*, rather than to his people. In addition, the notion of compensation (and the sums involved) cannot adequately redress the loss (in economic, social and cultural terms) represented by the loss of prime land. Commentators have argued that the chiefs involved in expropriation in colonial times were often motivated primarily by self-interest.[32]

Agricultural production at these plantations was based on forced labour, which did not offer a very viable alternative to the traditional peasant. As average wages were extremely low, this colonial policy provoked the start of a process of peasantisation and proletarisation. Also, agricultural colonisation and speculation strongly reduced access to land for peasant families living in densely populated regions such as Masisi and the Bushi region. Hecq and Lefèbvre estimated that a four-member family needed the produce of a plot of 1.2 hectares and a supplement of palm oil and salt to have sufficient nutrients. Already in 1959, households in Kabare (South Kivu) on average occupied less than 1 hectare.[33]

Another result of this colonial policy, was the transformation of the traditional, ethnically based rural political order into units of a much larger modern administrative system. One could not escape to ethnic belonging. Even more, ethnic identity now was transformed into a rigid juridical category. This led to a complete restructuring of the existing social rural environment, while it also transformed the political leadership. On the one hand, the leaders were stripped of some of their central powers. On the other hand, they gained power by their relationship with the colonial world. The '*chefs medaillés*' had the support of the white power, and through the courtier's art of flattery and intrigue, many arrived at strengthening their position. Generally speaking, however, most of the customary chiefs could hardly be presented as the spearheads obstructing the colonial powers. In most cases, they looked for the best of both worlds to maintain their influence. Even more important and devastating was the further institutionalisation of ethnicity. Ethnic citizenship, itself the result of local ethnic community membership, was recognised as the sole basis for the right to access land and thus contin-

ued to be the basis for existing economic relations. The practice of indirect rule, however, did not create one single customary system but was based on the colonial claims that every ethnic community had its own traditional system. It created

> *A different set of customary laws, one for each ethnic group, and [established] a separate Native Authority to enforce each set of laws. The result was a Janus-faced power, with two faces. The difference between them was that while civic power was racialised, the Native Authority came to be ethnicised.*[34]

Ituri is another example of the devastating impact of colonialism. Here, before colonialism, newly arrived Hema pastoralists had imposed their own authority structures on existing Lendu-communities. According to Lobho, these Lendu groups saw no other option than to integrate into this Hema society and to accept the authority of the Hema chiefs that "used diplomatic skill to maintain law and order". This integration led to a first process of social stratification, with "every Hema family head gathering around him Walendu clients, whom he called 'ma bale', my Walendu." On the eve of colonialism, Hema dominance was both political and economic. While "the Hema political role became so enormous that the Hema imposed upon all Walendu an entire political organisation imported form Bunyoro"[35], the Hema also gradually encroached upon Lendu territory, and "ended up dispossessing the Walendu of a part of their domain".

This existing order drastically changed after the arrival of the Belgian colonial administration. As elsewhere in eastern DRC, the Belgian colonial administration had to deal with these local socio-political structures if it wanted to impose its territorial control. One strategy was to disinvest the Hema king of his powers over all Hema and their 'Lendu subjects', and to regroup local ethnic communities into separate administrative centres, which gave the Lendu the right to self-rule.[36] Already in 1923, the colonial administration delimited the Hema- and Bindi-collectivities in Irumu and the Hema- and Lendu-collectivities in Djugu, aimed at the prevention of clashes between both groups. Another strategy was the introduction of a system of land registration and private ownership. To do so, it carved out the necessary land from the collectively held communal lands by declaring all vacant land property of the state. Besides the creation of mono-ethnic territories, this colonial policy also had an impact on the existing social order, as will be described below.

## *Issues of border identities*

As the example of the Lendu in Ituri demonstrates, since the colonial period, parts of society have found themselves in a marginalised position as the customary system denied access to those not belonging to a particular ethnic group or those not respecting the authority of the *Mwami*. Access to land was further complicated by the nature and effects

of pre-colonial and colonial migrations. The strong presence of immigrants of Rwandan descent, for example, led to intensified competition between different ethnic communities first in North Kivu, and later also in South Kivu.

Long before the creation of the 'Independent State of Congo' in 1885, significant numbers of Kinyarwanda speaking people inhabited 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. Colonialism and regional political events had a major impact on the number of these immigrants living in the Kivus. It is commonly agreed that both historical developments are responsible for the consolidation of regional migration patterns from the east to the west, which, in the case of the Kivus, resulted in the extremely heterogeneous composition of the local population.

Even if it is difficult to find credible evidence of the first arrival of immigrants of Rwandan descent in the Kivus, most sources agree that their presence dates back as far as the sixteenth century. According to Kagame, the arrival of the first Kinyarwanda speaking population dates back to the first half of the sixteenth century, when the actual zones of Rutshuru, Goma, Karisimbi and parts of Masisi came to be integrated into the Rwandan Kingdom. Furthermore, in the seventeenth century, members of the Rwandan clan of Basinga settled in Bwisha (Rutshuru). Some thirty years later, the influence of the Rwandan Kingdom extended to the zones west of the actual Lake Edward. This political expansion was followed by the settlement of a considerable number of Kinyarwanda speaking people in these areas.[37] In the late 19th century, Rwanda also tried to integrate the zones of Masisi, Kalehe and Idjwi into its territory.[38] Just before the arrival of the first European colonial powers, the Bwisha region, under the rule of Mwami Yuhi V Musinga (1895–1931), became a full part of the Rwandan Kingdom and was completely integrated into the Rwandan administrative system.

Contrary to North Kivu, in South Kivu the immigrant minority originated from both Rwanda and Burundi. The first settlement of Barundi in the Ruzizi Plain dates back to the end of the eighteenth century. At that time Ntorogwe, a prince of Mwami Ntare of Burundi, was in search of grazing lands for his cattle and settled in the Ruzizi Plain from where he extended his control from Katumba to the northern parts of Uvira. After a conflict between Mwami Ntare of Burundi and Ntorongwe's successor Rudengeza (resulting in the killing of the latter), the Barundi living in Ruzizi settled in Luberizi and disassociated themselves from the Burundian Kingdom.[39] The origins of the first immigrants of Rwandan descent in Uvira and Fizi (later to be called Banyamulenge) are significantly less documented and even until today remain a subject of debate among historians. Most written sources agree that a significant number of them arrived at the end of the nineteenth century, and was followed by several successive migrations.[40]

Even if it is hard to find a coherent explanation about why the first Tutsi migrants moved from Rwanda to what would become Congo, the history of the minority question in South Kivu is less complex that in North Kivu. While the influence of these minorities on the local situation in North Kivu has always been very significant, and to some extent determined by developments in Rwanda, until recently this was not the case in South Kivu.

Colonialism eventually cut through the existing relations between the Rwandan monarchy and some parts of eastern DRC through the creation of the Independent State of Congo in 1885 and the definition of its borders in 1910. The impact of colonialism on the demographic composition of the population in eastern DRC, however, was not restricted to defining the territorial limits of the newly created colonial states. Firstly, after the First World War, the Belgian colonial administration strongly promoted the migration of significant numbers of Rwandan farmers in an attempt to counteract strong demographic pressure in Rwanda and to provide the necessary labour for the newly created agricultural plantations and mining centres. Secondly, the colonial administration never succeeded in finding a sustainable resolution to the identity problem. On the contrary, the Belgian version of indirect rule resulted in two different and opposing types of identity, which regularly clashed. Thirdly, the so-called social revolution of 1959 in neighboring Rwanda – partly the result of colonial policies of ethnic favouratism – was responsible for the arrival of additional Rwandan immigrants (this time of Tutsi-origin) who were fleeing political violence in Rwanda.

In the early stages of their colonial power, the Belgians tried to restrict the influence of the Rwandan monarchy (that was under German colonial rule) on the population of eastern DRC.[41] 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.[42] 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.[43]

The demographic reality was complicated even further and the identity problem became even more confused after the creation of the *Mission d'Immigration des Banyarwanda* (MIB). The first reason for the institution of the MIB in 1937 was to counteract the demographic pressure in Rwanda, which had regularly led to food crises and famine. The MIB decided to displace parts of the Rwandan population and to resettle them in the low-density areas of North Kivu, such as Masisi and Rutshuru. Of course, another reason was the ever-increasing need for labour. As the Belgian colonial occupation of the region was in full expansion, there was a strong need for labour at the plantations, mining centers, road construction programmes and local industries.

It is estimated that between 1937 and 1945 more than 25,000 people settled in Gishari (Masisi), with this number reaching more than 60,000 people between 1949 and 1955. When taking into account the traditional

and uncontrolled migration, the total number of immigrants of Rwandan descent that settled in Kivu during the colonial period is estimated at 300,000.[44] At this time, Rutshuru and Bwito were also faced with the arrival of large numbers of Nande- and Hunde-immigrants originating from Beni-Lubero and parts of Masisi. These populations were forced to leave their homes due to social tensions and demographic pressure. These migrations forced the Belgian colonial powers to create a *Mission d'Immigration des Populations* in order to prevent densely populated zones from further demographic pressure.

These local patterns of migration finally led to growing confusion about the rights to create customary authorities. Even if the Banyarwanda of Bwisha (Rutshuru) were already present in North Kivu, and thus were considered by the Belgian colonial administration as indigenous, the claims to their own customary rights of new migrants from Rwanda led to different reactions. The reaction of the local population, which expressed its hostility towards these new migrants that were seen as competitors for land, was in sharp contrast to the initial position of the traditional authorities. For the local Hunde authorities of Masisi, the influx of large numbers of immigrants meant an important additional source of income, since these immigrants were supposed to pay tribute in return for the use of land. The Belgian colonial authorities, however, accepted the demand of these Banyarwanda to have their own customary system installed. In 1936 the *Collectivité de Gishari* was created, which was cut off from the Hunde chiefdom and from then on was headed by a Tutsi. Protests by the Hunde customary powers against what they saw as a violation of their 'customary rights' and the extremely negative reactions of the local population finally convinced the colonial powers to suppress the *Collectivité de Gishari* and to re-establish Hunde power. Competition for land, however, would always remain an important source of tension between the local population and the Banyarwanda immigrants. The Banyarwanda continued to express a residential claim of having certain rights on the territory they lived. The local traditional authorities, supported by their population, saw this appeal to rights as the start of a slow but certain "occupation".

Denied free access to land, the Banyarwanda finally tried to take advantage of the dual system that was institutionalised by the colonial powers. In order to escape the powers of the local customary authorities, they 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. The Belgian colonial administration never succeeded in resolving the problems it had created. Even during the Round Table Conference prior to the hand-over of power from the colonialists to the Congolese, the status of the Banyarwanda remained undecided. This explains why, at the beginning of independence, the first major conflict between both sides broke out. This *'Guerre des Kinyarwanda'*, which lasted for two

years, was the first rebellion against chiefly abuse and the first stage of a spiral of unending local violence.

To conclude, the Belgian version of indirect rule drastically changed the administrative and economic organisation of the Kivus and Ituri. This policy also had a serious impact on the existing social order. On the one hand, the introduction of the dual system of property rights affected the economic relations inside ethnic communities. On the other hand, the formalisation of ethnic citizenship as a state-sanctioned phenomenon had serious consequences for the relations between ethnic communities. Although the population living in the newly created collectivities was multi-ethnic, customary power, which now represented state authority, was defined mono-ethnically and awarded to the ethnic community considered as indigenous.

## *Patrimonialism and land-access*

The system of land control and alienation as introduced by the colonial powers, continued to exist during the first years after independence, including the reproduction of a double form of citizenship (a civic Congolese and an ethnic one). In 1973, however, the mechanisms of land-access were further complicated and confused by new legislation: the General Property Law, based on the so-called Bakajika Law of 1966. This new legislation declared all land (including the land under customary control) property of the state and integrated the traditional rural order into the urban-controlled modern political system.

However, once again the traditional, ethnically defined, territorial organisation formed the basis for the new territorial structure, thus confirming the territorial basis of ethnicity. In addition, many of those employed to work the land that came under indigenous Congolese control were recruited according to bonds of kinship with the new landowners, amounting to a "renewal of ethnic based access to the state and its resources", which Mobutu had to some extent avoided until this point.[45] More important, however, was that under this new law the traditional, customary authorities lost their legitimate control over the land distribution and were assigned the role of simple administrators in the institutions of the new Zairian state. The 1973 law declared all land state property. From then on all transactions of land based on customary law became illegal. Land could only be extracted from the state through an administrative procedure, which included an official survey, registration and cadastration.

As a result of this new legislation, the customary system was confronted with a deep authority crisis while the existing social and economic order also drastically changed. Since the 1973 legislation discarded customary law, 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. A second consequence of this new legislation was that it provided a newly formed class of rural Congolese capitalists with a new and powerful instrument. 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 nationalised colonial plantations were redistributed to reward the loyalty of a political elite, through either a) leases of up to 25 years; or b) perpetual concession, as long as the land was under constant agricultural or pastoral use and other land management conditions were met.

Despite the criminalization of land sales, in practice communal land also became subject to redistribution. The 1973 legislation not only drastically changed the social structure of Kivu and Ituri, but also was an expression of the changing political and economic conditions under the Mobutu regime. The policy of nationalisation offered the material basis for the formation of a new political elite. Loyalty, from now on, would be economically rewarded.

Although the new legislation was meant to limit the power of the traditional authorities, in reality these actors continued to play an important role in the control over land. The modern legislation, at odds with cultural norms, abolished the customary land rights and gave access to land only on the basis of individual property rights. In reality, however, the state was not capable of successfully implementing this new law. It never succeeded in describing the legal position of the traditionally distributed land, while at the same time the administration lacked the capacity to manage the distribution of land. As a consequence, a double system of land property rights (the *de facto* traditional order based on ethnic citizenship and the modern order based on individual property rights) continued to exist, which not only caused general confusion but for certain actors also opened up new opportunities.

These must be understood within the political and economic context of the time: the economy had gone into a steep decline in the early 1970s and was in tatters by the end of the decade. GNP steadily declined, and the formal means of production and exchange became non-profitable. Instead, people sought to survive through the parallel economy, and corrupt dealings were almost the norm, rather than the exception. On the one hand, new and powerful opportunistic alliances involving state administrators, traditional authorities, new land-owners, the freelance army, police and large land holders, have resulted in the reaffirmation of clientelism to the advantage of both traditional authorities and a new class of rural capitalists. In North Kivu, it was the combination of the nationality law of 1972 and the new legislation on property that worked to the advantage of migrants of Rwandan descent. This citizenship law, which was believed to be the result of the strong influence of a number of Banyarwanda on the central government, attributed Zairian nationality to those migrants who were living in Congo before 1950.

While it gave the Banyarwanda the right to vote, this law also included the right to buy land.

On the other hand, the traditional authorities became the privileged intermediaries for the sale of land. According to Mamdani:

> *To the extent that they were able to combine their chiefly status with important positions in the administration and the party hierarchy, [some Bwami] could claim authority on both traditional and political grounds, and make use of this situation to secure compliance with [their] decisions.*[46]

Mugangu concludes that by their control over the ethnic territory,

> *Not only did the traditional authorities become crucial partners in the territorialisation process of the state, they also were able to consolidate, within this new political context of the modern state and through the exploitation of the land tenure system in place, the traditional clientelistic relationships between elites and farmer. In doing so, the traditiona relationship between rulers and ruled were reaffirmed.*[47]

## *The development of networks of control and the emergence of rural capitalism*

The introduction of a modern land system through the new legislation on property rights, as introduced in 1973, had two effects. Firstly, the traditional system of reciprocal patron-client type relations embedded in a customary framework was undermined and a new type of patrimonial relations emerged, based on state patronage. Secondly, the inherent traditional social order was replaced by social stratification in which closeness to the political centre was a premium condition for the accumulation of wealth. This new social structure included a transformation of the property structure. The new land law was part of a policy of opportunistic nationalisation in order to reward political loyalty through the distribution of land, which became part of the patrimonial system.

From 1973 on, the best way to secure access to land was to get close to the state. This included the involvement in patronage-networks throughout which economic advantages were converted into political resources and distributed to those who expressed their political loyalty. Since access to land became regulated by administrative procedures, political power-holders and state administrators came to be crucial members of these networks of patronage, and thus, became enormously powerful. Since the property rights of new landholders were never secure (concessions could be re-allocated by the state when defined as 'insufficiently dynamic'), access to land was always conditioned by political favour.[48] All members of these networks derived mutual, but non-rival benefits from which most peasants were excluded. These informal alliances between a new class of rural capitalists, agro-industries, traditional authorities and state administrators have made it pos-

sible for a lot of land to be expropriated from poorer claimants, and for new claimants to extort heavy taxes or labour dues from those who lived on the land they claimed.

Perhaps even more important for the rural population's position, was the introduction of arbitrariness and land insecurity. These alliances that were seeking peasant-occupied lands also expropriated land held in the 'inalienable' customary tenure (such as the *kalinzi* or *vusoki* system), resulting in dispossessions of entire communities for the creation of new plantations and ranches. This would not have been possible if the traditional authorities had not participated in the expropriation of their subjects. As Newbury writes, "state and local authorities collaborated in forcing residents off their land and providing labour and other resources, in return for certain services and other prerogatives from the plantation companies".[49] Even worse was the generalised climate of arbitrariness.[50] Every public act or service was seen by the administrator as an opportunity to benefit from it and by the public as predation.

Both at a local and at a national level, members of these opportunistic alliances benefited from the redistribution of nationalised plantations and customary land, and from the different re-classifications of anti-erosion forests. The objectives of these new coalitions were clearly to limit access to land to their members' advantage. In terms of land reallocations, the nationalised plantations were of particular importance, since these were an access-point to one of the most profitable economic sectors. In the colonial period and the first years after independence, European planters dominated this sector. In 1973, however, Zairianisation opened the road to this very profitable sector for Zairians. As elsewhere in the country, in the Kivus and Ituri, agro-commercial firms, politicians, military officers, local chiefs and local businessmen and women became the new owners of the plantations.

Due to a lack of necessary capital inputs, however, many of these plantations were mismanaged or even neglected by their new owners, leading to a dramatic decrease in the production of cash crops. In Upper Zaire, coffee production dropped between 1972 and 1976 by more than 20% from 74,052 tonnes to 59,444 tonnes. However, the spectacular rise in the world price of coffee in 1976 (which was a result of a general shortage due to the Angolan civil war and weather conditions in Brazil and Colombia), provoked a local rush to get into this profitable sector of the economy. During that same year, local production increased to 108,613 tonnes.[51] Nevertheless, this world shortage of coffee could not prevent general mismanagement or bankruptcy of the enterprises by many of the new owners. As early on as 1976, the Zairian government decided to return most of the plantations and businesses to their former foreign owners. This new policy, however, included a decree of retrocession, which obliged the former owners to take Zairian partners if they wanted to restart their agro-businesses. This condition facilitated the creation of new business opportunities for a young class of indigenous entrepreneurs.

As already mentioned, land that was still under the customary land-tenure system also became privatised, through the co-operation of the traditional authorities. Even if the property law of 1973 strongly limited the power of the traditional authorities when it came to the right to allocate land, in reality these authorities could maintain their position. On the one hand, the administrative authorities responsible for the approval of concessions were highly understaffed, so supervision or control over transactions was not always possible. They were also underpaid, making corruption more likely. On the other hand, the traditional authorities were perfectly positioned to become gatekeepers for shifting the assets from customary control to the modern legal system. Present in both networks (the customary one and the modern patronage system), they occupied the perfect position to manipulate the duality of the new land legislation to their own advantage. This was all the more so because, even when their power after 1973 was strictly limited, they still held some judicial and administrative power. The Bami became the local representatives of the only political party, the *Mouvement Populaire de la Révolution* (MPR) in their collectivities. They could maintain their presidency of customary courts and they were nominated as *chefs de collectivité*, or the administrative heads of the rural collectivities. This lack of separation of functions (the chiefs represented the executive, the judiciary and civil service simultaneously) was open to abuse of power. Furthermore, most smallholder farmers and agro-pastoralists were largely unaware of the laws and regulations governing land, and, without access to education, information or money, were unable to defend their legitimate rights. Indeed, it could be argued that the law did not reflect the perceptions or wishes of local people, many of whom still identified the chief as the custodian of land access. There was therefore a fundamental conceptual disconnect between the *de jure* situation and the *de facto* reality in rural areas.

The clientelistic relations between traditional authorities, politicians and rural capitalists were prominently present in North Kivu.[52] Here, the selling of land was mainly to the advantage of migrants of Rwandan descent (Banyarwanda), who, as already mentioned, had obtained Zairian citizenship under the nationality law of 1972, mainly because they were Mobutu's main ally in the Kivus at that time. Their precarious position caused by the nationality issue benefited Mobutu's 'divide and rule' tactics. The Banyarwanda acted as his instruments of influence in parts of North Kivu, and were heavily reliant on him because of their vulnerability to political manipulation of their 'allochthonous' status. Also in this case, land titles were part of political resources to be rewarded to the most loyal parts of society. Banyarwanda often bought their land-rights in Kinshasa to come back to Kivu and claim large tracts of the most fertile land. It is estimated that after 1973 about 90% of the land of the *Comité National du Kivu* (CNKi) came under the control of the Banyarwanda, who were perceived as gaining wealth not just through their political connections, but also through their success as farmers and livestock-keepers.[53]

To acquire large tracts of land, the new class of rural capitalists could easily exploit modern legislation. 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 was impossible to buy land without their permission. They would generally benefit from land sales, while the population did not receive any benefit. An example of the practices of the Hunde-chiefs was the selling, with the direct involvement of the *Services Fonciers Provinciales*, of large parts of the forest in Rwamikeri and Nyarabana to these new rural capitalists that transformed the land into ranches.[54] 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.

## *The role of the Bami*

Before heading to the consequences of these processes of land alienation, one should have a closer look at the precise role played by the Bami in shifting land from the customary to the modern domain, a process of land-alienation within which the traditional authorities occupied a very unique position. As Van Acker demonstrates, to guard their position the Bami needed to create opportunities for members of the new alliances to establish titles on customary land. This could only be realised when the integrity of the traditional land allocation system was undermined. The customary land use rights of farmers were weakened, and customary controlled land that could not be attributed to farmers through the principle of *kalinzi*, *vusoki* or *mutulo*, such as the anti-erosion forests and the swamps, was gradually privatised.[55] As a result, the economic basis of the chiefs shifted from the control of land to new forms of social control.

In order to undermine the customary land rights of farmers, the Bami developed different strategies. One strategy that became widespread in the Bashi-community, was to dispute the legal status of the land use rights of farmers and to invoke a 'right to return'. Given the hereditary character of the customary contract, the best moment to question its validity was after the first user died or when the traditional witnesses of the establishment of the contract were no longer living. Another option was to offer a new kind of land contract no longer based on the heritable use rights through the payment of *kalinzi* or *vusoki*. Other forms of user rights such as the *bwasa* contract gave farmers the right to cultivate on rented land for a well-defined period, usually for the duration of one season, in return for a share of the agricultural surplus and an initial payment according to the supposed quality of the soil. A third strategy of the Bami was simply delivering false statements of vacancy, without informing the local population so it could be registered. As Van Acker posits,

> *Land could be declared vacant and registered without the knowledge of the occupants, and nothing much would happen until two years later*

> *when the new owners would move to occupy their 'property'. After this expiration period of two years, the title had become legally 'unassailable' in court.*[56]

Since the introduction of the new property law of 1973, the Bami discovered the market value of land. It became a widespread strategy of local politicians and businessmen to buy large tracts of land in their region of origin, as a form of *thésaurisation* or investment.[57] This practice introduced the notion of absentee landowners, or owners that were not depending on the productivity of their land for their economic success. Plantations, even when turned into ranches, became storehouses for wealth accumulated in other ways or as a means toward capital accumulation. In some cases, property titles were used as collateral to obtain loans for different uses.[58] Traditional authorities not only facilitated the buying of land but were often directly involved. In most areas close alliances between traditional authorities, politicians, some churches and rural capitalists could be witnessed. Traditional authorities either sold land to local capitalists or maintained a fierce grip on tracts of land that were supposed to be collective property.

Aside from the effect of the creation of a new class of Congolese rural capitalists, including some of the Bami, the role played by these Bami after the introduction of the new legislation on property rights transformed the economic basis of their power position. Even if in some cases the selling of their lands had a negative impact on their social position, they rarely lost their economic strength. Land-control as such was no longer the economic basis of the chiefs. A hierarchical system of social control guaranteed the generation of an alternative income to the traditional authorities. Although the *kalinzi* or *vusoki*-holders continued to pay tribute to their chiefs, most of the chiefs' income came to be generated from tax-raising at local markets and from a wide variety of taxes, or *amandes*, imposed at random by traditional authorities in order to demonstrate their authority.

## FROM SOCIAL FRAGMENTATION TO CONFLICT:THE EFFECTS OF LAND-ALIENATION

The previous part of this chapter revealed that the existing rural order in large parts of eastern DRC has been modified as a result of colonial rule and the implementation of post-colonial legislation. In this part, it will be investigated how both colonial and patrimonial rule have produced a number of effects on rural populations of eastern DRC. As will be demonstrated, these effects have had a considerable impact on the local social cohesion and economic competition and have guided local political strife. It is one of the main objectives of this section to trace the ways in which land issues finally have fed into local and regional conflicts.

Even if colonialism had introduced a dual system of property rights, it did recognise the legitimacy of locally evolved customary systems.

The introduction under Mobutu of the land law of 1973 meant a radical break with this tradition. First, the rise to prominence of the new breed of Congolese entrepreneurs meant an increase in heterogeneity of local society – in the form of inter-household social differences in wealth and interests – over and above the degree of heterogeneity that had been introduced mainly by the colonial politics of massive labour import from nearby Rwanda. As the controlled labour migration reflected the political economic conditions of the colonial era, so the emergence of a new class of people reflected the political economic conditions of the post-colonial time. The new principle of stratification and elite-formation represented one of the core elements of Mobutu's patrimonial rule: political loyalty allowed privileged access to economic resources. While granting large estates to members of the ruling political class, patrimonial rule also introduced the notion of absentee-landowners that were not dependent on the productivity of the land for their economic success, unlike the former colonial planters.

In some places in Kivu, the conditions underlying the political economy of the colonial and post-colonial era came together in what was to become one of the triggers of the current conflict, when certain Banyarwanda became Mobutu's closest allies in the seventies. Rewarded with ministerial posts and armed with the 1972 law on Zairian nationality, they 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. By the end of colonial rule, they formed a strong partnership with the Belgian colonialists, which at the same time guaranteed the stabilisation of alien rule and consolidated the Hema's advantage in the religious, educational, political and economic spheres. Given this favoured position, the Hema-elite had easy access to the inner circles of the post-colonial Mobutu-regime and could further increase its economic and political dominance in Irumu and Djugu.

Second, extracting land from the system of customary ownership had the effect of wearing down the social structure based on it. Capitalising the rents embedded in the land eroded the web of mutual dependency that was built on the careful extraction and (re-) distribution of these rents over time. Land-based social organisations form a stable structure as long as rents are created and are not destroyed by rent-seeking. The capitalisation of the full rent (the cashing in of the discounted future benefits of the land by means of subjecting land to the laws of the market), however, in eastern DRC had a disastrous effect. In regions such as Bushi, Rutshuru and Masisi, which were faced with unrelenting population growth, this dynamic has put the resources of poor peasant households under growing pressure, to the extent that large parts of the peasant population were faced with complete impoverishment. Three effects can be traced:

- The shift in the economic use of the available space resulted in land

dispossession and alienation, producing a large agricultural labour surplus.
- As mostly young men opted for a strategy of temporal migration, local mobility patterns shifted.
- Intensified competition for wealth accumulation through land 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. Why this did not happen is of particular relevance since it helps to explain the distinctiveness of the Zairian political system and gives an additional perspective on how land issues finally fed into conflict. Again, the traditional authorities need to be the focal point of analysis. In order to guard their position, ethnic discourse proved to be a perfect instrument.

It will be illustrated how in different cases, the link between territory and ethnic identity was exploited to redirect social tensions to their own advantage. In many cases these chiefs were helped by the presence of non-indigenous communities that could be held responsible for the very insecure land position of large parts of the population. Of course, this argument was a false one. Even if some members of these communities were able to acquire large tracts of land through their membership in the state bourgeoisie, this could never have been realised without the collaboration of the same customary authorities. The debate on the nationality rights of non-indigenous parts of the population was a successful strategy for the traditional authorities, as it was for local politicians in the mobilisation of their subjects. Even if the eastern parts of DRC were faced with growing pressure on the existing mechanisms of land distribution, it was only after the announcement of the democratisation process, in April 1990, that land issues were mobilised in the reconstruction of identity discourses and became crucial elements of local political competition, in March 1993 leading to a first outburst of violence.

## *The individual level: Growing land-insecurity and impoverishment in the Kivus*

As concluded before, the entrance of new participants via politics and the market not only produced a qualitatively different economic use of the available space, but also eroded the customary social organisation, leading to structural changes in society.

The first, and most important, effect of the wearing down of the traditional social structure and the introduction of a different economic use of space, was a growing alienation of land. Many of the plantations distributed to members of the political entourage of Mobutu remained under-utilised while large parts of the land formerly held under customary law were accorded to indigenous rural capitalists or international agro-industrial companies. Even though these plantations

offered new labour opportunities to the local population, since independence and the distribution of these plantations among the members of Mobutu's patronage network, most of these plantations were either left vacant (with a loss of labour opportunities as a consequence) or guarded by a *gérant* that rented parts of the land to landless farmers. Land- and food-insecurity and a labour-surplus among the rural population were among the most severe consequences.

Since in the most highly populated regions such as Masisi (North Kivu) and Bushi (South Kivu) access to vacant land through the former customary contracts was no longer possible and the rural population did not have the means to buy land through modern individual contracts, traditional coping mechanisms came under serious stress. Due to processes, including natural population increase and (limited) immigration, many farmers became landless. They were forced to use land under short term and very insecure contracts (the so-called 'rental contracts'), or to work as labourers on plantations or land of other farmers, thus paying 'tribute' in the form of labour.

A second effect was a shift in mobility patterns. The increasing land pressure mainly affected the position of the younger generations. For this new class of landless young men, the only option left was to sell their labour. They could do so either as migrant agricultural workers or as participants in the informal economic spheres of artisanal mining and smuggling high value goods around the mining sites.

The final effect was the impact on the existing social organisation. As already stated, accumulation of wealth through land provoked competition between members of the newly established patronage-networks. Such competition not only provided the opportunities for self-serving ethnic discourse[59], but also had the effect of hardening social boundaries on an ethnic basis.

Before discussing these different effects, however, the significance of the growing demographic pressure in parts of South and North Kivu needs some further explanation. The first reason for this population growth is the high natural growth rate. In Kivu in the early nineties, this rate was 3.1%.[60] The second reason is the arrival of large numbers of immigrants from Rwandan or Burundian descent. These two demographic tendencies explain why in Kivu, the growth rate exceeded 4% between 1948 and 1970. By the end of the eighties, 49% of the population in Kivu lived in areas with a density higher than 100 inhabitants per km sq, whereas this number was only 13.4% in Zaire as a whole.[61] A survey in Mulungu (Kabare) in 1985 demonstrated that, even with intensive cultivation, the land holdings of nearly 90% of the population were insufficient to support a family. More than two thirds of all households worked plots of less than 1 hectare. One third of all families had less than 0.3 hectare.[62]

Nevertheless, food security in Kivu was not dependent on the extent of agricultural resources (food and land) as such but much more on access to these resources. To give but one example, when in 1979 the

Bushi region was suffering from a serious food shortage, it remained at the same time an important export region for food products. This clarifies why even today, in absolute terms we cannot speak of any land shortage in Kivu: land distribution and access are the key issues.

These figures bring back the effects of land alienation. As demonstrated, since the introduction of colonialism the extraction of land from customary ownership and the inherent capitalisation of rents embedded in land, changed the patterns of inequality in the rural areas of Kivu or Ituri to the advantage of the owners of the plantations.[63] As customary land became limited, the effect was land alienation, which in many cases condemned farmers to exploit marginal land, resulting in the further degradation of these lands due to insecurity of tenure.[64] Most of the land under customary control had been distributed or sold to new rural capitalists. For the affected farmers, the only options were 'buying' a tract from someone who had already paid a customary tribute (this practice was called second-degree customary tribute) or renting land, which were both less secure forms of land tenure. The *bugule* contract (or the practice of buying land, which transfers the control over land from the traditional authorities to the state, giving definitive land-access to the new owner) was beyond their reach due to a lack of financial resources. The only option left was to rent a tract of land under a short-term contract such as *bwasa*. As for *bugule* contracts, in principle this offered a possibility to escape from land alienation. In practice, renting land was beyond the means of most of the local farmers. In extreme cases, farmers were forced to work as agricultural labourers on a daily basis, often in return for extremely low wages.

On the one hand, land insecurity negatively affected the existing cropping patterns. Crop diversification was no longer in accordance with agro-climatic zones,[65] but came to be dependent on security of tenure. Perennial crops (such as bananas and coffee, which are grown mostly for cash) are only traditionally grown on land to which the farmer has a long-term entitlement, while seasonal or food crops are cultivated on marginal land with less secure tenure such as the *marais* or steep hill-sides. These latter lands, which were most susceptible to erosion, were formerly governed by rules of open access, but came to be rented to poorer farmers under *bwasa* contracts. Seasonal crops were planted on these insecure lands, while the crops themselves changed from food crops to crops that could be more easily marketed, such as cassava. As was demonstrated in Bwisa (North Kivu) at the end of the eighties, this put food security increasingly at risk. The shift to other crops was producing additional effects. Perennial crops are traditionally the domain of men (even when the help of women is needed), while women are excluded from secure customary tenure systems and cultivate food crops. Today, women are relegated to the most insecure lands that they can only cultivate for a short period. Therefore women are the first victims of the effects of food-alienation.

What about resistance against this policy of dispossession, locally described as '*spoliation*' ? In some of the regions where entire communities had to leave their land in order to make way for the introduction of ranches or plantations, some significant resistance could be observed. Acts of repression, crop destruction and arbitrary arrests were used to convince the farmers to abandon their land. At the title registry office in Goma, between January 1979 and July 1983, 61 formal complaints against *spoliation* and 116 requests to annul the decisions of the customary powers for fraudulent appropriation were made. In other cases farmers used violence against new titleholders or their agents. Even if mediation by churches and local co-operatives sometimes resulted in the restitution of lands to the original users or owners, in most cases the state expressed a very limited tolerance to this rural resistance. The Zairian government, as it did in North Kivu in 1985, was even prepared to send troops to end the activities of 'rebellious elements'.[66]

Another option in the search for land was to extend the customary land into the forest reserves and wildlife parks. The Kahuzi Biega forest, for instance, which was transformed into a national park in 1970 and extended in 1975 and, thus, was not accessible for agriculture, was seen as a possible option by excluded farmers as a way to get access to new land. In 1999, a demand was even addressed by the new authorities (see the memorandum of the *'Comité des eleveurs et agriculteurs de Mulumemunene, Lushanja et Kalubwe'* of 15 February 1999). It is not surprising that this popular demand has the support of the traditional authorities, as it would extend their control if the forest was to become accessible for farming.

The second effect of the process of land alienation was the shift in mobility patterns. Traditionally, the customary land system discouraged migration away from largely populated regions. Poor farmers often hesitated to leave their region of origin for an uncertain future in an area where one did not belong to the ruling clan. Another reason was the strong socio-political and economic control of the customary authorities that prevented farmers from any form of social mobility or migration to other regions. The *chefs de groupement* and the *Mwami* had the power to confirm ethnic belonging, allocate customary land for livelihood, oversee administration, hold tribunals through which customary justice was meted out, collect taxes at local markets, etc. For the rural population there was often no escape from the customary power, especially in those areas confronted with a severe land-shortage, since this land-shortage only strengthened the position of these customary authorities. In some regions this prevented any form of migration.

The social structure simply did not leave any space for migration. When land became scarce, farmers found themselves extremely dependent on the traditional authorities for their own survival. For them, leaving their homes meant losing their local rights to land-access so they preferred to stay. As a result, there was a high risk of failure in all attempts to attract young farmers to migrate to areas where tracts of

fertile land were still available (such as Walikale, Mwenga and Shabunda).[67]

Given this impediment, the options for a growing class of landless young men to escape from the effects of land alienation remained very limited. In the absence of any industrial development some tested their luck in the artisan production of bricks. Others became involved in the large informal economy as traders. More often, however, these young men opted for a career as temporary migrant agricultural workers or tried to make a living in the illicit economy of gold and mineral digging and trading. In both cases, since the eighties an increased mobility of mostly young men has been the answer to social exclusion.[68] In both cases, this increased mobility also resulted in the development of a trading economy. Many of the temporary migrant agricultural workers traded goods on their way home. Others gained their living through participating in the migrant commerce between local mines and border towns such as Uvira, Bukavu and Bujumbura (Burundi). The prohibition of artisan mining discouraged production by this method, but expanded rapidly after the liberalisation of gold mining in 1982. Since then, mineral-rich areas such as Walikale (North Kivu), Mwenga and Kamituga (South Kivu) became very attractive destinations for landless young men in search of access to the 'fruits of modernity'.[69]

Gold, cassitherite and other minerals, as well as coffee, tea, cattle and agricultural products were smuggled out of the country to international markets in Bujumbura (Burundi), western Uganda, Kigoma (Tanzania) or even further in Dar es Salaam (Tanzania) in exchange for scarce consumer goods to be sold in the hinterland of eastern DRC. In other words, those parts of the rural society that were most vulnerable to land alienation were also the most successful in developing survival strategies through a skilful exploitation of their increased mobility. Gold revenues enabled them to substantially improve their standard of life. However, this shift in mobility patterns set an important precedent for the future, as it had severely disturbing effects on the social structure. These landless young dwellers from the early nineties onwards became an easy reservoir for mobilisation by leaders of armed peasant militias. As gold mining did before, these militias offered them a means for the achievement of some form of immediate redress against, or revenge for their grievances.[70]

## *The politicisation of ethnic citizenship*

This brings us to the next effect of the entrance of new participants via politics and the market. Accumulation of wealth through land provoked competition between the several components of the patronage-networks. Moreover, on a lower scale the rival nature of land became more pronounced, especially in those regions where an increase in the population density further exacerbated the effects of the erosion of customary land-control (such as the Bushi and Masisi). 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.[71] Schoepf and Schoepf illustrated this dynamic perfectly with an example from the same region, recorded in 1985:

> *An elected member of the National Legislative Council from Kivu reports the acquisition of several large estates in his area by wealthy absentee businessmen from another ethnic group. Since his group lays claim to be the 'original owners' he disputes the right of any members of the other ethnic group – including long-resident families of herder-cultivators – to land there. A son and heir-presumptive of the 'traditional' collectivité chief, he has registered title to 200 hectares in his own name, which he stocked with cattle. He did not chase the occupants off, since he wanted them to work for him 'to develop the land together'. He does not see why they have departed unless it is due to 'those people in ACOGENOKI stirring up trouble'.*[72]

Similar conflicts erupted in other regions as well. The historical competition between the Barundi and Bafulero in the Ruzizi Plain has already been mentioned. These conflicts, however, were not limited to areas where immigrants had settled. Between the indigenous communities of Babembe and Babuyu in the southern parts of South Kivu, the competition for land intensified and provided local leaders with opportunities for the building of ethnic agendas. As with the Bafulero-leaders in the Ruzizi Plain, 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. In all cases, local politicians and commercial interests mobilised the population on the issue of land by the use of self-serving ethnic discourse. Not surprisingly, these campaigns served the interests of the traditional authorities as well, since these offered them new opportunities to regain or reinforce their control over land. However, 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. The democratisation process set in motion a number of dynamics:

- As Mobutu encouraged stirring up the cauldron of ethnic resentment (in order to ensure his own survival), local political leaders started to mobilise their followings on an ethnic basis. Ethnicity was used as a vehicle to propel politicians into national politics on the basis of old but unresolved grassroots conflicts.
- In the Kivu-provinces, as a result of mobilisation strategies of local political and traditional leaderships, the nationality issue came to be directly linked to the issue of land ownership.

- Soon after the announcement of the democratisation process, ethnic discourse and violence replaced the strong demand for democratisation and introduced new processes of exclusion.
  marginalized youngsters, and introduced violence as a strategy of resistance and control.

Mobutu's announcement of a democratisation process, in April 1990, could be best described as yet another strategy to ensure his power. As this process set into motion a fierce competition between former members of the centrally led patronage network and new political actors contesting their power position, it permitted Mobutu to exploit this '*politique du chaos*', which was exactly what he had planned. He knew precisely how he could manipulate the process of democratisation. Local politicians were forced to build themselves a strong power base, for which it was necessary 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. But the building of ethnic agendas marginalised the more moderate political actors to the advantage of a new generation of strongmen. These new actors developed a much more extremist approach. The exploitation of ethnicity was soon intensified by new strategies of mobilisation that introduced violence based on ethnicity as a legitimate instrument for political change. Reference to land rights came to be an integral part of these strategies.

In the Kivu-provinces, the democratisation process resulted in a further decrease in the resources needed to feed patronage networks, forcing local strongmen to develop new strategies, whereby local conflicts became linked to a much larger debate regarding political representation, over the, for example, the rights of 'allochtnonous' populations.

The introduction of the notion of *géopolitique* had the effect of intensifying local ethnic competition. According to this principle, national institutions were to be created on the basis of regional quotas. While it was very clear that this was just another strategy, introduced by the Mobutu regime to divide all political opponents, the racist implications of its interpretation became obvious in Shaba and Kisangani in 1992[73], and in North Kivu in 1993. Here, the principle of *géopolitique* was used to argue that all positions of authority could only be awarded to those who were indigenous to the region concerned.

In North Kivu, a wave of inter-ethnic violence erupted for the first time in March 1993. Several elements helped create a context of intensified ethnic tension. Firstly, 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, both the local population and their chiefs protested

against their presence and supported the formation of local militias. Secondly, since the announcement of the democratisation process in April 1990, a coalition of local Nande and Hunde politicians, who were 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. Once again, reference was made to the citizenship issue.[74] Thirdly, as a response to the position of these local autochthonous elites, the local Hutu-Banyarwanda association Magrivi (*Mutuelle des Agriculteurs de Virunga*) in the Rutshuru region 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 Rwandan Patriotic Front (RPF). And finally, the indigenous customary authorities in Masisi felt their position threatened by the Banyarwanda communities and, within a context of intense political animosity, started a campaign against these Hutu-Banyarwanda. The best way to do so, was to mobilise those local youngsters that had shown their preparedness to take up their machetes for the defence of their own community. Local traditional authorities, as they had sold large tracts of land for their own profit to a Banyarwanda-class of rural capitalists without even consulting or informing the local population, risked finding themselves in a seriously marginalised position once there was no more land to divide amongst their subjects. To prevent being rejected by their own population, they needed a scapegoat that, within the context of growing political competition, was found in the Banyarwanda communities.

The trigger for the first wave of massive violence was a public speech by the governor of North Kivu, in which he asked security forces to assist the efforts of the Nande, Hunde and Nyanga to exclude and exterminate the Banyarwanda. According to local sources, the governor, himself a Nande, together with the vice-governor (a Nyanga from Walikale) and the latter's nephew (who was the local assistant administrator in Ntoto, Walikale) mobilised some local militias to exclude the Banyarwanda population. Other Nande paid and recruited members of Ngilima and Batire militias. In March 1993, these militias killed several people at a local market in Ntoto. Although these attacks did not spread further into Walikale, Hunde militias started attacking Banyarwanda in the Masisi District for which they received some help from Nande militias from Ruwenzori[75] and from local *Forces Armées Zairoises* (FAZ) factions. 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. At that time, *Mayi-Mayi*/*Bangilima* became used as a loose term to describe any local armed youth group, suggesting a somewhat premature unification of all these local groupings. Since this first outbreak of massive violence in North Kivu, however, semantics and reality have grown closer together, as these local

militias started playing a crucial role in the development of informal militarised social networks. Fighting became the best way to escape from marginalisation because it proved to offer these militia members, who included landless youth, easy access to livelihoods.

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 militias (who had taken the lead role in the genocide) in the different camps in Masisi and the Ruzizi Plain. The presence of the Rwandan refugees had some major effects on the local security situation. The Rwandan refugee crisis of 1994 had the effect of reinforcing the view that violence based on ethnicity and carried out by groups of mobile youth had become the dominant principle to effect structural change. Given the particular position of the Zairean state, the influx in 1994 of more than one million refugees that were armed and resourced from the outside, affected the local population in many ways and created the logic for future conflict, putting the Rwandan Hutu-Tutsi antagonism at the heart of local struggle. 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.

This underlying logic of political competition and conflict finally also spread to the southern parts of South Kivu, where a coalition of local politicians and traditional authorities picked up the discourse developed in North Kivu to start a campaign of exclusion against the Banyamulenge community. Since the start of the democratisation process, 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. The Banyamulenge were perceived as being part of a regional Tutsi-coalition, which aimed at consolidating Tutsi-control over the entire Great Lakes Region. As a result, local political and economic competition was directly linked to regional dynamics of conflict. All Tutsi in the area (including the Banyamulenge) were characterised by politicians as "recent refugees" and 'foreigners'. Until the summer of 1996, the struggle was based on memoranda, provocations and detentions. In July 1996, however, the district commissioner held a public meeting in a Pentecostal church in Kasenga, where he incited a "chase of the snakes" ("*une chasse au serpents*"), aimed at the Banyamulenge population.

From then on, politicians started activating a process of ethnic cleansing; first by encouraging others to take over all Tutsi property, later, by physically attacking Banyamulenge communities. For that purpose, local political leaders mobilised local youngsters to form armed groupings. Popular demonstrations and an increasing number of incidents

involving the harassment of Banyamulenge by the FAZ and youth militias turned Uvira into a zone of insecurity. Bembe-militias, supported by FAZ soldiers and Interahamwe factions, started attacking Banyamulenge villages, killing local residents and forcing those who survived to flee.[76]

By September 1996, the Kivu provinces had become a toxic brew of local and regional antagonisms that risked escalating at any time. The effects of a shift from patrimonial to military control over state resources, and an intensified political competition as part of the democratisation process, became interconnected with the destabilising effects of the refugee crisis in 1994. Both local (the Tutsi-Banyarwanda in North Kivu and the Banyamulenge in South Kivu) and regional actors (Rwanda, Uganda and Burundi) started developing alternative strategies for their own security. The position of the Congolese Tutsi-populations has been documented in the previous parts of this chapter. For the neighbouring countries, the presence of Ugandan, Rwandan and Burundian militias in eastern Zaire posed a threat to their own national security. These local and regional elements explain the dynamics behind the formation and start of the military campaign, in October 1996, of the *Alliance des Forces Démocratiques pour la Libération du Congo/Zaire* (AFDL).

It is not the objective of this chapter to document the formation and campaign of this regional movement, but only briefly to focus on the events following its formation. This alliance of local and regional forces easily defeated the remnants of the Mobutu regime and arrived in Kinshasa in May 1997. Yet, what had been the key element for its military success, became one of the most significant obstacles for the consolidation of its internal political power. 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). Once again, the Kivu provinces were the territorial base for the start of its military campaign against Kinshasa. Once again, the conflict was producing a formidable coalition of regional and local forces.

Nevertheless, 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, in which the struggle for local resources came to be a central element. Since 1998, however, this struggle no longer only concerned access to land for agriculture or cattle-raising, but also aimed at controlling the vast wealth of Congo's natural resources. In addition, this competition no longer only included local actors but also regional political, economic and military strongmen. The next part of this chapter will focus on this competition and will present a detailed analysis of the struggle, since 1998, for local resources, including land, in Masisi and Ituri.

## CASE STUDIES: LAND AND CONFLICT IN MASISI AND ITURI

As has been demonstrated above, the land issue, even when defined as an issue of control over agricultural and pastoral land (rather than land containing mineral deposits and other more valuable resources) is multi-dimensional, with economic, political, social and spiritual aspects. 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. Conflicts might be related to natural resources not only in terms of physical control over the resources themselves, but also over the control of labour, capital, technology, trade routes, markets and other factors that are necessary to make them valuable.[77] Therefore, while the resources themselves may be categorised as 'local', these factors extend geographically far beyond the local or national borders. While conflict may be fought by local actors, the influential actors in these conflicts may be hidden from view and far from the scene of the violence. Therefore, the conflicts in the DRC are multi-dimensional and can be analysed at different levels or scales, each of which are intertwined and interpenetrating.[78] Before looking at the local level, it is important to first put the current situation in Masisi and Ituri into the regional context.

### *Regional background*

The regional conflict is often referred to as the Great Lakes conflict system. The use of the term 'system' is appropriate because different conflicts have impacts on one another, often involve the same actors (though in different formations), can be analyzed in terms of structured 'levels', and have 'synergistic' effects. This is an extremely complex system, which changes over time, and a great number of important issues can be identified, including (but not limited to) the international trade in cassiterite, coltan, diamonds, gold and other important resources; 'reciprocal destabilisation' through support for rebel groups operating in the region and initiating cross-border attacks from safe havens in neighbouring countries;[79] the manipulation of ethnic identities, leading to large-scale antagonism between ethnic groups, the most pivotal currently being Hutu and Tutsi; intensified local competition for access to political power and control over economic assets; and international geopolitical considerations, including those of Western powers (with Francophone and Anglophone interests often in competition).[80]

To a certain extent, control over land and its produce is also a part of the regional picture, because the economies of the Great Lakes countries, particularly Rwanda, Burundi, Uganda and Northeastern DRC are linked. Regional trade has been important for centuries in all of the

countries, particularly since the final years of Mobutu's regime, when the Kivus were largely ignored by the central government, and Kinshasa was no longer a significant point of economic reference for the East.[81] More recently though, regional trade – particularly in food goods – has been negatively affected by conflict (the trade in minerals, of course, has been phenomenal, but is not officially taxed and replaced by systems of *pré-financement*, meaning that little goes back to the local population).[82] The reduction of trade in foodstuffs between South Kivu and Burundi, for example, and Masisi and Rwanda, has negative consequences for both the local Congolese communities, and their neighbours.[83] The cross-border aspects of agriculture and pastoralism are also seen in the tendency for out-migration from Rwanda, which has a very high population density and rising numbers of land-scarce or landless families; as well as, for example, the history of in-migration into Ituri.

As has been well-documented, the regional aspects of the conflict have been reflected in the presence of foreign armies on Congolese soil – most recently Rwandan, Burundian and Ugandan troops (which were all officially withdrawn during 2002), but also Angolan, Zimbabwean, Namibian, Zambian, Chadian, Sudanese and possibly other forces.[84]

At the national level, conflict has its roots in the structures of political and economic governance that were developed during the time of Leopold II – continued by the Belgian administrative authorities who ensured close collaboration between state agents, the church and large commercial enterprises – and were if anything reinforced by the strategies of Mobutu, especially from the late 1970s onwards.[85] The 'predatory state', operating through exclusion, patronage and violence has been a fact of life in the DRC, it could be argued, for as long as the concept of 'Congo/ Zaire' has been in existence, and is not merely a result of recent conflict. The 'citizenship' issues related to the political representation, land rights and nationality of the Banyarwanda (in addition to some other groups) which have been identified above, while perhaps central to an understanding of the current conflict, are just one aspect of this massive governance failure. Again, control of natural resources, including trading networks, are highly important. To a degree, aspects of territorial control are an integral part of national political struggles, as they are factors in the legitimacy of ethnic-based political units such as chieftaincies at various levels.

Because of the links between national questions and land access, separating the *local* level from national level questions (and due to the political and military influence of regional countries on a number of rebel movements, the regional conflict) is to some extent an arbitrary exercise. What is clear, however, is that local issues in the conflict are highly significant, both as political issues deemed to be worth fighting over, and as part of the wider governance failure that causes widespread impoverishment and hence makes violence a viable option for many. Given the collapse of the formal economy and the impoverishing effect of the conflicts on the general population, many young men with access

to arms have simply taken to banditry and extortion as a means to survive, cloaking their activities under a politico-military identity in order to gain some legitimacy.

In this sense, lack of land access – whether through the individualisation and commodification of land described in the sections above, or due to lack of physical security to cultivate land – is a structural cause of poverty, and thus a reason for many people's recruitment into armed groups.[86] Because of the structural inequalities in land distribution noted above, which have been formalised and legalised through purchase of title by wealthy landowners, the maintenance of political instability has been adopted as a strategy by some groups – particularly the Mayi-Mayi – to ensure that the *de jure* legal ownership cannot be translated into *de facto* control over those resources.[87] This analysis suggests that far from being solved by the inclusion of Mayi-Mayi leaders in the Transitional Government, conflict associated with local Mayi-Mayi agendas will continue until the structural causes are resolved. Despite the long-standing and continued importance of issues such as land rights, and the economic and political dominance of certain communities, these have been ignored by the Lusaka Peace Process and, according to some analysts, by MONUC as well.[88]

## *Masisi Territory, north Kivu Province*

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.[89]

### *Conflict patterns after 1998*

While there is insufficient space here to document the entire complex history of the most recent conflicts, it should be noted that in most parts of northeastern DRC, the years following the signing of the Lusaka Agreement were characterised by a process of fission of armed groups and their political counterparts – such as the RCD and others – partly as a function of competition and conflict between their sponsors (principally Rwanda and Uganda). For example, the RCD split into three main factions in September 1999, partly due to competition between their foreign backers (Uganda and Rwanda) and partly due to the different demands made by political/military leaders during the peace process. For their part, the Congolese government, before the establishment of the Transitional Government, supported ex-FAR and *Interahamwe* groups as well as many of the numerous Mayi-Mayi forces, which were, alongside rebels and their backers, responsible for widespread banditry and human rights abuses against civilians. There are credible accusations of continued support to some of these groups.[90]

The withdrawal of Rwandan troops in September 2002 provided an opportunity for numerous Mayi-Mayi groups to take advantage of the sudden weakness of the RCD, resulting in bitter fighting in numerous localities.[91] The result, in many areas, was a shifting and unstable politico-military environment, where power-vacuums in many areas prevented any kind of long-term recovery of the local economy. By January 2003, more than three-quarters of the Kivus lacked any public authority, public services, or other effective governance mechanisms at the inter-community level.[92] Prior to the Congolese wars, the local communities in many areas relied on a combination of traditional leaders and modern institutions, working together, for local governance and formed co-operative associations, income-generating projects, and the like.[93] However, these common-action approaches tend to be based on ethnically-homogenous units and are often of limited effectiveness in ensuring collective action between communities.

The Kivus is one of the most ethnically diverse regions of DRC, making for a high degree of complexity in local economic and politicalnetworks. In many areas, overlapping structures imposed by rival politico-military forces competed for dominance, with destabilising effects. In the absence of functioning national or provincial governance structures, large areas came under the *de facto* control of ill-disciplined and predatory armed groups, who extort money and goods from the civilians at will. In Shabunda, South Kivu, for example, women are routinely forced to hand-over as much as 50% of the fuel wood or foodstuffs they transport to and from their fields and the marketplace.[94] Losses of such magnitude to extortion or 'taxation' are likely to stifle local trade, and result in each household attempting to produce more from the farm, through expanding land holdings where possible. The net result is negative impacts on local food security, and possibly a greater threat of local land disputes as households attempt to expand production.

However, parts of North Kivu which came under control of the RCD (Masisi, Nyragongo, Goma, Rutshuru – though not Walikale) have experienced a slightly higher level of stability, especially from 2000–early 2004. Analysts attribute this to the objectives of the Government of Rwanda, which is the RCD's political and military backer and is intimately involved in high decision-making in the area, to ensure security of the border region against possible incursion by *Interahamwe*/FDLR/AliR elements.[95] However, though some basic service-provision resulted, there was, and there remains, widespread lack of regard for the rule of law. Human rights abuses are frequent and clashes between armed groups sporadically occur. Violence and robbery in rural areas have greatly increased since the violence in Bukavu in June 2004, which increased tensions between groups claiming to represent autochtonous interests (especially Mayi-Mayi groups) and people associated with RCD (including Rwandaphones in general, and Tutsi in particular).[96] In addition, the RCD administration has attempted to pursue a political agenda which seems to include close management of

land access issues, to the benefit of favoured actors but the detriment of many others.

## *Land and livelihoods*

Masisi is part of North Kivu Province. Together with South Kivu, this has the potential to rank as one of the most productive areas of Africa. It is a critical watershed area and supplies water, energy and food to surrounding areas, with most farmers able to gather three harvests per year.[97] However, the region is one of the most densely populated in the country, and despite this resource abundance, in Masisi, any land access issues are dominated by a condition of structural scarcity, which is exacerbated by population pressure, detailed above.[98] In addition to immigration from Rwanda at various times in history, the area also saw an influx of Nande people, from the neighbouring Beni/Lubero territory.[99]

The second issue is land distribution: the majority of the land, which is well-suited to pastoralism as well as farming, is the property of a small number of landowners, who each have extremely large land holdings as a result of their former access to the inner circles of Mobutu's patronage system. In a survey in the zone of Luhoto (North-Kivu) in the beginning of the nineties, it was found that 31% of these concessions covered 71.2% of the cultivable area.[100] In addition to commercial extensive ranching, traditionally perceived to be Tutsi-Banyarwanda interests, there are large pyrethrum, coffee and tea plantations, some of which have a controversial history of alienation from customary systems – documented above – and sale and purchase by those in political favour or disfavour at particular times. In the context of the high levels of corruption and personalization of power relations that have affected the country for decades, some of these transactions lack local legitimacy.

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. This is used by some communities for firewood, charcoal, artisanal mining and limited cultivation, but these activities are risky because of the activities of *Interahamwe* in the park. The extent of land scarcity is such that there are many requests from local people, supported by local chiefs, that the Park boundaries be revised and the Park area reduced.[101]

It is for these reasons – demographic pressure and inequitable land distribution – that observers argue that:

> *Nothing is more bitterly contested in North and South Kivu than control over land; the land issue has been, and remains to this day at the heart of ethnic violence throughout much of the region.*[102]

The majority of the population in Masisi, as noted above, is Rwandaphone. The Banyarwanda community was estimated to represent about 75% of the population by the early 1990s.[103] This area, and neighbouring Rutshuru, represent the two areas of Rwandaphone numeric dominance. Indeed, many of the big landowners are also identified as

Rwandaphone, or specifically 'Tutsi' – though it is noted that the term Tutsi is often applied haphazardly by local people, and is sometimes associated more with the combination of money and cattle, than any particular ethnic origin.[104] Indeed, some Hunde and other autochthonous people, including customary chiefs, claim ownership of large areas. Before the violence of the last ten years, ranching was the primary activity on these large farms.

Conflict in North Kivu has had horrific consequences for local people: many villages and fields of crops were burned, women raped (many armed groups are accused of the systematic use of sexual violence against civilians), goods and properties looted, and entire areas depopulated.[105] During the height of the violence in North Kivu, a significant proportion of the population was displaced to neighbouring Rwanda (mainly in the case of the Rwandaphone communities) as well as to IDP camps around urban centres and other areas, depending on extended family connections. It is also reported that many of the inhabitants sold their parcels of land cheaply before fleeing, for prices as low as $50 – considered a small sum in a highly populated area such as Masisi. Others trusted their lands, including grazing rights, to other people to manage in their absence. The violence (as well as the effects of the 1994 Hutu refugee influx) also cleared the area of cattle, (estimated at up to 450,000 heads before the war) which were either eaten or sold by combatants, or herded to safety elsewhere.

## *Changes arising from population movements*

Currently, levels of tension remain high in the area between autochthonous and non- autochthonous groups, and armed groups still pose a threat to civilians in many areas, due to ill-discipline and lack of political will to enforce the rule of law. Sporadic violence still occurs – largely due to the activities of local and foreign armed forces, particularly between Mayi-Mayi, Interahamwe and former RCD forces. The insecurity is such that there remain, in North and South Kivu, some 1.2 million IDPs.[106] In general however, though some areas of Masisi remain highly insecure, different ethnic communities are living side by side. In particular, relations between Hutu and Tutsi civilians have improved, partly due to the political strategies of Kigali and the RCD, which have aimed to bring Hutu community leaders within RCD, which was previously viewed as a Tutsi-led organisation.

Much of the population has now returned. By 2003, for example, it was estimated that 80% of the population that had been displaced from North Masisi to Rwanda had returned.[107] In the northern Plateau area, for example, there were three waves of returnees from Rwanda, in 1999, 2000 and 2002. Because the human population has returned, land scarcity is again an issue. For the poor, relying on small plots of approximately 0.25–0.5 ha, their harvests can no longer sustain them. Whereas in 1999 only about a quarter of 'poor' households relied on employment

as farm labourers, in 2002 this figure had risen to as much as a half. This makes the poor section of the population particularly vulnerable to future disturbances to the terms of this labour exchange.[108]

Agricultural production has increased since stability has improved. However, due to lack of access to markets in western DRC, prices of staple foods tended to be extremely low, and the population is generally cash-poor. This has slightly improved since the resumption of air traffic between Kinshasa and eastern DRC after the Global and All-Inclusive accord and the subsequent reunification process.

From 1999 until 2002/2003, many of the returnees from Rwanda and from other areas within the DRC were able to cultivate as 'squatters' on ranch land, due to the absence of cattle. Some rented land from the owners, at high prices – as much as US $50–80 for a family plot, which left little if anything as a profit-margin for the farmer.[109] In other cases, land access was granted to local people on a share-cropping basis, with about 10% of the crop being claimed in return.[110] Some squatters who would not or could not pay were forcibly evicted by the landowners, though others were able to stay. In 2002, for example, in the groupments of Nyamaboko and Banyungu, some 500 households, primarily Hutu, reportedly occupied a large concession. In Bapfuna groupment and Nyamaboko groupment, a plantation belonging to Victor Kambale Ngezayo and a plantation called 'Kishengo' were occupied and cultivated by the local population, primarily autochtones, and by the former workmen of these plantations. The tea plantations were uprooted to allow cultivation of food crops.[111] In recent years some of these occupations are enforced by armed elements.

Some believe these armed people – who are reported to be generally not in uniform – are part of the Local Defence Forces (LDF), under the command of the governor of North Kivu, and generally associated with Rwandaphone interests. It is also believed that some ex-RCD troops have effectively become a private security force for wealthy and politically connected landowners.[112]

Many farmers who had sold their lands because their lives were in danger, returned and attempted to negotiate to regain their lands, resulting in some disputes. In some cases, local agreements have been reached regarding land disputes, often with the help of inter-ethnic groups of elders. For example, in Burungu, it was decided that those who sold land for very low prices in 1996, due to the security situation, would be supported by the elders to negotiate in order to have their land returned and money refunded.[113]

In other areas, such as Nyamitaba, land disputes resurfaced, as inhabitants refused to pay tribute to local chiefs. In this case, Rwandaphone families refused to pay tribute to Hunde chiefs due to a claim that the land was legitimately owned by the Hutu, as implied by the creation of the Gishari chefferie in 1936.[114] However, the chefferie was abolished in 1957.[115]

## Land and governance: The role of political, military and economic elites

The 'governance' approaches of the RCD are a function of at least two sets of interests: firstly, the interests of sections of the elite Kivutian population (especially the Rwandaphone elite), and secondly, the political objectives of authorities in neighbouring Kigali, which was faced with the possibility of a 'Hutu-Power' stronghold on its porous borders. In order to minimize the influence of the genocidal ideology of the *Interahamwe* amongst local Hutu communities and ensure their loyalty, the RCD ensured that local Hutu youth – in addition to Hutu ex-FAR – were integrated into the Local Defence Forces and RCD military.[116] After the death of the former governor of North Kivu, a Congolese Tutsi (Gafundi Kanyamuhanga), a Congolese Hutu, Eugène Serufuli Ngayabaseka was appointed as his successor. Governor Serufuli has, according to reports, absolute control over the LDF, which are estimated at some 18,000 troops. Many of the LDF recruits are child soldiers,[117] and households in Masisi allegedly have to provide money or livestock, or see their young men forcibly recruited into the LDF.[118] This military structure has given the North Kivu governor *de facto* control over the North Kivu area, and some autonomy from the RCD Military High Command.[119] Although Rwanda maintains considerable control over the RCD-administrated areas, Governor Serufuli is seen as a political power in his own right. The fact that probably the majority of members of the LDF are of Hutu origin may also prove to be significant in future, both in terms of competition for land and political power within the Rwandaphone elite, and the wider regional dynamic.

The second main instrument for the pursuance of the elite political agenda is a so-called NGO, though it is effectively a branch of the provincial apparatus, *Tout pour la Paix et le Développement* (TPD, 'All for Peace and Development'), which was established in 1998. While the organisation is ostensibly devoted to provision of humanitarian and development assistance, it represents a strong network at the local level, composed of those loyal to the governor and his allies, and has evolved into an alternative, parallel system of decision-making at the village level. Local authorities, particularly those deemed unsympathetic to the governor, are systematically replaced, or bypassed and marginalized by the TPD structure. Even RCD military recruitment, reports suggest, is vetted by TPD: an indicator of the governor's political strength.[120] In addition, though proof is lacking, Congolese civil rights activists allege that TPD, and some of the customary chiefs, distribute weapons to Rwandaphone civilians, outside of the LDF structure.[121] These reports further link this alleged arms accumulation to the armed defense of illegal occupation of land, for cultivation and ranching.[122]

The political and strategic nature of the organisation can be judged by the results of a programme for the return of Congolese Tutsi refugees from Rwanda, which was run by TPD. According to published sources,

the programme was also a means to covertly bring Rwandan civilians and military into the area.[123] It is significant that the return of the refugees is believed to have been forced rather than voluntary.[124] It is also alleged that some of the refugees received military training whilst in Rwanda. On return to North Kivu, the refugees reportedly received little if any support and spent months living in poor conditions in Kichanga, far from their original homes. As of March 2004, there remained several thousand living in Kahe, Rutshuru Territory, adjacent to Masisi.[125] They were unable to return to their villages either because their lands were controlled by others, or their villages remained insecure. This was despite promises by RCD officials that security, land and humanitarian aid was available for them.[126] Reports indicate that many thousands returned spontaneously to Rwanda, particularly in the immediate post-election period. While speculation over the ultimate aims of this approach is problematic, given the lack of evidence, some observers suggest that an enlarged Tutsi constituency in and around the Masisi area could fulfill a number of functions. Given the forced nature of the movement, it would perhaps not be overly cynical to suggest that political motives were deemed more important than humanitarian ones. Indeed, the livelihood insecurity that was the likely result of this programme could be seen as a wider trend, of a local constituency for the authorities being constructed through various means – with the land access and physical security of this constituency being contingent on the authorities in Goma.

The interests of the local elites are served both politically and economically. Politically, the pre-eminence of Rwandaphone interests was secured by RCD interference in the selection and succession of chiefs in the area. Particularly in the case of the *chiefs de groupement*, it is believed that the governor has the final word over who will be allowed to take the post. 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.[127] Those who oppose the RCD often claim that violence has been used or threatened against legitimate chiefs who oppose them.

The interference of the RCD 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.[128]

The economic interests of local elites are served by a number of strategies. Until the fall in coltan prices in 2001, coltan exploitation was extremely profitable. Many of the deposits are found on private

ranchland. In some cases the landowners attempted to take part in the business, while in others they were unable to benefit. Since then, cassiterite (often found alongside coltan deposits) has become more significant, especially since its local price rose from about US$1 to about US$2 in late 2003. Protection from military and para-military forces, such as former RCD troops and members of the LDF, are important elements of the business.

More recently, a re-activation of large-scale ranching operations in the area has been evident, while their poorer constituents are able to gain access to land for cultivation due to the support of the local LDF troops. It is notable that ranching operations, as a fairly 'diffuse' means of resource accumulation – as herds can be split, moved and sold easily – may be less visible as a source of centralized wealth than mineral concessions, which are 'point' resources. As such, this issue may not be receiving as much attention as it deserves, as a potential cause of land access disputes. Since some stability has returned to the area, the cattle population has risen to about 50,000, and land pressure has increased accordingly.[129] Small livestock, such as goats, are also on the increase.[130] There is speculation in many quarters that these cattle belong not just to local Rwandaphone communities, but also to senior members of the RCD and Rwandan politico-military establishment. Seen in this light, the various aspects of control over land access which are exercised by the RCD are to some degree part of a plan for personal enrichment of influential leaders, at the expense of others. For example, it is reported that as recently as February 2004, a large area of land inhabited by local subsistence farmers was purchased by a senior member of the provincial administration, leading to the eviction of the inhabitants.[131]

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, due to the large areas under commercial plantation agriculture or ranching, some 75% 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, and prior to the incorporation of RCD within the transitional government, the then RCD Minister for Mines and Energy explicitly refused to grant permission for a summary of the land law to be distributed locally.[132] Efforts by an international NGO to tackle the land issue through research, programming and advocacy were halted by the arrest of some of their personnel and the (related) hostility from a politically powerful large landowner.[133]

Despite the common perception that those benefiting most from the current situation are 'Tutsi', some of the large land-holders who have seen their farms invaded, apparently with tacit government blessing, are Tutsi or part-Tutsi in origin.[134] It is not entirely clear to what extent struggles over land within the economic and political elite in North Kivu represent business rivalries, political maneuvering, or ethnic (e.g. Hutu-Tutsi) relations; though it is likely that all three aspects are significant. It

seems clear that access to land in Masisi is gained through political and economic connections to an elite group associated with the provincial governor. This elite group has used a variety of strategies, including control over customary institutions, as well as military power, to increase its control over land. It seems that access to land has been used as a resource by those in control of North Kivu to ensure they build a loyal constituency, composed primarily of the Rwandaphone population. Ensuring that many Rwandaphones, both Hutu and Tutsi, have access to land is one way for the ex-RCD-G group and its ally, the Rwandan government, to ensure unity amongst the Rwandaphone population, and to assure political support in the event of future elections.

The situation in Masisi cannot be separated from neighbouring areas. Many people expect that due to land shortage in Masisi and Rutshuru, less densely populated areas such as Walikale will see an influx of people. Indeed, it is reported that the governor himself stressed the importance of migration as a strategy in the face of the land scarcity in Rutshuru. Local people indicate that in response to this, in early 2004 Mayi-Mayi and some customary leaders in Walikale were asking local people to ensure that they have their land claims clearly established, due to the possibility of in-migration.[135] It was precisely the migration of poor Hutu-farmers (who were pushed off their land by a new class of landowners in Masisi), and the subsequent competition for local access to land, that is cited as one of the root causes of the 1993 conflict. Walikale, it should be remembered, was also the scene of fighting between the RCD and Mayi-Mayi in 2003, and was again wracked by violence in mid-2004, when fledgling cooperation between ex-RCD troops and Mayi-Mayi, who were both locate in the centre of Walikale town, was disrupted by ethnic tensions related to violence in Bukavu.[136] In Walikale, as well as other areas, lack of infrastructure (such as roads), services and security guarantees are likely to limit the extent of out-migration from Masisi, Rutshuru, and other densely-populated areas. However, the 'post-conflict' reconstruction plans of international actors include infrastructure development in this area and are likely to change the situation.[137] Conflict early-warning, mitigation and prevention measures should therefore be an important part of the design and implementation of these programmes, with migration and land-access issues being key indicators.

## *The risks of further conflict*

Though systematic data on the current status of land claims is lacking, the characteristics of governance in North Kivu suggest that the land claims and interests of one community may be given pre-eminence above others, through the various stratagems described here. There are aspects of the current situation of mal-governance and mistrust which are particularly at risk of undermining sustainable solutions to the citizenship issue. For example, some autochthonous leaders assert that the RCD leadership in Goma is providing Rwandans with citizenship

documents. While it is difficult to say whether this is definitely true or to estimate how many individual cases there might be, this perception will of course undermine the claims of those Rwandaphone families who have been in the Congo for generations.[138]

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. Currently, there is a political balancing act underway in Kinshasa, as former rebels work within the transitional government – up to a point – while at the same time ensuring that military and political power-bases are maintained in North Kivu. Analysts predict that former rebels are holding on to their position of military strength in the region in order to gain political capital and push for as much autonomy in the Province as possible, under a federal system if possible.[139]

Given the bloody history of the region, use of illegitimate means is likely to have tragic consequences, mainly for the poorest members of those ethnic communities associated with them. 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." This warning is particularly germane currently, as the events in Bukavu in July 2004, as well as a memorandum writing by ex-RCD politicians citing the weaknesses of the transitional government, illustrate the delicate and fragile nature of the transition process. Unfortunately, the murder of 160 predominantly Banyamulenge refugees in a refugee camp near Bujumbura, Burundi, in August 2004, is a reminder of the continued resonance of ethnic tensions across the region.

## *Conflicts over access to land in Ituri district, Orientale province, DRC*

Ituri District, in Orientale Province in the North-East corner of DRC, has since 1999 been the scene of some of the bloodiest fighting in the DRC's civil war; fighting which has been characterized by large scale 'ethnic' slaughter, the involvement of foreign troops and sophisticated weaponry, and the displacement of an estimated half a million people. Some areas have been transformed into empty 'no man's land' areas between different armed factions. While some towns, including Bunia, the administrative centre of the territory, have seen the return of people from various ethnic backgrounds, some areas remain 'ethnically cleansed' of certain communities. In general, it can be seen that some groups have lost access to a considerable size of territory, whilst others have gained almost 'exclusive' access to territory, markets and trade routes which have in the past been multi-ethnic.

More than 50,000 people, most of them unarmed civilians, have been killed in the fighting since 1999.[140] Many areas have been completely

emptied of livestock, thousands of which were stolen, killed and consumed during the conflict, while others were moved to neighbouring Uganda for safekeeping. Key resources – in particular, the valuable gold mines – are tightly controlled by particular armed groups. Although the level and frequency of violence has generally decreased since the horrors of mid-2003, the area continues to experience sporadic clashes, massacres and attacks on MONUC forces. The situation remains fragile, and we are reminded that lack of large-scale conflict does not necessarily mean that there is 'peace'. Militia-leaders may come to agreements between one another, but this does not mean that local communities are free from threat, extortion and violence. Rebel commanders tend to have lost a degree of control over their rank-and-file combatants.

The conflict in Ituri has been characterized in several ways. Many identify 'tribalism' or 'external interference' as the most important factors. They emphasize the significance of foreign intervention in the conflict, including the arming of all parties to the violence, as well as political interference that often constituted incitement to violence. They also point to the extreme violence involved (which included ritualistic elements, such as cannibalism) as proof that this is not a 'conflict over land'. At its worst, the emphasis on 'tribal violence' echoes the 'Coming Anarchy' ideas of Robert Kaplan, and amounts to gross stereotyping of African communities.[141] However, external actors are not the only ones to stress the 'tribal' dimension: many local actors talk of 'attempted genocide' of particular communities.[142]

The conflict is indeed clearly multi-causal – it could to some extent be described as a cluster of different conflicts, rather than a single war – and many factors must be taken into account, including political, economic and cultural dimensions.[143] These include the military support provided by Uganda and Rwanda to various groups at various times; the value of the mineral deposits found in the region (especially gold and coltan) as well as the other resources such as timber and livestock; the perceived need for 'shows of strength' and territorial control in order to bargain for strong positions in the Transitional Government; and the financial benefits accruing from control over customs posts, trading routes and markets. Though we do not focus on these elements, they are undoubtedly important, as argued in several studies.[144]

The importance of land disputes, particularly as a 'triggering' factor that added to an already conflictual situation, has been recognized by many. However, it would be misleading to merely identify a particular dispute, in a specific place and time, as the 'start' of the current conflict. There is a risk that a focus on a particular dispute will distract from a broader and more historicized view of the importance of land as a structural factor, as an 'indicator' of class and ethnic power relations in Ituri, and as a product of an inadequate land tenure system.

Another risk is that the situation is classified as a 'classic' case of 'herder-agriculturalist' conflict. The delicate relations between predominantly pastoralist and predominantly agriculturalist communities,

especially around the ecological border zones, has often led to disputes over land encroachment, across Africa and elsewhere in the world. However, each situation has its own complexities, and classifying communities as simply 'pastoralist' or 'agriculturalist' grossly simplifies the social, political, cultural and economic dimensions of their existence. Importantly, it reduces awareness of the highly commercialized nature of much livestock-keeping, in which wealthy, urbanized elites play an important role. Culturally, it ignores class differentiation as well as vertical differentiation within 'communities' which are in fact made up of several ethnic sub-groups (for example, there is a clear 'north' and 'south' division within Balendu and Bahema communities).[145] It also tends to reinforce images of 'tradition', which have been given considerable attention due to the emergence of cannibalism and other ritual aspects of violence, at the expense of an emphasis on very modern ways in which war has been waged (e.g. through use of sophisticated commercial and political networks, heavy weaponry and urban-based extortion and murder). Lastly, it ignores the alliances that have taken place between 'Lendu' and 'Hema' factions which should, according to the ethnic dichotomy, remain enemies.[146]

However, it is vital to address land issues in Ituri, as elsewhere in the DRC, through a variety of measures, including reform of land tenure legislation, an overhaul of the administrative and justice system, and conflict-sensitive planning for the return of IDPs and refugees. In neglecting them, analysts ignore factors which are undeniably 'real' to many primary actors in the conflict, and lose track of the means by which local relationships are manipulated by powerful actors (local and external). In discussions with local people – chiefs, householders in towns and villages, members of the Interim Administration, personnel of local and international NGOs, government administrators and academics – the majority identify land issues as a 'fundamental' or 'root' cause of the conflict.[147] Disputed claims of access to land predate the arrival of the Uganda Peoples' Defence Force (UPDF) in Ituri, link directly to issues of ethnic or social 'identity', and are also of significance to other areas in DRC, because they are partially a result of systemic failings of the land tenure legislation and the administration and justice system.

The first part of this section provides a historical background to the current conflict and suggests how this history has been transformed and mythologized – a cause as well as a consequence of the conflict. The second part looks at the procedures involved in the purchase or expansion of land concession, and the means by which they were bypassed. These are the issues which triggered the violence. The land disputes are then given some context in terms of different governance norms between communities, and the ways in which 'custom' and 'statutory rights' are dealt with in the Land Law are described. Finally, some conclusions on the role of land legislation and policy in the current conflict are offered.

## *Land, politics and mythology in Ituri's history*

Ituri is home to eighteen ethnic groups, as well as many people originating from elsewhere in the DRC, though many of them have fled due to the conflict.[148] Population numbers are difficult to define with any certainty, and are inflated or underestimated for political purposes. Generally, the Lendu population is estimated at 700,000 or more, while the Hema community is estimated to number between 150,000 and 400,000.[149] Together, the two groups comprise about 40% of the total population.[150]

Disputes over land access between communities and within communities have a long history within Ituri, which predates not only the 'second rebellion', but also, most likely, the arrival of the Belgian colonialists. The region, as most others in Africa, has a history of migrations of different ethnic communities. Many anthropologists believe that the Lendu, a Sudanic group, migrated into the area sometime in the middle of the second millennium AD (apparently displacing some groups already resident there, such as the Lese and Nyari).

Sometime later, probably in the late 17th century, the Hema migrated to the region, from the West. The Hema are a Nilotic group, related to the Ankole and other traditionally pastoralist groups in Western Uganda and elsewhere in the region.[151] Their pastoralist heritage has been manipulated in order to become a factor in the land-related causes of the conflict: some anti-Hema elements assert that as 'nomads', the Hema 'have no ancestral land' of their own, and have characterised them as 'visitors'.[152]

According to some anthropologists, the Hema were quickly able to integrate themselves into Lendu society and territories and to gain a predominant position, because of structural differences between customary Hema and customary Lendu socio-political organization.[153] The Lendu lived in dispersed settlements and were organized by clans, which had a strong sense of autonomy and a tendency to disagree (sometimes violently) with one another.[154] The Hema, on the other hand, had a hierarchical system (these differences were also reflected in customary land tenure systems, described below). The stability which this hierarchy provided, it is claimed, allowed them to provide a conflict-mediation and leadership role in the Lendu territories. Some even claim that the Hema, whether by example or by direct influence, essentially led to the Lendu adopting a more hierarchical social structure, similar to that in Bunyoro, which has a population ethno-culturally related to the Hema.

A land tenure study in Ituri in the early 1980s provides details of customary tenure systems, which remain influential. Amongst the Lendu, land acquisition is based strictly on inheritance: "each person lives on the land of their ancestors and noone else has rights over this land… in effect, the land is apportioned to individuals".[155] This is in contrast to the situation in Hema areas, where the chief of the collectivity is in full control of land access: "In Bahema areas, the chief of the *collectivité* remains solely responsible for the land in his area. No other person has the right to to decide anything on land matters." chez la Bahema, le chief de collectivite

reste seul responsible de la terre de son entite. Aucune notre personne n'a droit de decide quoique ce siot en matiere de terre."[156] This profound difference in governance norms and in the way in which land is customarily conceptualized (as family property in the case of the Lendu; as the property of the chief who administers it on behalf of the community in the case of the Hema) may provide an insight into the controversies over land acquisition in Ituri, as we shall see.

Anthropological data suggests that controversies over land access existed before the colonial period. The Bahema are believed to have expanded their pastures through a process of encroachment on Balendu lands. However, the abundance of lands (in a situation of low population numbers) meant that the Balendu did not put up resistance to this process at the time.[157] However, there were evidently some tensions between the two groups, and between the Alur (a Nilotic Luo-speaking people inhabiting Northern Ituri) and the Lendu. By the late 19th century, the Alur had purchased guns from Arab traders and slavers, and used these against the Lendu, across much of Ituri, partly at the request of the Hema King, Nblukba. Many Lendu were killed.[158] Perhaps in revenge, in 1911, a Hema chief, called Bomera, was assassinated by the Lendu-Ngiti in Irumu territory and other violent incidents continued in the early 20th century.[159]

In response to this violence, the Belgian colonial administration made changes to the administrative system, and to the settlement patterns in the district, that have a direct bearing on land access. The borders between *collectivités* were delineated, to stop the Hema encroaching on land controlled by the Lendu, who were given chiefs of their own.

The movement of people from one collectivity to another was controlled. For example, local sources suggest that there was a slow but steady trickle of Lendu people into the territory of Mahagi, apparently to provide labour on Alur lands, which the Belgians blocked by returning the Lendu to their homes – if necessarily, by force – whenever possible. Others see the movement of Balendu as part of a social relationship which had become exploitative, leading the colonial administration to provide the Lendu with chiefs of their own in order to avoid economic dependence on the Hema and the Alur.[160] In Djugu territory, for example, the Lendu were provided with 28 *chefferies*, while the Hema had just one. In the south, the Hema had more chefferies, and according to local sources, the creation of these was not always without controversy.

The treatment of the different groups under colonialism is the subject of some debate. Many observers argue that the Belgians favoured the Hema rather than the Lendu, perceiving the monarchical system and pastoralist lifestyle of the former as inherently 'superior' to the more segmented and agricultural society of the latter.[161] Some also assert that they were more receptive to colonialism, while the Lendu were more resistant.[162] Lendu assert that they were systematically discriminated against in terms of education opportunities, though like other marginalized groups, they may not necessarily have seen the benefits of

education. Indeed, as late as the 1980s there was low school attendance by Lendu children, many of whom were instead sent by their parents to work in local coffee plantations.[163] The vast majority of Lendu continued to rely exclusively on smallholder agriculture or provided cheap labour in the mining centres, and did not participate as actors in such networks of economic expansion. It has been argued that the colonialists situated many schools, missions and mining operations in Lendu territory, thus favouring the Lendu; but geographical location does not necessarily equate to equal access.[164] While many provided labour in the mining concessions, they did not necessarily find the terms of labour acceptable: it is reported that many left the area for Uganda, where there were opportunities for higher wages.[165]

Members of the Hema community came to form the majority of the educated people in the district, tended to gain many administrative positions and also invested their cattle-based wealth in the vehicles, buildings and other investments necessary for commerce and trade. When the territory of Kibali-Ituri was formed in 1962, for example, no Lendu gained a position in the administration.[166] Similarly, there are practically no major businessmen from the Lendu community, but very many from the Hema/Gegere community. This tendency has come to represent an urban-rural divide between Hema and Lendu, and the desire of some Hema leaders for exclusive control of Bunia after 1999 represents the extreme nadir of this pattern.[167]

In the post-independence period, there is evidence that pastoral land, in some areas, was expanded at the expense of agricultural land. A study on land tenure in Ituri found that following independence, in the collectivity of Mitego, a predominantly Hema area, areas which were enclosed and considered private property were little by little encroached by pastoralists, and some field boundaries were destroyed.[168]

During the 1960s, and at points during every decade thereafter, Lendu and Hema communities were involved in clashes over fishing and land rights. These were mostly addressed by customary leaders, though in 1993, troops were sent in to quell the violence. Predictably perhaps, they fought fire with fire, turning heavy artillery on Lendu villages.[169]

The early 1980s saw another change to existing land use patterns. The *Bureau du Projet Ituri* (BPI), a development project funded by international donors, sought to improve pastoral productivity, in part by delineating areas across the entire district as either 'pastoral' or 'agricultural' lands. BPI documents suggest that in many places, the delineation exercise was unproblematic, but in certain areas – for example, in the collectivity of the Lendu-Bindi, in Irumu – there was resistance to the exercise from cultivators: "The delineation of land between the pastoralists and the farmers is at a dead-end in this *collectivité*. In effect, the farmers believe that in sharing the land with the pastoralists, they [the pastoralists] will be able to definitively possess the land."[170]

In general, the exercise was delayed by several months in Lendu areas, due to local resistance. Indeed, a number of respondents interviewed in 2004 remembered the BPI as a Hema-dominated institution (which may be expected, given its focus on pastoralism), which resulted in many Lendu being displaced from their homes to make way for pasture. Informants also alleged that Hema members of BPI also purchased large farms during the exercise, and saw it as a tool of 'Hema domination'. While these claims are difficult to verify, a certain disregard for popular opinion is certainly evident in the BPI's recommendations regarding opposition to the delimitation exercise. The BPI urged the government cadres to put pressure (*faissent pression*) on the customary authorities, and to use their influence on the agricultural population, to ensure that the exercise went ahead. The BPI certainly reflected a more general trend of 'top-down' governance within the country.

### *Purchase of private ranching concessions: De facto and de jure procedures*

Djugu, the area where conflict first erupted in 1999, is one of the most fertile areas of Ituri, and also contains a number of profitable mining operations (such as Mongbwalu, the site of much fighting, and the well-known Kilo-Moto mines). It is inhabited predominantly by the Gegere (generally known as the 'Northern Hema') and the Lendu (of which there are several local sub-groups), and is the most densely populated territory in Ituri. The fact that this was the area where large-scale conflict first broke out in 1999 fits with the theoretical rule-of-thumb that where population density is greater, boundaries are stricter with fewer 'buffer areas' to provide flexibility, and disputes are more likely.[171]

There are a number of large colonial-era ranching and farming concessions located in Djugu. During the Zairianisation process, which involved the handover of foreign-owned assets to Congolese, several Hema were reportedly granted ownership of the concessions. They were, because of the importance of Hema traders and politicians, influential within the Mobutu regime and able to take advantage of the networks of patronage and favouritism, in a similar fashion to many other ethnic communities during this period. A considerable amount of land was also owned by the church. The perception of some informants is that the church is also a Hema-dominated institution, and when church land was sold, Hema were given priority in purchasing it.[172] Of course, as they formed the majority of the trading and administrative class, members of the Hema community would be among the few locals with the necessary access to funds to purchase land, whether church-owned or otherwise.

According to most accounts, the main conflict surrounded the expansion of the concession borders. Another type of dispute could arise when colonial-era concessions were passing into the hands of Congolese owners, after being abandoned for some time: local chiefs and communities often assumed that ownership had reverted to them, whereas by law, it

was still under the control of the state.[173] Another typical scenario involved the purchase of 'vacant' land, which, as described in the sections above, was an ambiguous category, due to the failure of the land law to define it adequately. In the words of one respondent, "the state, the chiefs, the people – they all think that they own the land!"[174]

In any case involving the leasing of a new plot of land, there is a clear procedure. First, an application is made to the provincial governor. The governor will assign the district commissioner in the relevant district to organize a lands survey, which will involve district administrative personnel in addition to technical officers from the Lands Office. This will involve a visual inspection of the site, and consultations with local people, especially with the locality chiefs and the traditional elders. The participation of the local population – those living there or performing activities there – is stipulated in Article 194 of the 1973 Law. One of the most important functions of the survey is to identify the existing land uses, and in particular, to see whether the area is inhabited. Once the survey is complete, a report is given to the district commissioner and then passed on the provincial governor. From the governor's office, the file will be sent to the Ministry responsible for Justice, for approval. The dossier is then returned to the district level, and a full survey is done, including delineation of borders. The final approval of the application depends on the size of the area in question. If it is less than 10 ha, the Registrar of Land Titles can sign the order for the title to be granted. If it is less than 200 ha, then the provincial governor has the authority to sign; if greater than 200 ha the Minister responsible for Lands signs; if 1000 – 2000 ha, only the President of the country has the authority to sign; while if more than 2000 ha, a law must be passed to legitimize the purchase.[175]

However, these procedures were, in many instances, not properly followed. The root problem involved the corruption of the administrative organs involved, reportedly at all levels. Particularly at the district level, during the late period of Mobutu's rule, wages were rarely paid, which made corruption a way of life. Cases of double-titling are apparently numerous, especially in urban areas, which risks the legitimacy of the whole land registration exercise. Political patronage networks also encouraged administrative shortcuts: the Minister for Agriculture, who was a Hema, reportedly made the process more accessible to his kinsmen.

In areas where the concessions were bordered by villages and farmland, officials were sometimes bribed to ignore various of the stages of the titling process described above.[176] Most significantly, the physical survey was not done, or if boundary delineation was done, the local people were not consulted. 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 levels altogether and going directly 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. This is because, under Congolese law, anyone living on land which has been

leased to an individual is granted a grace period of two years before being legally obliged to vacate the area. After this time, the inhabitants lose the right to appeal against the claim of the landowner.

Research indicated that after this two year period, the landowner would arrive at the concession, often accompanied by members of the district authorities, and ask the local people to leave. For the local population (with the possible exception of the chief), this may have been the first they would have heard about the land lease. Their anger or disbelief would have been increased by a sense of the illegitimacy of the concept of sale of customary land. The 1966 and 1973 laws were not effectively disseminated in rural areas and most people were – and perhaps remain – unaware of them. While increased awareness of the laws would not alter their fundamental flaws, it would at least have enabled some local people to find out from the Registrar of Land Titles whether title had been issued to land which they occupied.

Disputes over expansion of the concessions reportedly became frequent from 1975 onwards – which coincides closely with the general decline of the Congolese economy and state apparatus – and took on a more acute, potentially dangerous character. Until this time, the controversies over land acquisition might best be described as structural causes of conflict. This is because they were part of the 'dual' economic structure, described above, where elites, many of them Hema, benefited from the market economy, whilst the vast majority – including practically all Lendu people – remained limited to the subsistence economy. Specific disputes over illegitimate land purchase or expansion of boundaries could be classified as proximate causes of violence, because they often involved the eviction of households and were highly 'visible'. After the arrival of the UPDF, these issues became triggers for violence. The district authorities were compromised through their involvement in the conflicts, and hence lost the impartiality which is needed to mediate such conflicts.[177] The close connection between the authorities and the UPDF (based partly on exploitation of gold, livestock and other resources) at the start of the mass violence further blurred the lines between the administration, military forces and economic agents, making mediation impossible.

This fits with the hypothesis that one of the most important factors in determining whether parties involved in a conflict will resort to violence, is the nature of mediation and dispute resolution mechanisms: if they are seen as partial or ineffective, violence is more likely.[178] Administrative changes were also made, in order to increase the political autonomy of the area, thus benefiting those who profited from the local balance of power. Ituri Territory, which was under the control of the commander of the UPDF in the DRC, Brigadier James Kazini, was promoted to the status of a province, and a Gegere businesswoman, Adele Lotsove, was appointed as governor. The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo heard evidence to suggest that

she "contributed to the reallocation of land from Lendus to Hemas".[179]

In early 1999, Ugandan troops, who were paid by members of the Hema elite to further their economic interests, supported a wealthy Hema man to evict Lendu people who had laid claim to part of his land. A number of Lendu customary leaders were imprisoned and tensions were extremely high. The trigger for violence came in June 1999, when Ugandan troops reportedly intervened in a reconciliation meeting and arrested more Lendu. Tension turned to violence. The UPDF was therefore directly involved in the escalation of the conflict, especially in terms of arming and training different groups in return for payment in cash and kind, and even supporting rival groups simultaneously.[180] This has been well documented elsewhere and will not be detailed here.[181]

## *Customary and statutory land tenure: De jure theories, de facto realities*

As noted above, the fundamental concept of land 'ownership' differs radically between different actors. Although customary land tenure regimes are no longer legally recognised, in practice, customary and market-based means of land access and acquisition operate side-by-side, and are often in competition and conflict. As noted in the sections above, the chiefs were formally stripped of their powers to allocate land. Mobutu denounced "feudal" customary tenure regimes in the East. The legal notion of customary rights was never defined. This has led some experts to criticize the legislation for fundamentally ignoring customary land rights.[182] Elsewhere in Africa, customary rights are being codified and protected through legislation, due to widespread recognition that attempts to legislate them out of existence have failed, and that they represent a flexible package of use rights often better suited to social and ecological realities than individual title.

On the other hand, customary rights *are* to some extent built into the land legislation, in a way that reflects custom. In the eyes of local people, the 'right' to allocate land – or at least to be consulted before land distribution – belongs to them, through their customary leaders.[183] In order to avoid possible conflicts over land, an individual or group seeking to be granted a lease to a particular area, even a 'vacant' area, will typically consult the chief and the elders of the locality before applying to the province. During local consultations, the local elders and influential people will be informed of the intended uses of the land and will be requested to grant permission. A gift – largely symbolic – will be offered to the chief and elders, often consisting of a cow or goat, which may be slaughtered and eaten during the discussions.

This custom is reflected in the land legislation, which provides that when an application for lease of 'vacant' rural land is made, activities are carried out, "…with the aim of protecting the rights of traditional populations. The posting of a notice authorising this research needs to be done in the locality where the site is situated. The research should

include… a census of the people who are there or who are participating in any activity, …[and] interviews with the people to hear their complaints and observations"[184]

Clearly, this does not provide local people with the right to veto the purchase. However, local practicalities often preclude strict application of the law. The Registrar of Land Titles for Bunia District stated that during the 'survey' of the land prior to a title being issued, the local people essentially had a *de facto* right of veto over the acquisition process: "If the elders refuse, you can't do anything". Other surveys have also confirmed that in practice, access first has to be granted by customary leaders before state leases can be issued.[185] This then suggests that the relationships between local people and their chiefs are crucial. Indeed, the Registrar implicated the local chiefs in several of the contentious land disputes. In an example from Komanda town, Irumu District, South-West of Bunia town, local people, and sources in related that the former *chef de collectivité* had, before the war, distributed land as a concession to a Bahema individual, but that local people had not been happy with the decision.[186] They stated that the *chef de collectivité* had 'liked cows too much', suggesting that most if not all of any benefit to local people had in fact accrued to him. Before the conflict, there had been a series of court battles to overturn the Bahema man's title to the plot, but all had been unsuccessful. This confirms the point made in section two above, that despite legislation and state rhetoric limiting the powers of the chiefs, they remained highly important players in the political economy of land. In Ituri, as elsewhere, the land issue pivots around the nature of relationships between local communities, their chiefs, local elites and political and technical state functionaries.

Some former government officials argue correctly that the 1973 law and the 1980 modifications are the only regulations governing land leasing in DRC, and the chiefs should not, therefore, have such a role. However, despite this official position, it seems that they are also aware of the importance of local custom. A former provincial governor, after initially denying that the right to veto or *droit de regard* existed, later confirmed its importance asked about land issues in Bas Congo, where inheritance runs through the maternal line, "and all of the aunt's sons have the *droit de regard*".[187] While in the eyes of the law, such local rights may seem like outdated custom, with no legal basis, the history of land management in Africa and across the world is replete with examples that prove that such customs cannot simply be 'legislated away'. For changes to occur in practice, legislation has to be accompanied by local consultations, awareness-raising campaigns, and effective implementation of legal provisions by staff who are sympathetic to local attitudes but also rigorous in their application of the law. Most importantly, of course, in order to be followed legislation must be designed to be practical and responsive to local needs and build upon existing realities.

Interestingly, there may be socio-cultural reasons why Hema and Lendu perceptions of the correct 'protocol' for land acquisition differ. As

mentioned above, the Lendu see land as primarily a function of individual inheritance rights, within a broader framework of community ownership. The Hema, in contrast, entrust land administration to their chiefs. This profound difference in governance norms and in the way in which land is customarily conceptualized (as family property in the case of the Lendu; as the property of the chief who administers it on behalf of the community in the case of the Hema) provides an insight into the processes at work in Ituri. For the Hema elite, who are also more urbanised than the Lendu, it may be socially acceptable to negotiate directly with the chief, and to exclude other members of the community. For the Lendu, the concept of the chief, the local administration or anyone else being able to alienate what they see as 'their lands' may be alien and unacceptable.

## *Land and 'unfree labour'*

Land access has, of course, been massively altered by the conflict, with large-scale ethnic cleansing being carried out in many parts of the territory, affecting not just the Lendu and Hema, but many other communities as well. Some communities like the Bira and Alur were effectively split, with local leaders supporting different sides in the conflict, and have hence become embroiled in violence against, and at the hands of, both Hema and Lendu militias.[188]

Internally displaced persons (IDPs) are particularly vulnerable to violence, food insecurity, disease and a host of other problems. They are, like all civilians, dependent on physical security in order to settle, however temporarily, and cultivate. As such, they are very vulnerable to becoming controlled in various ways by those in a position to grant, or deny, land as well as security. Fieldwork was conducted in an area traditionally inhabited by the Bira community, which is now experiencing influxes of IDPs from other places. This indicates that there is a high degree of control over land use by the authorities. All the respondents identified *the chief de collectivite* as the custodian of land rights, and all cited the importance of seeking the permission of the chief before clearing any land for cultivation – even uninhabited forest.

While all the respondents stated that the *chef de collectivité* was involved in a continual process of identifying plots of land for the IDPs, most IDPS interviewed reported that they had not received land, even though they had been in the town for several months. The *chief de collectivite* stated that on average, about 300–400 households arrived every month.[189] Given this workload, a delay in allocating land for each household may perhaps be expected. However, administrative overload may not be the only, or the main reason for landlessness amongst IDPs. It emerged that some IDPs who do not have access to land are providing paid labour for those households who do have farms. Labourers complained that wages were low (reportedly about half a dollar per day), which may be partly due to the availability of a predominantly landless labour force. In theory, those who control land can, by denying access to land for a sufficient number of people, create a large, hungry labour

pool and thus reduce the cost of labour on farms belonging to the upper stratum of society (which the chiefs, for example, generally belong to).[190] Scholars have pointed to the importance of an "unfree labour force", which exists because of insecure land tenure and the need for physical security, which at present is provided by predatory militias: "protection is offered by powerful elites, often the very same elites who are responsible for the present condition of insecurity".[191] The basis of this phenomenon lies in the 'ethnic' nature of violence. Because of the role of civilians in violence – as perpetrators and victims – entire groups of people become vulnerable to violence and in need of protection. By mobilizing and incriminating local civilians in violence, leaders can exert control over them and benefit from the ethnic cleansing that results.

The creation of an "unfree" labour force in Ituri, as mentioned above, is based not on the issue of availability of land *per se*, but rather on the issue of physical security in particular areas. The availability of 'safe' land is further reduced in the area in question by the existence of a huge strip of pasture, some 10–12 km wide, which is effectively a 'no-man's land' between the areas controlled by different politico-military forces and associated with different ethnic groups.

A statement by the *chef de collectivité* hints that some aspects of control over land may be important for him, politically or economically. He mentioned that a cash-for-work programme being implemented by a local NGO was "stopping people from working in the fields". This may be a simple exaggeration, calculated to generate more international assistance. However, it may indicate that by providing off-farm income, the cash-for-work programme is actually undermining local elite efforts to control farm labour by limiting access to land. This remains a possibility, here and elsewhere in the DRC.

Most of the IDP households are being settled on land perceived locally as belonging to the state, and previously unoccupied. Eucalyptus plantations, formerly belonging to a Belgian, had been cleared in one area visited. While it is not certain if these IDP households will remain in the area permanently, this pattern may have important implications for future land use in the area. The villages in question are at the time of writing under the practical authority of one of the former rebel groups, and the central authorities in Kinshasa are yet to have any real influence at the local level.[192]

Some of these IDPs are receiving land located on a concession to which a Bahema businessman claims legal ownership, and have planted crops. The *chef de collectivité* stated that 10–12 IDP households came to his area every week, suggesting that the number of houses and fields could increase fairly rapidly. It seems that the local authorities (in this case the chief, in collaboration with the rebel group in control of the area) are using IDP populations to stake a community claim on a disputed concession. This is unlikely to be the only example of this situation.

This puts aid agencies in an awkward position. While some organisations assert that they do not provide resources to 'squatters', it is often

difficult to know the status of lands in an emergency situation.[193] It is also difficult to negotiate humanitarian access with some of the military groups, and this may prevent effective investigation of such issues. An international NGO operating in the area has already distributed seeds and tools to the population, without discriminating between IDPs and returnees, as all were considered 'vulnerable'. It was to distribute more in early-mid 2004, and was aware that by doing so, it would contribute to the cultivation of a disputed concession. This is in some ways a similar dilemma to that faced by agencies operating in post-genocide Rwanda in 1994, who by distributing seeds and tools, were strengthening the claims of those who had access to land – if only on a temporary basis.[194] Such international assistance may possibly have some influence – no matter how 'indirect' – on possible future conflicts.

Land issues are of great pertinence to post-conflict reconstruction and cannot be ignored by any of the stakeholders involved, including operations such as MONUC, which may, consciously or otherwise, have an impact on resettlement patterns through the (unavoidably) uneven provision of security.As noted above, 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. 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 involvement of civilians in violence of a 'genocidal' nature has resulted in massive population movements and creation of no-go areas for members of particular ethnic groups. This has created problems not just in terms of future restitution of property rights, but also in terms of local economies. With 80% of livestock missing from the local economy (either killed or moved across the border to Uganda), and ethnic communities divided into separate blocs, agricultural communities have little access to meat and milk, and pastoralist households little access to grain and vegetables. This problem is at the same time part of the solution, as the mutual suffering has encouraged local people to form agreements which provide access for certain groups to markets. These small beginnings can be built upon in order to gradually encourage movement of goods and people.

The role of the chiefs, in some cases, is somewhat similar to that documented above regarding the Kivu Provinces. The situation in Ituri therefore 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'.[195] 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. The exploitation of natural resources throughout the DRC is inequitable and predatory, based as it is on

patronage networks developed during Mobutu's era, transformed by conflict, and protected by contacts with military forces. The main difference between the 'stable' West of the country and the unstable East, is the amount of overt violence and chaos associated with it. Land and environmental governance issues should not be 'ghettoised' through an underestimation of the governance factors which are *systemic*, even though they lead to different outcomes in particular places.

In the DRC, the return of refugees and IDPs and the restitution of property should be based on principles of justice, and in light of the widespread manipulation of the law in the past, should also be pragmatic.

## CONCLUSIONS

The objective of this chapter was to analyse how the issues of land access and control have influenced the Congolese war, either as a structural cause or as a dynamic of conflict. As stated in the introduction, the reasons for this analysis were multiple. First, access to land since the start of colonialism has shifted from a structural basis of social identity to a currency of political power and economic wealth, through commoditisation and alienation of land from customary tenure systems. While these historical shifts have turned land into an important economic and political asset for some, they have marginalised large parts of the rural population. Second, in Ituri and Masisi, the two case studies of this chapter, land issues have been pointed at by many observers as one of the main proximate causes of violence and intensified competition between ethnic groups. Third, the conflict in the DRC has produced a serious impact on the existing patterns of land access due to shifts in authority structures, (forced) displacement and the consolidation of new power structures. And finally, the problematic system of land distribution in eastern DRC is one of the constraints to a peaceful resolution of local conflict.

From the study of the structural organisation of land access and control in eastern DRC, and of the role of land in local conflicts in Ituri and Masisi, a number of conclusions can be drawn:

First, our analysis has pointed out that the political manipulation of the land issue is part of a larger, historical process. The DRC is no exception to Herbst's observation that "the role of local elites in the distribution of land is critical to the autonomy of the state. As a result, states have continually sought to alter property rights in order to disempower local elites."[196] In different regions of eastern DRC, local elites have tried to consolidate their power position (the customary chiefs, the Hema elites in Ituri) or escape from state control and gain some economic autonomy (Banyarwanda elites) by the control over land. In return, Mobutu – through his politics of zaireanisation – turned land into a reward to be distributed among the members of his own patronage system, in order to guarantee their loyalty and to prevent the formation of local counter-forces. 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 (see the strategy of the Hema elites in Ituri) while at the same time land insecurity could be manipulated to mobilise rural populations (see the continuous competition between ethnic communities in Masisi).

Third, since the start of the Congolese war, land has turned from a 'source' of conflict into a 'resource' of conflict. In the cases of Masisi and Ituri, land was a structural cause and also a trigger for violent clashes between local militias. In both regions, several examples point to the importance of land as a key element for the development and consolidation of new systems of power, profit and control.[197] Rebel leaders have mobilised existing patterns of 'unfree labour' (thereby giving new meaning to this notion) 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. It explains why conflict in Ituri and the Kivus has had the effect of hardening ethnic boundaries and why the problematic systems of land distribution need to be addressed in order to reverse the dynamics of conflict into dynamics of peace.

## *A history of patronage and exclusion*

Analysis of the shifts in the access, use and control of land in eastern Congo has pointed at a number of elements that help to elucidate why this land issue, at several times in history, has triggered local conflict. Two different dynamics could be distinguished. First, colonialism has produced a qualitatively different use of land. Traditionally, the local economic space reflected the local social organisation and gave a material basis to ethnic belonging, a process that was described by John Lonsdale as 'moral ethnicity'.[198] Colonialism, however, had the effect of eroding this customary social order (or precolonial hierarchies). On the one hand, these ethnically based structures were integrated into the colonial administration and became crucial ingredients of the Belgian version of indirect rule. The effect was that it institutionalised ethnic identity as an organising principle of the colonial state. On the other hand, the introduction of individual ownership by the colonial administration turned agriculture into a source of accumulation. As the economic success of the individually owned plantations depended on the availability of labour, the colonial settlers introduced the practice of 'unfree labour'.[199] This colonial agricultural economy had two additional effects: it limited the available space of the rural population to the customary held land and drastically changed the ethnic composition of

some parts of eastern DRC, as it facilitated the immigration of labour from Rwanda into North Kivu. Both effects led to increased competition for the available space and announced large-scale economic marginalisation due to insecure land tenure of the rural population.

A second dynamic was the use of land, after Independence, as a political currency. Under Mobutu, agriculture was further consolidated as a source of accumulation and the customary authorities were integrated into new networks of patronage. A double process could be witnessed. While Mobutu distributed land amongst the members of his own patronage network (as part of a strategy to consolidate his control over the Zairian territory), other forces tried to escape from the control of the political centre or customary chiefs by buying large tracts of land. This last strategy was one of the few options of the immigrant Banyarwanda communities, who did not – given their immigrant status – have free access to (customary) land and thus tried to purchase it. In order to guarantee his control, Mobutu introduced in the early seventies a new land law (the 'Bakajika law', which confirmed the double notion of ownership) as well as a process of zairianisation of the existing economic infrastructure and resources. For many observers, this legal framework is at the roots of large-scale violence, because its implementation further marginalised large parts of the population and provoked regular contestations by food insecure farmers. According to Pottier, this law institutionalised 'political and economic protection' by those elites that were "responsible for the existing conditions of insecurity".[200]

In other words, the Bakajika law provided a coalition of comprising elements from the state bourgeoisie, traditional authorities, administrators, etc. with easy access to land. At the same time, resources of poor peasant households were put under growing pressure. Parts of the peasant population were faced with complete impoverishment as the shift of land to a source of capital accumulation led to land dispossession and alienation. By the early nineties, competition for land had become very tense. When local elites were forced to reposition themselves during the democratisation process, in different regions they started mobilising the class of landless people on the premise that other parts of the population were responsible for their limited access to land.

## *Land struggle as part of the Congolese war-complex*

The direct relationship between problematic access to land and conflict was further consolidated after the start of the Congolese war in 1996. On the one hand, local disputes for land came to be linked to the larger, multi-level conflict for political power and control over local resources. On the other hand, land has become integral part of strategies by new coalitions – comprising local and regional actors – to get control over local economic spaces, territory and social mobility.

A perfect example of how local dynamics of land access became integrated into a larger, multi-level struggle between local militias, national

elites and foreign army commanders for territorial and economic control, is the conflict in Ituri. Here, as was demonstrated in this chapter, contested purchase and expansion of agricultural and ranching concessions have stirred up the cauldron of ethnic conflict, turning this part of the DRC into a scene of mass violence and displacement. Since 1999, based on opportunistic interpretation of the Bakajika law, local Hema elites have tried to improve their economic power position. The generalised context of disorder was skilfully exploited, while the necessary support for their strategies was provided by greedy UPDF commanders. The subsequent reaction of food-insecure Lendu farmers was the start of a conflict that has given impetus to the proliferation of rural militias and until now has not found its resolution. From this example, it can be concluded that while the existing mechanisms of land distribution have been one of the most important dynamics of local conflict, it was only after the start of the DRC war, and the involvement of local rebel movements and foreign armies, that this dynamic led to mass-scale violence. The reason for this is that land had become a useful asset for a number of actors involved in the conflict. Closer analysis of the Ituri conflict reveals that mineral resources are not the prime objective of armed actors, but land is the most important economic resource. Another conclusion is that insecure land tenure helps to explain the success of militia groups. While landless youth are an easy mobilisation reservoir for militia leaders, warlords can extend their control over social mobility and territory through the control over land. As Pottier states, "warlords have loyal militias because they control the unfree labour of the unprotected. He who can claim a piece of land, or an entire region, can claim its people."[201] While it was stated in the introduction that structural violence – in terms of elite predation, lack of service provision, unaccountability and arbitrary governance – was to a large degree a 'normal' function of the Congolese state system, the Congolese war has given this form of violence a new meaning because of the shifts in the relationships between the 'rulers' and the 'ruled'.

Since 1996, land has also shifted from a source of conflict, into a resource of war. The most visible illustration is the confiscation by local commanders of land that they cannot legally claim. The case study of Masisi points at the importance of land for the consolidation of alternative power structures. While the AFDL- and RCD-campaigns advantaged the Banyarwanda elites in their claims to land, the same land has become one of the crucial assets around which a new local power complex under control of the Banyarwanda elite has been constructed. This power complex offers a good example of how local elites have instrumentalised a context of state decline and conflict and have combined foreign and national support networks for their local interests. Access to land, in the case of Masisi, has several functions. It provides this new complex with the necessary economic basis, yet at the same time helps to consolidate the support of the grassroots population, which in return is granted access to land. The informal governance

structure that has emerged from the unequal resource attribution – and which include both military and political elements, foreign and local actors – has laid the basis for a further reinforcement of ethnic boundaries, as this structure is based on processes of inclusion and exclusion.

It was one of the underlying arguments of this chapter that access to land is crucial to an understanding of the political economy of the DRC. It has been demonstrated that the relationship between access to land and local conflict is structural as a result of the introduction of double systems of land ownership by the colonial administration and the skilful manipulation of land as resource under Mobutu's rule. Since the start of the Congolese war, a number of important shifts in local land access patterns could be observed. While unequal access to land was one of the local causes of conflict, the Congolese war has provoked new competition for land, a re-negotiation of the local economic space, the formation of new complexes of control over territory, social mobility and economic exploitation (with land as one of the main assets), and a hardening of ethnic boundaries. It is highly unlikely that these processes can be stopped without addressing its root causes. The outcomes of our analysis point at the urgent need for agricultural reform and the strengthening of the capacities of the grassroots populations to claim their rights. Without this reform, insecure access to land will continue to push people into militias and will continue to offer rebel leaders a means to consolidate their informal systems of power, profit and control.

## FINAL THOUGHTS AND RECOMMENDATIONS

This chapter has identified a number of different causes of land-related problems, which include the historical legacy of migration; the deficiencies of the legislative framework for land tenure; the shortcomings of under-paid authorities which implement that legislation; the manipulative divide-and-rule policies of neighbouring countries; and the wider economic and political dynamics which have reduced off-farm opportunities and altered the role of land in the rural economy. In addition to these 'systemic' or 'structural' problems, land access for many households and communities has been fundamentally altered by violence, which has displaced millions. The extent of geographical, political and cultural variation across this vast country also rules out 'blanket' prescriptions. Even within eastern DRC, as we have seen, the issues and actors are very different in Ituri, North Kivu and South Kivu.

The wide range of inter-linked causes suggests that there are no simple solutions. Clearly, none of the issues above can be addressed in isolation from each other. The reform of the land tenure law, and the formulation of an effective policy, would, for example, be rather meaningless in a context where the rule of law is not respected and central government has little influence on day-to-day affairs. Security for all is paramount: a title deed is of little value if one cannot live on one's plot due to the threat of violence. For this reason, land access in the

post-conflict environment should be understood as the ability to access and use land, free from threat.[202] In this understanding the most important issue is the establishment of the authority of an accountable, legitimate central government throughout the country. However, this process will take some time to occur, especially as politicians will increasingly be looking towards the forthcoming elections; stabilizing the situation in the east may not be a priority for many until after the elections.

For this reason, we have separated our recommendations into two categories: short term and longer term. The recommendations for short-term action assume the continuation of the *status quo*: that is, relative stability (with the possibility of sporadic but contained violence) and a high degree of regional autonomy in decision making *vis-à-vis* central government. The recommendations for longer term action assume that a reasonable level of stability can be maintained and the central government can gradually increase its influence over the East.

## *Recommendations for short-term action*

- Foreign governments, particularly neighbouring countries, should desist from any military support to military or other actors in the DRC and should resist the temptation to destabilize Eastern DRC for their own political or economic purposes. 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.
- Aid agencies should ensure that all programmes are designed through a conflict-sensitive planning process, in order to ensure that potential negative impacts of their activities are avoided or mitigated. This is particularly important for any programme which may influence population movements or resettlement, livestock movements or land use patterns. Detailed information on land access and historical land claims should be collected in order to inform conflict-sensitive planning.
- The role of community representatives in land issues should be addressed. 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. International actors should be ready to facilitate such a process, but aware that dialogue can easily be hijacked for partisan ends. All local communities should be involved in identifying legitimate customary leaders, in order to avoid political manipulation of the office.
- Evidence from Ituri and other areas suggests that local markets are the practical focus for local peace-making agreements. In the Irumu District of Ituri, for example, certain areas have no livestock, which forces them to make access agreements with opposing groups in order to buy meat

and milk. These spontaneous agreements should be supported, not just by NGO efforts to reconstruct market facilities and roads, but also by MONUC in terms of security arrangements.

- The key to avoiding future recourse to violence lies in the establishment or reinstatement of effective and impartial dispute resolution mechanisms. 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. While their influence may be less significant in remote rural areas, the judiciary will be particularly important in promoting the rule of law in urban areas, where there are many disputed ownership claims to valuable property. Strengthening of judicial institutions should be an ongoing, nationwide process and should be aimed not just at improving the quality of decision-making, but also improving 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 composition of such commission should respond to a number of criteria agreed upon by major parties concerned in the land problem, particularly as it relates to the volatile issue of citizenship in North and parts of the South Kivu. At least a third of the members of the commission should be qualified people from outside the contested region. The commission should also include customary chiefs and elders, although not those who have been particularly compromised in terms of land expropriation or relationships with armed groups. Current or former politicians and military personnel (government or ex-rebel) would be excluded from the commission. 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 the parliament for enactment of a new policy on land allocation and distribution. The policy would seek to define 'customary land rights' in order to provide the majority of Congolese people with secure access to land. This policy should be implemented through local by-laws and regulations and monitored within government and by civil society groups. On the basis of this experience, a new law should be formulated within a year of the policy being finalized.

- A process of network building between local, national and international institutions should be instigated in order to build a constituency for peace and justice. The partisan and self-serving nature of many civil society groups (which has partly been a result of the modes of external support) should be counteracted through a long-term but low-profile programme of engagement by donors, informed by close grassroots involvement and research.
- As has been noted throughout this chapter, land access disputes are not the only problems related to the conflicts in the DRC. Political struggles and attempts to monopolize access to precious minerals and other resources are also extremely significant. They are relevant to this study because they have a direct bearing on land rights issues and related conflicts. Inciting violence around the issue of land rights through supporting proxies, for example, is a convenient way to access mines, forests and other valuable resources without going through central government. A number of contracts have been signed between various parties in the DRC (especially the Kabila-faction of the government) and investors, for example in the mining, oil, and timber sectors. The government and local authorities should consider the effects of possible activities by such investors on local land rights, particularly in disputed areas such as parts of Ituri and the Kivu Provinces. If such activities can be undertaken without major disruption to land rights, then they should be conducted without the use of private security or tacit support for militias, as both are likely to have repercussions on local inter-community relations.
- Given the importance of natural resource exploitation in the structures of patrimonialism in the country, the international community should encourage and enable the government to reform the governance environment and put in place benefit-sharing agreements for local communities adjacent to mines, forests, and other sources of revenue. Given the complexity of the factionalized politics in Kinshasa, the extent to which such enterprises benefit local people should be the benchmark by which they are judged 'legitimate', rather than whether they have gained official recognition. This will provide off-farm sources of income, hence reducing pressure on land, and also reduce the extent of 'patronage politics' in the country, which affects the whole nation, not just those parts recently affected by conflict. The international community should therefore restrain, if necessary, foreign investment which is likely to compound inequalities and entrench exclusionist political-economic structures.

## ENDNOTES

1 This chapter is based on research conducted by Koen Vlassenroot over a period of several years, and research conducted by Chris Huggins for this study in Ituri Territory and Goma, April–May 2004. The field research, which involved semi-structured interviews

with a range of stakeholders (including internally displaced households, local householders, civil society representatives, landowners, district officials and international NGO personnel) was complemented by a review of secondary literature. The chapter was reviewed by Professor Makumi Mwagiru and John Katunga.

2 S Leisz, Zaire Country Profile, in J Bruce, (ed) *Country profiles of land tenure: Africa, 1996,* Research paper No. 130, Land Tenure Centre, University of Wisconsin, 1998.

3 A Hoschschild, 1999, cited in A Tegera, *Natural resource exploitation and conflicts in DRC*. Paper written for the Society of International Development 1st Conference on Resource Based Conflicts in Eastern and Southern Africa, Nairobi, May 2004.

4 A Tegera, op cit.

5 Between 1965 and 1967 there were six major uprisings, each of which was violently repressed. Ruthless suppression of peaceful civil society opposition was also practiced. See J McCalpine, Historicity of a Crisis: The Origins of the Congo War, in JF Clark, *The African stakes of the Congo war*, Fountain Publishers, Kampala, 2002.

6 Scholars have warned of the dangers of imposing Western definitions of 'legitimacy' and 'criminality' on African realities, as these depend on the extent to which the benefits accruing to individuals are redistributed throughout communities. From such a viewpoint, clientelism becomes 'illegitimate' when it is judged to be too exclusivist. See P Chabal and J-P Daloz, *Africa works: Disorder as a political instrument,* International African Institute/ James Currey/ Indiana University Press, 1999.

7 SIDA, *A conflict analysis for the Great Lakes Region,* Division for Eastern and Western Africa, 2004.

8 The state, of course, is not the only actor involved in the running of day to day lives. Congolese communities in many areas, facing a state governance vacuum, established their own, locally legitimate structures, encompassing natural resource management, income generation and service provision functions. See, for example, D Beke, *Local government and administration, traditional and new leaders in the DR Congo conflicts,* (draft) unpublished paper, University of Gent, Belgium, 2004.

9 Figure from ISS website: <http://www.iss.co.za/AF/profiles/DRCongo/Table_Population.html#Anchor-42575> See also C Moyroud and J Katunga, Coltan Exploration in the Eastern Democratic Republic of Congo, in J Lind and K Sturman (eds), *Scarcity and surfeit: The ecology of Africa's conflicts,* ISS/ ACTS, Nairobi/ Pretoria, 2002.

10 C Moyroud and J Katunga, op cit.

11 See for example United Nations, *Panel of experts report on the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of Congo,* 2001.

12 See for example S Jackson, *Fortunes of war: the coltan trade in the*

*Kivus*, HPG Background Paper, Overseas Development Institute, London, 2003.

13 A variety of terms may be used, and some theorists only distinguish between 'proximate' and 'structural' factors, including triggers, accelerators, and other terms within the concept of proximate causes. See A Schmid, *Thesaurus and glossary of early warning and conflict prevention terms*, FEWER, London, 1998; and S Verstegen, *Conflict prognostication: Toward a tentative framework for conflict assessment*, Clingendael, The Hague, 1999.

14 SIDA, op cit.

15 F Van Acker and K Vlassenroot, Youth and Conflict in Kivu*: Komona Clair*, in *Journal of Humanitarian Assistance*, 2000.

16 See C Tilly, *The Politics of collective violence*, Cambridge University Press, Cambridge, 2003, for a discussion of boundary formation.

17 The conflicts are, of course, not merely domestic but regional in nature because of the extent of foreign involvement. The present study acknowledges that fact and does not seek to suggest that the conflicts are entirely internal to Congolese groups, or are based entirely on 'local' issues.

18 M Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism*, Princeton University Press, Princeton, 1996.

19 J Pottier, *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.

20 J Bruce, op cit.

21 B Mararo, *Land Conflict in Masisi, Eastern Zaire: The impact and aftermath of belgian colonial policy (1920–1989)*. PhD Diss. Indiana University, UMI, 1990.

22 *Ibid*.

23 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.

24 BG Schoepf and C Schoepf, Food Crisis and Agrarian Change in the Eastern Highlands of Zaire, in *Urban Anthropology*, 16(1), 1987, pp 5–37.

25 One example of this traditional organisation was the very hierarchical administrative structure of the Bashi community. At the top of the pyramid, the *Mwami* was bestowed with supreme power. In their position of representing the ancestors, they were the owners of both the land and the cattle. The country was subdivided into provinces, each of them ruled by a *Nahano* or *Murhambo*. Next came the chiefdoms, which were headed by a *Mushamuka*. At village-level, the power was exercised by a *Mugula* (or 'pater-familias'), who was responsible for tending to at least 15 cows and who could

claim patronage over four to five families. Although those in power ruled in an autocratic way, ancient laws and customs always controlled their behaviour. The same well-organised structures were in place if we look at the Bahunde. The proverb *'ozigara bush-ige ateta mukoro'* ('one has to submit to the decision of the chief') demonstrates this quite clearly. See RP Viane, *La religion des Bahunde*, Kongo-Overzee, 1952, (5), pp 25–26.

26 G Muzuri, *Evolution des conflits ethniques dans l'Itombwe (Sud Kivu), des origins à l'an 1982*, Mémoire de Licence en Histoire, University of Lubumbashi, Lubumbashi, 1982, p 13.

27 The difference between a Murhambo and a Murhwali is difficult to trace, but according to Mugangu only relates to a different origin. The Barhambo originate from the grassroots population, while the Barhwali are members of the royal family. In most cases, only the Barhwali have the right to distribute land, while the Barhambo only represent some form of political authority. See: S Mugangu Matabaro, *La gestion foncière rurale au Zaïre. Reformes juridiques et pratiques foncières locales, Cas du Bushi*, Louvain-la-Neuve: L'Harmattan, Academia Bruylant, Paris, 1997.

28 E Sosne, Colonial Peasantization and Contemporary Underdevelopment: A View from a Kivu Village, in G Gran, (ed), *Zaire: The political economy of underdevelopment*, Praeger, New York, 1979, p 200.

29 F Van Acker, *Of clubs and conflicts: The dissolvent power of social capital in Kivu (D.R. Congo)*, Research Paper 2000–07, Faculty of Applied Economics, Antwerp, 2000, p 3.

30 S Mugangu Mutabaro, 1997, op cit.

31 In the Kivus, colonial entrepreneurs claimed the most fertile lands and did not hesitate to chase the local peasants from their parcels. This was for instance the case in Kavumu, which is located some forty kilometres north of Bukavu. Here, 431 ha were acquired through two operations (in 1926 and 1929). The local administrator had declared that these parcels were vacant but after verification it turned out that an estimated 500 or 600 people were forced to leave their lands. C Bashizi, Processus de domination socio-économique et marché du travail au Bushi (1920–1945), in *Enquêtes et documents d'histoire Africaine*, 1978; Drevet, Les Plantations Industrielles du Kivu

32 M Buoyalimwe, *Land conflicts in Masisi, Eastern Zaire: The impact and aftermath of Belgian colonial policy (1920–1989)*, PhD thesis, Indiana University, 1990.

33 J Hecq and A Lefebvre, Eléments de la production agricole au Bushi: Recherche de la superficie nécessaire par famille, in *Bulletin Agricole du Congo Belge* 9(4), 1959, pp 285–293.

34 M Mamdani, *Understanding the crisis in Kivu: Report of the CODESRIA mission to the Democratic Republic of Congo*, Codesria, Dakar, 1997, p 4.

35 J-P Lobho, Impact de la colonisation belge sur les structures socio-politiques au Congo: le cas de la société hema en Ituri, *Revue Congolaise des Sciences Humaines*, 1971, p 90.
36 J Pottier, op cit.
37 A Kagame, *Un abrégé de l'ethno-histoire du Rwanda*, Butare, 1972.
38 C Bishikwabo, *Aux origins de la controverse sur l'identification nationale dans la région frontalière du Kivu*, miméo, 1987.
39 P Loons, *Histoire du territoire d'Uvira*, Archives de las Sous-Région du Sud-Kivu, Uvira, 1933.
40 For an overview, see J Mutambo, *Les Banyamulenge*, Imprimérie Saint-Paul, Kinshasa, 1997, pp 18–22.
41 C Bishikwabo, op cit.
42 Another consequence of this convention was that it cut through existing local kingdoms and divided ethnic communities.
43 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.
44 L De Saint Moulin, *Mouvements récents de population dans la zone de peuplement dense de l'est du Kivu*, in Etudes d'histoire africaine, 7(10), Presses Universitaires du Azire, Kinshasa, 1977–1978, pp 113–24. This figure must be regarded with caution, since there were also an unknown number of illegal economic migrants that were established in Kivu.
45 J McCalpin, op cit.
46 M Mamdani, op cit, p. 4.
47 S Mugangu Matabaro, *Terre, territoire et nationalité: les enjeux des conflits ethniques dans le Kivu Montagneux*, Paper Presented at the International Colloquium of Bujumbura, 18–22 May 1998, p 15.
48 B G Schoepf and C Schoepf, op cit, p 22.
49 C Newbury, Survival strategies in rural Zaire: Realities of coping with crisis, in Nzongola-Ntalaja (ed), *The crisis in Zaire: Myths and realities*, Africa World Press, Trenton, 1986, p 102.
50 H Dupriez, *Bushi: l'asphyxie d'un peuple*, ADI-Kivu, Bukavu, pp 33–34.
51 J MacGaffey, *Entrepreneurs and parasites. The struggle for indigenous capitalism in Zaire*, Cambridge: Cambridge University Press, 1987, p 101.
52 See K Vlassenroot, *Household food security assessment: The issue of land access*, Save the Children UK, Goma, 1999.
53 Mobutu's chief of cabinet, Bisengimana Rwema, was even rewarded for his political loyalty with the Osso ranch, one of the biggest colonial plantations.
54 Fieldnotes collected in Masisi, September 1999 and July 2003.
55 F Van Acker, La 'Pembénisation' du Haut Kivu: Opportunisme et droits fonciers revisités, in S Marysse and F Reyntjens (eds),

*L'Afrique des Grands Lacs, Annuaire 1998–1999*, l'Harmattan, Paris, 1999, pp 201–236.

56 F Van Acker, op cit, p 13. In 1989 the Mwami-Kazi (the Mwami's mother) in Katana succeeded in getting the legal rights over a large tract of land that belonged to local farmers under the principle of kalinzi. She later sold this land to rural capitalists who were unable to exploit their plantations in fear of local unrest.

57 H Dupriez, *Bushi: l'asphyxie d'un peuple,* ADI-Kivu, Bukavu, 1987.

58 B G Schoepf and C Schoepf, op cit, p 24.

59 Ibid, p 25.

60 L De Saint Moulin, op cit, p 114.

61 L De Saint Moulin, L'évolution des densités de la population du Zaire, *Revue Belge de Géographie*, 58(1–2), 1995, p 95.

62 B G Schoepf and C Schoepf, op cit, p 11.

63 K Vlassenroot and F Van Acker, op cit.

64 A Macintosh, *Consultancy visit to North and South Kivu*, Save the Children Fund (UK), London, 1998.

65 F Van Acker, op cit, p 18.

66 C Newbury, op cit, pp 99–112.

67 In Bunaykiri, the attempts of father Yves Lacoste to attract young farmers from Walungu were unsuccessful. After a short stay in Bunyakiri, most of them returned home because no guarantee was offered that the land they were cultivating would in fact belong to them.

68 As the authors observed in Kaziba (South Kivu), every week hundreds of very young people walk from Walungu (South Kivu) to Fizi and Baraka (South Kivu), where they hope to find some temporary employment as farmers or as gold-diggers at extremely low wages (less than one dollar a day). Fieldnotes, Kaziba (South Kivu), June 1998, September 1999 and July 2003.

69 There were several methods for the marketing of gold. The first one was through direct sale to gold traders at the mining site. In most cases, gold diggers were members of the local community, while the traders were mainly landless young men or small businessmen from other regions such as the Bushi region. In most these buyers would either sell their gold to the *comptoirs* (authorized counters) in the cities or to (foreign) businessmen. Gold purchased by this last method does not pass through the authorized counters but is smuggled across the frontiers to be sold on the international market in Bujumbura or Tanzania. Migrant diggers sometimes try to market their production themselves and sell to licensed counters or (foreign) businessmen in the cities.

70 D Keen, The economic functions of violence in civil wars, *Adelphi Paper* 320, 1998.

71 P J Laurent, and M Tsongo, *Mouvements de populations, cohabitations ethniques, transformations agraires et foncières dans la Kivu montagneux*, Institut d'Etudes du Développement, Louvain, 1996.

72 ACOGENOKI is a co-operative association for livestock-keepers, associated with Tutsi-banyarwanda interests. B G Schoepf and C Schoepf, op cit, p 25.

73 For an analysis of the eruption of violence in Shaba in 1992, we refer to: J Gorus, Ethnicity in Katanga, in D Goyvaerts (ed), *Conflict and ethnicity in Central Africa*, Institute for the Study of Languages and Cultures of Asia and Africa, Tokyo, 2000.

74 The installation in Kinshasa of the '*Conference nationale et souveraine*' (CNS) and later the '*Haut Conseil de la République*' (HCR) as part of the democratisation process, was a turning point for many reasons. Disputes were concentrated around the issue of who would represent Kivu at the conference. At first, indigenous leaders and some Hutu-representatives found agreement in the exclusion of the Tutsi population. However, in the end the Hutu population was subject to exclusion as well, although some Hutu-leaders managed to participate at the National Sovereign Conference (CNS). The citizenship question again became a contentious issue and representatives from eastern Congo in the CNS and HCR urged that priority be given to its resolution. The issue became even more contentious when, in 1992, the CNS confirmed the 1981 Citizenship law. The final report, however, stated that it could not be an objective of the conference to render people stateless or to retroactively deprive them of their rights.

75 It is said that soon after the arrival of the Nande-fighters in Masisi, serious problems arose between them and the local Hunde fighters, who refused to follow the orders of these Nande commanders. Finally, these Nande were forced to return to the Ruwenzori mountains.

76 Human Rights Watch/Africa, *Attacked by all sides. Civilians and the war in Eastern Zaire*, Human Rights Watch, New York, March 1997.

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

78 See for example, H Romkema, *An analysis of the civil society and peace building prospects in the North and South Kivu Provinces, Democratic Republic of Congo*, Life and Peace Institute, Bukavu. DRC, 2001; and International Crisis Group, *The Kivus: The Forgotten crucible of the Congo conflict*, Africa Report No. 56. Nairobi/Brussels, 2003.

79 See M D McGinnis, *Reciprocal destabilization: A two-level security dilemma involving rebellions, refugees, and regional conflict*, Paper presented at the Annual Meeting of the International Studies Association, Illinois, 2001.

80 The role of Western governments and multinational companies, while vitally important (especially in terms of mineral, and timber exploitation, as well as diplomatic and financial support to particular regimes or peace processes), is not dealt with in depth in this report. Readers are referred to reports such as UN Panel Of Experts, *Current situation: Exploitation, arms flows and trends,* 2003; and C Moyroud and J Katunga, op cit.

81 C Moyroud and J Katunga, op cit.
82 D Beke, op cit.
83 Confidential aid agency report, drafted in 2004.
84 O Afoaku, Congo's Rebels, in J Clark (ed), op cit.
85 G Nzongala-Ntalaja, *The politics of citizenship in the DRC*, Paper prepared for States, Borders and Nations: Negotiating Citizenship in Africa, Centre of African Studies, University of Edinburgh, 2004.
86 See for example F Van Acker and K Vlassenroot, op cit.
87 See for example the interview with a 'senior civil society figure' cited in International Crisis Group, 2003, op cit, p 28. Mayi-Mayi forces are found in the Kivu Provinces as well as further West, in Kasai and Katanga. While they are now part of the national-level struggles, with representation in Kinshasa and the unified Congolese army, the various groups were originally formed, in most cases, as local 'self-defence' groups.
88 *Ibid*.
89 See for example M Cogen and P Reyntjens, The Great Lakes, Kivu and the Search for Peace, 1999, Unpublished paper available online at <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.
90 See for example UN Panel Of Experts, *Current situation: Exploitation, arms flows and trends,* 2003*;* International Crisis Group, *Pulling back from the brink in Congo*, Africa Briefing, Brussels/ Nairobi, July 2004.
91 It is widely believed that despite the official withdrawal of Rwandan troops, undercover units remain, whilst RCD structures are intimately connected to the Rwandan military system, and troops covertly cross the border on a regular basis. MONUC forces stated that they spotted Rwandan troops in North Kivu on the 22nd April. See for example Concertation Chretienne pour L'Afrique Centrale/ Great Lakes Advocacy Network/ Resau Europeen Congo, *MONUC in the DRC: Strengthen its Mandate, Denounce the Warmongers*, Brussels, 2003.
92 International Crisis Group, 2003, op cit.
93 D Beke, *Local Government and administration, traditional and new leaders in the DR. Congo conflicts*, Powerpoint presentation, 2004.
94 M Kassa, Humanitarian assistance in the DRC, in M Malan and J G Porto (eds), *Challenges of peace implementation: The UN mission in the Democratic Republic of Congo*, ISS, Pretoria, 2004.
95 International Crisis Group, op cit.
96 The violence in Bukavu took place between different units of the national armed forces (units of the 10th and 8th Regions), and involved gross human rights abuses against civilians. One of the triggers for the fighting was violence carried out by soldiers loyal to Kinshasa against Banyamulenge (Congolese Tutsi). Interviews with local and national NGOs, Goma, July 2004. Also see Human Rights Watch, DR Congo: War Crimes in Bukavu, Human Rights Watch Briefing Paper, New York, June 2004.

97 C Moyroud and J Katunga, op cit.
98 As defined by Thomas Homer-Dixon, structural scarcity refers to a condition of unequal distribution of resources, while an increase in demand due to population increase or increase in per-capita consumption is termed 'demand-induced scarcity'. See Homer-Dixon, T and Blitt, J *Ecoviolence: Links among environment, population and security*, Rowman and Littlefield, Massachusetts, 1998.99
H Romkema, *Update on the DRC Transition: The Case of the Kivu Provinces*, ISS Situation Report, ISS, Pretoria, 2004.
100 M Tsongo, *Problématique dacces à la terre dans les systemes dexploitation agricole des régions montagneuses du Nord-Kivu (Zaire)*, Louvain-La-Neuve, UCL, 1994.
101 Interviews, Goma, April 2004.
102 R Lemarchand, *The Democratic Republic of Congo: From collapse to eventual reconstruction,* Centre for African Studies, University of Copenhagen, 2001.
103 M Mamdani, *When victims become killers: Colonialism, nativism and the genocide in Rwanda*, Princeton University Press/ Fountain Press, Kampala, 2001.
104 Interview with civil society activist, Goma, April 2004; see also S Jackson, 2003, op cit.
105 See for example Amnesty International, *Our brothers who help kill us: Economic exploitation and human rights abuses in the east,* London, 2003; Human Rights Watch, *The war within the war: Sexual violence against women and girls in Eastern Congo,* New York, 2003.
106 H Romkema, op cit.
107 Save the Children (UK), *Update of the household food economy analysis of the rural population on the Plateaux Zone, Masisi, North Kivu, DRC*, Goma, 2003.
108 *Ibid*.
109 K Vlassenroot, *Household food economy assessment: Consultancy visit to north and south Kivu, Democratic Republic of Congo, on the Issue of Land Access*, Save the Children (UK), 1999.
110 Interview with NGO personnel, Goma, April 2004; and CREDAP, *Rapports des Missions D'Enquete Sur Les Problemes Actuels des Agri-Eleveurs en Territoires de Masisi and et de Nyiragongo*, Goma, 2001.
111 Interview with NGO personnel in Goma, July 2004; and Aide et Action Pour La Paix, , op cit.
112 Interviews with national and international NGOs, Goma, July 2004.
113 CREDAP, op cit.
114 K Vlassenroot, 1999, op cit.
115 M Mamdani, 2001, op cit.
116 International Crisis Group, 2003, op cit.; Amnesty International, *Democratic Republic of Congo: Children at War*, London, 2003.
117 See Amnesty International, 2003, op cit.
118 UN Panel Of Experts, 2003, op cit.

119 A Tegera, *North Kivu: A rebellion within a rebellion?* Pole Institute, Goma, 2003.
120 International Crisis Group, 2003, op cit.
121 Several reports also suggest that TPD vehicles were involved in the transportation of armed personnel in support of General Nkunda's attack on Bukavu in May/June 2004. Source: interviews with local and national NGOs, Goma, July 2004.
122 Interviews, Goma, March 2004.
123 J Frushone, *The forced repatriation of Congolese refugees living in Rwanda*, US Committee for Refugees, Washington DC, 2002.
124 Interview with human rights researchers, February 2005.
125 Interviews with international human rights activists who visited the area, Goma, March 2004.
126 J Frushone, op cit.
127 Interview with Director of North Kivu Province, Goma, March 2004.
128 Land tenure security is here understood as a function of the perceptions of local people, not just a legal or social 'objective reality'. See D Beke, op cit.
129 H Romkema, op cit.
130 Save the Children (UK), 2003, op cit.
131 Aide et Action Pour La Paix, op cit.
132 Interview with NGO personnel, Goma, July 2004.
133 Interviews with NGO staff, Nairobi, April 2004, and aid agency internal reports.
134 Interview with members of major land-holding families, Goma, April 2004, and members of civil society, July 2004; also information derived from *Tableau récapitulatif des plantations dans le Masisi* based on data provided by Inspection Régionale de l'Agriculture, Pêche et Elevage du Nord-Kivu, reproduced in Aide et Action Pour La Paix, 2004, op cit. It should be remembered of course that Governor Serufuli is of Hutu origin, as are many members of the Local Defence Forces.
135 Very few plots in Walikale are registered
136 Of the 16,000 population, only 900 remained in town in July 2004, the rest having fled into the forests to avoid violence. Interview with international NGO, Goma, July 2004.
137 For example, plans for an extension of the road from Kisangani to Goma are at an advanced stage.
138 During field research, local civil rights activists made available photocopies of Rwandan and Congolese national identity documents allegedly proving that a single Rwandan individual simultaneously possessed both documents. This is in contravention of Congolese law, though Rwanda has offered citizenship to all people of Rwandan origin, wherever they may reside.

139 International Crisis Group, *Maintaining momentum in the Congo: The Ituri problem*, Africa Report No. 84, Nairobi/Brussels, 2004.
140 Human Rights Watch, 2003, op cit.
141 R Kaplan, The coming anarchy: How scarcity, crime, overpopulation, tribalism and disease are rapidly destroying the social fabric of our planet, *The Atlantic Monthly*. February 1994.
142 The violence can, indeed, be described as 'genocidal'. But whether genocidal impulses are root causes, or the defining feature of the violence, is another matter.
143 O Sematumba, *Ituri: the war within the war*, Pole Institute, Goma, 2003.
144 See for example International Crisis Group, 2004, op cit.; O Sematumba, op cit.; and M Malan and J G Porto (eds), op cit.
145 There are in fact numerous sub-groups within the Lendu, who are identified according to their geographical location, including the Lendu-Pitsi, Djatsi, and Tatsi of the North, and the Ngiti (or Bindi) of the south. The Hema also have sub-groups such as the Hema Boga of the South, who became sedentary at an earlier point than other groups. Bureau du Project Ituri, *Rapports de Projet*, Bunia, 1982.
146 These alliances are opportunistic and it remains to be seen whether they will survive for long. However, their very existence does prove that strategic interests sometimes outweigh 'ethnic' agendas.
147 Interviews in Bunia and a town in Irumu territory, February 2004. See also FEWER, *Ituri: Actors, stakes, dynamics*, unpublished report, Nairobi/Bunia, 2003.
148 The Nande population of Bunia town, for example, was systematically forced out *en masse* in 2003, by the 'Hema' UPC who were controlling the town at that time.
149 As mentioned above, the 'Lendu' and 'Hema' are made up of numerous sub-groups. However, for clarity, we will refer to them in terms of their broader identities for most of this section. Recently, divisions have appeared between the Hema and Gegere communities, partly because of economic differences, though due to limitations of space, this issue is not addressed in this chapter.
150 See A Van Woudenberg, Ethnically Targeted Violence in Ituri, in M Malan and J G Porto (eds), 2004, op cit.
151 Some dispute this: one Hema intellectual, for example, argues that the Hema arrived in the region in the 11th century, before the Lendu (interview in Bunia, February 2004). While ancient history should not be used as the basis of land claims (as the constitution of the country guarantees freedom of movement and the right to claim property for all citizens), it has a certain propaganda value to some actors.
152 See FEWER, op cit.; and J Pottier, op cit.
153 J Pottier, op cit.
154 The Lendu during this period have been characterized as a 'warlike' people by some. See FEWER, 2003, op cit.
155 "Chacun reste sur la terre ou le fief di ses ancestres et personne n'a le droit sur cette terre… in effet, la terre appartient aux individus".

Bureau du Project Ituri, 1982, op cit.

156 "Chez la Bahema, le chief de collectivite reste seul responsible de la terre de son entite. Aucune notre personne n'a droit de decide quoique ce siot en matiere de terre." Ibid.

157 Lobho, 1971, cited in J Pottier, op cit.

158 Southall, 1954, cited in J Pottier, op cit. Clearly, ancient history does not determine current events, as some sections of the Alur community now support the Lendu, while others support the Hema.

159 Asadho, *Rapport de l'Asadho sur le conflit inter-ethnique Hema-Lendu en territoire de Djugu dans la Province Orientale,* Kinshasa, 1999; and D Johnson, *Shifting Sand : Oil Exploration in the Rift Valley and the Congo Conflict*, Goma, Pole Institute, 2003.

160 Southall, 1954, cited in J Pottier, op cit.

161 Asadho, op cit; O Sematumba, op cit.

162 FEWER, op cit.

163 Interview with a former headmaster of a school situated in Lendu territory in Bunia, February 2004.

164 Lobho, 1971, cited in J Pottier, op cit.

165 Their lack of participation in formal education and economic networks is reflected in the leadership of Lendu military/political groupings such as FRPI, who tend to be less educated than those of some other armed groups. Source: Confidential military intelligence briefing, and interviews with NGO personnel.

166 See A Van Woudenberg, Ethnically Targeted Violence in Ituri, in M Malan and J G Porto (eds), op cit.

167 M Kassa, Humanitarian Assistance in the DRC, in M Malan, and J G Porto (eds), op cit. Even as late as mid-2004, despite almost a year of much-improved security, not all Lendu, Nande or Mbira inhabitants had returned to Bunia town.

168 "*Apres L'independence, les parties cloturees et considerees comme des proprietes privees etaient petit et petit envahies par des eleveurs d'aillieurs… les filsbarbeles ont ete enleves ou uses par les feux de brousse et puis casse.*". Bureau du Project Ituri, op cit.

169 O Sematumba, op cit.

170 Bureau du Project Ituri, op cit.

171 S Leisz, Zaire Country Profile, J Bruce, *Country profiles of land tenure: Africa, 1996,* Research paper No. 130, Land Tenure Centre, University of Wisconsin, 1998.

172 Sale of church land has been technically illegal since the 1973 land law, as the state is the owner and the church is merely a leasee.

173 Under Congolese law, all land belongs to the State. Use rights are conferred through leases of up to 99 years.

174 This anecdotal evidence is also supported by Mararo, 1990 (op cit)

175 Law No. 73/21 of 1973, amended and supplemented by Law No. 80/8 of 1980. See also Aide et Action Pour La Paix, 2004, op cit.

176 Interviews with civil servants and FAO personnel, Bunia town, May 2004

177 Interview with former administrator, Bunia, April 2004.
178 D Buckles (ed), *Cultivating peace: Conflict and collaboration in natural resource management*, IDRC, 1999.
179 UN, *Report of the panel of experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo*, 2001.
180 Asadho, op cit.
181 See for example International Crisis Group, 2004, op cit; Asadho, op cit; O Sematumba, op cit; M Malan and J G Porto (eds), op cit.
182 S Leisz, op cit.
183 This is locally referred to as *droit de regard*, the right to 'look after' the land – though in the eyes of the law, the term *droit de regard* refers to rights of management enjoyed by either the state (in which the correct term is 'eminent domain') or the landowner.
184 *"une large publicite visant a proteger les droits des populations coutumieres. L'iffichage de l'avis autorisant l'enquete doit se faire dans la localite ou le terrain est situe. L'enquete comporte… le recensement des personnes s'y trouvant ou y exercant une quelconque activite…l'audition des personnes qui formulent verbalement leurs reclamations ou observations."* Aide et Action Pour La Paix, op cit.
185 M L Kane, M Ayachi and L Ennahli, *DRC agricultural and rural sector rehabilitation support project: Appraisal report*, African Development Fund, 2004.
186 The *chef de collectivité* was killed in an ambush on his vehicle during the conflict.
187 Interview, Bunia, February 2004.
188 International Crisis Group, 2004, op cit.
189 In many cases, administrators exaggerate figures in order to make a better case for relief assistance. However, the figures broadly tally with figures given by a chief de localite, and the co-ordinator of an international relief organisation based in the town found them feasible.
190 A plot belonging to one chief de localite which was visited was noticeably larger than surrounding plots being cultivated by IDPs.
191 J Pottier, op cit.
192 The group in question is part of the Transitional Government, but practical linkages between the local level and Kinshasa are not yet in evidence.
193 Security issues constrained fieldwork conducted for this chapter, as such sensitive issues could not be approached through direct questioning.
194 See J Pottier, op cit. In Rwan da, once a crop was planted, the cultivating household would generally be allowed to continue to cultivate and live in the house until harvest time, even if seen as an illegal 'squatter'.
195 SIDA, op cit.

196 J Herbst, *States and power in Africa: Comparative lessons in authority and control*, Princeton University Press, Princeton, 2000, p. 173.197 See K Vlassenroot and T Raeymaekers, The politics of rebellion and intervention in Ituri: The Emergence of a new political complex?, in *African Affairs 103*, 2004, pp 385–412.

198 J Lonsdale, Moral ethnicity, ethnic nationalism and political tribalism: The case of Kikuyu, in *Staat und Gesellschaft in Afrika*, Jahrestagung Vereinigung van Afrikanisten in Deutschland, 28–30 April 1995.

199 J Pottier, op cit.

200 J Pottier, op cit.

201 *Ibid*., pp 9–10.

202 See N Thompson, *Land in post-conflict situations: An analytical paper*. FAO, 2003.

# Land Access and the Return and Resettlement of IDPs and Refugees in Burundi

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## INTRODUCTION

Burundi is a small land-locked country bordering Rwanda, Tanzania and the Democratic Republic of Congo (DRC), and is one of the poorest countries in the world. Today Burundi stands on the threshold of peace, after decades of decay in the throes of conflict and distress-induced underdevelopment.

Since gaining independence from Belgium in 1962, Burundi has been wracked by civil war and undermined by poor governance. In addition to countless attacks on civilians and general insecurity, particular instances of mass violence have resulted in the death and/or displacement of thousands of Burundians.[2] Repeated cycles of bloodshed have traumatized the people and polarized social and political relations along ethnic lines, thereby entrenching the conditions for political instability in the country. Governance practices by successive regimes galvanized political power and state control in the hands of a small elite group of Tutsi, from particular parts of the country, who have since sustained their hold on power by repressive and exclusive policies. Military dictatorship characterized by the systematic exclusion of Hutus, and intra-Tutsi rivalries have led to Hutu demands for more equitable power-sharing. Efforts by the Tutsi elite to retain political control and associated 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.[3]

Widespread displacement of communities within the country and across international borders, wanton destruction of property and death of an unknown number of people as a result of decades of war have had extremely negative impacts on Burundi's fragile economy. According to a recent study, a staggering 99% of the population lives below the international absolute poverty threshold of US$1 per day, and more than 85% survive on less than US$1 per week.4 Burundi is currently ranked number 171 of a total of 175 countries in terms of Human Development Indicators.[5] Bujumbura used to be an important business centre for trade in gold, fresh vegetables and a number of other goods, but Kigali and Kampala have taken over that role.[6] Since 1993, annual foreign aid has

declined by about two-thirds, and GDP has fallen by a fifth.[7] Primary school enrolment has dropped from the pre-war figure of 70% to 28%. Average life expectancy fell from its 1993 figure of 54 years to just 41 years. Over a quarter of all Burundian women are widows. Social relations are severed through separation of partners, while among displaced populations there is a higher incidence of casual and/or commercial sex, and associated risk of HIV infection.[8] There are links between land access and HIV infection in Burundi, particularly in instances where widows and orphans cannot inherit land, or when agricultural practices change because capacity for heavy labor is reduced due to HIV-related illness. [9] Land scarcity remains a major problem in Burundi, not just in the context of post-conflict refugee repatriation and internally displaced persons' (IDPs) returns, but also in terms of long-term development. Limited access to land resources not only constrains food security, but also poses important challenges to sustainable peace and national development. In the context of post-conflict reconstruction, there is a possibility of land concentration through domination of land markets by a wealthy elite, and increases in the rates of landlessness. The resolution of the current conflict and prevention of future unrest therefore requires the development of culturally and politically appropriate and sustainable policies with a long-term and coordinated approach, rather then only short-term responses to post-conflict emergencies such as refugee returns.

Following the August 2000 signing of a peace agreement by 19 political groups in Arusha, Tanzania, and the enhanced regional stability brought about by the peace process in neighbouring DRC, there is an opportunity for peace and development. This state of affairs has precipitated the return of thousands of refugees, primarily from neighbouring Tanzania. As suggested by ACTS in 2001 and by other organisations since then, the return of the refugees, and situation of IDPs, will hinge on the way that land scarcity and land ownership disputes are managed.[10] Reconstruction of administrative and physical infrastructure, as well as social capital in post-conflict Burundi should serve as the foundation for the implementation of land related policies that promote ethnic, regional and class reconciliation and seek to address root causes of social instability, such as poverty, hunger and homelessness.

## Geographical and historical context

The current situation of mass refugee return is not without historical precedent. In 1993, spontaneous return of refugees to a country ill-prepared to receive them precipitated political instability and reversed the gains of the just-concluded democratic elections. Some 50,000 refugees returned following the election victory of FRODEBU. The newly installed government was determined to return to the refugees the land and property that had been taken from them, but it was also aware of the fear by members of the Tutsi elite that they would lose from this process.[11] Land access was also a divisive issue within the Hutu elite.

For instance, after September 1993, a rift seemed to emerge between L. Nyagoma (the Minister in charge of managing repatriation, who backed a return of land to returnees without conditions) and President Melchoir Ndadaye, who suspended the works of local committees charged with resolving the land conflict at a grassroots level. Attempts by Hutu returnees to regain access to lost lands included forced evictions of those families (mostly Tutsi) who were occupying their plots. Some of those evicted, from Minago zone, demonstrated outside the President's office buildings in Bujumbura.[12] This, in addition to official attempts to challenge powerful people who had taken over land after the departure of the refugees, significantly contributed to the deterioration of the political situation that culminated in the coup d'état and the assassination of the President.[13]

The risk that the refugee's return could exacerbate conflict has been acknowledged by UNHCR and others.[14] Contentious issues around refugee return could provide means for 'spoilers' and entrepreneurs of violence and politics to trigger conflict. The land issue is by no means the sole, or most significant factor in the wider situation of refugee return – there are crucial questions regarding the security of those returning to their homes, criminal proceedings against those involved in massacres (which may politically be affected by the impunity provided for political leaders and official members of armed groups), and compensation for properties destroyed or expropriated (not just land, but buildings, coffee and banana stands, and other investments).[15]

However, it is also worth noting that refugees do not have a purely destabilising influence on events and inter-state relations in the region (such as through the cross-border rebel activities that take advantage of the protection offered by refugee camps), but also form a significant force in the efforts to bring peace to the country.[16] For instance, representatives from refugee camps in Tanzania were part of the Arusha Peace Process, while leaders of most of the political parties enjoyed refugee status in neighbouring states. Returned refugees have also been instrumental in domestic efforts to restore peace.

There are essentially two schools of thought on the issue. The first, which includes policy-makers within the government of Burundi, are quietly optimistic that if the political situation remains stable, no sudden influx occurs (for example, as part of a forced repatriation exercise) and adequate mechanisms are put in place for local dispute resolution, the refugee return may not pose major problems in the short term. However, most acknowledge that within the wider economic and demographic context, challenges may emerge over the medium-term.

The second view, held by some NGOs and civil society organisations, considers land questions as potentially explosive, even in the short-term.[17] They argue that the government and civil society does not have the institutional capacity (and possibly the political will) to cope with a sustained influx of refugees. From this perspective, the land issue should not be addressed in isolation, but should rather be part of a general

nation-wide process of capacity-building – particularly of local institutions such as the Bashingantahe – and democratised governance at all levels.[18]

Previous work by ACTS concluded that inequitable access to land is one of many structural causes of the conflict in Burundi, contributing to poverty and grievances against the government and elite groups. Burundi has a predominantly rural economy founded on agriculture and coffee production. In a country where 93% of the population is rural and dependent on agriculture for subsistence, access to arable land is a priority for almost every household.[19] Due to high population density, over 80% of rural households have less than 1.5 hectares (ha) of land.[20] Estimates of the average plot size vary – in 1982 it was reportedly 0.39 ha but other sources give figures of as much as 0.8 ha.[21] Most experts consider a figure of 0.5 ha to be a reasonable estimate.[22] Landlessness stands at about 15% nationally, and the figure is 53% for the Batwa, a marginalized minority group.[23] Unequal land distribution, over cultivation and concomitant food insecurity affects the poor, who have few off-farm opportunities.

Burundians traditionally live in separate homesteads, dispersed across the rural 'hills', in ethnically-mixed territories. Rapid population growth coupled with the traditional method of succession that divides the property of the father among the male sons has resulted in land fragmentation and increasingly smaller parcels insufficient to assure food security in most households. Hence land scarcity has historically triggered internal population movements towards relatively less populated areas, and contributed to cross-border migration into Tanzania, DRC and Uganda, sometimes generating tension between newcomers and the communities into which they migrate. Population pressure has led to exploitation of marginal lands, which makes livestock and agricultural productivity increasingly fragile. Forests have been devastated and soil productivity is on the decline, especially on small farms, which are intensively cultivated.[24] Moreover, multiple waves of displacement due to conflict have made land ownership issues very complex and politically sensitive. This is particularly so in areas where land abandoned by fleeing people has been occupied by others. Illegal appropriation of land is also a significant issue, and observers note that sales and/or development of land have increased greatly in recent months, since the transitional process started. Some allege that powerful people are selling land before the transitional period ends – in case of future investigations into land acquisition – or are taking the chance to 'grab' land before their political connections are compromised by political change. Many landowners are absentee landlords or maintain properties purely for purposes of speculation and access to bank loans, rather than for development. This is a potential source of tension especially if their under-utilized plots are located in areas of land scarcity. According to some observers, these various processes of land concentration in the hands of the few represents "a major source of ethnic tension in the rural areas creating a growing social malaise for which there appears to be no solution in sight".[25]

Given these dynamics, land use and ownership patterns are an integral part of long-term conflict prevention. Among the most salient of these factors are land disputes at the family and community level, which result from population pressure and legal and illegal distress-induced transfers.

Land disputes in Burundi are exacerbated by inconsistent implementation of the relevant legal and policy instruments, which have been poorly disseminated. The existing structure is misunderstood by many actors, while land management and administration institutions are ineffective and highly corrupt.

According to scholars such as Homer-Dixon, negative environmental change and resource scarcity may lead to conflict, especially in poor countries.[26] Resource scarcity, such as land scarcity, made worse by population pressure, environmental degradation and inequitable distribution of resources, lead to poverty, inter-group tensions and displacement. These in turn lead to instability and conflict. While the linkages between environmental scarcity and conflict have been questioned by some,[27] these variables are particularly pertinent in Burundi where access to and control of the scarce land and natural resources has inherent political dimensions and continues to underlie and motivate 'ethnic' violence. However, the 'scarcity' thesis is by no means the only model that one might use to analyse the situation. The role of 'military entrepreneurs', for example, who use violence as a means to gain personal wealth and power, should not be ignored. Often, such entrepreneurs use resource-related grievances as a means to influence people and mobilise them to violence.

Within this context, this chapter examines the causes, patterns and types of displacement, and how long-term displacement impacts on land ownership and access. It evaluates the effectiveness of institutions that have been put in place to address repatriation and resettlement of refugees and IDPs, particularly their role in tackling property rights and settling disputes arising from contested land claims. It examines the mechanisms used to ensure that 'abandoned' land or property is returned to its rightful owners, as well as the criteria used to arrive at other types of settlement where land is not available or accessible. This analysis is based on fieldwork in Burundi and interviews in Nairobi, Kenya, as well as extensive review of secondary literature.[28]

In the last decade, Africa's Great Lakes Region has been characterised as a hotbed of humanitarian crises following cycles of conflict and population displacement. Ceasefire agreements, peace talks and reconciliation processes have failed to procure sustainable peace because they are undermined by unresolved underlying causes of conflict which are easily mobilised to trigger violence. Given this scenario, 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, or the actions of powerful vested interests in relation to the elections and other political and economic considerations. In order to point to ways in which these

underlying issues may be addressed, the chapter 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.

## THE CHRONOLOGY OF CONFLICT IN BURUNDI

Burundi has been ravaged by cycles of dysfunctional conflict since its independence in 1962. As noted in the introduction, this conflict has largely been interpreted in ethnic terms, and seen as pitting the two main ethnic groups – Hutu and Tutsi – against each other in a violent struggle for political power and control of the state. Pre-colonial population estimates suggest that the country's population is about 85% Hutu, 14% Tutsi and 1% Twa.[29]

Various theories have been advanced (and critiqued) to explain the origins of the conflict between the two groups,[30] as well as the factors that sparked the first wave of violence and continue to sustain genocidal ideologies in the region. Despite the popularity of ethnic discourse, most scholars tend to agree that the protracted conflict is structural in nature. This section maps out the basic 'facts' of the conflict, prior to a more in-depth look at the root causes and the socio-economic effects of conflict in the next section.

Clashes and massacres have marked post-independence history. The assassination of the moderate and charismatic leader of the Union pour le Progres National (UPRONA) Prince Luis Rwagasore poisoned the nascent ethnic accommodation that political independence from Belgium may have portended.

In 1965, the assassination of the Hutu Prime Minister was followed by an abortive coup against the King, which was severely repressed by the army. For the first time, ethnic rivalries went out of the political arena to affect the rural population, and some Burundians fled the country. Arguably the most significant event in the conflict, which overshadows most discourse on ethnic violence in Burundi, occurred in 1972 when Hutu militants (many from the Burundian refugee community in Tanzania) attacked and killed thousands of Tutsi civilians. The army- and government-led retaliation and repression that followed were instant and targeted educated Hutu, systematically exterminating teachers, students, doctors, priests and any person with economic and social standing. While estimates of the number of dead vary, it is likely that 200,000–300,000 people were killed, the vast majority of them ordinary civilians, in an act described by the UN as 'genocidal repression'.[31] In the chaos and fear that ensued, many Tutsi also fled from their Hutu neighbours, often to Bujumbura to fill the many jobs left vacant, or to occupy the flat, fertile, palm-oil-producing strip of lake shore south of Bujumbura vacated by fleeing Hutu.[32] Nothing was done by successive governments to investigate this and other massacres, or to punish perpetrators, and for a long time many Hutu families stopped sending their children

to school, fearing that they were exposing them to a future annihilation. Thousands fled into Tanzania, where what was perceived as a 'lost' generation has grown up in refugee camps. The result is a severely polarized society riddled with resentment, suspicion and mistrust, where actions and issues are perceived and interpreted not so much by their merit, but by the ethnicity of persons behind them. The 1972 events – and their grim mirror, the 1994 genocide in Rwanda – have crystallized ethnic tensions in such a way that all subsequent crises have in many ways been their consequences.[33]

While Jean-Baptiste Bagaza's 10-year rule (1976–1987) was relatively free of major violence, and many refugees returned home, their return was followed with little reform in power-sharing arrangements. Bagaza engaged in a series of reforms, such as the abolition of the 'feudal' landownership system, but corruption thrived as elites scrambled for the control of state-owned companies, industry and services, and reforms failed to address the ethnic imbalance in political and economic sectors. Instead, there was further consolidation of the political and military structures of the state by members of a small clique, primarily from a single Tutsi clan from Bururi province, and the expansion of the powers of patronage to the exclusion of the majority Hutu community. Four-fifths of government Ministers were Tutsi. To indicate the extent of the influence of the 'Bururi mafia', it is important to note that two Presidents originated from the same village in Bururi, Jean-Baptiste Bagaza (1976–1987) and Pierre Buyoya (1987–1993), while a leader of one of the main rebel groups, also comes from the same hill.[34] The first president, Michel Micombero, and former leader of CNDD Leonard Nyangoma, also come from the same area.

Some progress was made in certain areas by President Buyoya between 1987 and 1993, after he took power through a *coup d'etat*. However, like all post-1972 regimes, the government failed to adequately address the root causes of the conflict or to resolve the ethnic deadlock over matters pertaining to power sharing. Internal unrest in reaction to some policies (e.g. attempts to stop coffee smuggling across the border into Rwanda, and the predominance of 'southerners' in the administration in northern Provinces) and pressure from refugee rebel groups eventually culminated in the 1988 Ntega and Marangara violence, in which many Hutu became victims of the army's disproportionate retaliation for localized killing of Tutsi.[35] Mounting international and local pressure for an independent investigation and comprehensive political, constitutional and economic reforms resulted in a process of reforms that culminated in a new constitution, multi-party elections, and the election of a Hutu president, Melchior Ndadaye, from the FRODEBU party.The 1993 assassination by Tutsi army officers of Ndadaye and his associates following tensions between the Tutsi-dominated military and the Hutu-controlled government plunged the country back into chaos. Some Hutu, in many cases organized by political leaders, slaughtered thousands of Tutsi civilians. In retaliation, Tutsi soldiers and police massacred thousands of

Hutu in a manner reminiscent of 1972. This once again sent thousands into exile to neighbouring countries, exacerbated ethnic intolerance, and undermined public trust in the democratic process. The security situation deteriorated as Hutu rebel groups mushroomed and took up arms against the coalition government.[36] Following the murder of Ndadaye, a coalition government made of Hutu-dominated FRODEBU, Tutsi-dominated UPRONA and several smaller parties took over power, though real power lay with the same elites as before.

Meanwhile, Tutsi extremist parties and militia carried out "dead city" operations in Bujumbura, forcing Hutu to abandon property, which was then looted.[37] Ndadaye's successor was killed in the plane crash together with Rwanda's president Juvenal Habyarimana in 1994. It became increasingly difficult for the government to function or to implement any kind of reforms, and in the midst of this confusion and instability, Maj. Pierre Buyoya staged yet another military coup and took over power on July 25th 1996.

International condemnation of the 1996 coup was followed by regional states' imposition of political, diplomatic and economic sanctions on Burundi. The adverse effects of the embargo,[38] coupled with mounting international and internal pressure forced Buyoya to agree to share power with the National Assembly, and to initiate negotiations for a peace settlement with opposing parties and some armed opposition groups, with a view to restoring the legally constituted government.[39] The late President of Tanzania, Julius Nyerere, spearheaded the talks before he was mandated by the international community as the official mediator by both the Organization for African Unity (now African Union) and the United Nations. However, little progress was made as Nyerere's intervention failed to reconcile competing political forces within the coalition government. The conflict became intractable and increasingly complex. Regional states intervened and assumed an umbrella position as the custodians of the process. After Nyerere's death, former South Africa's President Nelson Mandela stepped in and oversaw years of tedious negotiations that culminated in the signature of the Arusha Peace and Reconciliation Agreement in August 2000.[40] A transitional government, agreed to in the peace accord, was installed in November 2001. It included seventeen political parties and a careful balance of Hutu and Tutsi. The Africa Mission to Burundi Force (AMIB), was established in 2001 to facilitate the return of exiled political leaders.

However, groups that were not party to Arusha have dismissed the peace process as illegitimate, and continue their violent campaign even after the signing of the peace agreement. Ensuing insecurity and human rights violations by all parties to the conflict have caused some apathy among the population with regard to the peace process. FRODEBU, the main Hutu political party which enjoyed overwhelming success in the 1993 elections, has lost significant political mileage to CNDD-FDD.

Negotiations facilitated by South Africa and regional states continued with these groups, and in November 2003 the Transitional

Government of Burundi and the main rebel group – CNDD-FDD – reached an agreement on security, defence and power-sharing,[41] and joined the government.[42] Only FNL remained outside of the process and continues to maintain a hard-line position. [43] In April 2004 the FNL declared a unilateral ceasefire, and it engaged in talks with the UN, but violence continued and in August, they claimed responsibility for the massacre of 160 Congolese Tutsi in a refugee camp close to Bujumbura.

Therefore, despite the progress made so far, there persist concerns among some Burundians and observers about the feasibility of implementation of the peace accord and the sustainability of political stability, given a past history of non-adherence to such agreements, as well as the socio-economic environment and political dynamics within the country and the region. These dynamics reflect and underlie deep-seated feelings of vulnerability and injustice by contending ethnic groups, and are reinforced by the wider ramifications of ethnic solidarities, political and military alliances, resource-based conflicts and activities of prolific armed militias in the Great Lakes region.[44] The alleged involvement of Hutu-extremist former Rwandan military (ex-FAR) and Mayi-Mayi militia from DRC in the refugee camp massacre is evidence of these regional complexities.[45]

## CHALLENGES TO IMPLEMENTATION OF THE PEACE AGREEMENT

The Arusha Agreement on Peace and Reconciliation in Burundi was finalized in August 2000.[46] Three sub-committees were established to deal with the contentious issues of transitional leadership, creation of a ceasefire, the timetable for the implementation of the accord, and technical corrections to the Agreement document. The Implementation Monitoring Committee (IMC) was established to oversee the agreement's implementation.

Committee Four on Reconstruction and Development was mandated to collect views, advice, and make recommendations on matters relating to rehabilitation and reinstallation of refugees and internally displaced persons, and economic and social development. An additional task for the committee was to formulate viable policy recommendations regarding the recovery of property by refugees and internally displaced persons, and the reintegration of demobilized soldiers and rebels. Other tasks were to reconstruct and rehabilitate social facilities such as schools, hospitals, and religious buildings; to devise a programme for national reconciliation, and to reform and privatize key sectors of the economy such as coffee and tea, education and health. Modalities on equitable distribution of employment opportunities, land, education, regional decentralization and integration also fell under the doyen of Committee Four.

Progress towards fulfilling provisions of the Arusha Agreement for Burundi have steadily but tortuously been implemented. The Transitional

Senate and Parliament were established a few months after the inauguration of the Transitional Government in November 2001. The rotation of the presidency for the second half of the 36-month transition went ahead without incident at the end of April 2003. Several laws have been passed by the legislature in conformity with the Agreement, including a Transitional Constitution in June 2003.

However, the Arusha Agreement has deeply polarized the society in Burundi and contains vague provisions that could be the subject of differing and contentious interpretations by the parties to the conflict. Some sections of the Hutu majority are of the view that the minority guarantees accorded the Tutsi minority are excessive and should be reopened for discussion. An example is the establishment of the Upper House (the Senate) after the end of the transition period. Additionally, Burundi remains highly polarized about the need to pass a law that will see the creation of a Truth and Reconciliation Commission as provided for in the agreement. Accountability for the repeated ethnically motivated crimes remains a major challenge to the successful conclusion of the peace process in the country. Although Parliament has approved a law on genocide (April 2003), much of the progress registered on this front has been the result of political compromise, thereby stripping them of the spirit of justice and restitution originally intended.

## *Transition elections and the imperatives of the peace process*

As the end of the transition period nears, this is a delicate time for the Transitional Government because of the enormous amount of work and immense international pressure and expectation for concrete results. The danger is that interim reforms may be rushed to accommodate the October 31st elections deadline. The country is ill-prepared for elections in terms of legislation, army reforms, mechanisms for voting, guidelines for campaigning and general political confidence. The international community, while insisting that the government sticks to the November 1 election date is also slow on releasing funds necessary to put requisite structures in place.

The Transitional Government and signatories to the Arusha Agreement are yet to finalize and adopt the prerequisite legal framework for viable and credible elections. The transitional electoral timetable was re-scheduled due to logistical problems (including a lack of resources for the Independent National Electoral Commission) and political negotiations,[47] so that the constitutional referendum was delayed from June 2004 until February 2005. Some 90 percent of the electorate voted in the referendum, and more than nine-tenths of all votes supported the constitution (with 8 percent against). Elections at colline level, Commune level and subsequently parliamentary and (indirect) presidential elections have been delayed and are due to take place in 2005. Neither Maj. Pierre Buyoya or the incumbent are eligible to stand

in these elections, and the president will be chosen by a vote of two-thirds majority of the National Assembly and the Senate.

Furthermore, current altercations between UPRONA and FRODEBU on the one hand and CNDD-FDD and a motley of smaller factions on the other over the full compliance with the Arusha Agreement and the attendant boycotts of the National Assembly will serve to further delay time-sensitive legislation and require urgent settlement.

### *Demobilization, disarmament and re-integration (DDR)*

Traditionally, the Burundian army has served as the insurance of the Tutsi community against a perceived threat of extermination by the Hutu community. Conversely, the Hutu Community has always viewed the security forces as an oppressive and alien institution in which they have no trust. Reform of the army, gendarme and the police is critical to building confidence. This can only be a gradual process; however, it is widely acknowledged that the tragic developments of 1993 were partly a result of lack of reform in the armed forces. Therefore, elections without security sector reform would be a risky gamble. Currently there exist two parallel armies apparently conjoined by the short-term mutual interest of getting rid of the FNL. Both the armed forces and fighters of the CNDD-FDD remain armed. It is difficult to foresee the continuation of the current arrangement after elections.

The agreement signed between the government and the CNDD-FDD has apportioned the two sides percentages of positions in the High Command and in the NCO ranks. Clearly, when hopefully the FNL joins the peace process, it will require its share of positions in the security services. As constituted at the moment, the armed forces-CNDD-FDD alliance offers no room for another major stake in their allocation .[48]

The deployment of a UN Force is not guaranteed to undertake the DDR tasks envisaged for it quickly. Experience in other peace-enforcement operations indicates that the lead-time from approval by the UN Security Council and effective deployment could take months. Certainly Burundi does not have the luxury of this time to restructure and re-order its security services and structures.

In terms of justice and reconciliation, the Arusha Agreement provides for the establishment of an International Criminal Tribunal for Burundi, an International Judicial Commission of Inquiry, a law punishing genocide, war crimes and crimes against humanity as well as human rights violations and a National Truth and Reconciliation Commission.[49] All these remain unimplemented, with the exception of the law on genocide adopted by Parliament in April 2003. The government won the contest between its position for temporary immunity over the CNDD-FDD's insistence on general amnesty during negotiations for a cease-fire. The law is seen by some as a protection of the minority elite on both sides of the fence, and a sign of disregard for the need for justice and restitution.

### *Land and property rights*

Article IV of the Arusha Accords provides that all returning refugees will be able to access their property, including their land, or will instead receive adequate compensation. The Agreement recognizes the need for the "equitable apportionment and redistribution of national resources throughout the country"[50] and the "… compensation for plundered property".[51] The Accords recognise the important role that the international community will have to play, in order to make this a reality.[52] 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). As will be described in section six, the operation of the CNRS is currently problematic.

### *Regional dynamics*

The evolution of the Burundi peace process is tied to the interwoven character of the broader conflicts in Great Lakes. Developments in Rwanda have been encouraging in recent years, culminating in general elections in the second half of 2003. However, despite the repatriation of thousands of CNDD-FDD fighters from eastern Democratic of Congo by the United Nations Mission in the DRC (MONUC) beginning in 2003, the direction of the DRC's own peace process will have a bearing on the peace process in Burundi. Eastern DRC remains volatile and beyond the territorial sovereignty of the central government in Kinshasa and therefore a potential rear-base for disaffected Burundian rebel groups. Similarly, developments in Rwanda could have a demonstrative effect on the peace process in Burundi, as stakes heighten towards the end of the transition. Tanzania, host to circa 800,000 Burundian refugees has and continues to play a strategic role in the Burundian peace process. Camp restrictions in north-western Tanzania are compelling reluctant return.[53] The potential for forcible repatriation, although unlikely, cannot be ruled out. A massive outflow of refugees into Burundi from Tanzania may cause a degree of disruption the country can ill-afford at this critical juncture in the peace process.

## STRUCTURAL CAUSES OF THE BURUNDI CONFLICT

As noted earlier, while the discourse on the conflict is often dominated by 'ethnic' arguments, most informed analysts agree that the roots of the conflict lie in unequal distribution of economic resources and political power, which in effect results in relative deprivation and differential access to life chances and choices, including education, subsistence, security, leadership and participation.[54] This state of affairs is sustained by (often-illegitimate) repressive and discriminatory regimes, which use political favours and rewards, mobilize and manipulate cultural and ethnic differences or other identity factors to galvanize local support

and consolidate their hold on power. In order to understand the nature of Burundian society, it is necessary to consider the situation as it was before colonialism.

Historically, Burundian society was dominated by the patron-client relationship based on property ownership and service – usually access to land and livestock keeping. Society was hierarchical, with the king holding absolute power over the country and its resources. Positions in the mid- and lower-levels of the system were occupied by nominated members of certain clans, both Hutu and Tutsi, though the greater proportion was Tutsi.[55] These leaders had almost unlimited powers over the territories they controlled. The patron-client relationship was formalized through the institution of ububagire or ubugererwa, a contractual system where a person would work for a more fortunate one, usually a Tutsi. The client (often referred to as Umuhutu) would be in need of land, livestock or protection, which the patron (often termed Umututsi) would offer in return for services and offerings in kind. Fairness of exchange was not always guaranteed, and instances of exploitation due to the effects of war or scarcity led to cases where the client was unfairly compensated or totally reduced to 'serfdom'. The parcel of land that the Umuhutu was living on would never become his property or the property of his descendant, therefore he and his children always faced the prospect of expulsion. These dependency relations were "utilitarian and sentimental, jural and moral, and offered opportunities for improving one's life,"[56] and categories were not completely rigid: an ethnic Hutu could rise economically and socially to become a 'Tutsi', in a process called 'kuhutura'. A Ganwa, who was a person of royal heritage,[57] could also be demoted to a Tutsi.[58] Nonetheless, the issue of ethnic mobility and degree of social cohesion between the two groups has been questioned, with some scholars arguing that ethnic mobility was the exception rather than the rule since access to land and cattle, political and economic power and attendant social influence hinged around the patronage of the royal court, and was mediated through kinship relations and a political system based on the clan.[59] These scholars argue that the system, which was designed to entrench the economic status quo, allowed social mobility only at the lineage level, over a long time period, such that there was minimal opportunity for an individual to change his/her ethnicity. Therefore, many have argued that pre-colonial relations – including land tenure patterns – bred resentment and crystallized ethnic polarization. The Arusha Agreements acknowledge that, "… certain traditional practices such as … Ubugererwa… and others, depending on the circumstances, constitute sources of injustice and of frustration both among the Bahutu and the Batutsi and among the Batwa."[60]

## *Colonial legacy*

Other scholars have argued that pre-colonial Hutu-Tutsi relations were harmonious, with both communities peacefully coexisting and sharing the same culture, language and social organization. The conflict is then

portrayed as primarily a legacy of colonial divide-and-rule policies.[61] Whatever the true nature of pre-independence interethnic relations, it is true that Hutu and Tutsi were not involved in violent conflict with each other prior to the wars witnessed since the second half of the 20th century. Colonial policies did poison ethnic relations, and formalized the bifurcated nature of society by incorporating the minority Tutsi within the state machinery, while discriminating against and disenfranchising the Hutu in terms of political, economic and educational participation.

Divide and rule policies promoted primordial arguments regarding physical, intellectual, occupational differences and capabilities of the two groups.[62] The colonial government also undermined the monarchical order and supremacy of the Mwami (king) by not only shifting the locus of patronage from the royal court to the state administration, but also by fanning factional power struggles and fragmentation between rival princely elements. The social and political roles that once gave meaning and cohesion to membership in the community vanished, and the use of the terms 'Hutu' and 'Tutsi' with ethnic connotations became more rigid. Reinforced by portrayals of the Tutsi as "natural rulers" and the Hutu as "indigenous people disposed to opposition and disobedience",[63] ethnicity became a tool to determine liability to forced labour or admission to school. This augmented the dominant position of the Tutsi and Ganwa in administrative and other employment opportunities. In 1929, for example, a fifth of all chiefs were Hutu, while over 50% were Ganwa and the rest Tutsi. By 1945, the number of Hutu chiefs had been reduced to zero, while the proportion of Tutsi had increased to 29%, and 71% were Ganwa.[64]

The colonial powers also disrupted the self-sustaining economy, which was replaced with a market-based colonial system designed to extract maximum profit from the territory. Food crops and cattle keeping were replaced with export crops such as coffee, tea and cotton meant for the external market. Food production declined, and domestic development stalled as colonial merchants pursued their economic agenda while local elites sought to maximize their benefits from the control of the coffee and tea export trade. The impact of the extractive policy was to demarcate the population into the rulers and the ruled, the haves and have-nots, hence a class system where a 'predatory state' allowed those in power to control the allocation of natural, social, economic and political resources. [65] For instance, differential access to education in favour of Tutsi from Bururi and physical annihilation of educated Hutu has restricted and perpetuated access to the state and prospects for development to a small elite from a small region. In 2001, for example, just one commune in Bururi Province accounted for 15% of the students at the University of Burundi.[66] Agriculture, which forms the mainstay of 90% of the population, is under funded and neglected compared to the military and state-controlled industrial firms, some of which control the processing and marketing of coffee and other export crops. These firms not only benefit from the pricing of agricultural produce and privileged

access to foreign exchange, but also function as a political tool to retain loyalty and buy off opposition through appointments. Competition for control of state power and related economic rewards, in addition to pressure for reforms, provoke the ruling elite to protect their position through repression and violence.

In spite of progress made since the signing of the Arusha Agreement, the Burundian commercial, political, and military elite class is still dominated by members of the Tutsi community. For instance, during negotiations for balance of power with Hutu-dominated CNDD and other rebel groups in July 2003, the government was willing to offer only deputy command posts to Hutu, arguing that most were untrained and lacked the requisite academic qualifications. It insisted that integration should continue slowly with a view to achieving a 50:50 level between Hutu and Tutsi in four years, arguing that it could not relinquish many positions as reorganization had already taken place and that, for reasons of administrative stability, reshuffling all sectors would be delicate.[67] Generally, the Hutu majority, being less educated, have fewer economic alternatives other than subsistence farming and providing manual labour.[68] There has thus been widespread disaffection among the Hutu who demanded greater representation and participation in the social, economic and political management of the country.

While the beneficiaries of this system are generally characterized as 'Tutsi', this grossly simplifies the reality, as many Tutsi, particularly those in rural areas or in IDP camps, are just as poor as their Hutu counterparts. Social conflict in the country is characterized by splits along regional lines, as well as class lines. There is a long-standing rivalry between Muramviya Province, seat of the Kingdom, and Bururi Province, which is the home of most of the post-independence leaders. Indeed, reports suggest that the armed forces of the CNDD rebel movement, which has now joined the government, include Tutsi women within their ranks.[69]

As noted in the previous section, control of the state gives the elites in power the prerogative to decide who gets what where and when, which translates into a win-lose situation in Burundi where the small size of the private sector means the state remains more or less the sole provider of employment and agent of economic redistribution. Through legislative and administrative control, elites have been able to extract surplus generated by the country's agriculture-based economy. This is particularly true of the coffee sector, for example the Office des Cultures Industrielles du Burundi (OCIBU) regulates the coffee sector and maintains a monopoly over coffee export and marketing. The OCIBU consistently fixes low producer prices paid to coffee farmers, with the profits going to state coffers and the networks of patronage associated with state enterprises. This is a form of structural violence – backed up by state sanction and the implicit threat of 'legitimate' violence – which is associated with productive, geographically dispersed resources. As noted by Billon, such structural violence involves the control of labour

and trade, and gives rise to grievances and everyday forms of low-key resistance, such as the 'weapons of the weak' identified by Scott. It has also, indirectly, contributed to much more violent forms of resistance.[70]

Thus, elite competition for the control of the state by both groups has been the basis for creating grievances and mobilizing people for conflict behaviour. Both groups resort to aggressive actions, attitudes and beliefs that not only justify the use of violence as the sole means of retaining or achieving political and economic goals, but also buttress the conviction that the struggle is one of life and death, which necessitates violent behaviour against 'the enemy'. For the Hutu, Tutsi rule is nothing short of minority rule, which to them is unacceptable given the option of majoritarian democracy. Rebellion by the excluded majority often targets civilian members of the Tutsi community, and is countered by the Tutsi-dominated army's excessive use of force and reprisals against members of the Hutu community, whether they have participated in the killings or not. This trend, repeated over and over again over the years, has left a legacy of collective memory of atrocities and 'persecution' of one group by the other that remains un-addressed to date, due to prevalent impunity.[71]

The formation of mutual and reciprocal enemy images and recourse to memory of the 1972 genocidal acts against Hutu and the mass murder of Tutsi (for example, in 1993) inform ethnic ideology and are the basis for justification of violence by both communities. Numerous assassinations and coups d'etat also contribute to a perception that political processes are insufficient to bring stability and security. Both groups are convinced that unless the other's crimes are checked and/or retaliated, planned extermination will inevitably follow. In pursuit of this, both groups invent or suppress information on political events, and tinge memory of historical events with ethnic stereotypes.[72] Many policy makers, journalists and politicians continue to perceive and interpret the conflict through ethnic lenses. However, the 'ethnic' analysis is simplistic and misleading, as it fails to recognize the underlying political, social and economic causes.[73]

## *Population displacement within Burundi and across borders*

Insecurity-induced displacement has been part of Burundians' life for years, and for many, the threat or sporadic occurrence of violence has become a 'normal' occurrence. It is estimated that at least one in every seven Burundians has been displaced, some internally, others across the border. People run away from their homes to avoid being caught in the cross fire when fighting erupts between government troops and rebels, in anticipation of outbreak of violence or as a result of it. Retaliation by the army may be followed by reprisals against Tutsi civilians. This compels many Tutsi to flee the villages to regions near army barracks, fearing

attack from their Hutu neighbours. While Bururi and Makamba Provinces saw the heaviest fighting, people in every province have been displaced.

Unlike refugees, who come under the mandate of UNHCR, there is no single independent institution mandated to address the protection and assistance needs of IDPs. States are responsible for the welfare of their citizens, including the displaced. Humanitarian agencies in Burundi are approaching the IDPs issue on a sectoral or geographical level, and none has been able to assure the protection that IDPs are granted their rights under international law. In July 2002, there were 443,750 IDPs living in 230 displacement 'sites' across the country. [74] Since then, many have returned to their home areas due to the improved security situation: as of April 2004, there were 140,000 IDPs living in 182 camps.[75] Most of the IDPs who returned to their former homes originate from the south of the country. A further 40,000–60,000 persons are displaced monthly for short periods of two to four weeks (currently, these are mainly in Kabezi Commune in Bujumbura Rurale).

Displacement patterns in the country have assumed ethnic patterns, with displaced Tutsi camping outside major urban centres and close to military barracks, while the Hutu moved to army-controlled sites in rural areas.[76] According to NGOs many of the Tutsi settlements were better provided for in terms of social services than the regroupment camps where many Hutu lived in conditions are far below acceptable standards.[77] Even in cases of ethnically-mixed settlements, the practice of segregation both in treatment and access to government resettlement priorities tended to favour Tutsi IDPs.[78] This bred resentment and frustration among the Hutu IDPs, many of whom are said to have translated their anger into political support for the many rebel groups.

Population displacement, particularly the regroupment policy, was a very sensitive political issue as some Hutu perceived it as a strategy to emasculate their community. However, the government justified it as a necessary means to end rebellion. Ethnic sentiments are often manipulated by individuals for political support or to achieve narrow sectarian interests, while 'war merchants' create violence and displacement for the economic rewards it brings them through banditry, confiscation of land and property, and looting of relief aid. Displacement in Burundi is thus a function of many factors, and in some instances is the sole objective, rather than consequence, of conflict.[79]

## *Patterns of displacement*

### *Short-term displacement*

The conflict in Burundi has no frontiers, and civilians are continuously forced to leave their homes on short notice when fighting erupts, to return only when the situation has stabilized. An average of 100,000 people was displaced this way every month, and displacement continues in areas where the FNL launch attacks (currently Bujumbura Rurale).

The duration of such displacement varies from a few nights in the bush to months.

Short-term displacement has come to be perceived as 'normal', and involves temporary movement of people to safer areas, from where some are able to return to their fields during the day to cultivate.[80] In some cases, affected families have access to their land and property, but are unable to live there continuously due to sporadic insecurity. Unguarded farms, homes and property remain exposed to theft or vandalism by rebels, government soldiers or criminals, especially at harvest time. While the average number of the monthly displaced has reduced significantly in recent times, returning IDPs find their property destroyed or looted. This makes life particularly difficult for widows and separated or divorced women, who have limited access to land.

### *Long-term displacement*

The long-term displaced include the 'old caseload' of IDPs dating back to 1993 when up to 700,000 people were displaced as a result of the widespread violence that followed the failed coup attempt in October. Many of these are in Bubanza and Bururi provinces. The other provinces with IDPs since 1995/1998 are Bujumbura Marie, Bujumbura Rurale, Cankuzo, Gitega and Karuzi. Some IDPs have decided to resettle permanently in some areas where regroupment sites have been dismantled. They eschew being referred to as displaced persons and are reluctant to receive assistance.

Many Tutsi IDPs may be unwilling to return to their rural homes without security guarantees. Indeed, many camps in which Tutsi form the majority, are well-serviced with water, permanent housing and sanitation,[81] meaning that living conditions are actually better than those in their original homes on the hills.[82] Many still cultivate farms upcountry by day and return to the camps in the evening (and are hence known as "night commuters"). The government estimates that about 30,000 IDPs, many (though not all) of whom will be in this category, will not want to return to their original 'home' areas.[83] In response to this pattern, some sections of the Hutu community argue that such IDPs essentially enjoy two plots – they maintain their original farms and also cultivate plots in the camps. Some argue that they should be required to choose one or the other. This is a potential source of disputes. Another issue is that according to reports, some camps for long-term IDPs (especially those located near towns) have been situated on land belonging to others, including refugees.[84] This portends land disputes in future, probably with a distinct 'ethnic' factor.

Because of the apparent unwillingness of many Tutsi IDPs to return to their homes, large parts of the countryside are essentially populated only by Hutu. Many Tutsi indeed feel secure only in certain urban zones. Burundi is therefore becoming divided into ethnically homogenous enclaves, with large areas 'ethnically cleansed', though this may not always be as a result of systematic policies.[85]

## *Experiences of displacement*

Jacques is a Hutu from Bubanza, and has been displaced since 1993. He has six children and a wife, and now lives in a camp for the displaced near Bujumbura. He used to cultivate rice for a parastatals company, and hence this land was not his – it was state land. He had a small plot to grow beans which was his own, but some years ago, he returned to see the situation, and saw that this plot was cultivated by someone he didn't know – probably another IDP. His house, which was not permanent, had collapsed and "returned to the earth".

His father was from Gitega and he has a claim to land there, but his uncle took this land six months after his father died, when Jacques was young. He has no confidence in getting access to this land, because: "If you go to see the chief de zone – they tell you come tomorrow! Tomorrow! You will pass months without an answer."

Instead, he will just stay and work on other people's lands around the camp, for about US $0.60 per day. He lives in a house built by an NGO, and is saving up to buy it. But because he has to pay to put his children through school, he has managed to contribute only about $9 towards the total –he needs to contribute more than $200 to buy the house.

## *Regroupment*

The proliferation of rebel movements in the second half of the 1990s intensified the civil war and population displacement countrywide. The army has always viewed the Hutu civilian population with suspicion, as providing the rebels with supplies, shelter and information. To control this, in 1996 the Government of Burundi embarked on a policy of forcing the civilian population, mostly Hutu, to leave their homes and relocate to camps guarded by armed forces. The policy was started in Karuzi, Kayanza and Muramvya provinces and spread to other parts of the country, ostensibly to protect the civilian population from rebel attacks, allow the military to pursue the rebels and regain control of the territory. At the same time, through a process of "villagisation," Tutsi civilians were also gathered in sites located close to urban centres and protected by military garrisons. The people were given little time to collect their property in preparation to move into the designated locations, yet the government provided no assistance to assure minimum living standards in the regroupment camps. Many camps lacked basic social services and provisions and the regrouped population could not access their farms.

The result was a steep decline in agricultural production and deterioration of living conditions for the regrouped. Anyone who remained or ventured into the villages to collect food or for any other purpose was considered a legitimate military target. The humanitarian community provided only basic relief supplies, lest they be seen to endorse or sustain the policy. Rising international criticism led to the closure of the camps in 1997, but the government continued to pursue

targeted population relocation, especially in the west of the country. In 1999, the policy was resumed in 53 sites following rising insecurity in southern Burundi and continuous attacks by rebels in and around Bujumbura, displacing more than half the population. Persistent condemnation of the camps by the international community, coupled with demands by some delegations to the Arusha Peace Process that it be discontinued as a pre-condition to continued negotiations, led to the suspension of regroupment as a military strategy in mid-2000. However, the military discreetly continued the forcible relocation and regroupment of sections of the civilian population (e.g. in Bujumbura Rurale and Ruyigi) well into 2002.[86] Today, although the camps have been dismantled, some former residents remain living in the vicinity as IDPs, because they are unwilling or unable to return home.[87]

The policy is not currently practiced, hence the numbers of those in regroupment camps are fairly stable, but these communities remain located far from their homes, making it difficult to sustain or diversify their livelihoods. Continued fighting between government forces/CNDD-FDD and the FNL in Bujumbura Rurale communes of Kanyosha, Nyabiraba, Kabezi and Mutaha in March and April 2004 revived talk of renewing the policy.[88] Due to uncertainty with the security situation, some IDPs have decided to resettle permanently in some areas where regroupment sites were dismantled.

### *Dispersed IDPs*

The term 'dispersed' was born in the political spectrum before the policy of regroupment. Leonard Nyangoma was one of the first politicians to use it, at the end of 1993, in contrast to the term 'IDPs', who were in camps and were often Tutsi. Dispersed IDPS include returnees and people, mostly of Hutu origin, who have left disbanded regroupment camps but cannot return to their homes because they have been destroyed and their property looted. There are also some displaced people of all backgrounds who live with friends, relatives, or rent rooms in urban areas.[89] They are essentially 'invisible' to aid agencies and are at risk of being factored out of their analysis.

The Twa or pygmies have also been affected. They constitute less than one per cent of the population and have traditionally been insignificant actors in socio-economic and political life in Burundi. As a hunter-gatherer community, they were regarded as being under the jurisdiction of dominant groups claiming land rights over the same area, thus their land rights were not recognized in customary or statutary law. While 'serfdom', which affected all of Burundi's landless irrespective of ethnicity, was outlawed in 1976 by President Bagaza, the practice continues and most of the landless Twa have not seen any benefits. With the prevailing policy of allocating 'free' land to returning refugees and IDPs, it is envisaged that some Twa found to be genuine war victims will be given land like other war-affected persons. This, however, excludes some other Twa who have not been so displaced but are nevertheless landless.[90]

The livelihood choices of the Twa have been increasingly limited by the capture of natural resources by subsistence farmers or entrepreneurs, or by the state; as forests are expropriated for pasture or destroyed for fuel wood. Their coping mechanisms, including the sale of labour and crafts, are inadequate to meet even their basic needs given the general impoverishment of the local population. Many of them are resorting to agriculture, but the move is hampered by chronic landlessness. Apart from land bought for a few of the Twa by church groups and aid agencies, they do not own any land. [91] They also have limited access to education and are generally marginalized in socio-economic and political life. As one interviewee noted, the Twa suffer the brunt of Hutu-Tutsi hostilities as they are attacked by either or both sides.[93]

## *Effects of displacement*

### *Reduced access to land*

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.[93] As in most African contexts where land ownership is based on patriarchal inheritance systems, 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.[94] Women in camps have reduced access to land compared to the access they enjoyed before displacement. Alternatives to cultivation for a largely illiterate population are severely limited. Those who seek non-farm opportunities are often separated from their partners for long periods, which also lead to increased risk of HIV-infection as they seek new partners or are forced into the commercial sex trade.

### *Cycles of violence*

Given the poor living conditions in camps, poverty, idleness and high illiteracy levels, many youths are easily lured into joining armed groups or criminal gangs, often under promises of jobs, monetary compensation for their loyalty, or land. The prospect of acquiring land as a prize for supporting armed groups has stimulated some parents, especially those fraudulently dispossessed, to send their sons to the bush to fight the government.[95] For others, joining the army or any militia is the only source of income open to them, given their illiteracy and lack of skills or life goals.

When conflict finally ends, several thousand armed opposition fighters, including 14,000 child soldiers, are expected to be integrated into society.[96] A proportion of those troops currently in the army will also be demobilized to make room for rebel troops to be integrated into the national army. Given the slow pace of this process, and idleness among those waiting to be demobilized, there has reportedly been a dramatic

rise in violent armed crime due to the proliferation of small arms. Criminal gangs formed by ex-rebels, deserters from political groups, members of armed forces or Peace Guards, or armed civilians have looted, raped and brutalized people, complicating the return process. It is feared that lack of legitimate livelihood alternatives for demobilized troops in a context of land scarcity, insecurity, poverty and weak transitional institutions is a potential source of grievance, which could lead to sporadic or organized violence.

## REFUGEE REPATRIATION AND IDP RESETTLEMENT

The signing of the peace agreement (the Pretoria Protocol) between the Transitional Government of Burundi and the CNDD-FDD in October 2003 was seen to be the defining moment for ending armed hostilities, hence signaling a return to peace and the long-awaited repatriation of refugees and IDPs to their country or homes. Some remain skeptical about the durability and sustainability of peace, given the on-going fighting between the government and one of the rebel groups, FNL, which until recently continued to perpetuate insecurity and displacement around the capital. This not only hinders the return of IDPs in the affected province of Bujumbura Rurale, but also restricts the willingness of refugees outside the country from voluntarily returning to an insecure environment. Military and security arrangements called for by the 2000 Arusha Agreement are still unresolved, with many of the signatories to the Agreement and subsequent ceasefire agreements between parties complaining of marginalization, since only the agreement between the government and CNDD-FDD is being implemented.[97] Such discontent breeds uncertainty, especially when perceived alongside FDD's own disaffection with the pace of the government's implementation of the agreement, which culminated in its withdrawal from the unity government in May 2004, citing inadequate representation.[98] While FDD leader Hussein Rajabu asserts that the decision does not mean a return to war, it demonstrates the delicate political balance in Burundi.

More "local" concerns are also significant, especially due to simmering land disputes and destruction of property. The issues in recovery of property rights for refugees and the displaced differ from case to case. For example, a significant number of refugees were landless before their departure from Burundi. Research in nine provinces by Ligue ITEKA, funded by UNHCR, indicates that about 17% of returnees were in this category.[99] It is particularly important to note that there are substantial differences between those who have been living in exile or have been displaced for a relatively short period – since 1993 or more recently – and those who left their hill in 1972, for example.

With regard to the 1993 caseload, regaining access to their land may not be difficult. This is why most experts believe that some 90% of land disputes are considered to be small, local, intra-family disputes which can be resolved without significant external (e.g. central government)

intervention.[100] Nevertheless even at this level, non-state intervention is necessary to prevent their exploitation by local politicians out to fuel ethnic conflict and hatred. Since 2001, some NGOs have initiated, in different parts of the country, mobile legal clinics in order to manage these intra-family conflicts.[101]

People who have been away from their lands for longer will have greater difficulty in gaining access to land. This applies especially to those who fled the country in 1972.[102] This implies a regional differentiation in the nature and severity of problems, as many 1972 refugees originate from the south of the country.[103] The situation of the long term refugees is particularly delicate because their land, especially that located in the fertile Imbo plains, was confiscated "virtually systematically" by the government.[104] The expropriated land is now in the hands of other owners, who have a legitimate claim to it since they were issued with title deeds. In some cases, land may have changed hands several times. Other land was taken over by relatives, friends, neighbours or may have been resold. In some cases, relatives have subdivided or sold the land, and are now discouraging refugees from returning, through sending messages to the camps that security remains poor.[105]

A 1986 land law 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 can reallocate the land.[106] A consequence of this is that many of the 1972 refugees will be unable to reclaim their lands (unless this provision is altered, and the new policy applied retroactively, which would be problematic), or the government finds a suitable alternative, such as compensation or alternative land elsewhere. Many of the refugees do not possess any documented proof of ownership, and with the total number of *sinistres* (returnees, regroupes, internally displaced and dispersed) representing about one sixth of the total population, the situation is fragile as people look to the government to determine policy and strategies for managing tension.[107]

The government of Tanzania estimates there to be 200,000 refugees who fled Burundi in 1972 living in villages and a further 270,000 dispersed in towns, although the figures are difficult to estimate.[108] It is not guaranteed that all refugees will return, but aid agencies are planning on the assumption that a proportion will. Concerns around the availability of land limit UNHCR's willingness to facilitate their return at present, although political pressure has forced UNHCR to open four transit centres handling thousands of repartratees per week. Expectations are that the government, which has appointed a National Commission to look at the issue of land redistribution, will present a plan that will pave the way for the reintegration of 1972 returnees.[109] Another category of refugees, like IDPs, may have sold their land and property at throw-away prices in times of distress, or exchanged them for plots in areas they considered more secure or 'friendly'.[110] Attempts to regain access to these lands, based on a premise that they were sold under 'threat', may result in a heightening of local tensions, though the capacity of local

customary and government authorities should not be underestimated.

Another reason for non-return of long term displaced is the fear that they will be accused by those who remained behind of having participated in massacres against civilians, or they will identify those who did, and risk reprisals. It is feared that a scenario similar to what happened in Rwanda after the return of refugees in 1997 could occur, where 'land sharing' between Hutu and Tutsi was occasionally marred by false accusations of genocide complicity.

Moreover, in places such as Kayogoro in Makamba province, returning IDPs feel they are at risk due to proximity to areas where former rebels have gathered to await the start of the disarmament and demobilization, while the presence of landmines is also impeding the return.[111] In other cases, as in Gitega, returning IDPs find their houses and property destroyed, hence great difficulty reconstructing their homes as they do not have building materials. Some return to find their land occupied, and efforts to reclaim it result in conflict or threats. The legal processes and political repercussions of land-related conflicts touch on the massacres of 1972 and 1988, and therefore represent major political challenges. Research by the UN found that 58% of IDPs residing in camps express a willingness to return, sooner or later, to their places of origin. However, this percentage varied considerably from one province to another.[112]

## HISTORICAL PRECEDENTS: GOVERNMENT MANAGEMENT OF REFUGEE AND IDP ISSUES SINCE 1972

This is not the first time that Burundi has been faced by these challenges. Law no 1/21 of 30th June 1977 addressed the situation surrounding the 1972 refugees and their property. The law, in article 1, stated that occupation and use of properties left vacant by the refugees could not be opposed by the administration. Rather, through the workings of a Commission headed by the Minister for Internal Affairs (the "Mandi Commission"), the land would be shared by the current occupant and the refugee claimant. This essentially legalized the occupation of land following the departure of the refugees; and very few took up the offer.[113]

Under President Buyoya, a National Commission was created in January 1991to oversee the return and integration of refugees. From the outset, the Commission did not consider facilitating the return of land and property to the re free' land.[114] This may not always be popular or feasible, given customary preferences for 'ancestral' lands.

Under President Ndadaye, a new Commission was formed in July 1993. This commission made the return of property to returnees a priority. At around the same time, there was a massive spontaneous return of refugees, particularly to the south of the country. The majority returned directly to their original farms, without consulting the authorities. In some cases, the returnees intimidated those who had taken control of

their properties in order to make them leave. As documented above, demonstrations by those forcibly evicted from land belonging to refugees, especially in Rumonge and Nyanza-Lac, were a contributing factor to unrest amongst some members of the Tutsi establishment, and thus represent one of the factors in the assassination of the President. After his death, the refugees' lands were again occupied.[115]

Given these dynamics inside Burundi, there are a number of push and pull factors determining the pace and pattern of refugee and IDPs' returns to their homes. Research by Burundian NGOs suggests that returnees' major expectations are equal social services, recovery of property, employment and land, as well as tolerance and acceptance from the community.[116]

## *Incentives and disincentives for return: The pull factors*

### *Increased security and political stability*

One of the major motivating factors in the repatriation and return process is the restoration of relative security and political stability in most of the country following ceasefire and peace agreements reached between the Government of Burundi and most rebel groups in the last four years. Fighting has stopped in all but one province (Bujumbura Rurale). Burundians' optimism for peace after years of distress and conflict-induced underdevelopment is high, and has reinforced displaced persons' wish to return to their home areas from refugee and IDPs camps to start a new life. According to a survey of camps in Gitega, Kayanza, Kirundo, Muramvya and Ngozi, IDP numbers have dropped by half, from 284,000 in 2002 to 140,000 in April 2004.[117] The international community's continuing commitment to consolidating peace and offering 'peace dividends' is also a significant element of hope.

### *Recovery of land and property*

The internally displaced are voluntarily going home in large numbers also due to a prevailing sense of competition to regain access to land, which will become increasingly scarce as more and more refugees return from Tanzania and other neighbouring countries. The rush back home is therefore to acquire remaining land before it is all taken up by returning refugees. There is a regional differentiation in the perceptions of the IDPs, as many from the south and east of the country have returned to their homes before the refugees return. In the central and northern areas, the issue of 'sharing' land with returnees is perceived as less of a problem.[118] While 75% of households questioned said they owned land in their places of origin, this does not guarantee that gaining access to this land is straightforward.

During a survey in 1999, 28.6% of refugee respondents indicated that land shortage was a "crucial" obstacle to return, while 50.9% felt that it was "not crucial but important".[119] However, despite the importance of

land access, the overwhelming majority rated security issues as the main obstacle; with 96.4% stating that a "Tutsi-dominated army" was a crucial obstacle.

## Push factors

These are the factors that make IDPs and refugees feel that returning home offers better opportunities than those found in their current locations.

### Deteriorating living conditions in IDP camps in Burundi

The living conditions in displacement camps and 'villages' has progressively got worse since the signing of the Arusha Agreement. In the past, humanitarian assistance that was provided almost entirely by international actors and local NGOs has been sporadically compromised due to funding shortages, and this may continue as donor priorities shift from relief to programmes focusing on the repatriation of the refugees. In some hills where insecurity persists, difficulty in accessing camps due to terrain and rebel attacks has worsened the situation. As such, food shortages and disease have forced many people to relocate from the camps, sometimes to conditions of insecurity and increasing banditry.

In addition to poor conditions in camps, IDPs complain of marginalization in the whole return and rehabilitation exercise, because unlike returning refugees who benefit from an aid package constituting of food and shelter materials from UNHCR, returning IDPs are not receiving any assistance to facilitate their return, in spite of repeated encouragement by government officials and communal administrators to go back.

### Government policies in asylum states

While the peace agreement and ensuing stability have precipitated spontaneous and facilitated repatriation to Burundi,[120] some IDPs and refugees in Tanzania are not quite so ready to go home yet, adopting a 'wait-and-see' stance given the prevailing uncertain security and political situation in Burundi. In particular, they are concerned about the unstable security situation in parts of the country, as well as unresolved land disputes, the settlement of which is perceived as fundamental to sustainable peace. However, the United Nations refugee agency (UNHCR) has opened four entry points to facilitate the return of an estimated 150,000 out of 300,000 in a fast-tracked repatriation drive that has seen to the return of 52,000 refugees since January 2004.[121] Since the opening of the second entry point, the agency repatriates about 5,000 refugees per week.[122]

Observers and human rights NGOs have noted that refugee repatriation from Tanzania may not be as 'voluntary' as authorities and politicians would have us believe. Human Rights Watch and Refugees International have attributed large numbers of returns to the "difficult

conditions of life" and "the dire situation" in the Tanzanian camps as the main motivation behind large scale repatriation. The movement has been precipitated by the mounting intolerance to their presence, manifest in stringent restrictions on their movement and deteriorating security in the camps.[123] Restriction of movement has effectively inhibited refugees from employment and tilling arable land outside the camp, which constituted their coping mechanisms in the face of reduced food rations and non-distribution of non-food items.[124] Markets in some of the camps have been destroyed by the authorities, (such as Lukole market, in late 2003).[125] Moreover, there is increased banditry and other forms of attacks on refugees by local Tanzanians due to escalating xenophobia, which is not helped by speeches made by some politicians and administrators, who have reportedly threatened that the Burundians will experience the same treatment as Rwandan refugees, who were forcibly repatriated in 1996 and 1997.[126] Food shortages in Tanzania have further impaired the relationship between the refugees and local communities. However, there are significant positive symbiotic relationships between refugees and local people, particularly in terms of trade and farm labour, though the latter has been reduced due to restrictions on movement.

Those going back on their own face serious logistical problems, particularly transport from the transit camps in Burundi to their homes in the hills. Lack of any reception structures to allow safe and stable reintegration after repatriation aggravates and intensifies their difficulties. Many of them do not have an address, reference or land/property in Burundi. Such cases are allowed to stay at least one week at the transit centres. As noted earlier, others may not be willing to return to their place of origin as they fear facing justice for association with genocidal acts, or reprisals from perpetrators whom they may identify.

## *Obstacles to repatriation*

### *Alternative settlement*

Given the events of 1993 when the government response to massive refugee returns was one of the factors that lead to the assassination of the President and widespread violence, refugees interviewed in Kenya said they have more or less settled in their current location and are not in a hurry to go home. Many of those who go often travel alone, leaving their wives and children in Nairobi, and return after "checking how things are." Some of the IDPs inside Burundi also sold their land and permanently relocated to regions they considered less prone to insecurity. Such categories of people have no desire to go back, either because they have no attachment to their former homes in terms of land and property, trauma from memory of the war experience, or fear.

As noted in the previous section, preparations for the elections planned for October 2004 are far behind schedule, and fears that returnees may be caught up in heated electioneering and political schemes even before they can effectively reintegrate is raising worries of

renewed violence. Returning refugees also raised concerns about the feasibility of peaceful elections, since the same politicians from 1993 are still in parliament and the senate having the same debates. Many refugees have mixed feelings about returning to Burundi, because the current political scene is reminiscent of the 1993 pre-election period.

### *Experiences of displacement*

"We don't know if the elections will take place, or how the campaigns will be conducted. We can't be sure who will take over from Ndayizeye, or what he will do once he takes power. It is too early to go back. Even armed militias who usually terrorize people were seen in Cibitoke in April 2004. We can't be sure and say now there is peace in Burundi. People are still very afraid, but hopeful. I am not sure whether to go back now, but I also feel many things will pass me by if I don't. I want to vote."[127]

### *Ongoing insecurity*

While fighting has stopped in most of the country, intensified fighting between CNDD-FDD and FNL also renders some regions uninhabitable. Incidences of criminal activity including banditry and rape by bands of delinquents, armed political groups and militia are on the rise, which is attributed to the easy availability of small arms among the local population, and has been exacerbated over time by government policies of self-defence, where arms are distributed directly to the population.[128] Deserters from armed political groups and ex-rebels have neither been disarmed nor absorbed into the regular army, nor have they been provided with alternative means of livelihood. Other criminal gangs are formed by members of the armed forces or Peace Guards or by armed civilians, sometimes with the complicity of the security forces. When surveyed in April 2004, only an average of 18% of IDP households felt that security conditions were conducive for return.[129]

### *Experiences of displacement*

Marie originates from a rural area in Muramvya Province. In 1993 she was attacked and suffered multiple machete wounds to her head. She fled and has not returned there because of the danger. She lives in a displacement camp next to Bujumbura city, but doesn't have a house as they had been allocated prior to her arrival. She asks for hospitality and sleeps in a different place every night. She pays workers to farm her land in Muramvya, and they deliver the produce regularly. When she cannot get enough from her workers she works as a casual farm labourer to get some money.

Some years ago, her cousin went back to assess the situation in Muramvya Province. Local people said there was peace and he was welcomed with sodas and food; but was murdered the same night.

Before she fled, she employed a Twa man as head of her farm work-

ers. After she left, he occupied the land claiming that he was "like her son" after working for her for so long. However the chief de zone forced him to leave. Though she doesn't want to return there, she won't sell the land because her children will use it in future, or she can continue to pay workers to work the land for her.[130]

### *Mistrust of the establishment*

Some Burundians also feel that Burundian history suggests that democratic politics portends danger as it threatens the position and influence of the current power-holders, who are likely to stage or sponsor a coup d'etat. To others, Hutu personalities with high-ranking position in government and the army are said to be ineffective, with no real power or influence in decision-making, or purely selfish interests.[131]

### *Unresolved land disputes in the context of refugee returns*

As noted elsewhere, land that has been left for many years has eventually fallen into the hands of relatives, neighbours, other displaced persons, or been expropriated by the government and reallocated to other people. Some displaced persons return to find that their relatives who remained behind have sub-divided their portion either among themselves, ceded it to their sons, or sold it off. Those involved in disputes may seek to have them resolved by traditional dispute resolution mechanisms (Bashingantahe) or though the judicial process. Research in nine provinces by Ligue ITEKA indicates that of all returnees who have sought outside assistance in disputes, over half have approached the Bashingantahe. Almost as many (48%) have approached the local administration, while 28% had applied to the *Tribunaux de Residence* (the local court system).[132] These figures suggest that people are approaching more than one institution simultaneously; or that they have been referred from one institution to another. This is because a case cannot be made to the *Tribunaux de Residence* without the plaintiff first approaching the Bashingantahe.[133] The strategy of approaching more than one system (often known as 'forum shopping') can over time result in the undermining of some systems. The classic case involves a situation where local customary approaches are weakened because when their judgements are unfavourable to one party, that person will then go to a formal institution to try to get a different outcome.

Instances of corruption have been reported in both processes. In particular, the formal state justice system requires that plaintiffs have financial resources to see a case to the end, and apart from the lowest level (the *Tribunaux de Residence*) it is an almost exclusively Tutsi institution. According to some reports, it lacks local credibility. From this perspective then, while aiming for a long-term rejuvenation of all state organs, it makes sense for land-related disputes to be primarily addressed at the local level, particularly through the Bashingantahe. However, some analysts question the role that the Bashingantahe could

play in future, especially because many local people blame some Bashingantahe for failing to prevent the 1993/4 mass killings. Given these dynamics, it appears that attempts to invigorate the institution should include substantial local participation.

## Access to justice

> *Access to the justice system is closely linked to class and money. With peace, there has been an increase in the value of land, and some people are willing to pay money for judges and lawyers to travel, to be fed when they do their local investigations… while others don't have this money. Justice is being done for those who are able to afford it. They pay for justice.*[134]

New owners may be exploiting the land or may have disposed of it through sale or exchange, creating a plethora of ownership disputes of legal and political nature. Returning IDPs and refugees find that not only are they unable to access the land, but that their ownership of the same may be contested by other people who have legal documents, such as valid title deeds. Some returning refugees, especially those who have been away since 1972 or their children (especially those children who have been brought up and orphaned in exile) may have particular problems because they do not have identity documents to prove their identity. Research indicates that more than two-thirds of repatriates do not have identity documents.[135]

Ensuing disputes hinder return, and as more refugees return to find this situation prevailing in their homes, unresolved disputes are being seen by some experts as a "time bomb" that could blow up the fragile peace that has been achieved in Burundi unless addressed with due urgency by the national government and the international community.[136]

To address this and similar conflicts, the government conducted a study to identify land which was unoccupied. The report, published in January 2002, found that there were 141,266 hectares of free and available land in the country. One of the 'priority' areas is 17,000 hectares of 'free lands' in Cankuzo, on which returnees could be resettled in compensation. While this may be feasible to some degree, it does not necessarily represent a comprehensive solution, for a number of reasons. Many of them owned more than five hectares, and given the steep population growth since, it is not possible to meet their expectation of total restitution or commensurate compensation. In addition, the definitions of 'free' land utilized in the government studies on the issue means that concepts of 'available' and 'free' are open to dispute.[137] Some stakeholders believe that some of the land that appears to be free on paper (belonging to the state) is in fact under customary use, or has been allocated to people through state institutions since then, due to insufficient co-ordination between government departments. These current users would therefore lose their access if the land were to be availed to returning refugees.[138] As

pointed out by analysts, the challenge is not merely to ensure that returnees and IDPs gain access to land; but to ensure that the process involved is characterized by even-handedness and transparency.[139]

## *Political considerations in refugee repatriation and IDPS resettlement*

The return and reintegration of refugees and resettlement of IDPs is a major political issue out of which political groupings see potential mileage. For instance, politicians in Burundi and Tanzania foresee electoral dividends in having refugees repatriated, since presidential and local elections in both countries are scheduled to take place at the end of 2004 and 2005, respectively. In Burundi, Hutu-dominated parties enjoying majority support among refugee populations, such as CNDD-FDD are keen to see their speedy return to consolidate the party's chances of victory in the October 2004 elections. In Tanzania, the ruling Chama cha Mapinduzi (CCM) has vowed in its election manifesto to return all refugees from Tanzania before the next elections.[140] Consequently, it has put pressure on UNHCR to accelerate the repatriation process and adopted harsh measures designed to encourage the 'voluntary repatriation' described above. Refugees caught outside the camp are imprisoned and returned to the Burundi-Tanzania border without documents such as identity cards, while government officials have promised to rid camp areas (Kibondo and Ngara) of refugees by the end of the year, to curb the "threat to national security."[141]

Other actors are also interested in repatriation and resettlement for financial considerations. Contracts and tenders accruing from the process constitute a source of patronage that the coalescing political alliances wish to profit from ahead of the planned transition elections. The depressed economy, collapsed infrastructure and declining standards of living for the majority of Burundians present a situation where profiteers out to make quick profits will exacerbate inter-government and regional tensions. The Government has made promises to reduce corruption and increase transparency in tendering processes, but little concrete progress has been made in terms of legislation or procedures.[142]

### *Institutions involved in the repatriation of refugees and resettlement of IDPs*

The Arusha Peace and Reconciliation Agreement provides for the establishment of institutions to facilitate repatriation and reintegration of refugees and related concerns towards a post-conflict dispensation. The National Commission for Rehabilitation of Victims of War (*Commission Nationale de Réhabilitation des Sinistrés*, CNRS), was thus formed, first as an autonomous agency with decision-making powers, but later subsumed under the Ministry of Resettlement and Reinsertion of IDPs and Repatriates (MRRDR). The Ministry was formed in 1994 and is charged

with ensuring humanitarian assistance to affected populations, the voluntary return of refugees and the resettlement and reintegration of refugees and IDPs. The CNRS replaced the National Repatriation Commission, and is to work alongside other institutions including the Sub Commission on Land Issues, the National Fund for Sinistrés and Reception Committees of local authorities and security agents.

Among the pertinent issues it should address include truth, justice and reconciliation, property rights, especially land ownership and adequate, proportional and timely compensation for lost property and the settlement of disputes; participation in transition elections scheduled between June and October 2004; successful re-integration into society until returnees are able to sustain themselves; and the re-unification of separated people with their families. It should also carry out a census of Sinistrés and other vulnerable groups, including women and children, and provide adequate material support to returning refugees and IDPs to ensure they have access to social services. The return and resettlement preparatory activities also include infrastructure support, administrative support and the protection, rehabilitation and advancement of vulnerable groups.

Given the complex and integrated character of the imperatives for a successful repatriation and resettlement, the Arusha Agreement also provides that supportive or lead roles be played by key stakeholders including UNHCR, the governments of Burundi and Tanzania, OCHA, donors, local and international NGOs and the local communities through the CNRS.

The CNRS was established in February 2003. Its institutional set-up is a result of a compromise between the dominant political parties, FRODEBU and the G10 parties who are associated with Tutsi interests. Frederick Bamvuginyumvira of FRODEBU chairs the Commission, which is under the institutional 'guardianship' of the MRRDR, which is headed by a Minister from the Tutsi-dominated Inkizo party. In spite of its broad mandate, its activities since its inception have been limited to providing short-term assistance to IDPs.[143] The Land Sub-Commission was established in April 2003. Reception mechanisms, as well as a National Fund for Sinistrés, have also been established. In January 2004 the National Programme for the Repatriation of Refugees and Resettlement of IDPs was published, in which the CNRS is envisaged as a secretariat of the Ministry. The objective of CNRS is to resettle IDPs and returnees with dignity and establish basic social services, promote the local economy and ensure the successful transition from humanitarian emergency to sustainable development.

The strength of the CNRS lies in the fact that it is a product of the Arusha Agreement and as such, enjoys some legitimacy and recognition by the signatories. Despite financial and logistical constraints, it has made significant inroads into addressing the short-term needs of IDPs in some parts of the country.

However, it has a number of potential weaknesses, most importantly its loss of autonomy, as its financial and administrative capacity was placed under the MRRDR. This greatly hampers its effectiveness, especially because its mandate conflicts or overlaps with that of the Ministry. Indeed, the Commission established to monitor implementation of the Arusha Accords sees this political compromise as a breach of the spirit of the Accords.[144] Some internal relationships within the CNRS are also problematic. Given these dynamics, the CNRS lacks the support and good will of some political parties, which perceive elements of its leadership as politically partisan. For instance, analysts have questioned the selection of a Tutsi army officer as head of the sub-commission on land, arguing that it does not bode well for an impartial and de-politicized process.[145] Moreover, the manner of appointment of some members of the CNRS leaves a lot to be desired, as it appears professional competence was not a significant criterion of selection; as some of them may have bought cards of political parties just to get through to the CNRS, where they stood to earn a salary equal to that paid to the CSA's members.[146] There are also questions over the lack of human capacity and resources needed to handle the needs of high numbers of returnees. The impact of this can be seen in the need for some returnees to move into IDP camps, to receive assistance from international agencies, as they were receiving little or no help outside the camps.

This problem is aggravated by lack of a detailed plan of action and constrained co-ordination between the 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 the CNRS in October 2003. Most alarmingly perhaps, the CNRS does not seem to have a contingency plan of operation in case of a sudden, spontaneous (or forced) repatriation of refugees.[147]

Furthermore, the management of the CNRS may lack some technical expertise, as the composition of its personnel reflects a political battle for control of resources, rather than competence in addressing repatriation, resettlement and reintegration needs of affected people. Many stakeholders also feel that the 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.

A wider issue perhaps is the role of the CNRS vis-à-vis other actors. The CNRS has been given the responsibility of ensuring that refugees' rights to land are respected. The procedure to be followed involves the refugee making a case to the Provincial Governor, who then writes a letter to the lands sub-commission of the CNRS. The sub-commission is then responsible for examining the case and identifying a solution. Considering the number of potential returnees, this is a logistically challenging responsibility for CNRS. Currently, due to the lack of dissemination of this policy, the refugees are unaware of this procedure. For example, refugees returning from the DRC interviewed at a transit

centre in Bujumbura were unaware of the role of the CNRS and were "totally lost" regarding the potential means for solving land-related problems.[148] The issue is not only one of dissemination of procedures. The need for transparent and equitable decision-making requires awareness-raising amongst all the stakeholders involved in the process, including local authorities and communities who will 'receive' the returnees.[149] Indeed, some civil society groups have criticized the lack of participation of the refugees and IDPs themselves in the preparation of guidelines and formulation of procedures. Although involving the beneficiaries – especially the refugees – in decision-making will be challenging and expensive in terms of time and resources, a more participatory approach would ensure that these stakeholders felt a sense of 'ownership' of the process, and reduce the risk of possible future disputes and dissatisfactions.

The good intentions of the CNRS and donors could be threatened by political interference and greed for the funds reserved for the Commission's programme activities. The resources required for the successful implementation of the provisions of Protocol IV[150] are significant. Whoever controls these resources will be seen as controlling a source of patronage, which in the current political dispensation in lieu of the October 2004 elections could be perceived as an asset in mobilizing political support. It is important that use of CNRS resources is not perceived to favour political, regional or ethnic interests. There are examples from the past where, for example, returnees have benefited from official assistance while adjacent IDP communities – who might actually be worse off – are ignored.[151] There is a risk of the classi crelief-agency problem of 'host' communities being ignored while 'vulnerable' elements are aided, which could lead to conflict.

The success of the Commission also depends on the establishment of other institutions, such as justice and reconciliation structures, provided for in the Arusha Agreement. Donors have also been slow to release pledged funds, which could frustrate the implementation of the Commission's activities.[152] Without material assistance for reconstruction of homes and livelihoods, there is a high risk for returnees to become internally displaced. Delays or partial implementation due to lack of funds, coupled with lack of political support, could erode public confidence in the Commission.

In spite of these challenges, all is not lost, as opportunities still remain unexplored should donors release the monies pledged to support and empower the CNRS to carry out its mandate. It seems that improved co-ordination with other stakeholders would be a prerequisite for this to happen.

## *Experiences of displacement*

Isabelle is from Bubanza Province, which she left in 1993 due to the conflict. Her husband is dead. She has six children. She has no land in

Bubanza because her husband didn't originate from there – he went there to look for work, and they rented land. In Burundian custom, as a widow she can only have land access by going to her place of origin and asking her blood relatives, who live in Gitega. However, her parents are dead and she doesn't know people there, and most local people are in displaced camps. She therefore doubts that anyone can identify her: "How then can the Bashingantahe help me?"

She has heard of the CNRS and knows what they are meant to do: to help the refugees and displaced people to go back to their hills. But she has never seen them, just heard of them on the radio, and doesn't know where their office is. They have never been to the camp and the chief de zone never talked about it.

## LEGAL AND POLICY FRAMEWORKS OF LAND ACCESS

The preceding sections have demonstrated the centrality of the land question in the successful transition to peace, especially in the context of refugee repatriation and expropriation of land by power brokers in Bujumbura. During the transition period, significant issues that could thwart the achievement of durable peace in Burundi ought to be given priority over short-term gains by sectarian interests. But focus seems to have shifted from implementation of the provisions of Protocol IV of the Arusha Peace Agreement to haggling over transitional issues dealing with the institutions and the legal framework under which the country is governed. Issues such as unresolved land disputes have been relegated to non-essential status as the issues become part of political 'turf wars'. Land, which has a strong social value as it is associated with status and prestige, is being sought in unscrupulous ways – such as expropriation by the elites – as a source of security or a long-term safety net.

Given the ethnic and political sensitivities around land ownership and access, this section examines land tenure systems in Burundi with a view to understanding the significance of land access to power relations and conflict resolution in the current political environment. It describes land use and livelihood patterns in a predominantly agrarian society devastated by war, trends in women's access to land, the production, management and marketing of export crops, specific land-related challenges and dispute resolution opportunities and alternatives.

### *Land scarcity and access*

Population density in Burundi is the second-highest in Africa: estimates of average population density vary from about 230 people per $km^2$ to as high as 278 people per $km^2$ and is as high as 360 persons per $km^2$ in some areas.[153] Over 93% of the population is rural and entirely reliant on agriculture for their survival and income; hence most of the land, 90% of the total cultivated area, is devoted to food crops and 10% to export

crops.[154] Settlement is in dispersed homesteads, similar to those found in Rwanda. Land use is as shown below.

**Table 1:** Land Use in Burundi[155]

| | |
|---|---|
| Arable land – % of total | 30 |
| Arable land – % under continuous cultivation | 81 |
| Arable land – Ha per capita | 0.12 |
| Irrigated –% of cropland | 1 |
| Permanent pastures –% of total | 60 |
| Forests & woodlands – % of total | >2 |
| Deforestation rate /yr – % of total | 2.7 |
| Nationally protected areas– % of total land area | 4.23 |

**Sources:** ISS website, www.iss.co.za; Leisz, S. (1998) Burundi Country Profile. In: Bruce, J. (1998) Country Profiles of Land Tenure: Africa, 1996. Land Tenure Centre, University of Wisconsin. Research paper No. 130; UN (2004) Les Defis du Processus de Transition: Bilan Commun de Pays. Draft 4. Bujumbura.

Given the high population growth and increasingly smaller plots of land per family unit, land scarcity has become a severe problem, and access to arable land is a priority for almost every household. Pressure on the land is pushing underprivileged families to relocate to relatively less populated areas, often generating suspicion on the part of communities into which newcomers integrate, or to encroach on forest reserves, national parks and swamplands to meet their demands. Levels of poverty are such that the poor have very little capacity to withstand external shocks, and may be forced to sell a portion of land in order to cope with a relatively minor crisis, such as a child falling ill and requiring medical treatment.[156]

Although yields could be improved with technical alternatives, agricultural production has declined due to over-cultivation of small plots, while lack of purchasing power means that fertilizers cannot be purchased, and there is little land available to leave fallow for regeneration of soil fertility. In addition, forced population displacement has led to exploitation of ecologically sensitive areas in safer zones around displacement camps.

Agricultural production and economic reward have increased for groups with favourable access to productive land and resources, hence the high social status, political power and patronage associated with land ownership. Access to land is an important indicator and symbol of social rights, obligations, and status, both within and between households. Land ownership or access is the basis of 'feudal' relations in Burundi, and transfer patterns significantly shape the perceptions of various social groups on the relationship between increased competition for land, poverty and the on-going conflict. For instance, cycles of violence have

been described as 'ancient hatreds' and inter-ethnic struggles for control of political power. This analysis, as described above and as shown by ACTS researchers,[157] obscures the underlying causes of conflicts in the great lakes region, among which is competition for scarce land due to population pressure, government policies and market forces.

The relationship between power struggles and land lies in the fact that the state guarantees the right to access, use and ownership of land. In Burundi, political power also means access to control of resources emanating from the market for agricultural export crops. Land scarcity and soil degradation in Burundi has meant lower production of both food and export crops, hence lower incomes and limited access to other productive resources. This is exacerbated not only by fluctuating prices of coffee in the international market, but also by exploitation by local elites who control the processing and marketing of coffee and offer very low prices for the produce and fail to reinvest in the agricultural sector. The population's sense of exploitation by the state and lack of other off-farm opportunities to diversify the sources of income lead to grievance, especially as rising poverty predisposes more people to violent behaviour to effect change.

## *Natural resource distribution and conflict*

In most African societies, land was a corporate property owned by the community, and each household enjoyed usufruct rights. The community had special attachment to the land, which essentially belonged to the ancestors buried therein and held in trust by the supreme authority on the land, usually a king, council of elders or a privileged class.[158]Land held significant religious, cultural, and political importance, where the rights to own, use, enjoy the fruits of, alienate or sell it was determined by stringent established rules on who could access what resource, how they were granted this right, and when and how they could exercise it. Most of these systems were patriarchal, where land was passed down generations through the male lineage. Women never owned land, although they had access to it depending on their relationship to the male owner, for example, as wife or daughter. Communal land could not be sold, but plots allocated by the king as reward or other consideration could be exchanged.

A similar situation existed in pre-colonial Burundi where, as noted above, there was an elaborate socio-economic land ownership and access system based on the 'feudal' institution of the Ubugererwa. Through the client-patron dependency relationship that developed between a 'lord' (Umututsi) and a less fortunate 'serf' (Umuhutu) those who did not own land could be allowed to use another person's property in exchange of gifts in kind or service.[159] While these labels were flexible and represented socio-economic standing of individuals regardless of their ethnicity, divisive colonial and post-colonial policies that preferentially empowered the Tutsi over the Hutu and Twa polarized

and politicized the society, crystallizing ethnic stereotypes as lowly, ineffectual Hutu and charismatic, competent Tutsi.

### *Ubugererwa*

As noted in previous sections, in pre-colonial Burundi, all land was formally the preserve of the king (Mwami), and ownership was bestowed as a reward for loyalty or as an entitlement to members of the royal blood, the Ganwa.[160] Various forms of land relationships existed. Ubugererwa, which was the most prevalent, was a contractual system where a person in need of land, livestock or protection would work for a more fortunate one in order to access and/or utilize these properties usually in return for services and offerings in kind. The system had distinct characteristics from province to province, and depending on circumstances, constituted a source of injustice and frustration both among the Hutu and the Tutsi, and among the Twa.[161] 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, because it was inflexible and coercive, with the classical characteristics of any other feudal society. The banning of the exploitation structures was hailed as a radically positive move in re-orienting the socio-economic relations of the Burundian society.[162] Many rentees subsequently became 'owners', resulting in the growth of private ownership. While this was seen as a way of stimulating access to finance, the banks place little value on rural land, only on land in and around the urban centres, so farmers have not been able to use their land as collateral for accessing loans.[163]

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 abuse and 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, the military and the civil service.

## *Land acquisition and dispute resolution systems*

### *The customary tenure system*

As noted above, land ownership and access was based on Ubugererwa, as well as a system where the king allocated land to an individual or group in recognition of service, loyalty or other consideration.[164] Communal land could not be sold; its transfer was based on a rigid patriarchal inheritance system where subdivision occurred between the

male heirs upon the death of their parents. Those who gained land by clearing and exploiting it put themselves under the protection and patronage of the chief – generally a Tutsi – in whose jurisdiction the land was situated, and paid tribute in the form of farm produce or labour in recognition of the chief's authority. The chief also occasionally allocated 'free' land to those who did not have land, such as the Twa. Thus monarchical distributions of land and inheritance patterns were the main types of land acquisition and access mechanisms in the customary system. However, we must bear in mind that the system was characterized to some degree by social mobility and a general flexibility.[165]

Land tenure conflicts were mediated by the local council of elders, the Bashingantahe. The Bashingantahe council was made up of Hutu and Tutsi men of integrity, chosen for their sense of truth, justice, responsibility for the overall good, knowledge of customs and ability to exercise authority as judge, notary and ombudsman.[166] They were an organized corporate group in whom was vested the social, political and judicial power of their society. The council settled disputes by conciliation or judgment, authenticated contracts such as marriage, sale or land inheritance, oversaw the maintenance of justice, and provided guidance and balance to politicians.[167] They were accountable to the people. Most of the disputes in which they were expected to intervene pertained to property, but they engaged in other types of conciliation on family or other matters. The council held such power and respect in the society. However, during the colonial period, the institution of Ubushingantahe was weakened when the Catholic Church usurped some of its traditional roles, and individuals without the requisite qualities were appointed by the authorities.[168] As they increasingly became judges and executors of the policies of the colonial power, they lost their virtues of neutrality and independence. Successive regimes ignored the moral value of the institution, and made few serious attempts to rejuvenate it.

In some cases the independence of the institution, which is essentially free to access, has also been compromised by changes to the ceremonies involved. Customarily, the final decision of the Bashingantahe would be followed by the conciliatory sharing of beer between all present – the Bashingantahe as well as the parties in the dispute. These days, some Bashingantahe request the beer prior to the decision-making process, and those too poor to provide it may be refused a hearing.[169] Efforts to support the institution have been criticized in some quarters, as some Bashingantahe included in donor-funded support projects have been civil servants or political figures, which is not allowed under custom.[170]

Current efforts to revive the institution of Ubushingantahe are premised on the conviction that a return to traditional cultural values and to traditional methods of conflict resolution after years of conflict stands a chance of contributing to the restoration of peace and stability in Burundi.[171] The Arusha Agreement emphasizes the role of the Ubushingantahe in reconciliation at the level of the colline (hill).[172] In the context of escalating land disputes, it is hoped that involvement of

Bashingantahe in judgment on land disputes will circumvent fraud and corruption, and ensure the return of (or fair compensation for) land and property to their rightful owners. Currently, however, Bashingantahe report that land issues are one of the most difficult problems to resolve, and some NGOs are doing training and dissemination of basic tenets of the land law to tackle this.[173] While Ubushingantahe has lost some of its power and its effectiveness has been dampened by political interference and allegations of corruption, it remains alive as an institution and commands significant regard among most Burundians.

### *The statutory land tenure system*

Land-owners in Burundi are able to transfer land mainly through bequest to the male heir upon marriage or the parents' death, while landless people can acquire land through purchase, donations from relatives or wealthier patrons, or distribution by the government. The primary beneficiaries of land distribution by the government are returning refugees, though the land donated is often unproductive swamp land and natural reserves, due to land scarcity. Another way of gaining access to land is through temporary leasing for one or several seasons, given the decreasing availability of land for cultivation by households.

Provisions on land ownership, access and transfer as spelt out in the Land Code are little understood and hardly implemented. Land tenure in Burundi, as in many countries, currently has both customary and modern systems operating in parallel, and with some overlapping and 'hybrid' arrangements in place. This creates confusion, contradictions, disconnects and points of interaction between the tenure systems, making the resolution of land disputes particularly intricate. 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. While the law states that registration must be passed on when it is sold, inherited or otherwise passed from one owner to the other, land is often sold in areas under indigenous tenure systems yet to be registered. Moreover, the state lacks the financial resources to disseminate and implement the Land Tenure Code. As a result, customary tenure regimes are still very influential in rural areas, and land holdings remain largely unregistered. Besides, less than 5% of the land is registered, and oral traditions about its ownership predominate. Thus title deeds hold little value, and endemic corruption in the Ministry of Lands has undermined the legitimacy of such documents. While the land code stipulates that all land belongs to the government and no transactions may occur, land sales do take place (whether registered or not) and renting of land is also significant, with up to one fifth of households accessing some land through renting.

The Burundi constitution allows the state to expropriate land in the 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. This has been made possible by a tightly-knit group bound by kinship and a network of patronage. For instance, the Rumonge Regional Development Corporation scandal, in which the state expropriated private property and irregularly distributed it to 'businessmen' for better production of palm oil, featured prominently in the negotiations leading up to the Arusha Agreement. Many of the families from whom the land was expropriated were never fairly compensated. The state has increasingly encroached onunoccupied land and repossessed it ostensibly for distribution to the landless. However, distribution of land to the landless, provided for in the law at a small fee, has ended up benefiting politically-connected and land endowed people at the expense of the landless.

Expropriation of land by the government and redistribution to undeserving cases aggravates the disparity in land distribution among the rural poor peasants and the elites. Such expropriation reflects tenure insecurity for the landless and near-landless who, due to land scarcity, are compelled to cultivate hillsides prone to erosion, or to clear and exploit lands belonging to the government. Following the cessation of hostilities, the value of land has gone up, and rich individuals and groups with the means to purchase or 'grab' land are expanding the size or number of plots for economic security, while the land available to returning IDPs and refugees is getting increasingly smaller. Unequal land distribution, over cultivation and concomitant food insecurity affects the poor, who have few off-farm opportunities. Over 90% of available arable land is under cultivation. Agricultural practices such as continuous cropping, elimination of fallow periods, shifting to higher-yielding crops such as tubers and agricultural intensification is inadequate in addressing the threat of food insecurity and to sustain livelihoods. Rural-urban and rural-rural migration in Burundi is on the rise, while some people are working as labourers in agricultural farms. Poverty and threats to rural livelihoods, coupled with the government's inability to provide welfare and address the causes of deprivation and dispossession by the rich only feeds rural disaffection.[174]

## *Land administration*

The land administration system in Burundi has been negatively affected by the conflict. The loss of human resources through out-migration is one issue; many of those people able to leave have done so. Those with the money and connections to leave are generally the well-trained cadre of the civil service, and the quality of land administration has subsequently declined. Lack of coordination between different government departments is a big problem. Provincial Governors can allocate land, whilst the Ministry of Agriculture and the Ministry of Environment are also able to control access to land. 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.[175]

Double-registration of plots is another problem. Treatment of the issue of landlessness is also problematic: according to official policies, landless people are able to apply to the government in order to receive plots of land. Only a small fee is charged for this service. However, anecdotal reports suggest that the system is abused, with some people waiting for years while others, who are not actually landless, receive plots rapidly due to favoritism or bribery.[176]

## *Women's access to land*

Differentiated access to land in Burundi is based on sex and ethnicity. Under customary law, women could not own or inherit land; they could only enjoy limited access bestowed through affiliation to the male legatees.[177] As such, in the event of death or separation, widows or divorcees could easily be dispossessed of the land by male relatives. In the ongoing conflict situation, women's access is further compromised by repeated displacement, particularly because they may not competently undertake male roles such as negotiating for land access that life in displacement compels them to assume. Besides, upon return from displacement, they may find their spouses' land occupied, denying them access. High population growth and subsequent subdivision of land is increasingly disinheriting many people because of the increasing unavailability of smaller and smaller parcels of land. This directly places women in a disadvantaged position, in spite of the fact that they are the main force working the farms.

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 granted to women and to the wife if the husband is absent. In practice, this means she has no rights as most men tend to delegate land matters to their male relatives. Besides matrimonial arrangements, succession, legacies and gifts are all governed by customary law, which does not recognize women's land rights.[178]

Despite limited access to land, women are nonetheless expected to provide food and keep the families going in conflict situations, when their partners abandon them or go to fight.[179] Non-observance of women's property rights in spite of these responsibilities could breed resentment and apathy, and determine the role of women in post-conflict reconstruction and reconciliation. For instance, dispossessed women who do not find viable redress may support warring parties by providing food, money, clothes or indirect support by maintaining secrecy over their whereabouts, political support or information in the hope that when they come to power, they will address these grievances. Furthermore, they may be willing to 'donate' their sons to the war effort, especially when armed groups promise land as a prize for such sacrifice. Without an alternative source of income, women may send their sons to

join armed groups, from where they support themselves through looting. *Experiences of Displacement*[180]

Adela has been displaced from her home in Bubanza, close to the Kibira forest, since 1994, and now lives in an IDP camp on the outskirts of Bujumbura. She is Tutsi. She had five children but two have died, along with her husband. She has heard that someone is cultivating the family farm, but she does not know who. Due to bad memories of the place and her feelings of insecurity (Kibira forest is a traditional rebel stronghold), she is going to stay in Bujumbura. However, she won't sell her plot in case there is a problem in Bujumbura, and perhaps her children can stay there and cultivate it in the future.

## *HIV/Aids, land ownership and use*

The effects of HIV/AIDS on affected households include reduced labour availability, both in terms of those suffering from AIDS-related diseases, and those caring for them. The prevalence of HIV – estimated at around 7% – translates into several negative effects on the land use patterns of affected households, including a reduction in area of cultivation, fewer crops, lower levels of production, hence lower incomes and more expenditure as time, energy and money are diverted to relieve the effects of ill health.[181] 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.[182]

Officials at the CNLS, the National Commission for addressing HIV/AIDS, are broadly aware of these issues. However, firm evidence of the effects of HIV prevalence on land use is lacking, partly because the situation in many rural areas is so fluid, with many factors affecting household's land use, including displacement and injury or death from violence.[183] It is thought that rural areas have a lower prevalence than towns, but these figures may be skewed due to the stigma attached to HIV, which is greater in the countryside than in towns, and the difficulties this poses to estimating rural prevalence.

Women in abusive relationships often lose their land if they leave their husbands, in spite of having children to support. Equally, women in polygamous relationships may be evicted to create room for a new wife. Widows are particularly vulnerable to dispossession of land and/or confiscation of property by male relatives of the deceased, although this depends on many factors, such as her bargaining power, whether or not bride price was paid for her, availability of land, her social standing in the society, and decisions taken by community leaders.[184]

Given the conflict that the people of Burundi have lived with for decades, the response to HIV/AIDS may be viewed within the larger context of the humanitarian response to food and shelter needs, as well as to

recurrent epidemics of malaria, meningitis and other infectious diseases. According to a study by Save the Children (UK), the spread of HIV/AIDS is linked to poverty and conflict-induced displacement. Many people lack adequate information about the disease, while conflict has not only disrupted their social networks but also livelihoods. The response to the epidemic is scattered due to a critical lack of coordination between different actors. The impact and quality of NGO interventions are rarely evaluated, making lesson-learning difficult. The study concludes that there is a pressing need to create systems for sharing information, which will enhance transparency and accountability.[185]

### *Experiences of displacement*

Jean-Bosco is from Ngozi Province, but was displaced in the conflict and now lives with his wife in a camp for the displaced near Bujumbura. He has no access to land in Ngozi because after his parents died, his uncle took the plot. Jean-Bosco has no certificate to prove that it is his, and most of his identification papers were destroyed when he was fleeing the violence. In any case, he cannot return there as he fears his uncle would kill him because of the land issue. He doesn't think that the chief de zone could help him.

He has AIDS and can do little work. His wife, who is pregnant, makes and sells sisal rugs, and does tailoring. Though they have a rural background, they have stayed so long in Bujumbura that he is like a "child of the town".[186]

## *Land fragmentation*

As noted above, the size of land inherited or otherwise available to households has progressively shrunk due to subdivision as families have continued to expand. Land fragmentation has also resulted from distress-induced transfers, where people are forced to sell their land in conflict situations for fear of losing it. Others have exchanged it for smaller plots in safer regions. As noted elsewhere in this chapter, families affected by HIV/AIDS have sometimes been compelled to sell off part of their land or property to meet the cost of medication and care for patients.

Because less land is available to put under food crops, food security and livelihoods are threatened. Burundians have adopted various coping mechanisms to reverse the effects of reduced plot size. These include recourse to off-farm income-generating activities such as itinerant labour, petty trade in such items as second-hand clothes, vegetables, sugar, fuel wood, manufacture and sale of crafts, and fishing. Some households receive remittances from urban relatives. Others have migrated to less populated rural areas or urban centres. Agricultural practices have also been modified to increase productivity by investing greater amounts of time and energy in weeding, mulching and other labour-intensive activities. More farmers are replacing grains and legumes with tubers such as sweet potatoes and cassava that can feed

more people per hectare, though they are not as nutritious, and the health of the household may be affected as a result.

Land fragmentation is a complex problem in the densely populated country, and its effects can be addressed only by very fundamental measures such as providing widespread off-farm economic opportunities, or by influencing traditional inheritance systems. In Rwanda, an attempt at 'villagisation' aimed at moving people into farming villages to maximize rational exploitation of land by reducing population pressure and fragmentation, failed because it resulted in unequal and unfair land distribution among the rural poor. It also did not address the root causes of land scarcity. [187] Environmental degradation is being attributed to land pressure that has reduced the periods available for land to lie fallow. Soil fertility is reportedly also declining as a result of over cultivation and continuous cropping. Because arable land is limited, many households are resorting to cultivating sloping areas, which are very prone to loss of topsoil through various processes of erosion. Inability to afford agricultural inputs due to poverty and the decline in terms of trade for goods such as coffee also contribute to the problems.[188] Over-exploitation of farmland near IDP camps has reduced its productivity. Deforestation for fuel wood and concomitant soil erosion has exacerbated environmental degradation.

## *National agricultural policies*

The Interim Poverty Reduction Strategy Paper (PRSP) notes that agricultural production should be intensified through use of improved livestock varieties and breeds, mineral and organic fertilisers, appropriate cultivation techniques and use of high-yield seed varieties, while acknowledging that the availability and affordability of these inputs is problematic.[189] It also identifies certain dry areas as suitable for irrigation. Compared to other countries in the region, the Burundian Interim PRSP does not identify many concrete options for agricultural specialisation (e.g. developing niche markets). It does recognise that ensuring that the displaced and returnees are able to find land to settle on is a priority.

Previous research by ACTS has documented in detail the role of state control over the coffee sector in the reproduction of the predatory state and economic structures.[190] This section will not reproduce that argument, but it is important to make explicit the links between coffee production and land use more generally. The coffee industry is of relevance to this study because of its role in state dominance over land use at the level of individual farming households.

Almost all farmers across the country grow some coffee, because it is state policy that they should do so, and local administrations enforce this. Because of the coercive nature of the industry, coffee is often planted without due regard for soil suitability, in which case the trees are unproductive. This effectively puts valuable land out of productive use, driving farmers further into poverty. [191]

When land is inherited, the recipient is obliged to plant some if coffee is not already planted. On an average smallholder farm, this is generally a minimum of 50 trees.[192] The prices received for coffee are extremely low, and are also highly variable, despite producer price stability being the main government justification for its regulation of the sector through the Coffee Board of Burundi (OCIBU).[193] Coffee producers – who are almost all smallholders – receive only a small percentage of the international price, about 40%.[194] The comparable figure in Kenya is 85%.

Research by Oxfam GB suggests that coffee generates far less revenue than other alternative cropping patterns. For example, a farmer in Kirimiro region with a plot of 575 square metres devoted to coffee can expect to make about 17,100 Burundian Francs. In comparison, a combination of bananas (which are a cash crop) and maize and beans planted on the same plot could generate 85,000 Burundian Francs. [195] The insistence of local administrators that coffee should be planted therefore directly contributes to local poverty.

Coffee is also a very labour-intensive crop. People who are unable to cope with the labour requirements, such as the old and those weakened by HIV/AIDS-associated illness, either have to pay for labour to tend the trees – which may even become a loss-making enterprise – or simply abandon the trees, in which case the land is then confiscated by the local authorities. [196]

From a perspective of the livelihoods of local people then, the coffee policy undermines their capacity to survive. Coffee has been seen as the revenue-base of the government and therefore anti-government demonstrations and activism have involved smallholder peasants tearing-up their own coffee trees.

## *Land, politics and conflict*

As noted above, land is the main source of wealth and livelihoods in Burundi, and is therefore a vital means of patronage. The ruling elite dominate decision-making structures and institutions for land allocation, which they manipulate to not only accumulate personal wealth but also to maintain their hold on state power, which in turn assures their continued control and access to scarce land and other natural and economic resources. The issue of scarce land has been used by elites from across the ethnic divide competing for control of the state to fuel ethnic resentment and polarize the local population. By arguing that those aiming to capture power are interested in dispossessing land-owners, the ruling elite shift responsibility for poverty and social injustice from the state. On the other hand, rebel groups mainly of Hutu origin cite the need to redress unequal land distribution as a raison d'être for the struggle for state power. Such resentment is said to have been instrumental in the genocidal massacres of 1993, when some people who had illegally occupied land belonging to refugees resorted to violence to prevent refugee returns, because repatriation spelt reforms that would haveled to their eventual dispossession and return of the land to its

rightful owners. Violence was used to ensure continued access to land and also to displace more people to 'free' more land.

It is alleged that before the cessation of hostilities following the signature of the Arusha Agreement and the Pretoria Protocols, commanders of most of the rebel groups in Burundi promised land to recruits as a prize for joining rebel ranks. They told them that when they seized power, they would compensate them for their sacrifice and service with employment and parcels of land. Rebels in the bush also had access to agricultural produce through looting and banditry. As noted above, off-farm activities for most Burundians are limited due to land scarcity and environmental degradation. This predisposes the youth to involvement in crime or recruitment into armed groups. Lack of legitimate and viable livelihood alternatives is a concern for the future of demobilized soldiers and ex-rebels, especially if they are not given land and supported to integrate into civilian lifestyle.

People who are disaffected or aggrieved with the government's handling of the land issue are thought to render political support to conflicting parties. Such grievance may stem from perceived or real injustice regarding access or ownership of land, such as an unfavourable court ruling, dispossession or an intractable land dispute. Support for armed groups may be direct logistical support through provision of food, shelter and other supplies, recruitment drives, and information about the whereabouts or plans of opposing sides. They may also get personally involved for the opportunity to exact revenge.

Unresolved and new land and property disputes are feared to be the biggest threat to sustainable peace in post-conflict Burundi, especially in the context of refugee returns. Already, such disputes have been reported in Gatakwa, where returnees and those who remained behind are contesting ownership of the palm-tree growing area.

## *Case study: The Gatakwa commissions*[197]

Gatakwa is a sector situated in Kigwena zone, Rumonge Commune in the southern province of Bururi. The sector contains extensive marshes that were farmed since the early 1980s, after President Bagaza gave authorization for marshes to be drained in order to cope with food insecurity (which was partly a consequence of the massacres, conflict and displacement). People from other areas came to Gatakwa in 1981 to drain the swamp through manual labour – an exhausting process which took three years, before planting of palm oil trees could start. The locals did not participate in these efforts, and the land remained state property. Soon after, the farmers were told by the Rumonge Regional Development Society (RDSR) to stop producing the current species, and concentrate on a new species of palm oil. The argument for justifying this instruction was that the land belonged to the state. However, those whose land was re-planted with the new palms did not gain access to all of their plots: some land was appropriated by RDSR and allegedly given to military personnel and senior RDSR staff.[198] Many farmers therefore defied this order, and were

consequently harassed and threatened with eviction. The community took the case of de facto land ownership to the administrative court to get clarity and legal ownership, but to date they do not have this and the case is still pending, even though in 1998 Parliament stated that someone who drains marshland becomes the owner of a property through that action.

In 1999, the farmers were again subject to threats of expropriation and went back again to the court because this time fields of maize, cassava and other crops were destroyed. In response to these threats they took the case to court, and a commission was appointed in October 2001 to look into the matter. But the commission, while claiming to have identified beneficiaries as "destitute people, returnees, widows and other vulnerable groups", drew up a list of beneficiaries composed of the commissioners themselves, their wives, relatives and other administrative cadres and civil servants, especially those from Bururi province. The 240 farming families were issued with eviction notices, but the community has continued to resist demands that they leave the land.

In March 2003 the community made a presentation to the Ministry of Agriculture to denounce this. After a short period where they suspended their farming activities due to administrative pressure, they resumed their agricultural activities on 4th August 2003. In response the authorities at provincial and communal level took a decision to arrest people. Three people were arrested: one for a period of two days, one for two weeks and the third for two and half months. Despite these threats, the community continued to pursue farming activities, it being a crucial time for agriculture, before the rainy period. On 2nd September they went to Parliament to protest. MP's replied that they were busy discussing the matter. On their side, the community started the process of having those arrested released. According to local people, the authorities started to organise soldiers, young local defence forces and local administrators in operations to harass and beat members of the community. Many were wounded, one person killed and others put in jail. The community again went to Parliament, this time with their wives and children. The Speaker of the Parliament, Jean Minani, gave the order that they could go back and resume agricultural activities, and he also ordered the release of prisoners.

At this stage then, the local people, some of whom had been in exile in Tanzania (who had not drained the marshes) attempted to gain control of the plantations. The farmers again went to the Ministry, who after receiving them (both delegations) gave the order to immediately stop exploiting the fields. Another commission was appointed. At the time of writing, the community is still awaiting a final decision, and tensions remain high between the returned refugees, the local population and the group that cleared the land. According to local informants, the Bashingantahe have not been effective in this case, probably because of the influence of the urban-based elites who have a vested interest in the outcome. Affected farmers insist that, "the Gatakwa land crisis must be dealt with on the justice level and not with the current commission."[199]

The involvement of government officials in the scandal has not only politicized the dispute, but also set the stage for probable fresh violence. Besides grabbing of public land by influential individuals as demonstrated above, the state also uses different processes to expropriate or dispossess individuals of their land, or to appropriate public lands to individuals. While expropriation of land by the state in the public interest is permitted in the Constitution (for example in order to encourage private investment in industry), corruption has enabled undeserving individuals to grab or benefit from appropriation of plots in formerly conflict-affected zones as compensation for displacement. In the process, many people are dispossessed of their land, and in some cases may not receive any compensation. State appropriation of privately-owned land and subsequent unfair subdivision between previous owners has been a source of great acrimony.

Prevalent corruption in the judicial system, which is the ultimate guarantor of land tenure security in the country, exacerbates the problem. Some land disputes take extremely long periods in the courts, as judicial officers lack sufficient travel budgets to facilitate visits to disputed land to ascertain facts. Claimants with the means to offer transport, accommodation and other facilitatory services may be able to influence the case in their favor. Expropriation of land by politically-connected elites seems to continue to be the rule in many parts of the country. Economic and political exclusion in Burundi is based on tight networks of kinship and patronage, with strong links between the civil service, military and the private business sector. As noted above, the struggle for control of land and the most important purchasing offices has been a factor in the development of the civil war.[200]

## *Land conflicts in the context of refugee returns*

As noted above, land disputes related to the return of refugees and IDPs to their former homes are common. Research by local NGOs indicates that 90% of problems experienced by refugees (as reported in interviews) are land-related. This research also supports the general hypothesis that the 1972 refugees tend to have problems due to their land being occupied by non-relatives, while the refugees from 1993 and later tend to have intra-family land access disputes.[201]

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% in a matter of a few months, forcing some people to cultivate marginal areas as they were unable to access fertile land.[202]

While supporting refugee repatriation and resettlement of IDPs, the Government of Burundi has not developed effective legal mechanisms to address land-related disputes arising from occupation, restitution and compensation. Given the war fatigue felt by the population after decades of violence and displacement, any measures to address inequitable land distribution that has dichotomized the society into the

haves (the rich and the rulers) and the have-nots (the poor and the masses) is welcome. The historical dynamics of land ownership, its social value and approaches to address land disputes, for example, through the Bashingantahe, have been overshadowed by political dimensions that foreground the commercial value of land, access to which is promoted for long-term economic security. Corruption has permitted fraudulent transfer of prime land, such as plots near the Bujumbura airport, to influential individuals and politicians, while commissions appointed to look into land availability for the resettlement of refugees have appropriated the land for themselves. Some Bashingantahe have been compromised by indulgence in politics, and many have failed to rise above sectarian interests, allowing themselves to become the local elites in such conflicts.

Individuals working in the current transitional government are reported to be occupying and exploiting lands belonging to Burundians who fled during the civil war. Others are colluding with people who remained behind to deny returning refugees and IDPs access to their land. In some instances, as in Ruyigi, returnees are being forced to sell their land, houses or property at throw away prices amid threats or violence. The practice is also common in the urban centres where the new buyers purchase land for security, not for agricultural purposes. Peasants sell in order to raise money for things such as medical bills and school fees.

## *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.[203] 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.[204] 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."[205]

The Land Code is now in the process of being revised, through the preparation of a draft document by a combination of foreign consultants – funded by the Food and Agricultural Organisation (FAO) – and a working group of civil servants.

Policy-makers have taken inspiration from Rwanda's draft policy and have modeled several ideas upon it, such as the establishment of local-level land commissions. By May 2004, a draft was almost ready for presentation to Parliament for debate. However, the finalization of the Code is not currently a high priority, as the upcoming elections are the main political focus. There are several proposed changes to the law, which have been summarized in the table below. While there is insufficient space here to discuss the proposed revisions in detail, a few

comments may be made. 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, as summarized below, 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 following institutions: ministries concerned with land; provincial and commune-level associations of agriculturalists and pastoralists; NGOs involved in agriculture, siviculture or pastoralism; as well as people chosen for their particular competence.[206] However, as the text is silent on how these people will be selected, it may be assumed that they will be appointed by the Ministere de L'Amenagement du Territoire, de L'Environment et du Tourisme. 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. As is the case for the national commission, it seems that the Ministry will take responsibility for operational modalities, including selection of members. 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.[207] No more than half of the members may be state employees.

The recognition of the currently informal Certificate de Possession will bring increased security of tenure at local level. Experience from Rwanda suggests that farmers do not necessarily require full title (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.[208] 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 who are 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 may be impossible to implement.[209] In the absence of a realistic strategy for implementation, it is conceivable that this provision will be implemented in ad hoc ways and could be abused by some administrators in order to further their vested interests.

The prescription period is important due to the great numbers of refugees living in exile. 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.[210] A maximum land ceiling would be one simple way of making at least a preliminary move towards greater equality.

**Table 2:** Some Current Provisions of the Land Code, and Proposed Revisions:

| **Issue** | **Current Law** | **Proposed Revision** |
|---|---|---|
| Area of rural land that can be distributed by authorities (private domain of the state) | Minister: 50 ha<br>Governor of Province: 4 ha<br>Commune Administrators: in practice, up to 20 ha | Minister: 2 – 10 ha<br>Governor of Province: 2 ha<br>Commune Administrators: none |
| Land ownership Registration | Certificate de Possession issued by commune authorities for a small fee – but no legal recognition<br>Acte de Notoriete/ certificate d'enregistrement used in urban areas – issued in Bujumbura | Certificate de Possession to be legally recognized<br><br>Acte de Notoriete to be abolished. Certificate d'enregistrement to be issued at Provincial level<br>Systematic registration of lands planned – so that titles may be used for collateral and to avoid disputes |
| Maximum length of land lease. | 99 years | 50 years |
| Swamp exploitation | No legal individual ownership of swamps, currently (state ownership)<br><br>No fee paid | Those using swamp-land, and living nearby, will be able to purchase their plots<br><br>Annual fee will be payable by others for access |
| Max. landholdings | None | None – but local provincial laws may impose them |
| Female access to land (Inheritance) | None | None – but clause will call for 'situation to be analyzed in order that the succession law may be revised' |
| Land Administration structure | Centralised; minimal civil society participation | Land Commissions to be formed at commune and national level. |
| Period of Prescription | 30 years (i.e. if land is unused for 30 years it reverts to the state – important for refugees) | 15 years |

**Sources:** Nikumasabo, V, Ndaye, E., Nindorera, D. (2004) Avant-Projet de Code Foncier: Text Integral, Version Provisoire. Ministere de L'Amenagement du Territoire, de L'Environment 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.

## CONCLUSION AND RECOMMENDATIONS

The decade-long civil war that began in Burundi in 1993 has produced a humanitarian crisis marked by widespread population displacement, destruction of property and devastation of infrastructure. While the violence has oftentimes been described as ethnic in nature, it has recently been acknowledged that competition for scarce natural resources – particularly land – and elite struggles for political power, to ensure access and control of such resources, is the underlying cause of violence. Genuine grievances over unequal land distribution, relative deprivation in terms of political representation and participation in the formal economy, access to education, and exploitation of revenue from coffee exports to benefit a small elite class, among other underlying dynamics, make it possible for politicians to polarize the society along ethnic lines. By exploiting sentiments about poverty and inequality, elites fan ethnic hatred to justify the use of violence, repression and exclusion in order to retain or ascend to power.

The signing of the Arusha Peace and Reconciliation Agreement and the Pretoria Protocols signified the beginning of a return to peace in Burundi, and a long healing process. Internally displaced persons and refugees in neighbouring states have started returning to their home areas, albeit with varying degrees of hope and skepticism. While political negotiations continue with the aim of bringing on board the FNL and ironing out differences among all parties, it is feared that large scale return of refugees to a country ill-prepared to receive them – especially in the context of unresolved land disputes – could trigger violence and undermine the gains made in the implementation of the peace accords. In this regard, the successful repatriation and resettlement of refugees and IDPs hinges on more than physical security and guarantees, because fundamental issues and grievances, particularly inequitable land distribution, must be addressed to bolster and sustain public confidence in the Transitional Government.

Regarding livelihoods, it is important that the government seeks ways and means of providing alternatives to subsistence in agricultural production, given the shrinking land resources. Also, in line with the global tendency towards regionalism, Burundi should endeavor to fulfill any necessary steps in order to gain membership of regional economic blocs such as the East African Community or the Common Market of Eastern and Southern Africa (COMESA), a move that could open the regional labour market as a solution to the demographic challenge inside Burundi.

Recognition of the existence of oppressive structures that have been put in place by the ruling elite in Burundi will significantly change perceptions about the nature and conduct of the conflict. Land tenure issues affecting the majority of the population must not be subordinated to political settlements negotiated to satisfy sectarian interests of an elite few. 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. Due to the complexity of issues at hand, all of which need immediate attention, Burundi might need to borrow a leaf from the book of 'best practices' on security of tenure and access to land from other countries with similar experiences to effectively address its own challenges posed by unresolved land disputes and complex land law.

At the time of writing, the political situation in Burundi is quite fluid given the fact that the country is now in the last phase of a three-year transition period. As the implementation of the Peace Agreement labours on, the situation is complex and any recommendations at this stage may be overtaken by events in a short while. For instance, according to the Arusha Agreement, elections should be held by 31 October 2004, but several Burundian political parties were opposed to this date, and proposed to extend the three-year political transitional period by one year. While the risks of the country going to the polls unprepared is very great, there may also be risks in delaying the election, particularly if this entails a more general revision of the Arusha Accords, which would open the way for more disagreements. Due to various obstacles, the elections were delayed and will now take place in 2005.

A regional summit meeting under the auspices of a regional initiative to restore peace in Burundi on 5th June 2004 urged the parties to stick to the Peace Accord and to begin the country's electoral process. Regional leaders also imposed immediate 'restrictions' on the FNL and mandated the African Union's newly formed Peace and Security Council to recommend further punitive actions against the FNL, which is yet to sign a ceasefire agreement with the government. These actions are intended to ensure that the FNL no longer constitutes a threat to security. In addition to the political maneuvers, informal negotiations and formation of unofficial alliances by elites and political parties as elections approach, the number of refugees returning to Burundi has increased steadily, posing new challenges to the Transitional Government, particularly with regard to the question of land allocation.

Taking these dynamics and the protracted nature of the Burundi conflict into consideration, this chapter makes recommendations to relevant stakeholders to address pertinent issues in two time frames – the short term and the long term – with a view to mitigating the possibility of renewed violence in the run-up to or shortly after the elections, and also to address underlying structural causes of conflict.

## Short-term recommendations

In the short-term, a number of important issues need to be urgently addressed, including legal, political and social preparations for elections; disarmament, demobilization and reintegration; and negotiations with the FNL. However, other organisations are better-placed to map the way forward on these issues. We have restricted ourselves to making recommendations which are directly related to the land-related issues discussed in this section. All such programmes will require the support of the international community, which greatly reduced its aid to the country between 1992 and 2003. It is essential that the more than US $1 billion pledged at donor meetings in early 2004 is disbursed in a timely fashion.

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

The CNRS, the institution mandated with handling all matters related to reinsertion of victims, lacks technical and financial resources, and its effectiveness is compromised by lack of autonomy from the Ministry of Rehabilitation and Resettlement of the Displaced and Returnees (MRDRR). Consequently, displaced persons returning to their homes are not receiving adequate services and their problems are not addressed to their satisfaction, which is breeding resentment and apathy. It is therefore recommended that enough funds be allocated to CNRS to carry out its mandate, while its functions should be separated from those of the Ministry to give it 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. Donor support to the CNRS should be generous in order for it to achieve its objectives; but should be contingent on it being able to use its funds independently and transparently, and on effective coordination with other institutions.

### 2. Strengthen dispute resolution mechanisms

As noted in the text, the institution of the Bashingantahe has wide-ranging roles in dispute resolution at the community level, and it enjoyssignificant legitimacy among the population across the ethnic divide. Although the institution's effectiveness and esteem have been curtailed by political interference and allegations of corruption, the elders continue to be relied on and consulted in many regions and cases of disputes. It is therefore recommended that the institution be revamped and strengthened by official recognition of its role as a community-based peace mechanism, with membership decided through participatory local elections, similar to the 'original' style of recruitment of Bashingantahe elders, in order to restore the institution's esteem and steer it away from political interference and corruption.

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

In post-conflict Burundi, the reconstruction of destroyed infrastructure and the development of necessary administrative institutions at the centre may overshadow or ignore salient concerns and priorities of the population at the community level, such as access to land and governance issues. Civil society organizations at the grassroots and national level should lobby the government to maintain 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.

NGOs such as League ITEKA and Global Rights should be supported in their efforts to provide human rights and legal education to promote tolerance and co-existence, and to provide legal clinics for land-related disputes. Civil society organisations should also be supported in educating the population about the provisions of the Land Code, when it is finalized. In particular, rumour-mongering or political manipulation of land disputes should be countered by a campaign of full transparency in decision-making, on the part of the government as well as civil society partners who will have monitoring and dissemination roles. They should also lobby the government to take measures to enable the population to plan the size of their families more effectively.

## *Long-term recommendations*

These recommendations constitute actions and policy decisions designed to eradicate the underlying structural causes of conflict in Burundi. These should be undertaken in conjunction with other initiatives, such as peace education, the formulation and implementation of comprehensive and fair policies on impunity, and further support for the independent media.

### *1. Institute land policy reform*

One of the main causes of grievance among the people of Burundi regardless of ethnic affiliation is the unequal distribution of land, which has ensured the concentration of wealth in the hands of a few elites, mainly from the southern province of Bururi. The disparity in land ownership is also significant. A policy, or a clause in the Land Code, should also be formulated to limit the size of land holdings per individual in order to help redistribute land resources. The land registration systems and procedures should be reviewed and reformed to be more accessible and transparent to ensure effective land administration and management. Local land records and information systems can be used to generate information and records on land rights, transfers or other transactions, and land use. These aspects can limit conflicts over ownership and enhance tenure security for those using the land.

The operation of land markets is unlikely to benefit the poor due to the distorting effects of war and displacement and the massive disparities of income in the country. The operation of land markets should be carefully monitored in order to identify trends and means to mitigate some of the negative effects.

Women's unequal access to land and consequent tenure insecurity in Burundi stems mainly from discriminative inheritance patterns, but is reinforced by their political and economic disempowerment, as well as gender-insensitive legal, administrative and regulatory frameworks. The current law should be amended to include a provision allowing for equal access to land and property for women. The law should be amended to protect women against arbitrary dispossession, and to provide the legal basis for women to inherit some land and property upon being widowed or separated. NGOs need to do more capacity building for women so that they know their rights, and include men in such training so that they are not resistant to reforms to include women.

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

As noted in the text, control of the state amounts to control of the country's economic resources and foreign exchange, as well as institutions charged with land allocation and management. State power is therefore the ultimate prize which elites, regardless of ethnic affiliation, struggle and fight to gain or retain. The government, with the help of the international community, should encourage the development of the private sector to deconcentrate the responsibilities and resources of the government. Rigorous checks need to be put in place to ensure that this process does not come to be dominated by a small politically-connected group, as has been the case in other countries. In addition, infrastructural and market development should be balanced to avoid regional disparities.

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

Most of the population in Burundi is rural and subsists on agriculture. Given the chronic land shortage, agriculture is no longer a viable means of livelihood and there is need to diversify income-generating activities. 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. The government, with the help of donors, should provide funds for such programmes. Revolving funds or micro-credit facilities could be promoted among women's and youth groups or individuals. Particular attention should be paid to demobilized soldiers and ex-rebels so that they do not revert to war or crime. Besides allocating them with land, vocational training opportunities should be availed with the help of NGOs and religious organizations. These efforts should be seen within the long-term development of a regional labour market.

### *4. Revive regional economic cooperation*

In July 2004, the foreign ministers of Rwanda, Burundi and the DRC agreed to revive the Economic Community of the Great Lakes Countries, which will aid regional cooperation, particularly in the various economic, energy, conservation and social development sectors. Besides the economic gains of such regional cooperation, the initiative aims to consolidate peace and stability, as a prerequisite to promoting cultural, scientific and economic cooperation, besides allowing for the free movement of labour. Whilst remaining cognisant that there are serious political obstacles to this, and thus avoiding excessive spending on insubstantial activities, the international community should support this initiative with the requisite resources and technical expertise.

Before, during and after the colonial period the rural populations in Burundi have established mechanisms to diffuse the land and fiscal pressure through temporary or permanent migrations towards Tanzania, the DRC and Uganda. At the end of the 1970s and early 1980s, the governments of these countries endeavoured to institutionalise those movements, in particular within the CEPGL (*Communuté Economique des Pays de la Région des Grands Lacs*), but war put an end to this effort. The concept remains important. For instance, Tanzania, with its large territory and political stability, could be a key player in resolving the population/land question in Burundi and Rwanda by hosting development projects and allowing settlement of the landless displaced in its Kagera and Kigoma regions. Currently, the Tanzanian Government opposes such an arrangement, but with continued negotiations and the support of the international community, mutually beneficial terms could be identified.

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

Much has been written about the causes of the conflict in Burundi, the actors, duration and resolution mechanisms, but there remain lacunae in information about such factors as the impact of long term displacement on the society, the prevalence and implication of HIV/AIDS; long term solutions to the problem of land scarcity in the midst of soaring population growth, the plight of demobilized ex-rebels and ex-soldiers, and other issues that have a direct bearing on sustainable peace. Discussion among stakeholders should focus on the implications of the interface between forced population displacement, conflict and land tenure in order to guide policy formulation and implementation with a view to preempting conflict. Gender, regional and ethnic differentials in land access and utilization should be further explored to identify necessary legal, institutional and socio-cultural measures or innovations through which women and the landless majority can be helped to secure land and security of tenure.

Like-minded organisations inside Burundi and beyond should foster greater collaboration and networks through formation of theme groups (for example, on HIV/AIDS, land rights, refugees etc) not only to profile

the issues, but also avoid duplication and competition. Moreover, findings should be shared with policy makers with a view to contributing to political processes such as peace talks, and influencing positively government decisions on emotive issues such as land and migration, which often underlie conflict.

Access to land and tenure security is a fundamental element of stability and sustainability in post-conflict Burundi. 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. It is therefore imperative to take the needs of each stakeholder into consideration, and to co-ordinate government policy activities with the activities of local and international NGOs and the needs of local people in order to identify the main areas of concern and potential conflict.

## ENDNOTES

1 Considerable input and fieldwork data was also provided by Jenny Clover and Jean-Marie Gasana of ISS, and the chapter was reviewed by Arnaud Royer.

2 Incidents of mass violence occurred in 1965, 1966, 1972, 1987, 1988, 1989, 1991, 1993 and 1996. For a description of these incidents see among others, R Lemarchand, *Burundi: Ethnic conflict and genocide*, Woodrow Wilson Centre Press and Cambridge University Press, Cambridge, 1997.

3 F Reyntjens, *Burundi: Breaking the cycle of violence*, Minority Rights Group, London, 1995.

4 Medicins Sans Frontieres, *Burundi: Vulnerable population deprived of healthcare*, 2004, <www.msf.org/countries/page.cfm? articleid=38704110–D2FF-479D–9077008CBBD5126B>

5 UNDP, *Human Development Report 2003*, UNDP/Oxford University Press, 2003.

6 See A Ayebare, Redistribution of Power and an End to Patronage: Conditions for the Resumption of International Cooperation in Burundi, *East African Alternatives*, Nairobi, September/October, 1999.

7 International Crisis Group, *A framework for responsible aid to Burundi*, Africa Report 57, 21 February, 2003.

8 M Hammarskjold, *The environment, natural resources and HIV/AIDS*. SIDA, Environment Policy Division, 2003. See also P Kamungi, *The lives and life-choices of internally displaced women in Kenya* ,UNIFEM, Nairobi, 2001.

9 D Mullins, , and S Drimie, *HIV/AIDS and land: Kenya, Lesotho, Malawi & South Africa*, Paper presented at Social Aspects of HIV/AIDS Research Alliance Conference, 1–4 September YEAR, Pretoria, South Africa.

10 See for example R Kitevu and J Lind, Enhancing the Arusha Agreement: Environmental aspects of the Burundi peace process,

*Eco-Conflicts Policy Brief* 1(2), April 2001; International Crisis Group Réfugiés et Déplacés au Burundi – Desamorcer la Bombe Foncier, Africa Report 70, 7 October 2003.

11 See International Crisis Group, Réfugiés et Déplacés au Burundi – Desamorcer la Bombe Foncier, Africa Report 70, 7 October 2003.

12 ICG assert that these people were essentially being used by UPRONA to pressurize the President. See International Crisis Group (2003), Réfugiés et Déplacés au Burundi – Desamorcer la Bombe Foncier. Africa Report N°70, 07 October 2003

13 J D Nkurunziza, and F Ngaruko, *Explaining growth in Burundi: 1960 – 2000,* Norwegian Refugee Council, Profile of Internal Displacement, Burundi, 2002; A Hatungimana, and J Ndayishimiye, *Politique de Repatriement, de Reinsértion et de Rehabilitation des Sinistrés ainsi que la Problematique de Gestion des Terres au Burundi*, Observatoire de L'Action Gouvernmentale, Bujumbura, 2003.

14 UNHCR-The UN Refugee Agency, *Draft operational plan for the repatriation and reintegration of Burundian refugees,* Bujumbura, February 2004.

15 See A Hatungimana, and J Ndayishimiye,op cit.

16 See P Kamungi, *The diplomatic and foreign policy aspects of refugee movements in the Great Lakes Region, 1993–1998*, Unpublished M.A Thesis, Institute of Diplomacy, University of Nairobi, 2000; and International Crisis Group (ICG), *Burundian Refugee in Tanzania: A Key Factor to the Peace Process,* Central Africa Report 12, November 1999.

17 See Refugees International, *Burundi: Large-scale repatriation would threaten peace. Press Release*, 12 Apr 2004; International Crisis Group, "Refugies et Deplaces au Burundi – Desamorcer la Bombe Foncier". Africa Report No. 70, Oct 2003.

18 The *Bashingantahe* are a local council of elders, who customarily resolve community disputes.

19 Burundi has an area of 27,830 km$^2$, about 6,224,000 inhabitants.

20 Norwegian Refugee Council, 2002, op cit.

21 See S Leisz, Burundi Country Profile, in J Bruce, Country Profiles of Land Tenure: Africa, 1996, Land Tenure Centre, University of Wisconsin, 1996 and <www.wto.org/english/tratop_e/tpr_e/s113–4_e.doc>

22 UN, *Les Defis du Processus de Transition: Bilan Commun de Pays*, Draft 4, Bujumbura, 2004; and interview with FAO personnel, Bujumbura, May 2004.

23 D Jackson, *Twa Women, Twa rights in the Great Lakes Region of Africa*. Minority Rights Group, 2003.

24 United Nations Consolidated Inter-Agency Appeal for Burundi, January-December 2000 New York and Geneva 30 November 1999.

25 R Lemerchand, Burundi: Ethnic Conflict and Genocide, Woodrow Wilson Centre Press and Cambridge University Press, Cambridge, 1997.

26 T Homer-Dixon and J Blitt, *Ecoviolence: Links among environment, population and security*, New York: Rowman and Littlefield, 1998, pp 5–11.

27 For instance, Hartmann argues that these variables show a 'questionable causality' since they focus mainly on aggregate population size and density and tend to homogenize diverse regions, histories and cultures. Fairhead also argues that Dixon's analysis confuses distinct environmental variables. See B Hartman, Population, Environment and Security: A New Trinity, *Environment and urbanization*, 10, 1998, pp 113–127; J Fairhead, The Conflict over Natural and Environmental Resources, in W Naffziger, F Stewart, and R Vayrynen (eds) *The economic causes of complex humanitarian emergencies*, Oxford University Press, Oxford, 2000.

28 Interviews were conducted by ACTS researchers as well as by Jenny Clover, and Jean-Marie Gasana of ISS, who also provided access to a number of important documents. Key informants included government officials, NGO and UN representatives, community and religious leaders, internally displaced persons, returning refugees, youths, demobilized ex-rebels, community opinion leaders, scholars, elders and members of the general public. Document analysis was also undertaken on records related to land policy, adjudication of land issues, and literature on land ownership, displacement, repatriation, and related issues.

29 These percentages may not be accurate given widespread intermarriage and the effects of genocide and displacement. They also leave out members of the Ganwa sub-group and immigrant communities. See R Lemarchand, 1997, op cit. p 6.

30 Two distinct 'schools of thought' prevail regarding Hutu-Tutsi relations. Some people insist there is no ethnic difference between the two communities; that what there exists is a normal socio-economic difference, a division of labour between pastoralists and agriculturalists (this was the line taken by many members of the RPA in neighbouring Rwanda, for example). On the other hand, others – particularly Hutu extremists - maintain that the two are distinct peoples with different origins, histories and racial characteristics. See S Jackson, *Regional conflict formation and the "Bantu/Nilotic" mythology in the Great Lakes*, Centre for International Co-operation, New York University, 2002.

31 See J S Oketch, and T Polzer, Land and Coffee in Burundi, in J Lind and K Sturman, *Scarcity and surfeit: The ecology of Africa's conflicts*, ISS, Pretoria, 2002; and L Ndikumana *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.

32 T P Melady, *Burundi: The tragic years*, MaryKnoll Publishers, New York, 1974.

33 F Ngaruko, and D Nkurunziza, An Economic Interpretation of the Conflict in Burundi, *Journal of African Economies* 9 (3), 2000.

34 Jean-Bosco Ndayikengurukiye, who is a leader of the FDD. See International Crisis Group, The Burundi Rebellion and the Ceasefire Negotiations, *Africa Briefing Paper,* August 2002.

35 L Ndikumana, *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.

36 The most notable of the rebel groups were the CNDD, FDD and PALIPEHUTU (the latter of which pre-dated the events of 1993). Many of them later disintegrated into rival factions, further complicating the attainment of a ceasefire. For instance, PALIPEHUTU-FNL is better known for its radical stance and military capacity than for local mobilization or area of influence.

37 The operations included violent street demonstrations and riots, looting, burning of vehicles and homes, beatings and other acts of hooliganism and civil disobedience intended to breed fear and chaos with the effect of bringing all business and activities in the city to a standstill. See L Ndikumana, 2004, op cit.

38 In addition to the effects of conflict, the sanctions sent commodity prices soaring, contributing to a 36% increase in the general price index over the course of the first year alone and virtually doubling the average family's household costs. By the time they were lifted three years later, the cost of living had increased by 50%, the exchange rate had fallen and state structures had weakened. See United Nations Resident Coordinator System in Burundi, 1998, pp 16–17.

39 See for example J Oketch, *A critical evaluation of sanctions as third party leverage in the management of internal conflict: The Burundi peace process, 1993–2000,* MA Dissertation, Institute of Diplomacy and International Studies, University of Nairobi, 2001.

40 See for example ICG, *The Mandela effect: Prospects for peace in Burundi,* Central Africa Report No. 13, April 2000.

41 See the Pretoria Protocol on Politics, Defence and Security and the *Additional protocol to the Pretoria Protocol on political, defence and security*, available on the United States Institute for Peace, http://www.usip.org/library/pa/burundi/burundi_10082003.html

42 Its leader, Pierre Nkurunziza was appointed the Minister of State for Good Governance, the third highest ranking position overall in the political hierarchy in Burundi. The president and the vice-president cannot, according to the agreement, make any security-related appointment decision without consulting him. Two other ministerial positions were allocated members of the rebel groups.

43 Agathon Rwasa's faction of the FNL maintains that negotiations should be between the armed Hutu groups and the Tutsi dominated army, which they perceive as wielding power in Burundi, not the government.

44 Most of the rebel movements rely on informal bases in neighbouring countries and military support from other countries in the region.
45 M Carnegie, *UN says Rwanda, DRCongo fighters may have carried out Burundi slaughter*, Agence France-Presse, 24th August 2004.
46 See R Kitevu and J Lind, *Enhancing the Arusha Agreement: Environmental aspects of the Burundi peace process*, Eco-Conflicts Policy Brief 1(2), April 2001.
47 Since this report was initially drafted, the draft electoral calendar was changed due to logistical problems and political negotiations. and foresees a constitutional referendum in June, *colline* elections in July, Commune elections in August and subsequently parliamentary and presidential elections in October. Both Maj. Pierre Buyoya and the incumbent are not eligible to stand in these elections and the president will be chosen by a vote of two-thirds majority of the National Assembly and the Senate.
48 President Ndayizeye signed two decrees formalizing the agreement between the government and the CNDD-FDD in January 2004. The first decree, signed on 7th January, appointed 33 members of the Joint Military High Command (20 from the army and 13 from the CNDD-FDD). The second degree elaborated the mandate of the Joint Military High Command as being to propose the structure and size of the proposed new Burundi National Defence Force.
49 The Transitional Assembly adopted the legislation for the establishment of a National Truth and Reconciliation Commission in April 2003, but the legislation remains stuck in the Senate.
50 Protocol I Article 7 (19).
51 Protocol I, Article 7 (25c).
52 See for example Protocol IV.
53 See for example *The national refugee policy*, the United Republic of Tanzania, Ministry of Home Affairs, (undated); and for a detailed analysis, M Fellesson, Prolonged Exile in Relative Isolation: Long-Term Consequences of Contrasting Refugee Policies in Tanzania, *Acta Universitatis Upsaliensis Studia Sociliologica Upsaliensia 49*, Uppsala Universitet, 2003.
54 See for example, L Ndikumana, *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.
55 L Ndikumana, 2004, op cit.
56 Lemarchand, op cit. p 12.
57 In traditional hierarchical Burundian society, the Ganwa were the ruling princely class. They had wide ranging powers to enforce labour, extract taxes and distribute land to the Hutu, Tutsi and Twa. Factional rivalries between royal princes were common – notably between the Batare and the Bezi – compelling each to resort to family, cattle clients and local peasantry for support. Such political rivalry intensified during the colonial era, and is thought to have

contributed not only to the decline of the social system that allowed social/ethnic mobility, but also to regional rivalries. See R Lemarchand, *Rwanda and Burundi*, 1st ed, Pall Mall Press, London, 1970.

58 For greater analysis of these dynamics of Hutu-Tutsi ethnic relations and the subtle rankings within each group, e.g. based on clan or kinship affiliations, see R Lemarchand, 1997, op cit. pp 2–16.

59 The process, known in Kirundi as *Kwihutura*, is now extinct. See L Ndikumana, 2004, op cit.; J Pottier, *Re-imaging Rwanda: Conflict, survival and disinformation in the late 20th century*, Cambridge University Press, Cambridge, 2002, pp 116–120; and A Mafeje., *Kingdoms of the Great Lakes region: Ethnography of African social formations,* Fountain Publishers, Kampala, 1998.

60 Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Article 1 (4).

61 See for instance JP Chrétien, Burundi: Le Métier d'historien: Querelle d'école?, *Canadian Journal of African Studies*, 25(3), 1991 pp 450–467; A Mafeje, 1998, op cit.

62 See "The Tutsi, the Hutu, and the Abazungu." in G Prunier, *The Rwanda crisis: History of a genocide, 1959–1994,* Fountain Publishers, Kampala, 1996 pp 5–9.

63 See F Reyntjens, *Burundi: Breaking the cycle of violence*. London: Minority Rights Group, 1995.

64 See L Ndikumana, 2004, op cit.

65 J S Oketch and T Polzer, 2002, op cit, p 90.

66 J D Nkurunziza, and F Ngaruko, *Explaining growth in Burundi: 1960 –2000,* 2002, op cit.

67 The civil service is yet to be restructured to accommodate equitable ethnic distribution, though a few key posts such as ambassadorial positions have been given to Hutu. See JM Gasana and H Boshoff , Burundi: Critical Challenges to the Peace Process, *ISS Situation Report*, 16 September 2003.

68 Recently, provisions of the Arusha Peace Agreement and the Pretoria protocols have seen an increase in the numbers of Hutu in the civil service and the security forces from CNDD-FDD and other political groups.

69 Interview with aid agency personnel.

70 See P Billon, The Political Economy of Resource Wars, in J Cilliers, and C Dietrich, *Angola's war economy: the role of oil and diamonds*, ISS, Pretoria, 2000; and J Scott, *Weapons of the weak: Everyday forms of peasant resistance*, Yale University Press, 1987.

71 See F Ngaruko, and J Nkyuruziza, An Economic Interpretation of Conflict in Burundi, *Journal of African Economies 9(3),* 2000; and Human Rights Watch, *Every day victims: Civilians in the Burundian war*, New York, 2003 pp 54. See also *The Economist Intelligence Unit,*

*Quarterly Economic Review of Burundi and main report on Burundi., 1997–2000,* EIU database, <www.eiu.com>

72 See R Lemarchand, 1997, op cit; and J Vansina, *Oral Tradition as History*,University of Winsconsin Press, Madison, 1985.

73 G Nzangola-Ntalaja, *Ethnic identification in the Great Lakes Region: The Hutu-Tutsi conflict in Rwanda and Burundi*, Paper prepared for the conference on 'Shifting African Identities', 1998.

74 UN, *Les Defis du Processus de Transition: Bilan Commun de Pays*. Draft 4, Bujumbura, 2004.

75 UN-OCHA, *Internally displaced populations and displacement sites in Burundi*, March–April 2004.

76 T Laely, Peasants, Local Communities and Central Power in Burundi, *Journal of Modern African Studies,* 35(4), 1997, pp 695–716; 695–698.

77 In 1996 the Government of Burundi embarked on a 'regroupment' policy of forcing the civilian population, mostly Hutu, to leave their homes and relocate to camps guarded by armed forces.

78 United Nations Secretary General, *Report to the Security Council*, 6 March 2000, para. 30.

79 Some Burundians argue that people are forced to move out of their homes so that their property can be stolen, or their land fraudulently acquired by influential individuals. Interview with a Burundian refugee in Kawangware, Nairobi on 5th May 2004. See section 5 on land disputes.

80 The phenomenon of 'night commuters' or seeking refuge in urban centres and other safe areas by night and retuning home during the day is common in most rebel-controlled areas of the Great Lakes region.

81 Many NGOs operating on the ground assert that Tutsi camps are generally better serviced than Hutu ones. However, the reality is more complicated because this generalization does not apply to displacement situations in such places as Kirundo and Muyinga where the majority of the Tutsi do not have access to water, sanitation or permanent housing.

82 International Crisis Group, *Réfugiés et déplacés Burundais: Construire d'urgence un consensus sur le repatriement et la réinstallation*, Brussels/ Nairobi, 2003.

83 Republique de Burundi, *Tableaux de répartition des terres domaniales Libres*. (Mimeo), 2003.

84 Interview with international NGO personnel, Bujumbura, May 2004.

85 See Bikwemu *et al*, 2003, op cit.

86 International Crisis Group, *Réfugiés et déplacés Burundais: Construire d'urgence un consensus sur le repatriement et la réinstallation*, Brussels/ Nairobi, 2003.

87 Interview with JRS personnel, Bujumbura, May 2004.

88 J Van Eck, *Burundi update-A brief overview of current developments within the Burundi Peace Process,* ISS, Pretoria, October 2003.

89 Interview with JRS personnel, Bujumbura, May 2004.

90 IRIN, *Burundi: Focus on displaced Batwa*, March 30 2004 <www.reliefweb.org/country/burundi>
91 For greater analysis of Twa lives, livelihoods and culture, see D Jackson, 2003, op cit.
92 Interview with a Burundian refugee living in Kangemi, Nairobi on 20th April 2004.
93 Often, gender roles change. Trauma, alcohol abuse and poverty predispose families to situations of stress and domestic violence, which ultimately leads to divorce or separation. See P Kamungi 2001, op cit.
94 S Sabimbona, 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.
95 Interview with Burundian refugees in Nairobi, 19th April, 2004.
96 L Ndikumana, 2004, op cit.
97 J Van Eck, *Challenges to a durable peace in Burundi*, ISS Situation Report, Pretoria, April 2004.
98 The BBC World Service 09.00 hrs News Bulletin, 22nd May 2004.
99 League ITEKA, *Monitoring Des Répatriés*, Bujumbura, December 2003
100 Interviews with Francois Ngendahayo: Minister of Repatriation, Reintegration and Reconstruction; Terence Nahimana, MP; and NGO personnel, Bujumbura, April 2004.
101 These NGOs include Global Rights and League ITEKA.
102 Most of the refugees who fled due to violence in 1988 returned to their hills within six months.
103 Nyanza-Lac and Rumonge are the classic cases of especially problematic areas.
104 International Crisis Group, Refugies et Deplaces au Burundi – Desamorcer la Bombe Foncier, Africa Report No. 70, October 2003.
105 Interview with IRIN staff who had conducted research in the refugees camps in Tanzania.
106 Article 53 of the Law Code: Republique du Burundi, *Loi Portant Code Foncier Du Burundi*, Loi No 1/008, 1 September 1986.
107 Estimates of the number of *sinistrés* released in a Seminar on the National Strategy for Reinstallation and Reinsertion of Refugees, Bujumbura, 28th March 2004, cited in A Hatungimana and J Ndayishimiye, *Politique de repatriement, de réinsértion et de rehabilitation des sinistrés ainsi que la problematique de gestion des terres au Burundi*, Observatoire de L'Action Gouvernmentale. Bujumbura, 2003. The UN estimates that *sinistres* represent about 17% of the population. See UN, *Les defis du processus de transition: Bilan commun de pays*, Draft 4, Bujumbura, 2004.
108 According to some analysts, Tanzanian authorities' estimates of the number of refugees include Burundian migrants who settled in Tanzania during the colonial period. Consequently these estimates are an exaggeration of the true number of refugees. UNHCR offers a

figure of 100,000 but these are only registered refugees, in known locations; UNHCR, *Operation plan for the repatriation and reintegration of Burundian refugees* (Draft), Bujumbura, February 2004.

109 Interview with UNHCR personnel, Bujumbura.

110 Personal communication with Burundian official, Nairobi.

111 Refugees International, *Burundi: Returning internally displaced in urgent need of assistance and protection*, May 2004.

112 UN-OCHA, *Internally displaced populations and displacement sites in Burundi*, March–April 2004

113 See A Hatungimana, and J Ndayishimiye, 2003, op cit.; and International Crisis Group, *Refugies et Deplaces Burundais: Construire d'urgence un Consensus sur le Repatriement et la Reinstallation*, Brussels/ Nairobi, 2003.

114 A Hatungimana and J Ndayishimiye, 2003, op cit.

115 International Crisis Group, 2003, op cit provide the example of the Chief of Vyanda, who allegedly occupied 10 ha of land in Kigwena Zone.

116 Research by Agency for Cooperation and Research in Development (ACORD), quoted in IRIN, *BURUNDI: Refugees, IDPs facing psychological trauma, agency says*, Bujumbura, 18 May 2004.

117 Survey carried out by the Ministry for Rehabilitation and Reintegration of Displaced Persons in March and April 2004. However, the figure did not include those temporarily displaced in Bujumbura Rurale, and those living with host communities. <www.irinnews.org> 12th May 2004.

118 UN-OCHA, *Internally displaced populations and displacement sites in Burundi*, March-April 2004.

119 M Felleson, *Prolonged exile in relative isolation: Long-term consequences of contrasting refugee policies in Tanzania*, Uppsala University Press, Sweden, 2003.

120 Thousands of refugees voluntarily (spontaneously) repatriated to Burundi in 2003, a development hailed by many as an encouraging sign.

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

HERMAN MUSAHARA AND CHRIS HUGGINS[1]

## INTRODUCTION

Between 2000 and 2002, the African Centre for Technology Studies (ACTS), in collaboration with the Institute for Security Studies (ISS), conducted research to identify the extent to which environmental factors have contributed to political conflicts in Rwanda. This work was published in 2002 as a chapter in *Scarcity and surfeit: The ecology of Africa's conflicts*.[2] It identified a number of ways in which the political economy of land contributed to socio-political tensions, conflict and genocide. These include the role of resource capture by elite groups and landlessness in the economic collapse prior to 1994, as well as the historical significance of land in patron-client relations which became increasingly rigidified in the late 19th century, and which meant that "land became a factor of differentiation between Hutu and Tutsi". All of these factors must be seen in the context of structural land scarcity: the country is the most densely populated on the African continent. The average land holding at the household level has dropped from 2 ha in 1960, to 1.2 ha in 1984, to just 0.7 ha in the early 1990s.[3] In 2001, almost 60% of households had less than 0.5 ha.

The study concluded:

> *Various factors contributed to the onset and continuation of conflict in Rwanda. The role of land, however, is critical to understanding conflict dynamics…many reforms will be necessary to effectively manage the sources of conflict in Rwanda. The government has the responsibility to strengthen the security of rural livelihoods, and to create employment for thousands of unemployed youth… the government, however, has a moral duty and responsibility to redress gross inequalities in land ownership, and to improve livelihoods for the rural poor. Land distribution to benefit the poorest will be a necessary part of any strategy for meeting these responsibilities. Doing so will reduce powerful tensions related to access to and control of land, and contribute to the process of national reconciliation and peacebuilding.*

Since that chapter was written, the Government of Rwanda has completed a process of developing a National Land Policy and a National Land Law, which at the time of writing (September 2004) were being considered by a parliamentary standing committee, and evaluated by

the Ministry of Justice. The development of the Land Policy and the Land Bill required some seven years of internal debate between policy-makers, which would seem to indicate the importance of the issues, and the sensitivities involved. Land policy reform is reportedly the most sensitive item on the government's agenda.[4]

This case study, based on interviews in Rwanda and an extensive review of secondary material, builds on ACTS' previous analysis, and examines the proposed land reforms as articulated in the policy. However, it does not attempt to be a comprehensive review of the land policy – more in-depth studies have already been conducted.[5] Instead, it situates the policy and the process involved within the wider debates about governance and conflict resolution in the country. It examines some assumptions made in the policy, and essentially looks at the political aspects of questions which are often portrayed as purely 'technical' issues. We suggest that "policy *implementation* is more likely than not to be a process of policy *interpretation*"[6]; and examine governance structures which are likely to guide this interpretation.

Finally, some recommendations are offered on ways in which the land policy and law can best be implemented in order to assure the long-term growth and stability of the country, and mitigation of future conflict.

## A BACKGROUND TO THE CONFLICT IN RWANDA

Inequality and social tensions have existed in Rwanda prior to the civil war which began in 1990. The pre-colonial and colonial-era situation, which is discussed in detail below, led to the political dominance of an elite group within the Tutsi community. However, on the eve of independence, the Belgian colonial power essentially switched allegiance to those advocating for 'Hutu majority rule'. The 'social revolution' of 1959 led to most Tutsi in positions of power being forced or voted out, and there were widespread ethnic pogroms against Tutsi across the country. Post-independence governance, despite some positive characteristics, came to be characterized by exclusionary 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.

These grievances were used by some political elements in the transition to multi-party politics in the early 1990s, which occurred against a backdrop of civil war. Rwandans in exile formed the Rwandan Patriotic Front (RPF) and invaded the country from Uganda in October 1990. Hundreds of thousands of people were displaced as the RPF, composed mainly of exiled Tutsi, engaged the government forces between 1990 and 1994. Amidst rising ethnic tension and widespread anti-Tutsi propaganda, militia forces allied to political parties, carried out violent attacks against Tutsi civilians with impunity. In advance of the death of President Habyarimana, a 30–50 thousand-strong militia was recruited, armed and trained specifically for the task of massacring Tutsi, and

Hutu opponents of the extremists.[7] The genocide of 1994 was directed, planned, supported and incited by officials in the armed forces, the police and the civil authorities. Civilians were forced and cajoled into violence through a number of means, including propaganda, bribery, intimidation and fines for criticizing the genocide policy. Over 800,000 people, the vast majority Tutsi, are believed to have been murdered.[8] The failure of the international community, including the United Nations (UN), to prevent or stop the genocide, and the alleged complicity of some Western countries, continues to affect relations between Rwanda and the outside world.[9]

The remnants of the Rwandan armed forces (ex-FAR) and the *Interahamwe* militia fled the country, along with more than 1.7 million refugees, most of them into Eastern DRC. In 1996, an anti-Mobutu rebel group calling itself the Alliance of Democratic Forces for the Liberation of Congo (ADFL), along with Ugandan and Rwandan troops, attacked and destroyed the refugee camps in the DRC, which had become highly-organised military training grounds for the *Interahamwe*/ex-FAR. The *Interahamwe*/ex-FAR, lacking operational bases in DRC, moved to areas in North Kivu, and then mounted attacks in the Northwest of Rwanda.[10] The areas most affected were Gisenyi and Ruhengeri Provinces, which have historically been heartlands of anti-Tutsi sentiment; but neighbouring communes in Kibuye, Gitarama and Greater Kigali were also affected.[11] The insurgency was suppressed by 2000, though a few sporadic incursions have been experienced since then.

As a result of violence, almost everyone in Rwanda has undergone an experience of forced displacement, either within the country or to a second or even third country. People who had left the country at different times returned in successive phases during the 1990s (particularly 1994–1996) to claim their lands and property. Those who left due to violence and repression from 1959 onwards entered Rwanda in large numbers, starting from 1994. They are generally known as the 'old caseload', are almost all Tutsi, and numbered about a million. Those who had fled in the immediate aftermath of the war and genocide – who are almost entirely Hutu and became known as the 'new caseload' – returned in late 1996 or early 1997. These influxes resulted in multiple claims of ownership for farmlands, buildings, and agricultural and forest products. Government policy, guided to some extent by the Arusha 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 *imidugudu*, into a more widespread settlement policy. Despite people's general willingness to share land and natural resources, considerable controversy surrounds issues of land in many parts of the country, and there are many land disputes at the local (intra- and inter-household) level.

## Discourse on conflict, governance, and environment in Rwanda

> *Since 1994 donors have differed radically in their assessments of basic matters such as the current dynamic of the Rwandan conflict, the nature and intentions of the government; the weight of the past in explaining the present, or the nature of current ethnic, social and economic trends in society.*[12]

Any kind of analysis of actual or potential 'conflict', by nature of its subject-matter, is bound to be controversial. The debate over governance in Rwanda has also been highly emotive and tended towards polarised positions, for reasons which will be discussed below. Here, we follow the UNDP in defining governance as:

> *The exercise of economic, political, and administrative authority to manage a country's affairs at all levels and the means by which states promote social cohesion, integration, and ensure the well-being of their populations. It embraces all methods used to distribute power and manage public resources, and the organisations that shape government and the execution of policy.*

We further agree with UNDP that,

> *Good governance therefore depends on public participation to ensure that political, social and economic priorities are based on a broad societal consensus and that the poorest and most vulnerable populations can directly influence political decision-making, particularly with respect to the allocation of development resources. Good governance is also effective and equitable, and promotes the rule of law and the transparency of institutions, officials, and transactions.*[13]

Before discussing land issues, and the volatile debate over governance in Rwanda, it is important to examine the perceived significance of land issues to 'conflict prevention' in Rwanda. It has become more apparent to a number of actors, especially since the late 1990s, that effective management of land disputes, and policy responses to land scarcity, are essential for long-term stability. The ACTS study quoted above concluded that, "dealing with issues of land and resource rights in a considered and open way at the level of policy-making to the level of local dispute resolution will have enduring benefits for peace building in Rwanda."

A number of other studies and scholars have also identified land as a key issue.[14] The *Country Indicators for Foreign Policy Project* study on the Great Lakes, dating from 2002, looks at demographic and environmental stress, as well as other indicators.[15] The assessment concluded that Rwanda had a 'high risk' of conflict according to all these indicators, and a 'very high risk' according to the environmental stress indicator.[16] The specific indicators under the environmental stress category include:

rate of deforestation, people per sq. km of arable land, and availability of freshwater (cubic metres per capita).

USAID's *Conflict Vulnerability Assessment*, conducted in 2002, also prioritises land issues.[17] "The reform of land use, land tenure policy and law issues" was one of three areas selected and analyzed in 'qualitative' terms, with information being gathered primarily through interviews with key informants.[18] The assessment concluded that,

> *The period 2002–2004 will be one of maximum danger for the consolidation and successful conclusion of the transitional process that began in 1994… the lingering threat of potential, large-scale violent conflict in Rwanda (whether or not it takes a specifically genocidal turn) remains very great – perhaps among the greatest in Africa.*

In specific reference to the land reform process, the assessment warns that:

> *…should there be a great deal of land 'consolidation', the perception that large numbers of people have been left poor and landless while a small minority prospers could have explosive implications in the post-genocide context.*

A third example comes from the Clingendael Institute, which is particularly respected for its analysis of conflicts in the Great Lakes Region.[19] Land scarcity is included under an indicator of "Mounting Demographic Pressures", which was rated as "Alert Status", meaning that it was a priority issue to be addressed in order to safeguard stability. The study concluded that,

> *The prevailing land scarcity and demographic pressure make land into a highly sensitive issue along ethnic, intra-ethnic and class-lines. The problem is compounded by the existing imidugudu policies of the government and future uncertainty about the land tenure law and associated policies. The influx of refugees, soldiers and the outflow of released detainees of the gacaca process, all add to this problem. Improper land use and management systems lead to erosion and deteriorating land quality, while rural productivity remains at low subsistence levels.*[20]

Finally, the draft land policy itself recognizes the importance of land management in conflict prevention. It states that,

> *From 1959 onwards, the land system became a conflict factor among the population", and that, "At the beginning of the 80s, the "new" land no longer existed, and serious problems began to emerge; the reduction of soil fertility as well as land for cultivation, family conflicts stemming from land expropriation, scarcity of land, etc.*

Before discussing Rwanda's vulnerability to conflict, we should start from a definition of what we mean by 'conflict'. Conflicts can be defined in many ways; though for our current purposes we are specifically referring to large-scale violent conflict, whether of low-intensity or

high-intensity in nature. Analysis of the current situation in Rwanda tends to focus on ethnic relations. The threat of violence from Hutu extremists is real, and indeed Rwanda was regularly affected by violence arising from their activities (both in terms of attacks by the 'insurgents' and, in some cases, violent repression by government troops) in certain areas until 2000; in April 2004 some 200 insurgents entered the country and were repulsed by the Rwandan Defence Forces.[21] The presence of ex-FAR and *Interahamwe* in Eastern DRC was the main official justification for Rwanda's involvement in the conflict there.

It may be assumed, therefore, when discussing potential conflict that one is talking exclusively about 'Hutu-Tutsi' conflict, or more specifically, about a resurgence of genocidal ideology and genocidal acts. However, to define potential conflict purely in 'ethnic' terms, or according to a specific type of manifestation of violence, would be over-simplistic. As mentioned above, Rwanda is part of a region which is politically volatile, and where patterns of political violence, internal displacement, refugee movements, and arms supply and opportunistic cross-border military alliances have led to complex regional interactions. As the direct involvement of some nine African states in the 'second Congo rebellion' in the late 1990s demonstrated, the international dynamics also go further than the region; and indeed, the actions of development partners, transnational corporations and other non-African institutions are also significant. In recent years, neighbouring countries have been accused of harbouring dissidents (of various ethnic backgrounds and political affiliations) with the intention of destabilising Rwanda.[22] All of these problems become more pressing in the context of extreme poverty – while the GNP per capita has risen since 1994, the country has higher levels of poverty than in the pre-genocide period.

Various aspects of land tenure reform, land scarcity and land management can be seen as potential root causes of conflict; and also as proximate causes. It is generally agreed that poverty was one of the root causes of the genocide, though not on its own a 'sufficient' cause. The general situation of grinding poverty for the majority was worsened by the sudden crash in coffee prices between 1989 and 1991, and the disrupting effects of the civil war. Land scarcity is strongly associated with poverty, particularly because there are few off-farm opportunities available in rural Rwanda today. Inequitable distribution of land, and tenure insecurity (brought about by frequent episodes of population displacement and subsequent re-distribution of land by the state), have been described as key aspects of the 'structural conflict' that have underpinned violent conflict – i.e. one of the aspects of economic domination and exclusion that creates deprivation and social tension, and prepares the way for violence. During the genocide, violence was directed not just at Tutsi, but also at those involved in land disputes. One in-depth study of local level land access provides an account of a particular commune in Gisenyi, where land disputes were becoming more and more numerous in the years leading up to the 1994 genocide.[23] Customary conflict mediators reported that about half of all the disputes being

referred to them were over land, particularly over inheritance. Because of the sheer extent of land scarcity, many of these conflicts could not be resolved satisfactorily. Evidence of increasing social tensions included the activities of a large number of thieves in the community who became less and less amenable to control, and the tendency of some local people to live in fear of their neighbours and relatives, and specifically a fear of being poisoned. This led to the researchers concluding that, "the social fabric was at risk of falling asunder". In this particular commune, 32 people of a total population of 596 were murdered during the genocide period. Of these, only one was a Tutsi. According to researchers, many of the rest were resented by some people because they had large landholdings. This then represents a tendency for some local people to use the cover of confusion in order to 'settle old scores', many of which originate in social struggles for access to land, and reminds us that the Hutu-Tutsi dynamic is not the only issue of significance.

Land disputes are increasingly common in Rwanda, and as demonstrated above, can erode social relationships. Many people consider land disputes to be at the heart of most conflicts between households. A number of organisations have estimated that between 80–95% of disputes operating at district level reported to administrators are centred on land.[24] The National Unity and Reconciliation Council, which conducted consultations across the country, found that land disputes are "the greatest factor hindering sustainable peace".[25] Disputes which are difficult to solve at the provincial level are referred to MINITERE. Based on the frequency of these referrals, we can conclude that land disputes are most prevalent in the provinces of Ruhengeri, Gisenyi and Cyangugu (which are also among the most densely populated areas), while Umutara and Kibungo also experience many disputes, mostly linked to land-sharing.[26] The provinces of Byumba and Gikongoro seem to have fewer disputes.[27] Kigali Ngali also has a large number of disputes related to land sharing, because many 'old case' refugees returned there. While local level land disputes may not seem to be high risk phenomena in terms of violent conflict, it should be remembered that they often have 'political' aspects related, for example, to competing claims of 'old case' and 'new case' refugees. These political aspects become more pertinent if they are purposefully emphasized: according to provincial officials, one Rwandan presidential candidate used the land issue for political purposes during the last elections. Many people feel that by promising to return to the peasants land that they shared with old case returnees, he was striking the ethnic chord. [28]

However, land disputes do not only involve land sharing or disagreements between families: intra-family disputes are also common, especially over inheritance, with the rights of women being significant. Evidence from Kinigi commune, for example, suggests that over 90% of local court cases are over land and of these, 30% involve women claiming their rights over land.[29] In 1996, approximately a third of households were headed by women, and a fifth of households were headed by widows.[30]

It is possible to categorise most disputes into a number of broad types. First, competing claims due to the return of multiple waves of refugees (typically small-scale farmers) – local level agreements and compromises have been made in some places, and the situation is far from uniform across the country. Second, disputes related to *imidugudu*: significant numbers of people are yet to receive compensation for private land converted to communal use, while others received less than the value of the land they gave away.[31] Many people who moved into *imidugudu* were able to retain their farmlands outside the villages (in addition to having access to communal plots), while those whose land was used for settlement lost significant portions of their land.[32] Third, appropriation of large plots by powerful people: large plots of land have been appropriated in many areas, often for purposes of land speculation, rather than agricultural production.[33] After 1994, large parts of the Akagera National Park, and some other public lands, were 'grabbed' for private use.[34]

Land scarcity, exacerbated by inequitable distribution of land, has also been described as one of the proximate causes of the genocidal violence. It has been well-documented that during the genocide, extremist politicians urged people to kill Tutsi and moderate Hutu in order to gain access to their land. In some cases, those who led the killings were rewarded with land by politicians.[35] This was an organised effort: the minutes of a meeting from a commune in Kibuye, in May 1994, for example, reveal that the *bourgemestre* allowed people to ask permission to cultivate the land of dead families for the six months prior to it falling under the management of the commune.[36] Presumably, the land would eventually be earmarked for redistribution or communal use. This demonstrates the link between 'structural' factors and 'proximate' factors: the lure of land would have been lessened if land had been more readily available, or if more off-farm opportunities had been available.

In addition to the promise of more lands if people were killed, there was also a fear of loss of land, as well as a general loss of economic opportunities, if the RPF were victorious. The state had for so long been the instrument of wealth acquisition by the elite, that some Hutu feared that their lands would be distributed on the orders of the RPF, to the incoming 'old case' returnees.[37] Indeed, government propaganda claimed that, if victorious, the RPF would redistribute land in favour of the Tutsi.[38] This argument was also used against Tutsi inside Rwanda, and leaders distributed false evidence of maps showing Hutu-owned fields which would supposedly be grabbed by Tutsi after the RPF gained control.[39] These fabrications presumably became more credible in the chaos following the death of Habyarimana.

Issues related to land tenure and rural production are extremely controversial in Rwanda, and the long process of policy formulation reflects a hot debate within government itself – one that has largely been kept out of the public eye.[40] There are a number of reasons for this. First, as mentioned previously, is certainty that the scarcity of land and the

general lack of technological and market developments, will lead to an agrarian crisis over the next generation, unless major changes can be made to occur. Agriculture, primarily for home consumption, is the occupation of 90% of the population.[41] In addition to the constraints imposed by land scarcity, a number of factors have led to a change in the mix of crops grown by most households in recent years: in particular, both cash crop production and high protein crop production have fallen. This may translate into reduced access to market goods, a less healthy diet for most households and an increase in chronic food insecurity.[42] Specialists have estimated that according to a *status quo* scenario, 425,000 households (more than a quarter of the projected population) will be without family land, due to land scarcity, by 2010.[43]

Another significant aspect of land access is the unequal distribution of land, which has been a recurrent pattern throughout much of the country's history. Pre-colonial systems ensured that a significant proportion of the population accessed land only through providing labour and other services to the socially powerful, while in 1984 it was estimated that 50% of agriculturally productive land belonged to just 182,000 farms out of the total of 1,112,000 in the country.[44]

Because of population pressure (and to a lesser extent, unequal access to land) fallow periods are minimal, leading to decreasing soil fertility. In many areas, households are cultivating soils which are inherently poorly-suited for agriculture. Many agricultural plots, particularly on upland slopes, exhibit symptoms of soil erosion.

The second reason for the inherently controversial or 'political' nature of land issues is that the disputes over land ownership have been managed by local administrators, and the policy may therefore undermine or support the *ad hoc* solutions that they put in place. Policy-makers will be wary of undermining their authority, as they are the most important local arm of government.

The third reason is that, as elsewhere in the world, land use and land tenure systems were an important part of social differentiation. Different kinds of customary land tenure and associated rural production systems have become associated with different groups in society. The ways in which the history of land use and land tenure is interpreted thus becomes part of a historical narrative of Hutu-Tutsi relations. While such historical debates may seem somewhat academic, there are reasons why they may be highly relevant to an understanding of social dynamics today. First, much of the North-west of the country only came under control of the central Kingdom in the 1920s, with a simultaneous change in land tenure systems.[45] Upon taking power from President Kayibanda in 1973, the Northern Hutu elite around President Habyarimana lost no time in attempting to restore the influence of the pre-Tutsi land-use system.[46] Second, research has demonstrated the importance of 'group memory' in identity-formation and in the mobilization of particular communities towards either peace or violence. Group memory consists of a particular (re)interpretation of the past, constructed – just as all narratives are

constructed through popular 'folk' analysis (which may verge on mythologizing) of selected significant events. The genocidal narrative that was propagated in Rwanda since independence and amplified in the early 1990s used elements of a collective 'Hutu' memory of 'Tutsi' privilege. At that time, the 'privileged' group was in fact a particular Hutu elite, largely from the North, and especially those linked to the *Akazu* – the 'little house' formed of members of Habyarimana's clan, that of his wife and their close allies. The idea of the 'zero-sum' political game, by which the victors gain such privilege, had been reinforced by the colonial experience and the exclusionary practices of post-independence regimes. However, through organised propaganda, it became linked to the memory – which to some extent was a *re*interpretation of history – of Tutsi privilege. This, in conjunction with many other factors, especially economic collapse, related events in Burundi and the approach of the RPF, facilitated the genocide. Significantly, some Rwandans remain in self-exile.

While group memory is important for all communities all over the world, it is particularly significant for diaspora communities who (re)interpret the history of their home country, and their community, as part of an effort to remain sure of their specific identity. Of course, many of Rwanda's people have been in exile at specific periods – many Tutsi, including a considerable number of the most powerful members of government, were in exile between 1959 and 1995; while many Hutu were in DRC or Tanzania between 1994 and 1996/1997. Liisa Malkki, in particular, has demonstrated the importance of group memory and myth-making to the survival of group identity amongst Burundian refugees in Tanzania.[47]

Another reason why understandings of historical development of land tenure/land use systems may be relevant to our analysis is that customary systems are still of considerable significance. There has been insufficient research to fully understand the situation, and many (including MINITERE) feel that the customary systems have 'broken down', largely due to land pressure. However, it is likely that customary systems still have some influence. In the North West of Rwanda, much of which remained outside the control of the central court and the Belgian authorities until the early 20th century, customary systems of lineage-based clientship (*ubukonde)* are a local counterpoint to the *isambu* systems which were imposed by the Tutsi monarchy. Under *ubukonde*, land was accessed in exchange for goods such as banana beer. Under *isambu*, however, land access was dependent on exchange of goods as well as labour – and the labour requirements became more onerous after the Belgian authorities encouraged local chiefs to become coffee entrepreneurs. Scholars have linked these unpopular labour requirements to the prevalence of anti-Tutsi feeling in the Northwest during the 1950s.[48] Many official readings of land tenure do not acknowledge this, and as such may be seen as a re-writing of history.

## *Governance in post-genocide Rwanda*

The test of any land tenure reform process is not the quality of the policy or legislative frameworks, but the extent to which the policy is effectively implemented. The style of governance in the country then becomes all-important in any assessment of whether the political will exists, at various levels, to ensure that policy will be implemented evenly and effectively. This is especially true in Rwanda, where so many difficult trade-offs have to be made and where the issues are so inherently 'political'.

Rwanda's tragic recent past makes the country unique in many ways, and this has affected the expectations of all stakeholders – such as citizens, civil servants and donors – regarding forms and standards of political governance. In the words of one analyst,

> *Rarely in human history has a society asked that all its people live together again, side by side, in the aftermath of genocide. That is, however, the task at hand in Rwanda. The people of Rwanda are attempting to do what few societies in recorded history have ever done.*[49]

The impacts of the civil war, and particularly the genocide, cannot possibly be understated, either in personal human terms or from a macro-economic perspective. Three quarters of all public service personnel were lost.[50]

> *…houses had been destroyed, cattle slaughtered, fields abandoned, government institutions ransacked and professional staff killed or forced to flee. The national coffers were looted; the economy was in tatters; social structures collapsed.*[51]

Rwanda is therefore a special case, a country in "post-traumatic convalescence".[52] The international community expected that governance in the country would be 'tightly managed', and that the country would not be ready for Western-style 'democracy' for many years. This view was informed by a realisation that the hasty imposition of multi-partyism in the early 1990s (led by international donors and international financial institutions) contributed greatly to the political and social tension in the run-up to the genocide. Donors have been willing to support the government, giving it the 'benefit of the doubt' despite of its limitations. The post-genocide government was constituted as stipulated in the Arusha Accords, though the *Mouvement Révolutionaire National pour le Dévéloppement et la Démocratie* (MRND) and *Coalition pour la Défense de la République* (CDR), both implicated in the genocide, were disbanded. The Presidency was assumed by Pasteur Bizimungu, a Hutu member of the RPF; Faustin Twagiramungu, a Hutu member of the MDR, took the position of Prime Minister; while Paul Kagame of the RPF became Vice-President and Minister of Defence. The RPF however, faced with a country that was still affected by sporadic insecurity and a force of ex-FAR/*Interahamwe* in the DRC, reportedly governed with a 'heavy hand' during this period. This lead to the Prime Minister, and several Hutu

Ministers, leaving the government in 1995, and a concomitant tightening of control from the centre. In 2000, one observer argued that,

> *…the concentration of power is not only expressed in terms of a dominating position assumed in the government and the army by a splinter group of the Ugandan Diaspora. Since the military victory, the political, military and economic networks created by the RPF have been closely linked.*[53]

It is noticeable, however, that Rwanda has undergone some transformation since then. The transition from a broad-based government of natinal unity to elections in 2003 saw a broadening of the RPF rank and file, including people who were not in the diaspora. The efforts of the government to integrate ex-FAR in the army and diverse social groups in government have created a 'broader' elite than was previously the case. Within organisations (such as institutions of higher learning, for example) the predominance of '1959' refugees who had been in exile in Uganda and elsewhere, was tackled through more open recruitment.[54] From 1998, the RPF conducted a number of national–level consultations (known as the *Urugwiro consultations*) in order to guide national policy-making, and many of the recommendations were incorporated into the Vision 2020 policy programme document. A decentralisation programme has been implemented, and elections were held at the local and district level in 1999 and 2001, respectively. The country has moved from the emergency phase, through a transition period, which formally ended in 2003, and has implemented presidential and parliamentary elections, and promulgated a new constitution. While not perfect, proponents argue, these represent the start of a long-term democratic process.

These processes, in particular the presidential election, are themselves a source of controversy. In combination with the knowledge of the international community of their own lack of action against the genocide – or even, in some cases, complicity in the escape of *genocidaires* and possibly worse – the fact that Rwanda is an 'exceptional case' has led to a lack of common, agreed criteria for assessing the appropriateness of different policies.[55] The pivot-point of politics in Rwanda is the issue of democratic debate and political competition. While the organising principle of Rwandan politics has been 'consensus', there is disagreement to what extent consensus over problematic issues has really been achieved through dialogue.[56] This debate over the appropriate boundaries of debate and political competition takes place within the RPF as well as more generally. Rather than moving towards increasing openness, some organisations and individuals feel that governance in the country is in many ways becoming less inclusive, and more tightly managed by a relatively small group of influential people.[57] As evidence of this, they argue that the continued use of charges of 'sectarianism' against individuals and groups – including, for example, the MDR and Liberal Party, both banned prior to the Parliamentary elections, and numerous civil

society organisations (CSO's) accused of sectarianism by a recent parliamentary commission – is an illegitimate means of political control.[58]

When the Transitional National Assembly (TNA) released a report in 1999 that criticized certain ministries, it was not well received amongst key decision-makers, and the president of the TNA was forced to resign and leave the country.[59] They also argue that a more general, though less visible problem, is that few mechanisms have been put in place to enable power-sharing and truly inclusive decision-making, and that pressure is exerted by the key decision-makers within the state in order to control debate and 'impose conformity'.[60] Clearly political opposition to the RPF is weak, and the RPF generally dominates Rwandan politics. At lower levels, RPF members still dominate the administration: in 2003, for example, 11 of the 12 provincial *prefets* in the country were RPF members; and of the 28 heads of state-owned enterprises, 24 were RPF members.[61]

Research by NGOs has revealed lack of trust and disagreements between local communities, NGOs and local and central authorities, and lack of full two-way communication between various levels of government.[62]

In addition, economic decision-making is relatively unaccountable, with some questioning the levels of investment in urban centres, particularly Kigali, compared to poor rural areas.[63] In reaction to this, internal and external opposition to the government – both overt and covert – has seemingly increased. Due to the lack of legitimate channels for such opposition, some observers have warned that it is more likely to take on a destabilizing character.[64]

Supporters of the current regime argue that the RPF's strong-hold on political events is necessary in a country that is vulnerable to sectarian sentiments, and is still recovering from the terrible effects of war and genocide. The decentralization programme, initiated in May 2000, has utilized participatory methodologies to reduce 'power distances' at local levels.[65] While the policy hasn't yet been fully implemented due to funding constraints and other issues, and the provincial level remains much more powerful than the district level, there is greater communication and awareness of local problems.[66]

Debates over the nature of governance in the country cannot be ignored by those concerned with economic development, environmental sustainability and conflict prevention in Rwanda, as they are important factors in the success of policy implementation, and the perception of policies and laws amongst the general population. Even a good policy cannot be successful if it is formulated and implemented in the context of exclusionary governance.

The most recent problems of land scarcity and access have been identified with the genocide, displacement of Rwandans and influxes of old and new case refugees. In this regard, it may be argued that roots to the land problems (and to some extent, their potential solutions), are located in the 'ethnic' nature of political organisation in Rwanda. Indeed the

problem of land in Rwanda had a substantial political flavour even before 1994.

Politicisation of the land question is evident in the refusal of the Habyarimana regime to allow Rwandans in exile to return to their country, ostensibly due to land scarcity. The anecdotal metaphor was that Rwanda was like a glass of water, which was already full to the brim. It could no longer hold any more people. In the mid 1960s, the government had invited refugees to return, but directed that they should by no means attempt to reclaim their original lands, but rather accept to be resettled elsewhere. In the political and social context of the era, this was not seen as a fair or well-intentioned offer, and few if any refugees returned.[67]

The Arusha Accords of 1993 may have recognised the political importance of land but did not provide adequate consideration of land access and distribution. As part of the negotiations it was agreed that people who were outside of Rwanda for ten or more years would not claim right on the property they held before leaving Rwanda. At the same time it stipulated that all Rwandans had rights to property. When the genocide was stopped and the post-genocide government was established, there was a large inflow of Rwandans who had fled the country. Those who left due to violence and repression in 1959, 1963, 1973 and other years entered Rwanda in large numbers starting from 1994. As mentioned above, they are generally known as the 'old caseload', are almost all Tutsi, and numbered about a million.

Many of these people occupied lands belonging to those who had fled Rwanda during the genocide. On their return, those who had fled in the immediate aftermath of the war and genocide – who are almost entirely Hutu and became known as the 'new caseload' – tried to access these same lands. In many cases, the official government policy of land sharing was followed, though this was sometimes problematic in practice.

The present problems of access are therefore those of contested rights to land that arose from largely political happenings in the past. The old caseload, many of which have little or no land, is perceived by government officials to "continue to feel cheated"[68] that their property was distributed to others by the government after the 1960s, largely through a process known as *amasambu ya demokrasi* – "*plots of democracy*".[69] Some members of the 'new caseload', who have shared part of their plots with returning 'old caseload' families, may nurse grudges due to having smaller plots than those they possessed before 1994. Moreover the sharing process was not supported by any written legislation. Those who shared land and any capital investments on the piece of land, such as coffee plantations or banana stands, were not compensated.

Currently, there is a burgeoning elite, composed mainly of town dwellers owning large swathes of land in the rural areas. It has been suggested that they, too, have strong links to the political, military and business networks, which are the domain of those with high positions in government.[70] It is likely that without effective checks and balances, those with political connections will continue to have preferential access to the little land that is available.

Finally, access to pasture is a potential source of tension. Traditionally, the distinction between agriculture and pasturage corresponded broadly to the distinctions among the major ethnic groups.[71] There is no empirical evidence to suggest that the distinction is still clear and sharp, but it is a legacy that is not easy to dismiss. Land scarcity has affected this relationship: in 1970, there were 487,000 ha of pasture in the country, but by 1986 there were only 200,000 ha.[72] By May 1995, at least 700,000 head of cattle had been brought into the country by the returning 'old case' refugees. Returning 'old case' refugees in Umutara received large chunks of land for pastoralism: about 25 ha were originally distributed for each 50 cows, and the maximum area allocated for grazing was 100 ha. The land was further subdivided in 1996 and 1997, but it seems that many large plots still remain in the hands of single households.[73]

A recent survey, also in the East of Rwanda, revealed that large swathes of land were being allocated to herders associations.[74] Since the same herders also have land for cultivation, they have accordingly been referred to as a group with 'multiple access' to land.[75] After 1994, there were reports of members of the political elite taking over large tracts of land in the East, for ranching.[76] Such controversies have ethnic dimensions.

## *The challenge of participatory policy-making in post-1994 Rwanda*

Policy-making in Rwanda is subject to a number of challenges and constraints, many of them due to the lingering effects of the war and genocide. These challenges are social, economic, political, and even linguistic – due to the need for documents to be drafted in English as well as French to cater for those who grew up in exile in Anglophone countries. The loss of human capital and institutional knowledge during the war and genocide has been a problem, and the financial burden of the 'emergency' period also limited investment in longer-term policy research and development. However, perhaps the most important challenge, particularly for a sensitive domain such as land tenure, which affects every household in the country, is the incorporation of the views of all stakeholders in policy-making, whilst simultaneously maintaining government control of a process that is potentially volatile. It is this challenge that we focus on here. In most parts of Africa, non-governmental actors have started to play an important part in the policy-formulation process, due both to their importance in the implementation of such policies (often a result of access to external funding sources) and to their technical capacity in particular areas. Despite the existence of a plethora of NGOs and CBOs, in general, civil society in Rwanda is weak and disorganised.[77] As in other countries, though perhaps to a greater degree, dependence on external funding limits their ability to plan and implement long-term programmes. There is also, as is true of other sectors, a clear rural-urban divide, and many urban-based organisations do not have strong grassroots links.[78] On the one hand, there has been a lack of adequate consultations in the

development of most major policies. On the other hand, there has been little, if any, organised lobbying or pressure from civil society. For example, during the Poverty Reduction Strategy Planning (PRSP) process, international NGOs that convened a meeting of local NGOs were surprised to find that only two of the 30 participants at the meeting had heard of the PRSP before receiving the meeting invitation.[79]

There are a number of reasons for the limited capacity of civil society to influence policy. First, the effects of the war and genocide on civil society were serious, not just in terms of loss of life (with many intellectual Hutu moderates killed, as well as Tutsi) and property, but also in terms of damaged social relations. Civil society organisations, like any institution, function through networks which rely on trust and mutual support, which have been undermined by the legacy of violence.[80]

Second, most Rwandan NGOs have some unwritten links with government, either because the NGOs benefit from government consultancies, or rely upon good relations with government officials for authorization, access to land for offices, or other needs. The role of the churches (traditionally the strongest of all non-government institutions) in the genocide, as well as the 'co-option' of the church 'seal of approval' for political ends, has led to a reduction of their ability to engage in constructive criticism of the government.[81] It is reported that, after 1994, government politicians made many public statements about the huge amount of land owned by churches.[82] This amounted to a dispute between the government and the church: however, it is believed that consultations led to some understanding between these two stakeholder groups, as the issue has not been publicly raised by the government for several years. [83]

Third, the centuries-old history of centralized, exclusivist governance in the country has resulted in lack of awareness amongst the general public about the nature of democratic citizen-state relationships. The formulation of the PRSP, for example, was seen as fairly consultative, but the level of participation did not go beyond consultation: in other words, CSOs were not involved in decision-making. In many cases, the expectations of CSOs were limited to consultation: they did not hope for a more participatory process.[84] Finally, the government often reacts strongly against any activities which are seen as critical of government programmes. For example, human rights groups in particular have suffered "intimidation and co-optation by the government".[85] In order to survive, civil society organisations often opt to support government policies broadly, thereby relinquishing any advocacy role. Debate has therefore become increasingly polarized, with those that have continued to criticize government policies often taking confrontational positions.

## *The policy/law development process*

The land policy formulation process, like all politically significant processes, is open to a number of possible interpretations. Policy formulation has often been portrayed as a linear, unproblematic

process, dictated by rational and objective scientific arguments. Elements of the formulation process are described by terms such as 'consultation', and 'consensus-building'; often without being 'unpacked' or critically analysed. Pottier notes that this is the case in Rwanda, where

> *…the message seems to be: Government and donors know what they are doing. Those suggesting new policies, however, take little account of the likely impact that discourses of public morality and social exclusion will have on how policies are actually realised.*[86]

Experience suggests that policy formulation is more accurately conceptualised as discourse – as a competition between different narratives, each of which is presented in various ways in order to achieve greater credibility and a dominant position. For example, certain policy prescriptions claim 'scientific objectivity', whilst others might claim 'local legitimacy'. These claims are always open to debate, and should be seen as constructions of processes such as legitimation through networks of actors, (such as local 'informants' or international journals and conferences, for example). When policy formulation is deconstructed in this way, "analytical attention is turned to the webs of power underlying the practices of different actors in the policy process".[87] By studying the 'knowledge interfaces' between different actors, we pay attention not only to the outcome, but to the process involved:

> *The types of discontinuities that exist and the dynamic and emergent character of the struggles and interactions that take place, showing how actors' goals, perceptions, values, interests, and relationships are reinforced or reshaped by this process.*[88]

A stakeholder analysis then becomes a useful tool for understanding the power relations between different interest groups. The significance of the state in multiple sectors and aspects of life in post-independence Rwanda is well-documented. The ability of the central state to penetrate and monitor community structures, especially through party-political membership, obligatory participation in state-organized activities and of course the ability of elites linked to the CDR to mobilize thousands of ordinary peasants to participate in the genocide, are all examples of the state's power to intervene at the local level. However, this power has not translated into an ability to regulate the general patterns of land-use and transfer effectively (for example, the three-hectare legal 'ceiling' on land holdings that was put in place).

Legislation was passed in 1960 and 1961 to move customary systems further towards Western notions of property rights. Legal pluralism still existed – i.e. the co-existence of statutory and customary systems – but the customary system was intended to be brought closer to statutory systems through the formal registration of customary rights by the state. 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. It specified that the state is sole owner of land in

Rwanda, with all access being usufruct, granted on behalf of the state. This is, according to some experts, in contradiction to the constitution, which guarantees individual rights to property.[89]

Subsequent efforts at legislated land reform in 1967, 1978 and 1991 all aimed at spreading the concept of individual rights within areas under the *ubukonde* system, though they were largely unimplemented. In fact, the regulations that did exist tended to bring more confusion, rather than clarity, as they were provisional, or were ignored in practice. For example, a circular from the Minister of Home Affairs regarding land distribution was prepared and finalised, ready for distribution to all *bourgemestres* (now called mayors) in the country. However, despite the preparations, it was never distributed.[90]

This inability to implement and enforce legislation over land effectively seems to be a combination of two factors: firstly, the sheer technical difficulty of the task, with people using long-term leasing arrangements to circumvent the law, or simply not registering sales; these difficulties were compounded by lack of consultation and a sense of 'ownership' amongst the key stakeholders in the process. The second factor is the self-interest of the bureaucrats, themselves part of the class that was most active in acquiring land.[91]

The idea of development of a land law began in 1996 within the Ministry of Agriculture and Livestock, and was particularly prompted by the development of the "Agriculture Development Strategy", and a two-day national conference on land issues, where delegates argued that the agriculture sector could not be developed in a sustainable manner without the development of a land law.

Following the recommendation of that conference, the Ministry of Agriculture and Livestock conducted a first concrete study on land reform in Rwanda by Olivier Barriere, funded by FAO, in 1997. The study recommended that family plots should become legally indivisible in order to safeguard plot-sizes; and supported the *imidugudu* programme. The paper, which remains influential, includes a description of the historical development of land tenure systems, which seems to have informed the land policy, and has been criticised by some analysts.[92] Others praise Barriere's emphasis on the importance of 'communal' aspects of land, and interpret this as a return to the 'traditional' concept of patrimony. However, it is generally situated within a narrative based on commercialisation of agriculture; and it is this narrative, rather than one focussed on subsistence agriculture, which has taken precedence since.[93] Some observers assert that a convergence of FAO, World Bank and Government of Rwanda narratives has come to dominate the policy formulation process, notwithstanding the popular participation that is claimed for the early consultation processes.[94] It is likely that this situation is a product not just of direct contact and influence, but also through the indirect influence of publications and paradigms which tend to dominate the literature on rural development and land tenure.

In 1998, the ministerial cabinet decided to put in place an inter-ministerial commission to follow up the development of a land law, headed by the Ministry of Agriculture. Interestingly, it is during this period (1997–1998) that the majority of the contents of the Land Law were drafted, and the first draft was ready in early January 1999. However, it was 'shelved' until a policy could be formulated to frame the bill.

Preliminary consultative meetings were organised throughout the country and recommended that 'full ownership' of land be given to all land owners. Those meetings included local administrators, members of local organisations and farmers' representatives. In September 1999, a workshop was held on "Land Use and Villagisation in Rwanda", convened by a Rwandan NGO. A number of the recommendations made at this workshop, including that 'any new land law should be preceded by a national land policy' were endorsed by the government over the following year.[95] Importantly, this workshop, initiated in a context of distrust between civil society and government, reportedly created greater space for dialogue around the issues. In subsequent workshops, there was a shift towards greater openness and trust.

In 1999, a new inheritance law was passed, which generally improved the situation of women.[96] The law allows a newly-married husband and wife to choose between three property regimes (community of property, separation of property, and limited community of property) and gives women the same inheritance rights as men, both in terms of bequests made prior to the death of parents, and the division of property upon the death of a parent. However, the law does have limitations (discussed below), and the inheritance of land is subject to land regulations – making the land policy and law even more significant for women's land rights.[97]

In the beginning of 2000, the ministry in charge of land, currently termed the Ministry of Lands, Environment, Forestry, Water and Natural Resources (MINITERE) began the development of a national land policy, and, in November, the first national consultation was convened to exchange views and considerations of the first draft of the policy. One of the recommendations of the conference was to continue consultations at the grassroots level. This process has been done with the participation of some NGOs working closely with local people in rural areas, including CCOAIB, and RISD.[98] MINITERE organised other consultative meetings in all provinces. These meetings tended to involve administrators at the district level, rather than members of the general public.[99] This reflects a tendency within some governments (common to many parts of the world) to see peasant populations primarily as beneficiaries, incapable of fully and actively participating in such processes. Of course, governance norms in Rwanda have long discouraged ordinary people from considering themselves capable of designing solutions.

In 2001, a workshop was held by MINITERE, with UNHCR support, in order to make the policy and law more gender-sensitive. A number of recommendations were made by the participants, who included NGO members, mayors, and government personnel.[100]

The draft land policy was almost complete by 2001, and was disseminated for comments to organisations such as RISD, the Rural Development Institute, Oxfam GB and others. These comments were incorporated to varying degrees. In the words of one analyst:

> *…because the changes envisaged by the land policy are so far-reaching, 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.*[101]

Also in 2001, the Poverty Reduction Strategy Paper (PRSP) was drafted. This includes several important elements concerning land, including the following:

- Households should consolidate plots to ensure that each holding is not less than 1 hectare; there shall also be a ceiling of 50 ha.
- All land should be registered to improve tenure security. The title will be tradable, but not in a way that fragments plots below 1 ha.
- The community will be involved in the process of allocating title.

The Vision 2020 document, which sets out Rwanda's vision for development until 2020, also forms a framework for development of the land policy. It aims to raise agricultural incomes and generate incomes outside agriculture, through 'recapitalization' and transformation of the rural agricultural landscape into a commercialised sector. This vision is laid out in fairly general terms and specific strategies are not elaborated.

At that time, it was expected that both the law and policy would be approved in 2002; but from 2001 until the final draft of the land policy and land law, which were sent to the ministerial cabinet for adoption in February 2004, key issues were being debated within government, largely behind closed doors. Interviews and published sources suggest that the most contentious issues include the process of consolidation of fragmented plots; and the resolution of disputes over land-sharing. The law was adopted by the cabinet meeting in February 2004 and will now pass to the parliament and the senate for adoption.

Rwanda has in many ways only just started to develop procedures and norms for policy development. According to some observers, the process involved (for example, the role and phasing of review and discussion by cabinet and parliament) is unclear, and is in fact quite fluid. Certainly, in early 2004, there was widespread confusion at the progress of the land policy and bill, which suggested that key stakeholders had not been informed of the process.[102]

By August 2004 the policy was being discussed by a Parliamentary Standing Committee with input from interested CSOs. The discussions were open and free, with a number of local and international organisations making presentations. At the time of writing, it was too early to say whether extensive changes would be made based on the discussions.

Despite some effective consultation with civil society organisations and district-level administrators, it appears that some stakeholders in

government were not fully consulted during the process. Key stakeholders within government would include, for example, the Ministry of Agriculture (MINAGRI), the Ministry for Local Government and Social Affairs (MINALOC), the Ministry of Finance and Economic Planning (MINECOFIN), and the Ministry of Justice (MINIJUST). However, the policy makes extensive reference to the centrality of MINITERE and there is insufficient reference to relevant institutional linkages and policy synergies (and possibly contradictions of policy).

The main Rwandan CSO advocating for an informed land reform process is LandNet Rwanda Chapter, a network of local and international NGOs dealing with development projects in Rwanda, the majority of which are based in Kigali. Like most NGOs, the member organisations rely heavily on support from foreign donors, and the membership has not been broadened to include, for example, farmers associations and cooperatives.

LandNet has an official of the Ministry of Lands as a *bonafide* member, as it is believed that having government officials as members of the organisation makes dialogue possible and engagement more organised. A number of opinion leaders in the network can use the government member as a link to the policymaking process, while the government can have access to the advocates and NGOs trying to create a pressure group. Indeed, this has helped LandNet to gain access to some policymakers in a regular, structured way.

Despite this, LandNet has had to walk a fine line between procedural, formal dialogue with government, and more direct 'lobbying' tactics, such as writing directly to the President to seek an audience. A mix of tactics has been used, partly because the progress of the draft Bill, for example, was not entirely clear, due to lack of communication from government. Key stakeholders were often unsure, for example, what processes the draft had to go through before it was 'finalised' and adopted. While the relationship between LandNet and the government has generally been positive, tensions have been evident when the network has taken the initiative to lobby senior politicians, without prior consultations with MINITERE.

A crucial issue, however, is whether civil society and important Ministries will be actively engaged and involved *ex poste*. The proposed composition of the Land Commission, which will be appointed by MINITERE, may involve civil society. But as in other countries, the role of the local rural peasant in policy-making and implementation is minimal: the real stakeholder is still out of the arena.

This chapter will draw attention to some of the most important aspects of the policy in section four, but it is first necessary to provide some background on the land issue in the country.

## Land use, management and tenure systems in Rwanda: Historical perspective

An analysis of the historical development of land tenure and land-use management systems is a particularly important part of any analysis of the Rwandan socio-economic and socio-political situation today, especially from a conflict prevention perspective. This is because land tenure, land use and the benefits and obligations linked to land have been a key aspect of the formation of Rwandan society, including class and 'ethnic' differentiation. The history of Rwanda, particularly the pre-colonial period, has become something of an intellectual battle-ground, particularly since the terrible events of 1994.

The first main point of contention relates to the earliest beginnings of what is now known as Rwanda. There is perhaps a consensus that the earliest inhabitants of the territory were the Twa, who were primarily a hunter-gatherer society, related to the pygmies of the modern-day DRC. The Twa form a small minority in Rwanda (currently less than 1%) and though some Twa played important ceremonial roles in the central court of the *Mwami*, they have been marginalized from politics for more than a century. They have suffered from insecure land tenure and landlessness for many years.

From a general consensus that the Twa are the oldest inhabitants of the country, the picture becomes more hazy. There are two polarized views of the origins of 'Hutu' and 'Tutsi' identities. We will review these before also considering a more nuanced possibility that involves aspects of these two polar viewpoints. It is important to say from the outset that a belief in any of these narratives – or any other – cannot and must not be used to justify violence, discrimination or oppression against any group in society. However, given their importance in the political history of Rwanda, they are significant to the present study.

The first view, which could be termed 'primordialist', is that the Hutu and the Tutsi are different peoples, originating from different parts of Africa. The colonial authorities, and a number of colonial-era scholars, saw physical differences between the Hutu and the Tutsi (especially in terms of average height, as well as the size and shape of noses and lips), as well as the fact that Tutsi tended to be cattle keepers while Hutu tended to be primarily farmers, as evidence that the Tutsi were originally a 'non-negroid' pastoralist people from outside of the region, perhaps from Eastern Africa. Some went as far as to claim that the ancestors of the Tutsi may have originated in Tibet, or India: this belief fitted racist colonial ideology that saw black Africa as inherently 'primitive' and generally stateless: the colonialists saw the Tutsi-dominated royal court as evidence of racial superiority which could not, from their viewpoint, originate from Africa.[103] The narrative presupposes that the Tutsi migrated to Central Africa, found the Hutu and Twa already living in modern-day Rwanda, and gradually took control from the Hutu through military force as well as a system of loaning cattle to farmers in return for labour.[104] This view – that the Tutsi were late-comers to the country

and hence 'foreigners' – was, of course, propagated by Hutu extremists, particularly in the years immediately preceding the 1959 'social revolution', and again prior to and during the genocide. In one infamous speech, a government official declared that the Tutsi came from Ethiopia and would be made to return there – via the Nyabarongo river.

The second view is that the people of Rwanda have common ancestors. This explains why all Rwandans speak the same language, live together in the same communities, and had the same customary religious beliefs. The differences in height and physiology, according to this view, may be explained primarily through differentiated access to foods, which came about through the specialization of labour. Over centuries, a situation developed whereby some households – those who primarily tilled the land – who would later come to be identified as Hutu, relied primarily upon a diet of starches and other drought-resistant staples. This starch-laden diet, accompanied by lives of work in the fields, resulted in a 'stocky' physical body-type. Those who tended to be livestock herders had better access to milk and other animal products, and hence progressively became taller through access to protein. The fact that they, as a group, tended to do less physical work in the fields meant that they supposedly developed a more slender body-type. They later became identified as Tutsi. This process of differentiation was, according to some scholars, enhanced by sexual selection based on individual and socially-constructed ideals of beauty.[105] This was broadly the version of events taught by senior members of the Rwandan Patriotic Front (RPF) to their (almost exclusively Tutsi) troops prior to and during the invasion of Rwanda, and remains essentially the 'official' government view. An official history curriculum has yet to be developed in post-1994 Rwanda, however, government and army officials tend to emphasize that all Rwandans viewed themselves as essentially the same prior to the colonial period, although there is an element of class-based differentiation in the analysis of the term 'Hutu', which is meant to signify a 'servant' or 'client', whereby a 'Tutsi' was a 'patron'or 'master'.

Those who hold this view add that in pre-colonial times, it was possible for family bloodlines to move gradually from one category to another, and even for an individual to be considered 'Tutsi' by clients or servants, but 'Hutu' by patrons or 'superiors'.[106] This has become part of a narrative which describes pre-colonial Rwanda as an essentially harmonious society, where the exchange of cattle for labour – the *ubuhake* cattle clientship system – allowed for people to cross class boundaries, and which decreased social tensions and inequalities. Along with many scholars, they argue that the Belgians turned this essentially fluid 'class' system into a rigid ethnic divide, by arbitrarily dividing the population into different categories, based largely on the number of cows each household possessed.[107] The production of fixed identities, which were compulsorily printed on identity cards, had tragic consequences. Indeed, the cards were used by the *genocidaires* to identify their victims, as it was often difficult to tell who was Hutu or Tutsi from physical appearance.

Both of these narratives seem overly simplistic. Mahmood Mamdani has outlined four ways in which scholars have further problematised such black-and-white accounts.[108] First, migration may not be a single, massive movement of people, and may not be associated with conquest – it may be a protracted affair. We might add that it may presumably have different outcomes in different areas, at different times. Second, any presumed migration of people may not necessarily be the only or the primary source of pastoralist livelihood strategies and was not the only model of 'statehood'. Livestock keeping, perhaps on a small scale, may have been part of a basket of options employed by (primarily agricultural) people in the region for centuries. Thirdly, an exchange of ideas and practices between communities is possible without migration or conquest. Fourthly, many contemporary Rwandans may be the descendents of marriages between Hutu and Tutsi, although the *idea* of Hutu or Tutsi identity was maintained through patriarchal transmission of cultural identity. This is, as has often been observed, very clearly the case in the South of Rwanda, where 'intermarriage' is quite common. The overall impression is that the terms Hutu and Tutsi are to some extent 'constructed' socially and, therefore, have changed over time.

It may be the case that a variety of processes contributed to the country's current ethnic situation, the distribution of labour and perceptions of 'class' or privilege. These are likely to have included migration (possibly over a long period of time), but the situation was not always a simple division into Hutu, Tutsi and Twa. While we know very little about how these three terms were used until the 1860s, seminal work by Catherine Newbury, as well as other historians, has shown that many communities who now consider themselves Hutu did not do so until relatively recently – as recently as the late 19th century.[109] The people of the North West, for example, considered themselves *Bakiga*, the people of the mountains, and saw themselves ethnically linked with neighbouring hill-dwellers in Uganda. They referred to the southern Hutu, who warred against them alongside the Tutsi in the late 19th century, as *Banyanduga*. It should also be noted that the primary unit of organisation was not 'tribe' or 'race' but rather lineage or the neighbourhood residential group. The North West, as well as the Hutu Kingdoms of Bukunzi and Busozo in the South West, did not come under the control of the central court until the 1920s.

It was through the process of state formation and the associated changes in control over land and livestock, that the term Hutu came to be associated with the mass of people who did not have the privileges accorded to the Tutsi. In Kinyaga, lineages that were wealthy in cattle and had connections with chiefs came to be known as Tutsi.[110] The term could then be seen to be partially socio-economically constructed, as well as partially 'ethnic'. Those who were Hutu and who came under the control of King Rwabugiri, who expanded the royal court, largely through conquest in the latter half of the 19th century, became bound to contribute free labour (*uburetwa*) in return for the ability to till the land.[111]

It can be seen, then, that changing patterns of control over land and natural resources – specifically, the expansion of the royal kingdom and related customs, tenure and taxation regimes – were a factor in the generation of current 'ethnic' identities. This shows the importance of understanding the political economy of land tenure and land use, and also the risks inherent in changes to the existing systems. It has been shown, for example, how the 'collective memory' of Tutsi privilege was resurrected to suit the selfish aims of the Hutu elite of the 'Hutu Power' factions – even though the realities on the ground did not tally with the genocidal myth being propagated. Changes to land tenure, rural production systems, settlement patterns and land access may be perceived through a historically-specific 'ethnic' lens by some people and will certainly be interpreted that way by the extremists who still maintain genocidal ideology, within and outside the country.

As has been mentioned briefly above, 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 his local representatives, in return for obligations including fees, payments and labour requirements.[112] The right to use land could be withdrawn by the *mwami* and it seems that access to land was used as a political 'stick' or 'carrot' according to need. In the 1870s some forms of the *igikingi* land grants were altered and became more exploitative.

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 or household who first cleared a plot of land (which was, in this region, mostly under forest) controlled access to that land.[113] The rights of exploitation of the land were permanently conceded to members of that lineage, or granted to others in exchange for obligations and fees. These typically consisted of banana beer or agricultural implements, and only rarely included provision of free labour. Some clients could, over a period of time, increase their wealth and thus become *abakonde* – a lineage head. However, one problematic aspect of *ubukonde* – at least from the point of view of the clients – was that an *abakonde* could reduce the amount of land available (i.e. to settle members of his extended family) but would still have to pay the same 'tribute'. The situation has of course changed greatly since the pre-colonial period. The extent to which any vestiges of the customary systems remain today, is not very well understood.

In agricultural areas that were under Tutsi control (including those, for example, which came under the control of the central court during the reign of the expansionist King Rwabugiri in the latter half of the 19th century), the *isambu* system replaced the *ubukonde* system – on which *isambu* seems to have been modelled. Instead of the *abakonde*, the Tutsi *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. The *igikingi* system, which was also based on access to land being granted by a Tutsi lineage to a client group, was also significant. The spread of this system led to some landed Hutu lineages being transformed in social status in order to become Tutsi, but also relegated the vast majority to a state of inferiority, such that they had to sell their labour to survive.[114] However, in the late 19th century, grievances over land were not articulated in ethnic terms, but rather in terms of a regional, centre/periphery struggle.[115]

As the peripheries of the country came under central rule, administrative control over land shifted from the customary Hutu lineage heads to the hill chiefs, who were under the control of the *Mwami*. These hill chiefs (who could be Tutsi, Hutu or Twa) were part of a hierarchy that included, at the 'provincial' level, three kinds of chiefs: the 'chief of the men' (responsible for recruitment to the army), the chief of the land and the chief of the cattle. Appointed by the *Mwami* or his delegates, the chief of the land was usually a Hutu, while the others were always Tutsi. It has been suggested that the cattle chief and the land chief were engaged in a kind of "reciprocal surveillance" which benefited the peasants, which some authors describe as a "balance of forces"[116], while Mamdani speculates that the masses could reduce the pressures on their labour, by playing the two chiefs against each other.[117]

The land policy, in its historical review of land tenure in the country, glosses over the important issues of inequality and imposition of tenure regimes through conquest, describing the system of land access as stable and harmonious.

## *Some impacts of colonialism*

The impact of the colonial regime has been well documented in a number of sources.[118] Some – including many in government in Rwanda today – argue that Rwandan society was largely 'harmonious', with classes or groups living in a kind of social 'balance', until the colonial period. They blame the Belgian colonial machinery for creating the ethnic identities and tensions which have resulted in conflict.

Others, who are probably in the majority, argue that inequalities and differentiation between Hutu and Tutsi existed in pre-colonial times, and became especially significant during the rule of King Rwabugiri. The colonial regime then exacerbated these differences to a massive degree, by a number of direct or indirect processes, including the dissemination of an explicitly racist ideology. Mamdani has done a particularly good job of contrasting Rwanda's colonial experience with that of others to indicate the extent of the influence on current events. He describes how in most other colonies, indirect rule 'created' ethnic groups (by fixing them as separate entities and ignoring gradual changes, fusions and fissions which may have taken place over decades) and made these subordinate on a racial basis to the colonialists. In

Rwanda, by contrast, the particular form of indirect rule (re)created the Tutsi as a 'race', not an 'ethnicity', and thus further separated them, in the minds of some Rwandans, from the Hutu. He compares the treatment of the Tutsi as somewhat similar to the British treatment of 'Indian' or 'Arab' inhabitants of other parts of Africa – they were seen as inferior to the Europeans, but superior to what the colonialists thought of as 'indigenous' Africans.

The Belgian authorities, during the first half of the 20th century, assisted the Tutsi in bringing the remaining independent areas under their control, and hence ensured that *isambu*, with its *uburetwa* labour requirement for Hutu, was applied to the whole of the territory. They also made several other changes: by codifying it (in 1924) they increased the number of days to be worked; by encouraging the chiefs to become coffee entrepreneurs, they encouraged increased exploitation on the chief's coffee fields; they ensured that *ubuhake* clients, who were in a cattle-client relationship (usually with a Tutsi) took part in *uberetwa* in some regions; they made *uburetwa* the responsibility of all adult males (before it had been rotated between members of a lineage), and by imposing additional labour requirements (for reforestation, road construction, and cultivation of export crops). It should be noted that, a) all Tutsi were exempt from these requirements; and that b) the chiefs who were imposing these requirements were exclusively Tutsi. While it has been estimated that the average Tutsi household (outside the royal circle or administrative class) may have had an annual income of only slightly more – around 5% than the average Hutu) all Tutsi, no matter how poor, were exempt from these labour requirements. In 1929, the Belgians ordered that the three chiefly positions at provincial level (chief of the army, the chief of the land and the chief of the cattle) be fused into one. Tutsi's held these positions:[119] in the 1950s, for example, on the eve of independence, and after several UN missions criticizing the levels of inequality in the country, all 45 *chefs de chefferies* were Tutsi, as were 544 out of a total of 559 sub-chiefs. In addition to the Tutsi dominance, these positions were dominated by two particular Tutsi clans.[120] The Belgians apparently believed that fusing the three chiefly positions into one would benefit the Hutu majority, but in fact, the action lead to the creation of a position without peers, and without a system of appeal, which could easily be abused.[121]

In addition, some politically-powerful Tutsi took advantage of Belgian laws, which held that land under *ubukonde* was 'vacant', to control large amounts of Hutu land (the compensation that the law provided for was often minimal and provided late.)[122]

The Belgians sought to enhance the rights of individual farmers and land-users, by abolishing the *isambu-igikingi,* imposing constraints on the *ubukonde* and by proposing exclusive individual rights more akin to modern notions of 'private property'. Another feature of this period was the spread of Christian missions, which claimed private property rights to land in many areas. This contributed to a situation in which users of

*igikingi* land (which was mostly grazing land) who had a number of cows (and were therefore almost bound to be Tutsi) tried to obtain 'private' rights to what had, until then, been a kind of public resource.[123] This, in turn, altered the client-patron contracts governing access to land and labour relations, polarizing Tutsi-Hutu relationships and causing much resentment.[124] Violent conflicts erupted between various actors, including 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.

Through the 'Social Revolution', the government claimed to have dismantled feudal structures and thus created a more equitable system of land ownership, but most commentators have noted that the new state elite lost no time in (mis)using their power and influence to gain access to land as well as cheap agricultural labour. According to Prunier, in the early 1960s, "…the new *bourgmestres* were quickly picking up the old habits of 'feudal' rule and were creating their own Hutu clienteles on the Tutsi model".[125] Some examples of abuse of government control over land include the logging of part of Gishwati forest (public land) in the North of the country, for a World Bank-funded cattle-ranching project, the profits of which were allegedly siphoned off by corrupt members of the government and the Bank.[126] By the 1980s, the process of land concentration accelerated, through unregistered land sales.[127] Those buying land tended to be in commerce, government or the aid industry, rather than full-time agriculture.

As civil servants became more and more wealthy,

> *…the land available to ordinary cultivators actually diminished in some regions as local officials appropriated fields for development projects and as members of the urban elite bought out the poor, establishing themselves as absentee landlords*.[128]

Peasants, forced to sell land to cover subsistence costs (see below) found their former lands being purchased by progressively richer traders connected to the political regime, who often operated as absentee landlords. Some analysts have argued that this process of land concentration took place at least partly as a way for poor families to clear their debts.[129]

As documented earlier, land ownership in the country was radically disturbed by the political violence following the 'social revolution' of 1959 and the flight of many Tutsi, whose land was then allocated to other people. Subsequent legal efforts to manage the land issue were unsuccessful due to lack of political will at various levels, and a process began of accumulation of land by an elite, accompanied by the rise of a landless population. By 1984, approximately 15% of the landowners owned half of the land.[130]

## *Land access and scarcity in Rwanda today*

### *Access*

As stated in the introduction, for the purposes of this study, we adopt a single useful and succinct definition of land access: "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".[131]

According to such a definition, access is therefore mediated by various factors – political, economic, social, technical and legal.[132] In a 'development' context, access to land is also defined to include access to the benefits of land – such as the income streams generated through productive land-based activities. From this perspective, land access is part of a broader context that enables agricultural or pastoral production. It is mediated by many significant factors including access to inputs, seeds, technology, credit and infrastructure such as water conveyance technology.

In the African context, land access is often a complex concept, due to the simultaneous operation of statutory (or 'modern') and customary systems. Under customary systems, access to land is mediated according to kinship ties and other forms of communal identity-group membership. Under customary natural resource management systems found across Africa, multiple resource use is common, with different categories of users (for example, owners, co-owners, primary, secondary and tertiary users) each entitled to different uses of a particular resource, often at different times of the year or under specific circumstances.[133] Particular categories of people may be granted rights (often of a temporary nature) to common property resources, such as 'village lands', which are administered by village leaders. For example, in Rwanda, custom dictates that if a married woman returns to the home of her parents or her brother (i.e. due to separation from the husband), she should be provided with land to support herself.

In Rwanda, the increasing frequency of land sales, in tandem with the increasing land pressure, has significantly affected these systems. In at least one area for example, it seems that purchased land is exempt from these customary or 'family' rules, perhaps because bought land is perceived to have been acquired through the 'sweat' of an individual rather than handed down through generations. In other words:

> *Due to the ever growing population pressure on land, a land market developed. Those with money could acquire land without obligations for solidarity; i.e. capitalization and accumulation became means for transcending solidarity.*[134]

Currently, in contrast to less densely populated parts of the continent, access to land is primarily secured through individual ownership of plots (whether registered with central government or not). However, leasing, tenancy, sharecropping, grazing rights and other usufruct functions of land are also important aspects of access. It should also be noted

that some of the best-known information on land access is based on research in specific areas – such as Andre and Platteau's study of a single commune in Gisenyi. The situation across the country may vary greatly, and in general there remains a lack of in-depth information.

Because so much of the available land surface is already being used, and there is a lack of additional land for cultivation and pasture or other uses, it can be said that Rwanda is experiencing land scarcity in 'absolute terms' whereby the area available per capita is extremely limited. While this is putting great pressure on customary systems, it is not clear to what extent monetarized land markets have replaced custom.

## Geography and land use

The surface area of Rwanda is 26,388 square kilometres. It is one of the smallest countries in Sub-Saharan Africa. Out of the total area, 52% or 1.38 million ha is arable. Forests cover 3,000 square kilometres or 12.4% of total land area.[135] Protected areas, particularly the Akagera National Park, Nyungwe Forests and Virunga (Volcano) National Park constitute 3,600 square kilometres or 14.6% of total land area.

Except for the desert-like terrain of Southeastern Rwanda, where extensive pastoralism has historically been practised, Rwanda's relief is typically hilly. Most of Rwanda is above 900 metres (3,000 feet) and the central plains have an average elevation of 1,932 metres (4.400 feet) above sea level. Although the mountainous topography has often conjured the beauty of a country of 'a thousand hills', to an ordinary peasant it has provided a challenge, as sloping hillsides are not ideal environments for agriculture or pastoralism. It is estimated that 27% of cultivated land is undertaken on slopes of more than 20 degrees, 23% on slopes between 10–20 degrees, 16% on slopes between 5–10 degrees and about a third on land between 0–5 degrees.

Unlike some of its neighbours, Rwanda has no major deposits of precious resources such as diamonds, oil or gold. Agriculture and pastoralism are therefore crucial components of the economy.

The draft Land Policy (2004) acknowledges that a plot of less than 0.75 ha may not be capable of fulfilling the nutritional needs of an average family. It also cites an FAO statistic that for a plot to be economically viable for a family, it has to be at least 0.9 ha.[136] Already by the late 1960s, some scholars had started warning of a growing absolute land scarcity in Rwanda. Landal stated that "it is assumed that by 1975 *ceteris paribus* there will be no further land for cultivation lying idle."[137] This became a reality in the 1980s when several Rwandan families started migrating into countries neighbouring Rwanda because they could not get any land for cultivation.[138]

Scarcity of land must not only be viewed in absolute sizes of arable or other forms of land uses only, but also relative to demographic changes and geographical and environmental factors. Access is limited by pressure on land by population growth and the resultant

environmental scarcity. Percival and Homer-Dixon have defined environmental scarcity as either demand-induced (resulting from population pressure or increased per capita consumption); supply-induced (resulting from degradation of the quality or quantity of the resources); or structural (resulting from unequal distribution of such resources).[139] Data on population change in Rwanda suggest that demand-induced scarcity is a reality, while supply-induced scarcity is supported by data on the effect of soil erosion and environmental degradation. As mentioned above, structural inequality is also an important issue.

## *Demand-induced scarcity*

In the last 50 years, the population of Rwanda has almost quadrupled. The population in 1934 was just over one and a half million. It had risen to 8.16 million in 2003.[140] In the 1980s Rwanda had a total fertility rate of 8.3, the highest in the world at that time. For many decades the natural rate of reproduction was in excess of 3%, the highest in Africa even today. The government, with the support of development partners, is now conducting a programme to encourage condom use for family planning and sexual health, in the context of the HIV/AIDS pandemic. However, because of the genocide, the ethnic quota system practiced from 1959–1993 (which depended heavily on estimates of ethnic proportions within society), and the influence of the Catholic church, family planning is an extremely sensitive issue.

The obvious result of dramatic demographic change is the rise in density of population. Some 40 years ago density on agricultural land was 121 persons per square kilometre; the figure rose to 166 per square kilometre ten years later; is thought to have been approximately 262 people per square kilometre in 1990; and is today well above 350.[141] In some parts of Rwanda, density is exceptionally high. In parts of Save District, in the South of the country, it is estimated at 700 persons per square kilometre and Ruhondo in Ruhengeri, to the North of the country, is thought to have 820 inhabitants per square kilometre – the highest density of population on arable land in Africa South of the Sahara.

Clay *et al* have documented the dynamics of population pressure and declining productivity in Rwanda.[142] They summarise the effects of rapid population change in Rwanda as follows: first, farm holdings have become smaller due to constraints on land availability and holdings are more fragmented. Second, cultivation has pushed into valley-bottom lands and fragile, marginal lands on steep slopes previously used for pasture and/or wood lots. Third, many households now 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.

This would be less alarming if increasing adaptation and considerable increase in levels of productivity offset the limitations posed by increasingly smaller plots. Unfortunately, this has not been the case,

even prior to the war and genocide. For example, if annual food production was 100 units between 1979–81, it was only 70 units in 1993. Kilocalorie production per farmer fell from 2,055 per day in 1984 to 1,509 kcals in 1991, well below the FAO recommended minimum of 1,900 kcals per day for active adults.[143]

One major factor that has caused the fall in productivity has been environmental degradation. On average, farmers observe a decline in productivity in nearly half their holdings due to soil degradation.[144] Soil erosion is moderate to severe on 50% of the land surface of Rwanda.[145] It was estimated that up to 4/5$^{th}$ of households in hilly areas like Ruhengeri observe a decline in productivity related to soil erosion. Soil erosion is reducing capacity to feed 40,000 persons per year (cited by Draft Land Policy, 2004). Of course, it should be noted that some of the topsoil contributes to the fertility of the marshlands, and so is not completely 'lost' to the agricultural system.

It is generally believed that demographic pressure is the driving force behind soil degradation in Rwanda. However, it must also be recognised that a variety of social, political and economic forces are also important. Poverty (and, to a lesser extent lack of agricultural training) restricts the use of artificial fertilisers[146], while the lack of extension capacity of MINAGRI, also limits the dissemination of organic farming techniques, soil and water conservation measures, and other 'intermediate technologies.'[147] Farmers have in the past often been blamed for poor soil and water management, despite evidence that they in fact invest significantly in technologies such as terracing, agro-forestry, use of living hedges, cultivation in mounds, mulching and manuring.[148] Production systems can be characterized as intensive organic systems and involve the combination of food, fodder and tree crops. In addition, intercropping and crop rotation are typically practiced.[149] However, despite widespread use of appropriate anti-erosion technologies, there are several constraints to their universal adoption, including land fragmentation, as higher transaction costs reduce incentives to invest in conservation measures, and insecurity of tenure.[150]

Some attempts to reduce erosion have been counter-productive. Many of the 'conservation projects' planned and implemented in an authoritarian, top-down manner, contributed to grievances amongst the rural poor. These grievances were noted by some political elements and used to their advantage. Mukankusi quotes a peasant talking of 'development' in the years immediately preceding the genocide:

> *We were told to dig water harvesters and to cultivate in terraces. If we did not we were fined 500 RWF or more – this represented five days of work! When the MDR leaders/brothers came and told us this was exploitation and oppression, we did not hesitate, we destroyed it all! … MDR were right, 'they' [the Habyarimana regime] were cheating us, making us waste our time digging this.*[151]

Environmental degradation is not limited to soil erosion (fluvial and dry) alone. In the 1980s the deforestation rate was 2.3% or 2000 hectares per year. These patterns are important for food security, because of the use of forest products (such as wood and wild fauna and flora) by rural households. Deforestation therefore indirectly affects private land uses.[152] There have been major reforestation efforts, which have been successful in many areas. However, many of the replanted trees are exotic species, and specifically Eucalyptus, which, while fast growing and reasonably good for providing building material, is known to absorb many important soil nutrients and also to be very demanding of groundwater reserves.

Another exhibit of environmental degradation is the rate at which forests have been depleted on mountains and natural reserves. In most cases it was through converting them into arable land. Of the primary forest that covered 80% of the country there is 5–8% left.[153] Altitude degradation of vegetation was also influenced by the search for more land for cultivation. Whereas in past decades the cultivation was practised at a maximum elevation of 1,800m, today the maximum is 3,000m.

Gishwati forest was declared a national reserve in 1930s. Forest cover has been depleted by 86,4%. It had 21,000 ha of forest cover by 1981, lost 5,000 ha to a World Bank project and was settled by 1959 returnees after 1994. Mukura Forests have lost original cover by 46,7% and Akagera National Park by 17.6%. While in 1956 the Akagera was 331,000 ha it was depleted to 255,000 in 1992 and is now 90,000 ha, slightly below a third of the original size.

At a national level, the major agent of environmental degradation is the requirement of wood for different uses including fuel and timber. In excess of 4.5 million cubic metres of wood is exploited each year, up from 3.5 million in 1990.

Another aspect of relative scarcity, mentioned in the introduction, is limited access to technology, inputs and even credit. Rwandan agriculture is still overwhelmingly traditional. The hilly relief does not permit use of modern technology; although poverty is the primary reason for low application.[154] Only one tractor is available for 100 ha of arable land compared to 175 in Botswana or 20 in Tanzania. Irrigation can be applied to less than 0.4% of the cultivated area.[155]

Most farmers lack access to chemical fertilisers, as they are expensive. Chemical fertilisers are used by 5.2% of Rwandan households. Between 1996 and 1998 on average only 400 grams of fertilisers were used per hectare of arable land, compared to say 35,700 in Kenya or 53,700 in Zimbabwe.[156] Like other African countries, Rwanda intends to exploit this fact for the production of certified organic produce. However, the market is specialised and not all smallholders may be able to benefit from it. Sources of agricultural credit (for example, *Banques Populaires*) have not had any significant impact on the agricultural sector mainly because a lot of credit is used for non-agricultural purposes.[157]

## *Land distribution*

Structural scarcity has not been perceived as a major problem in Rwanda, because land distribution has not been as skewed as in other parts of Africa. However, some studies have indicated serious concerns over increased inequality in land access. It is argued that the Gini co-efficient (a measure of inequality) of land distribution has been steadily increasing, particularly since the 1980s.[158] It is currently 0.594.[159]

**Table 1:** Farm holdings in 1984

| Classification | Percent of households | Percent of cultivated land |
|---|---|---|
| Less than 0.5 ha | 26.4 | 6.9 |
| 0.5–1.0 ha | 30.3 | 18.4 |
| 1.0–1.5 ha | 15.6 | 15.7 |
| 1.5–2.0 ha | 11.1 | 16.1 |
| > 2.0 ha | 16.4 | 42.9 |
| Total | 99.8 | 100 |

**Source:** Guichaoua 1989 cited in Baechler 1999

**Table 2:** Farm holdings in 2001

| Classification | Percent of households |
|---|---|
| <0.5 ha | 58.6 |
| 0.5–1 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 |
| *Total* | 100.0 |

**Source:** HLCS 2002.

However, it needs to be emphasised again that land distribution has not been perceived as a major problem in Rwanda's past.[160] This does not mean that land distribution inequality is not increasing, and is not a policy concern.[161]

First, it is widely believed, as stated in the draft land policy that a significant share of land is in the hands of a rich elite, who are mainly from urban areas.[162] There is no recent figure, but as far back as 1984 it was estimated that 50% of agriculturally productive land was on only 182,000 farms out of the total of 1,112,000 in the country.[163]

The church is also a major landowner: in the mid-1980s one estimate put church land alone at about 20% of all arable land in Rwanda.[164] Some land is given to the poor for cultivation, but the extent of this is not known and such users lack any security of tenure.

A second indicator is that of landlessness. Some observers have opined that Rwanda does not have absolute landlessness in the true sense of the word.[165] The observation is true to the extent that some

Rwandans have access to land even if they do not own any plot. A landless person can still operate a plot of land from the extended family through the traditional mutual help schemes.[166] A landless and jobless person, even if in town, can be supported by his family if he returns to the rural areas.[167] The customary access rights for women in some 'social categories' have already been mentioned. However, all of these livelihood strategies are insecure, constrained by land scarcity, and are likely to have been weakened by the social effects of the genocide.

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%.[168] The proportion of the landless including urban dwellers, is estimated by the government at 11.4%,[169] though other figures of between 15–20% have been offered.[170] Even if inequality in land ownership is not as extreme as in other countries, the trend seems to be that inequality is increasing, not decreasing.

## *Land, poverty and livelihoods*

The effects of land scarcity and environmental change, combined with civil unrest, have meant that Rwanda has at many times been incapable of producing enough food for the rural population. Frequent periods of famine are common 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 and 1943.[171] Most of these famines were localized. As noted above, annual food production declined by 30% between 1979 and 1993. Food production remained low after 1994, due to the effects of war and genocide.

A variety of factors were involved in these famines, including epidemics, droughts, locusts or military expeditions. Although food insecurity may be highly geographically variable, with some part of the country producing a surplus while others starved, markets do not 'naturally' function in order to supply food from surplus areas to food deficit areas during times of localised food insecurity.[172] In the past, food insecurity has existed on hills just a few kilometres from areas of food surplus.[173]

One strategy that has often been advanced in relation to food security is regional specialisation. It has been suggested that Ruhengeri specialize in production of white potatoes, Gitarama focuses on cassava, and Kibungo on bananas.[174] This approach is based on the comparative advantages of the regions, but can succeed only subject to a number of conditions. One is a working marketing system with efficient infrastructure for distribution. It should be possible, with a proper marketing system, to ensure distribution in the right quantities, at the right time and at the right price. However, regional competition is significant: Kibungo's banana crop must compete with bananas from outside the country, especially from Uganda. As stated earlier, it should be remembered that specialization in a 'consumption oriented' economy may be difficult to implement. A small farmer may reduce food security risks by growing a little bit of most of the crops.

It is also important to note that 'miniaturisation' of plots may be associated with poverty. Table 4 below corroborates the finding that the majority of the poor – those whose livelihoods are on balance – are the ones with smallholdings.

**Table 3:** Size of average agricultural farms, by wealth quintiles

| | | |
|---|---|---|
| 1st quintile | (poorest) | 0.55 ha |
| 2nd quintile | | 0.58 ha |
| 3rd quintile | | 0.66 ha |
| 4th quintile | | 0.82 ha |
| 5th quintile | (richest) | 0.85 ha |

**Source** HLCS 2002

Some exit solutions from the problem of land scarcity have been known in the past. The first is migration, internally and internationally. The latter solution was either encouraged, forced or tolerated by the government. At one point before independence, Rwandans formed a fifth of the population of rural Buganda, in neighbouring Uganda.[175] However, internal migration had become untenable by the 1990s. With minimal or negative growth in the numbers of formal jobs available, moving to towns has not provided an adequate means of livelihood under conditions of shortages of land in the rural areas. Instead, it is a policy concern with regard to possible creation of slum areas, a point noted but not fully pursued by policy makers.[176]

The political aspects of exile have made it less attractive to both the government and refugees since the 1970s. The government, since 1994, has consistently called for all Rwandans in the diaspora to return to the country, while Rwandans in other African countries have at times been victims of harassment or violence. In 1990 Rwandan migrants were expelled from Tanzania and 1000 were killed in communal violence in 1993 in Zaire.[177] Violence against Rwandan Tutsi in Uganda was instrumental in persuading them first to join Yoweri Museveni's National Resistance Movement, and then to form the RPF and enter Rwanda by force.

More local coping strategies may not always be sustainable or dignified. When asked what landless or land-poor households do to survive, the Mayor of Save (Butare Province) mentioned the following four 'occupations': petty theft, prostitution, migration to towns, and dependence on intermittent casual labour (with the last two strategies often linked). A case study from Gisenyi between 1988 and 1993 found that crime was greatly increasing because of land scarcity and extreme poverty. The researchers concluded that the level of crime and suspicion was such that, "the social fabric was at risk of falling asunder".[178] Interestingly, the local community differentiated between those thieves who were driven by desperation (who were to some extent implicitly forgiven for their crimes) and those who were more ruthless. It was reported that some of the latter group were killed during the civil war/genocide period. Another strategy that is usually mentioned as a means

of livelihood under land scarcity is that of non–farm and off-farm activities. Indeed in a recent survey 16% of all rural households were found to have at least one off-farm activity carried out in the course of the previous year.[179] It should be noted, however, that most of these are distress tasks that do not constitute full time employment, such as casual labourer in a rich farmer's farm or enterprise. About 47% of households engaged in some non-farm and or agricultural labour activities out of necessity and not as a form of alternative employment.[180] This indicates that subsistence farming no longer provides an adequate livelihood – many non-farm activities therefore complement, rather than replace, farm activities.

There are far fewer non-farm activities than off-farm agricultural activities available in Rwanda. A survey prior to 1994 revealed that of all the 'off farm' activities, almost a third involved agricultural labour on another household's land. Men dominate off-farm employment,[181] as do those with an education. Those with at least primary education spend at least 71% of their time on off-farm activities, compared to only 42% of their time for those without education.[182] Also, non-farm income is concentrated in the hands of high income households.[183] This implies that promotion of non-farm activities – which is undoubtedly an important priority, especially in the context of land scarcity – should be carefully targeted in order to benefit the poorest, and women, rather than entrenching current inequalities.

A closely related issue is that of subsistence and commercialisation of agriculture. Rwandan agriculture is 'consumption oriented' and not 'market oriented'.[184] The meaning of the concept is that a majority of Rwandan farmers aim their production at food self-sufficiency. A single household in the South of Rwanda will typically grow as many as 14 different crops.[185] Studies suggest that only a small percentage of crops – possibly around 35% – are marketed, and that less than two-thirds of households sell any crops.[186] In this regard, Van Huyweghen notes rightly that this may be a cultural attribute of Rwandans, who traditionally take pride in being able to provide for their families and households; though this is changing. It is also related to the vagaries of the market – many farmers felt the ill-effects of the crash in global coffee prices in 1989.

Unfortunately, the tendency towards home consumption, rational though it is, is often seen in a purely negative light. This fits with a broader tendency, which has been in evidence for some time within government, whereby:

> *The vocabulary and language use in all policy documents related to rural areas clearly stigmatise the peasant economy as backward and out of date in a modernising economy.*[187]

HIV/AIDS is also an important factor in land use and access patterns. The national sero-prevalence rate is about 11%.[188] Though empirical data on the effects of HIV/AIDS prevalence on land rights in the country is

largely lacking, due to the practical and ethical difficulties involved, a number of studies have identified general patterns, which are likely to be seen in rural economies affected by high rates of HIV/AIDS infection.[189] Death and impoverishment within households due to HIV/AIDS tends to undermine the land rights within the nuclear family, particularly for women and children. Interview-based research in neighbouring Uganda, for example, found that male and female respondents differed in their view of the most significant land-related issue associated with the pandemic.[190] According to men, the most important issue was the increased frequency of distress sales of land, while women reported that increased vulnerability to loss of land and general tenure insecurity were most important. The study also suggested that the effects of the disease on land use (related to reduced labour within the household) and land rights (especially in terms of inheritance for women) result in a higher frequency of land disputes, which is particularly important for Rwanda, being already saturated with disputes.

The results of studies from countries across Southern and Eastern Africa reveal that 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.[191] Within Rwanda itself, there are associations of people living with HIV/AIDS in Rwanda, which are overwhelmingly female in membership.[192] These associations could be important in the struggle to defend the land rights of people living with HIV/AIDS and family members (especially widows and orphans). This is true both in terms of their importance as a channel for information to their members, and also as a voice to influence policy-makers and administrators.

The effects of the pandemic are not just felt at the household level, but less directly, through reduced ability of governments to regulate land use and access. HIV/AIDS reduces the government workforce, not just in terms of illness and death of infected persons, but also in terms of absenteeism associated with support for infected friends, relatives and colleagues, either in monetary terms (i.e. forcing civil servants to take on extra occupations) or in time devoted to care or attending funerals.

Some of the policies that the Government of Rwanda – for very good reasons – is pursuing, may in the long-run increase the risk of infection for many people. For example, policies likely to increase rural-urban migration (particularly when this leads to nuclear families becoming separated for long periods of time) and create pools of rural labour in agro-industry (which is also associated with internal migration and separation of families) are likely to create conditions that hasten the spread of HIV/AIDS in rural areas.[193]

To conclude this necessarily brief survey of land access and production in Rwanda today, we can observe that despite the importance of non-farm activities due to land scarcity, there are relatively few options open currently to most rural people. The development of a

market-based agro-industrial economy is very necessary, but extremely challenging. It may also conflict with the idea of regional specialization, which is only likely to be achieved, if at all, through regulation, and is thus at risk of introducing major market distortions. Transformation of agriculture will depend not only on the quality of land and agricultural policy, but also on the degree of political will to implement these policies, and the level of confidence that peasant households and communities will have in the systems put in place.

## *Aims and modalities of the land policy*

The land policy is designed to respond to the negative effects of the following issues:

- extremely high density of the population and the resulting pressure on land;
- excessive partitioning of family agricultural plots, resulting in: plots that are no longer viable, increased food insecurity and poverty, and a growing number of people without land;
- soil erosion and degradation to the point of loss of fertility through overuse, and "inappropriate farming systems";
- pressure on forests and natural reserves;
- inadequacies and anachronisms of the written law governing land issues and the predominance of customary law, which is not formally recognized by the state;
- a customary land regime which discriminates against women; and
- insufficient human, material and financial resources which affect many governmental sectors and results in poor management and use of land.[194]

The Government of Rwanda sees increased security of tenure or rights of access to land, and more effective land management, as important factors for the improvement of the agriculture sector and the economy as a whole, helping to create the resources needed to reduce poverty and to consolidate peace and social cohesion. In the words of policy-makers, land reform is envisaged to:

- provide security of land tenure in order to promote investment in land;
- establish an appropriate land allocation and land use through national and local level land use planning and development;
- avoid land fragmentation and to promote land consolidation in order to enhance optimum production;
- establish mechanisms which facilitate an optimum exploitation of land, targeting the social-economic development of the country through the development of land use and development guidelines at national and local levels;
- orient land management towards more profitable and sustainable production, by making good choices among methods of land development which are appropriate to the nature of soils;

- develop appropriate methods of land protection and conservation, such as terracing on slopes of between 25% and 55%, and agro-forestry in cultivated plots to avoid land degradation;
- promote research as well as the education of the public on all aspects of land tenure, land management and land markets;
- strengthen discipline in land acquisition in order to control pressure on land, inappropriate development and any kind of land speculation, by creating a framework for the following: elaborating regulations and guidelines; involving local authorities and local NGOs in the process, and training technicians of the district land offices and the district and sector land commissions; and
- involve and sensitise the population at all levels in order to ensure protection of the environment and good management of the land.[195]

The land reform in Rwanda will be guided by clear and concerted principles that are summarized in the words of policy-makers as follows:

- The right to land ownership should be co-related to a certain number of obligations in order to guarantee the development of the land, which is the common heritage of past, present and future generations;
- According to the constitutional principle of equality for all citizens, all Rwandans enjoy the same right of access to land, without any discrimination whatsoever;
- Land tenure and administration should guarantee land security for all holders of title deeds, and should promote optimum development of land;
- The process of land management should consider different land categories, as represented by the various land use maps and master plans which show the using of different categories of land according to their capability;
- The methods of management and use will differ, depending on whether they apply to urban or rural land;
- Proper land management should include land use planning, including the reorganization of urban and rural settlement and land consolidation for more economically viable and productive use of the land; and,
- Development of a land market will improve the value of land and lead to more productive land use. An appropriate cadastral system is essential for good land administration.

The policy plans for the current manual land registration system, which has approximately 20,000 pending applications for land registration, to be modernised and transformed into a cadastral system. Practically, Rwandan land administration will be characterized by the:

- 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

- establishment of national, provincial, and district land commissions. Currently, their composition is uncertain, and will depend on appointment of citizens to the commissions by MINITERE.

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.

Activities can be broadly divided into 'urban sector' and 'rural sector'. In Rwanda, the rate of urbanisation is low: about 17%, according to the draft land policy. Currently, the urban growth rate is approximately 9% year, most of which represents the growth of the capital city, Kigali. Rwanda's policy-makers believe that urban growth is an inevitable and desirable phenomenon, because towns facilitate the integration of surplus agricultural population. However, the government wishes to avoid the development of slums. Most of the low-income housing (90% in Kigali city, and also in other agglomerations) is developing in a spontaneous manner. The policy stresses that appropriate sites must be found in towns to re-allocate the low-income housing.

In rural areas, the actions to be undertaken are:

1. Re-organisation of habitat in rural areas through villagisation (*imidugudu*);
2. Demarcation of agricultural areas;
3. Establishment of the general master plan of land use and land development;
4. Guided land consolidation;
5. Maintenance of marshlands in the state's private domain, and establishment of clear regulations concerning their sustainable use in order to avoid negative environmental consequences;
6. Complete inventory of marshlands, and clarification of their location, as well as their allocation;
7. Specialization of marshland users, and establishment of appropriate measures which can increase the yields of the chosen marshlands for agricultural purposes;
8. Complete inventory and delimitation of protected areas, and other fragile ecosystems;
9. Planning for the development and management for each protected area;
10. Development of ecotourism infrastructure; research and promotion of technologies adapted towards the proper use of biological resources;
11. Development of a comprehensive political and legal framework geared towards sustainable conservation and use of resources in protected spaces; and
12. Creation and strengthening of structures carrying out a community based management with equitable share of the benefits of protected areas, with the population surrounding the protected areas playing the key role in management.

According to MINITERE personnel, the next steps regarding implementation of the policy and law will be taken according to the following plan:

### *2004*

- Adoption of the land policy and land law by the government, parliament and senate
- Elaboration of a national master plan of land use and development

### *Years 2005–2007*

- Development of by-laws (land regulations)
- Sensitisation campaigns and large diffusion of policy and law documents (through media)
- Installation of land offices and land commission in each district, training of staff at district level, installation of pilot zone of land registration in districts
- Restructuring of national cadastre by introduction off modern methods of mapping
- Land surveying and registration
- Land registration at district level

### *Year 2006–2010:*

- National Centre of Mapping and Land Information established

## LAND POLICY ANALYSIS

The recent endorsement of the land policy by the government is an important landmark in the post-genocide history of Rwanda. It will be effective if it safeguards the livelihoods of the rural poor, who form the overwhelming majority of the population, reduces poverty and mitigates conflict. If it manages to do so, it will act as a major pillar for peace building in the country and the region.

It is, however, important to critically analyze the assumptions on which the land policy has been drafted. Although the policy states that there has not been any written law or policy in Rwanda, there were attempts, as mentioned above, to undertake land reform in 1967, 1978 and 1991, which all failed, largely due to a lack of political will at various levels.[196] In other countries, such as Uganda, land reform is also politically very difficult to implement, with some district officials characterizing a policy that looks good on paper as 'unimplementable' due to political considerations at the local level.[197] Given the historical challenges to implementation, it is important to identify possible constraints and limitations on the effective implementation of the current draft policy while, of course, recognizing its strengths and the opportunities that it presents.

We look at several aspects of the land policy, which 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: different meanings of tenure security, 4) Abolition of customary systems, 5) Addressing Inequalities in land ownership, 6) Villagisation, and 7) 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.[198]

## *Consolidation of land*

Consolidation is stated as the third objective of the land policy framework in Rwanda.[199] The PRSP also states that,

> *…households will be encouraged to consolidate plots in order to ensure that each holding is not less than 1 hectare… this will be achieved by a family cultivating in common rather than fragmenting the plot through inheritance.*

It is intended to address the "excessive partitioning of plots" (land fragmentation) and to promote their regrouping in order to bring about optimum production. As indicated earlier, the average total household land holding is about 0.76 ha. In some areas, the mean size of family holdings is particularly small – 0.36 ha in Butare and 0. 5 ha in Gikongoro.[200] It is estimated that the average Rwandan household possesses five plots, though the figure is higher in some areas, such as Ruhengeri where the average is about ten.[201] This is a result of several factors, including subdivision of household plots amongst sons through customary inheritance, and also sale and purchase of land. A household may sell a portion of land during a financial crisis, only to buy another plot from a different family when money becomes available. Land sharing arrangements, which differ from place to place, and the distribution of unoccupied land by the government, may also have contributed to this pattern.[202] These land parcels are typically located in different parts of the landscape: in general a household will actively try to access land in different eco-niches (for example, valley bottoms and at higher altitudes), in order to benefit from differences in rainfall availability and soil retention characteristics.[203]

In simple terms, consolidation means putting together small plots with the aim of making them viable and more productive per unit of investment, through economies of scale. This need not change the amount of land controlled by individuals, and is therefore not necessarily an instrument for social justice.[204] The Draft Land Policy instructs that,

> *…henceforth a clause forbidding the partitioning of land by inheritance or transfer among individual members will appear in the land law. The process of grouping plots for more economic use will be favoured and the regulation and purchase of land among inheritors will be established so as to render regrouping of plots effective'.*

In addition, if the Minister of Agriculture believes it to be necessary, he may advise on issues related to consolidation. This differs from the land law, which provides for the Minister of Agriculture and Livestock Development to request the consolidation of smaller plots. This is of the many areas in which harmonisation of the law and policy will be needed.

Land consolidation is not a new concept, and has been implemented in a number of countries, using different models, which differ in terms of the process involved, and also the extent of voluntarism or coercion of the affected community. 'Comprehensive' land consolidation includes the re-allocation of parcels together with a broad range of other measures to promote rural development.[205] Examples of such activities include village renewal, support to community-based agro-processing, construction of rural roads, construction and rehabilitation of irrigation and drainage systems, erosion control measures, environmental protection and improvements including the designation of nature reserves, and the creation of social infrastructure including sports grounds and other public facilities. Typically the government, in the form of a variety of line ministries, will be the main agency involved in design and implementation, but because of the extent of impacts on the local community, the participation of all community members in decision-making is particularly important. However, as it is unlikely that all community-members would agree, a fair degree of legal compulsion is usually involved.

Other forms of consolidation are voluntary or individual types.[206] In voluntary consolidation schemes, unlike comprehensive schemes, all participants must agree fully with the proposed project. As a result, voluntary projects tend to be small, and voluntary consolidation tends to be best suited to address localised problems. Voluntary projects usually have fewer than ten participants, but in some cases this number may be higher. Individual consolidation involves the spontaneous consolidation of holdings, without the direct involvement of the state. However, the state may provide an enabling environment for consolidation by promoting instruments such as joint land use agreements, leasing and retirement schemes. Experience in a variety of countries has shown that entirely voluntary consolidation tends to be a "slow and unsatisfactory" process.[207] This is due to the difficulties of community collective action, which suggests that progress would be particularly slow in communities where social bonds are weak or strained.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 states that, "one needs to carry out the regrouping of plots". MINITERE personnel suggest that land consolidation will be focused on encouraging increased production, through formation of adjacent plots with similar crops. According to policy-makers, this means that, "nobody will lose their plot". Farmers will be encouraged to adopt cash crops including tea, coffee, flowers, and rice, in large mono-cropped areas, but each person will have the possibility to register his/her plot separately.[208]

However, by linking the process to villagisation, the policy suggests that it will be a type of comprehensive consolidation process. As argued above, it is far from clear whether further large-scale villagisation will be possible in Rwanda, due to lack of funding. Donor representatives routinely refer to it as a "dead issue".[209] Despite this, the government is absolutely resolute that it remains a central pillar of policy. This impasse is likely to severely cripple the implementation of the land policy.

There are a number of other pertinent questions related to consolidation in the Rwandan context. First, and most importantly, the policy fails to state how consolidation will bring significant improvements. Possible ways include various forms of economies of scale; mechanisation; associations which are better able to invest in inputs and negotiate with middlemen, etc. However, none of these will bring a miraculous increase in returns: indeed, researchers have argued, based on empirical data from Rwanda, that "land consolidation policies are unlikely to increase land productivity significantly."[210] It would be useful if policy-makers could produce some figures, based on research, to explain the theory behind the policy. It is far from clear whether fragmentation is necessarily always a negative phenomenon. As with most issues, it depends to some extent on the scale at which one wants to examine it. At the scale of the household, there are often benefits in terms of crop diversification and risk management represented by each plot's specific characteristics of fertility, water retention, accessibility, altitude and form of tenancy.[211] The negative aspects of fragmentation (such as distance from the homestead) may be offset by these benefits, as well as better spacing of labour throughout the year, due to different labour demands of different crops planted in different microclimates and soils. Also, fragmentation is a result of household management of land as an asset: plots are sold during hard times, and other plots are bought when money becomes available. Some researchers have concluded that all in all, the private benefits of plot fragmentation are probably at least as large as the private costs.[212] The policy intends to facilitate the further development of land markets, however, much of the activity in the informal land markets that currently exist, involves plots smaller than 1 ha.

Second, the policy suggests that consolidation will result in some people losing their lands. The policy states that, "not every one will own a registered plot, given the existing pattern of scattered housing, however, those who miss out will be compensated." There are a number of important issues. The amount of compensation that will be offered is of course a crucial factor. Currently, Rwandan law only allows for compensation for investments on the land (such as buildings and crops), but the draft Expropriation Law allows for land to be valued in order for appropriate compensation to be calculated.[213] It is important that valuation is based not just on 'productive value' (i.e. the value of goods that the land could potentially produce) but also on market value. If compensation is calculated appropriately and paid on time, there remains the question of what alternatives are open to those made landless. It is unlikely that the money

will be sufficient to purchase land of 1 ha or more, as those whose land is expropriated through consolidation will presumably have owned less than 1 ha. The government would prefer that they invest in non-farm activities, but many peasant households will find the move from smallholder agriculture to small enterprise challenging. If land expropriation affects a number of households simultaneously in the same area, the market may also be flooded with people looking to invest in small businesses. Households will need support on the technical aspects of setting up a business, and there is a very real risk that if the policy results in a large number of expropriations, the result will be an unmanaged influx of households to urban areas, and a growth in the urban underclass.

Third, the minimum plot size of 1 ha may be questionable. With the majority of the population owning less than this, and surviving through off-farm and non-agricultural activities, it may well be better to aim for a smaller mean plot size. The 1 ha minimum figure, which also appears in the legislation on inheritance, does not appear to based on a full scientific study.[214] Indeed, even the policy itself considers 0.75 ha to be a viable minimum for a household to fulfil its nutritional requirements. Several studies have indicated that productivity per ha is significantly higher in small plots due to higher levels of investment (in labour, inputs and conservation investments), but insufficient research has been done to estimate at what point increased intensification fails to compensate for reduced plot size.[215] In some ways, this 1 ha rule-of-thumb has come to be received wisdom in the land reform debate. This illustrates the power of a 'sound-bite' in policy debates.

This question is far from academic. Because 73–77% of households own less than 1 ha of land, for consolidation to achieve a minimum holding of 1 ha, over half a million households would have to give up their plots, but would receive compensation, according to the policy (the question remains whether the government could afford to pay adequate compensation). This huge number of people, representing almost a third of the entire population, would have difficulty finding alternative forms of subsistence.[216] The likely result would be an influx of this group to towns, and hence a large unemployed or underemployed and extremely poor urban population. This would not bode well for the future of the country.

The 1 ha figure is also significant, because it is partly on this basis that widespread land redistribution has been ruled out. The idea of land redistribution may seem inappropriate in a country as land-scarce as Rwanda, and indeed would be a huge task, with great social, political and technical challenges. Some might argue, however, that principles enshrined in the constitution and the policy (which talks of the "guarantee of right to land" and promises "just and fair access" to land) support the idea of re-distribution. Specialists estimate that by redistributing land from the land rich (those with more than 1 ha) to the land poor (primarily those with less than 0.5 ha), the mean land holding would increase to 0.91 ha.[217] However, a simple distribution from the land

reserve to the land poor would be much simpler, and less conflictual. There is probably about 400,000 ha of land available for redistribution: including some 33,000 ha of unexploited marshlands. If this was redistributed to those with less than 1 ha (and primarily to those with less than 0.5 ha) then the mean land holding for those with less than 1 ha would rise to 0.83 ha. Of course, re-distribution would not solve the 'second generation' problem: unless the rules governing the inheritance of land were strictly followed, this land would quickly become fragmented amongst the sons and daughters of the current generation.

Fourth, encouraging farmers to concentrate on monocropping of cash crops, in the absence of strong mechanisms for market support and possibly some form of price regulation, will be contrary to the patterns seen today. Coffee farmers, for example, are increasingly turning to intercropping, especially of beans and bananas. Questioned in 2003, a quarter of farmers said they planned to reduce the number of coffee trees on their plot, introducing intercropping instead.[218] Moreover, monocropping involves highly effective soil and water erosion measures, as row cropping of crops will lead to increased rates of soil erosion when compared to the inter-cropped fields commonly seen today.[219]

Consolidation is seen as a way to create conditions for commercialisation and intensification of agriculture. Plans for regional specialisation of agriculture were first outlined by government in the 1970s, but have yet to be implemented. In 1998, for example, a "Thematic Consultation on Food Security" recommended that Rwanda be categorised into three zones for planning purposes:

- The plateau area of Central and Western Rwanda: food production with careful land preservation;
- Central and Eastern areas: high potential for increased production, e.g. through exploitation of wetlands; and
- Peri-urban areas: intensive livestock and vegetable production to be encouraged.[220]

The agricultural policy will support intensification in agriculture only if a number of other services are delivered more efficiently. Particularly important is the availability of inputs, especially fertilisers, seeds, technology and changes in the methods of agricultural production.

It can also be expected that only a small segment of the population, namely those with the most land and the best access to markets, will move towards increased commercialisation. The most likely source of commercialisation in agriculture is within the export sector. It is, however, estimated that 90% of Rwandan exports are produced on 7% of agricultural land. In terms of population, it will be practised by less than a third of the farming population.[221]

The PRSP identifies expansion of rice, maize, potatoes, soya and beans, which will presumably dominate the 'master plans' mentioned in the land policy. However, Rwanda has historically suffered from periods of severe and widespread food insecurity.[222] 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. The question should be asked: what safety nets will be put in place in case of widespread crop failure? In the words of local peasants, "we cannot eat tea".[223]

Finally, if consolidation is to be voluntary and spontaneous, it is unlikely to happen very quickly – if at all. It is suggested that in Rwanda consolidation can be through farmers associations and cooperatives.[224] But, as mentioned above, the cooperative sector and associations are fairly weak and sometimes affected by corruption. Also, given the current number of land related disputes within families, which have arguably increased since the passage of the inheritance law, it is yet to be seen whether consolidation can occur at the extended family level, as envisaged by policy-makers.[225]

If the targets set out in the Vision 2020 document are to be achieved, it seems clear that the process will involve some degree of compulsion by the government. This is not impossible, in light of the tactics used (mostly based on decisions taken by local level administrators) in the villagisation programme in the late 1990s. This will raise the danger that peasants will lose control over their land-based livelihood strategies, which will compromise the incentives for efficient utilisation of the plots. Local elites may gain the bulk of the benefits from a process that is likely to be uneven, due to the difficulties of objectively valuing land (according to soil quality, position, etc). Even if the decisions made are technically appropriate, the very act of compulsory consolidation may be a source of discontent, partly because of the traditional 'attachment to the land' felt by Rwandan peasants, and because it will go against much of the democratic, participatory language of the government. The district and provincial land commissions are charged (in the land policy) with ensuring effective implementation of the resettlement policy, and hence their composition, technical capacity and accountability to local people will be an important factor in ensuring that the exercise does not add to social tensions. The situation is difficult, however, as a more spontaneous process will be difficult to integrate into a strategy for broader rural transformation (including infrastructural development, marketing systems and investment in non-farm activities) that is necessary if Rwanda is going to overcome the agricultural constraints that currently make the future look bleak. Without such a comprehensive strategy – the details of which are lacking from documents such as Vision 2020 and the PRSP – the necessary, but difficult decisions cannot be made: for example, regarding selection of cash-crops, and trade-offs between enhancing small-holder agriculture and facilitating big agribusiness investment. The solution would seem to rest in the quality of relationships between different stakeholders, in order to achieve an iterative learning process, which is responsive to various micro-and macro-economic factors. Systems should be put in place for the effective coordination of various line ministries, district land commissions,

donors and civil society groups, who will play a particularly important role in facilitating information exchange between such institutions.

## *Access to land for the landless*

The Land Policy, in its section on the historical background to the land issue, notes that many people were landless even prior to the civil war and the events of 1994. As has been documented elsewhere, 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.[226] Other forms of landlessness, including people depending on renting or sharecropping, need to be addressed. Women, particularly widowed, divorced or single women, are also vulnerable to landlessness. The government has noted this elsewhere.[227] It is also possible that some of the 'new case' refugees were unable to gain access to lands when they returned. It was not unknown for someone to be falsely accused of being involved in the genocide in the years after 1994, and this discouraged some people from claiming their land rights too vociferously.[228]

However, after this historical section, the policy 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 ten years.[229] No other type of landless person is mentioned.

The policy's solution to the problem of landlessness is redistribution of private and public state land, including non-occupied, escheated and unexploited reserves. According to experts, there may be around 330,000 ha of arable land available for distribution. Without full details of the numbers of landless people, it is difficult to assess whether this will be sufficient. The government estimates the number of 'old case' refugees as about one million. However, a large (but unknown) proportion has benefited from land sharing, and hence have access to land. Others are in salaried employment; however, as noted by researchers, salaries are often insufficient to cater for the needs of a household and a plot is often necessary to supplement incomes.[230] If we use a very approximate figure of 15% of the total population, which would include not just the 'old case' refugees but others as well, we can estimate that 1,224,000 people may be landless.[231] Clearly, the land reserve will be insufficient to address the needs of so many.

In addition, the policy provides that the land of genocide survivors (such as widows) and orphans will be leased out to them. Survivors and orphans were often exempted from 'land sharing' arrangements and hence the size of their land-holdings often out-strips their labour availability; in some cases they are living with friends or relatives and their land is unoccupied.[232] This leasing would be done in order to make efficient use of land in Rwanda. However, the terms and conditions for this should be carefully thought through, with full involvement of survivors and orphans themselves. According to a number of sources, many

survivors already feel that the government has not done enough to defend their rights.[233] If the government or local administration is to be charged with leasing for them, regulations regarding the terms and duration of the deal should be established, which are responsive to local variations in land and labour markets. Clear guidelines to prevent problems will be necessary if this is not be another source of social tension.

It is apparent that if the land reserve will be reserved only for the 'old case' refugees, then this definition and the approach to the solution will appear biased towards one social group (as indicated previously, the 'old case' refugees are almost exclusively Tutsi). It is true that this group is genuinely a major victim of the land problem in Rwanda. Analysts have noted that the 'ten year rule' and the provision for villagisation in the Arusha Accords seem to violate the property and housing rights of the 'old case' refugees, under international law.[234] The rights of the 'old case' refugees has already become one of the most visibly controversial aspects of the policy.[235] However, the issue of landlessness is much wider than this, and will continue to expand as relative land scarcity increases. The policy is silent on how, and by whom, 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 (which would have the drawback of insufficiently detailed knowledge of local situations) and local authority, for example, through the District land commissions (which would risk bias through personal links with those affected).

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 the landless are unlikely to be able to produce such a plan. It would be unjust if those with economic means were given priority to access the land reserve over those who are most in need of land. This would be a source of tension in future. It is also perhaps surprising, given the importance of 'environmental scarcity' narratives in the policy, and the conversion of huge parts of protected areas that took place during the 1980s and 1990s, that the policy states that: "Should the redistribution of land be necessary, the government will dispose of any protected reserve, to provide land for any larger, landless community." This clause comes in the context of policy on villagisation. The remaining areas of protected land have important functions as watersheds and habitat for significant wildlife (including the endangered mountain gorilla, in the case of the Parc des Volcans), which can bring in foreign exchange from tourism in future. It would seem unwise to sacrifice more protected land.

Overall, there is a need to redefine the issue of landlessness. There are those, influenced by the customary structure of social capital in Rwanda, who state that there is virtually no real landlessness in

Rwanda.[236] However, it is indisputable that social capital is under great pressure, due not only to the population displacements, trauma and death caused by violence, but also due to the scarcity of communal land which could previously be utilized to address disputes.[237] It is imperative to establish the extent, rate of growth, and the nature of landlessness in Rwanda, and the coping strategies arising from it. The policy perhaps requires a timeframe for distribution of the 'land reserve', as the number of landless people will continue to grow in the future. 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*

The issue of registration of land rights illustrates two things: first, the need for working definitions of 'land tenure security' which reflect realities on the ground; and second, the importance of popular perception, with the associated dangers of misinterpretation.

As mentioned above, the capacity for land registration is currently below demand, especially in terms of urban demand. In urban areas municipal authorities are responsible for registering land. Only Kigali Municipality currently has a truly effective system, which is managed by a Kenya-based company, GeoMaps, which issues title deeds on a full cost recovery basis. In rural areas basic documentation, including a sketch plan and a description of the property, is issued to the user and held in a cadastral database at MINITERE. In some cases, an *Acte de Notoriataire* has been given to recipients of land through land-sharing, though this does not appear to have a formal legal basis. Registration of land across the country, and the creation of a modernised land cadastre will be a major feature of the new land policy.[238] Although land will continue to be owned by the state, land tenure security will be achieved through the acquisition of leases, of between three and 99 years duration.[239]

This is based on the assumption that 'tenure security' is a priority for Rwandan farmers. Numerous studies and consultations have indicated that indeed it is: but the question is, security from what, and from whom? In line with many institutions – particularly the World Bank, for example – MINITERE originally perceived 'land tenure security' as means for farmers to access credit, through formal title. 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. Also, land tenure security cannot be measured objectively, but as a production of social and psychological processes, as exists in the minds of the farmers.[240] 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.[241] For example, research

in Kibungo has revealed that local administrators are most often identified as the source of problems – or the 'culprit' in land disputes.[242] In particular, those involved in land sharing require some guarantee for their land rights. 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. Therefore, tension over land – arising from the *ad hoc* nature of land sharing, for example, as well as general social tensions – has to be reduced in order to improve tenure security.[243] This explains the spontaneous rise of the *Acte de Notoriataire*. From this perspective, the land policy, which gives the government the right to cancel the long-term leases of farmers who do not use it in conformity with the law, may actually undermine land tenure security if the policy is not elucidated further, and disseminated at the local level. A key danger is that this clause, which is linked to legal obligations to maintain land productivity, land 'protection' and land use in accordance to master plans, is abused by local leaders in order to dispossess people and benefit others.

The Government of Rwanda has re-conceptualized its notion of registration in pragmatic ways, though not necessarily because of the reasons above. The original plan was for every plot in the country to be surveyed and registered: however, it is practically impossible for all households to have plots registered in the near future, as there are over 1.5 million plots.[244] It was also stated that the landowners would pay for the registration process. Some stakeholders have therefore been concerned that those with access to money and with influence, may be able to claim rights at the expense of the marginalized. The policy states clearly that cadastral costs and costs of registration will be borne by the tenants,[245] though this has been re-defined, within MINITERE and in consultation with independent specialists, as a dual system. The 'formal' or 'national' system will be based on full cost-recovery, will utilize standard and accurate surveying equipment, and will cater to those willing to invest in titles in order to gain bank loans and have a very high level of security, to enable high levels of capital investment. The 'informal' or 'local' system will use less expensive mapping methods – aerial photography (at a resolution that is affordable, but shows plot boundaries such as lines of trees) or participatory community-mapping, which is already completed in some areas (under the *ubudehe* programme) have both been suggested.[246]

There are already worrying popular perceptions of what the land registration process, along with the consolidation exercise, might entail for the poor.[247] The 1 ha minimum, the compulsory nature of registration, the principle of cost-recovery for registration, and the policy's statement that "Not every Rwandan can possess a plot of land for agriculture or livestock" have led to fears that those with land holdings smaller than 1 ha, or unable to afford the fees, would not be able to register, and would be forced to give up land for consolidation.[248]

Many of these issues have been resolved by amendments to the land policy, or through elaboration of definitions in internal MINITERE documents. However, the risks of misinterpretation remain high, due to the complexity of the issues involved – not every farmer will be able to read the entire 52-page land policy, due to lack of access, illiteracy or insufficient understanding of the issues. The rights of child-headed households – who are numerous due to the effects of genocide and HIV/AIDS – should also be defended, through the actions of the land commissions. Also, more details of the compensation scheme for land expropriated through consolidation should be developed and disseminated. Information dissemination will be a vital part of the implementation strategy, and should involve multiple stakeholders, such as civil society organisations, as well as government organs. Regulations should also be developed and published to ensure that the spirit of the policy and law is adhered to.

### *Abolition of customary systems*

In many African countries, recent or current land policy reform has taken account of customary land tenure systems, often seeking to incorporate elements of customary rights and traditional power-structures within a written legal framework. In many areas, common property resources are governed by customary regimes, which allow multiple users to access the same lands, often at different times and for different purposes. In Rwanda, by contrast, the new policy generally casts customary tenure in a negative light, and rights are seen as purely 'individual' by nature. This is, we suggest, partly a reaction to the evolution of indigenous tenure systems due to the effects of land scarcity and partly a result of a somewhat partial reading of history.The new policy is somewhat contradictory regarding the influence of customary tenure. It characterises the current written law as "very restrictive and confining" and the customary law as "widely practised, but with a tendency to cause insecurity, instability and precariousness of land tenure, in general".

While the policy is ostensibly designed to unify all land access under one system, implying a kind of recognition for customary rights, in fact the law essentially abolishes the dual nature of the Rwandan land tenure. Due to the restrictions on subdivision, the long practiced system of inheritance will cease and access by lineage *ubukonde* will also be abolished. However, a number of caveats must be attached to this scenario.

The first issue is the way in which custom is conceptualised by policymakers. As has been pointed out by others, given the social dynamics in Rwanda the interpretation of historical 'facts' continues to have a strong relevance for Rwandans.[249] The policy indeed notes that, "the definition of land… carries the mark of the socio-political history of the country." It may be appropriate, then, to accept the essentially political nature of the task, and make some reference to the fact that different systems were used by different social (or ethnic) groups. However, instead, the policy

states that, "One should therefore strive to avoid being trapped by cultural considerations". From a conflict prevention viewpoint, the cultural aspects of land access are highly significant. The policy paints a very rosy picture of pre-colonial land tenure systems, which

> *Facilitated economic production, stability and harmony in production… The profits were thus based on the liberty to occupy any territory as well as the complementary links among types of production.*

This narrative ignores power relations and elements of exploitation based on provision of labour, in return for access to land. This labour – known in Kinyarwanda as *uberetwa* – was only imposed on Hutu, not on Tutsi.[250] The policy also describes,

> *…the suppression of the ubuhake system [by the colonialists], and the distribution of cattle in grazing areas (ibikingi), the effect of which, "favoured the extension of arable land, to the detriment of livestock". This brief statement would seem to indicate a repression of grazing rights: however, it refers to a complex reality. Having abolished the ubuhake system, the colonial authorities failed to redistribute pasture land, so that those who had a number of cows tried to obtain 'private' rights to what had, until then, been a kind of public resource.*[251] *This in turn altered the client-patron contracts governing access to land and labour relations, polarizing Tutsi-Hutu relationships and causing much resentment. Pottier has demonstrated the way in which a focus on the ubuhake, to the exclusion of other aspects of rural tenure and systems of production, has resulted in a simplified version of history being reproduced until today, despite extensive research which contests this version.*[252] *For example, the land policy states that in the pre-colonial period, "the ruler of the time accorded plots to any who required one". This significantly understates the class-based social differentiation, which governed land access. Rather than being characterised by harmony, the pre-colonial system from the middle of the 18th century was characterised by the complete control exercised by a small group of nobility over access to land and the labour of the majority of the population, whether Hutu or Tutsi.*

The land access rights of the Batwa – a minority social group in Rwanda who were traditionally hunter-gatherers and have been largely denied land tenure security since colonial times – are also not mentioned. Historically, as other communities encroached upon forests, the Twa were forced to retreat into smaller and smaller pockets of land. Opening of large farms of pyrethrum in the North exacerbated a similar process of marginalisation on even a larger scale. The project involved clearing large forests that used to be occupied by the group. Land Net Rwanda has been advocating for greater appreciation of the Twa as a marginalized stakeholder group, but it seems that they have yet to be heeded.[253]

The summary of forms of land tenure is also somewhat general, and doesn't go into detail into the differences in tenure between pastoral

grazing areas (shared by 'associations'), marsh areas, forested lands and agricultural areas (of which there are private plots and those administered by local administrators). There are also issues of the evolution or mixing of tenure systems, as customary and 'modern' systems are not always separate, but have in some ways influenced each other.

In many parts of Africa, population pressure and intensive use of land led to individualisation, closing of land frontiers and commercialisation.[254] The same phenomenon seems to have been the case in Rwanda.[255] In other words, the customary tenure system adapted to changing demographic realities and the growing economy. The policy and land law will not be implemented overnight, and changes on the ground will not be instantaneous and spontaneous. It is likely that some aspects of customary practices will continue to have an influence, but due to lack of research in this area, it is unclear how the changes will be felt at the local level. For example, the policy mentions that,

> *Between 1952 and 1954, King Mutara III Rudahigwa abolished the ubukonde system and decreed that all abakonde [lineage heads, in charge of land] would henceforth share their land property with their tenants, known as Abagererwa.*

However, the extent to which the patron-client relationship was fully overturned is unclear, as a decree of 26th May 1961 reconstituted it. The lack of reference to this decree in the policy tends to suggest that the customary systems (in this case, an essentially Hutu custom) have fallen into irrelevance, when in fact they may still have an influence. It is for this reason that the land law specifically abolishes *ubukonde*. After independence, many powerful political leaders were lineage heads (*abakonde*).[256] Research in the Northwest of Rwanda suggests that some of these customary client relationships have become 'monetarised'; the power of the patron is based on his or her links with the monetary economy.[257] Overall however, the policy seems, on the face of it, to address customary systems without fully exploring their significance today.

## *Addressing inequalities in land ownership*

Inequality in land ownership is a complex issue, but only two aspects will be mentioned here: first, inequality in the size of plots held by different landowners (for example, as estimated by the Gini coefficient); and second, gender imbalances in land access.

The extent of inequality in access to land has been noted above. The quarter of the population who own more than 1 ha/household, own almost 60% of the entire land holdings in the country. The 16.8% who own less than 0.25 ha /household, own just 3.3% of the total. To put this another way, the quarter of the population with the largest land holdings own about ten times more land than households within the lowest landowning quartile. Unlike some other countries, inequality is not really a 'regional' issue, as the situation is fairly uniform across the country.

The policy notes the "increasing hold of the urban elite over rural land" – but provides no explicit means to counteract this tendency.

There are two major policy and legal instruments in the policy and law, which could address inequalities in land ownership. The first is consolidation, discussed above. The second is a maximum land ceiling. The maximum land ceiling is also a component of the PRSP, which sets the maximum at 50 ha. In an earlier draft version of the land policy, this minimum was set at 30 ha. However, in the latest version of the policy, the maximum ceiling has been dropped altogether. This is interesting, 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.[258] Also, as stated above, returning 'old case' refugees in Umutara received large chunks of land for pastoralism: the maximum area allocated for grazing was 100 ha. The land was further subdivided in 1996 and 1997, but it seems that many large plots still remain in the hands of single households.[259] As mentioned previously, the churches also have huge amounts of land, which it seems will remain untouched by the planned land reform.

The Government of Rwanda has been very active in addressing historical imbalances in gender relations. Women constitute 54% of the population and more than 30% of all households are headed by women (RDI 2002).[260] Rwanda is a largely patrilineal society where sons, but not daughters, may inherit land. A widow cannot take over the full rights to the household land: she can make use of the land as long as she stays with the husband's family, and her sons will take over the land when they reach the age of majority; or if she has no sons, the brothers of her late husband could take over the land. Custom did provide safety nets for women such as *urwibutso*[261], *inkuri*[262], *intekeshwa*[263] and *ingaligali*.[264] However, evidence suggests that these are now largely inoperable, because of land scarcity.[265]

Many analyses do not consider gender issues to be highly significant in the generation or reproduction of violent conflict, because of a perception that women are 'peacemakers' and war is inherently a male dominion. However, if poverty is seen as a root cause of conflict in Rwanda, as elsewhere, then the deprivation suffered by female-headed households, for example, will be particularly significant. Children in landless female-headed households are likely to join the ranks of those seeking casual labour in the towns, a social category, which played a significant, if unorganised, role in the genocide.[266]

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 parents' property, both prior to, and after, the death of a parent.[267] However, there remain a number of obstacles to effective implementation of the law.

First, the law only applies to married women: those in long-term unmarried relationships (who are numerous) are not covered. Many couples do not get legally married because of the expense, while

polygamous households (which exist mostly in the Northwest, an area mostly populated by Hutu) are not legally recognised.[268] Second, the land law stipulates that women can inherit land as guided by the inheritance law; while the inheritance law provides that the land law will spell how women can also inherit land. This does not clarify the position.

There are also customary barriers to implementation, with many men believing that the law is unjust as women will then be able to benefit from land from two sources: her parents and her husband.[269] Some women believe that only a woman who is single or separated from her husband should claim land through inheritance, because of the extent of land scarcity.[270]

Access to land for women is often dependent on subjective community perceptions of their 'virtue', as judged against ideals of female behaviour. In addition to customary norms, Christian narratives have also been influential in shaping local perceptions of the secondary status of women.[271] In some cases, female survivors have been stigmatised due to alleged or actual sexual relations (including rape) between them and those who hid them or helped them to escape the genocide; the situation is particularly traumatising for them.[272] District administrators mentioned that the 'coping strategies' employed by those affected by landlessness included prostitution, due to the lack of other non-farm opportunities.[273] This is likely to establish a vicious cycle, where those judged 'unworthy' of gaining land then turn to 'unworthy' occupations: a self-fulfilling prophecy.

Interviews with local administrators in rural areas – who tend to be aware of the inheritance law – suggest that some women are retroactively claiming their rights, which were denied in past inheritance cases.[274] The same administrators also state 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 2 ha will be impossible to enforce.[275] Finally, while awareness of the law amongst officials is high, it seems that a large proportion of the general population may not be fully aware of the provisions of the law.[276]

Clearly, gender-based inequalities cannot be merely 'legislated away'. Customary attitudes and the pragmatic approaches of local administrators – who often combine statutory and customary law in their decisions – will determine how the law is implemented. In order for the inheritance law to be effective, the 'top-down' mindset which sometimes dominates the policy-making arena, will have to be tempered by awareness of local realities. Monitoring of the implementation of the law, by researchers who have experience in gender issues and are aware of the Rwandan gender 'narratives' (including the effects of the war and genocide on these), will be essential in order for it to have a positive impact. In addition, the high-profile gender equality campaign – which is highly effective in underpinning urban, middle-class rights – may not be as effective at the level of the *colline*, and a multi-dimensional approach to gender inequalities is necessary.

## *Villagisation*

Planned villages, known in Rwanda as grouped settlements, or in Kinyarwanda as *imidugudu*, were initially constructed almost entirely through the financial and logistical support of donors and international NGOs, as housing was urgently needed for the hundreds of thousands of returnees and internally displaced people in the country in the years following the 1994 genocide.[277] Secondary justifications included the improved security that grouped settlements provided for the inhabitants. It was therefore explicitly seen by donors as an 'emergency' policy. However, in December of 1996 the government launched its villagisation policy, stating that, "the ultimate objective of the government is to enable the entire rural population to live in grouped settlements".[278]

Indeed, in early 1997, the government directed that construction of any house outside of the *imidugudu* by any Rwandan, whether or not a returnee, was forbidden. Had it not been for the official argument that resettling Rwandans was an exceptional, 'emergency' measure, the compulsion used to ensure that households moved into the villages would certainly be judged unconstitutional. The constitution provides that every Rwandan has the right to go anywhere and settle anywhere (Article 23).

Some observers have noted that Villagisation is ambiguous in both its aims and its effects.[279] What is certain is that, like many other government initiatives, it demonstrates the amount of faith that policy-makers have in the 'power of planning'.

Vision 2020 states that by the year 2020, the majority of the rural population will be villagised. The draft land policy is clear that it is going to be a mode of using and managing rural areas,[280] based on a justification of land scarcity: section 5.6.3. states that, "villagisation is the one and only method allowing for utilisation and proper management of land considering the scarcity of land". Except for a policy statement on choosing of sites the policy is mute on other issues, such as infrastructural development and sources of funding. The overall financial costs of such a radical programme, needs to be estimated. Currently only a small segment of the population lives in villages. With the exception of Kibungo and Umutara (each with 92% of the people living in the grouped villages) and Ruhengeri (with 52.5%) the rest of the country has extremely low rates of settling in the villages. The national average would appear to be around a quarter of the population, but only around 4% of those living outside of these three provinces have been villagised.[281] Donors have been unwilling to fund the programme since the late 1990s.

Villagisation is also related in the policy to consolidation:

> *Regrouping of land in rural areas needs regrouping of plots…. New method of regrouping partitioned and dispersed land ensuring the permanence of larger and more regular plots as well as the possibility of a more independent exploitation.*[282]

There are two burning questions: first, whether the new drastic changes will be able to answer most of the land issues raised with regard to Rwanda; and second, whether they will be implementable.

If villagisation is to be attempted, it will have to avoid the problems that have dogged earlier attempts. Decision-makers should make sure that services are available and that particular sites are not reserved for certain categories of Rwandans – for example, genocide survivors, 'old case' refugees, the elderly, or particular ethnic groups, which weakens community social 'safety nets' and risks a perception of biased treatment for particular groups.[283] The sites need to release fertile land clearly and those whose lands were used for the settlements should be compensated. The process should be participatory and coercion should not be used. [284] Also, villagisation should avoid breaches of traditional norms of privacy (an enclosure or *urugo* should be built, which may be difficult if the area allotted is limited).

The Government of Rwanda has argued that the villagisation policy is one answer to food insecurity, as well as land scarcity. It is argued that by situating houses close to one another, cooperation will be facilitated and improved agricultural productivity will result. However, there exists little firm evidence to suggest that this is the case. Senior agricultural specialists at the University of Rwanda state that, in general, it seems that productivity in *imidugudu* has actually declined. Similar experiments in other countries in Africa, such as Tanzania, Ethiopia and Mozambique, have also had disappointing results.

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 – or the sub-committees that will probably be established for this purpose – will have to demonstrate the appropriate mix of local participation. This should include members of those 'voiceless' sections of society who are most easily marginalized (such as the poor, the elderly and vulnerable women), as well as those with greater technical and planning abilities. The draft Land Law leaves the details of membership and the mission of the National Land Commission to be defined by presidential decree, while MINITERE will set the mission, programme and membership for the provincial and district land commissions.

### *Land use, allocation and environmental protection*

The policy cites the lack of 'specialisation' as an obstacle to effective land management, with reference to the appropriate choice of crops relative to soil type, altitude and regional location. In response to this, the policy argues that, "the rational utilisation and proper management of national land resources should be based on master plans". It is true that, as mentioned above, transformation of the rural sector is crucial if Rwanda is to avoid a rural food security crisis and improve economically. 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 the cultivation of a variety of crops, and to reduce the risk of impoverishment through a collapse in cash crop prices, by simultaneously cultivating food crops. A single household in the South of Rwanda will typically grow as many as 14 different crops in 50 different rotations, with the view to maintaining fertility of the soil.[285] Fruit trees are very important (where the climate allows, hence particularly in the South) including papaya, avocado, guava, jack fruit, mango, passion fruit, and others. Other trees are grown for timber, firewood, or shade; and leaves and twigs are often used as compost. Banana is normally intercropped with beans, groundnut and maize during the long and short rains seasons; and also with sorghum during the long rains season. Woodlots, where they exist, are intercropped with food crops. The rational nature of these diversified cropping patterns should not be ignored by policy-makers. It is also unclear whether the master plans will have been formulated with the full participation of all the relevant government ministries and departments. For example, decisions on land use cannot be made in isolation from plans for marketing of produce, investment in agricultural processing infrastructure, road construction and other aspects of rural development. The PRSP, one of the main frameworks for national development, does not provide a full rural development strategy. It does provide direction on priorities for the agricultural sector (such as expansion of the crops noted above) but does not make the links between human settlement patterns, private investment and public infrastructure priorities, including investment in 'social services' such as health clinics and schools. The idea of 'rural development poles', which has been discussed at various times since independence, is yet to be fully elucidated.

The management of marshlands is an important issue. It is estimated that there are 165,000 ha of marshland in Rwanda, of which about 98,000 ha are utilised. By the late 1990s, the marshes had come to provide about a fifth of the national food production.[286] Currently, the marshes are managed by local administrators, who allow households to use marshes for a fee, often on leases of three to five years.[287] According to interviews, the poorest households are often allowed to cultivate free-of-charge; though in the past, such arrangements have depended on the recipient providing a 'sweetener' such as a gift of banana beer or other incentive.[288]

In some cases, the sustainability of the marshland hydrological regimes may be at risk. Hence, 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 prioritised. It is, for example, instructive to remember that MINAGRI, not MINITERE, is responsible for the inventory of classified wetlands. This would seem to indicate the prioritization of 'development' rather than 'conservation'. Unless this is done in a sensitive way, the changes to marsh management could have a serious impact on livelihoods, particularly of the poorest. The government aims to encourage agro-industrial

investment and give priority to 'professional' farmers with development plans for the land. Issues such as terms of labour and transparency of land allocation will be important. A case in point concerns a foreign private investor, who in the late 1990s secured a right to exploit a part of marshlands in the Nyabarongo valley for sugar cane plantation.[289] This resulted in several peasants losing their access to marshland. Discontent led to confrontation, and some farmers set fire to the sugarcane crop, before the government intervened in the dispute.

Marshlands and protected areas are potential areas for competition and conflict in land scarce Rwanda, and some local administrators may resist or 'adapt' new policies in order to continue to enjoy the social benefits – and possibly the 'sweeteners' mentioned above – associated with the power over marsh management. It has been a 'lucrative business' in the past, and may remain so.[290] The trade-off between ecological sustainability and agricultural productivity must also be managed within government, and indeed there has been disagreement between the two ministries over the scientific calculations involved in modeling water flow regimes.[291] Marshes are fragile ecosystems and effective management is crucial in order to safeguard environmental services such as water filtration, infiltration into groundwater and regulation of water flows.

## CONCLUSIONS

As noted throughout this chapter, there is a striking lack of consensus, both within and outside Rwanda, over the nature of governance in the country, and the threat of future conflict. Many people argue that the constitution, the elections and the decentralization process, amongst other things, all indicate that the government has put in place systems for good governance and public debate of key issues. Such views tend to suggest that the main threats to Rwanda's long-term stability lie outside of its borders – in the form of the *Interhamwe* and perhaps hostile neighbours – rather than from internal opposition and social tension.

On the other hand, others warn that opposition may take an increasingly conflictual turn, if avenues for legitimate protest are limited. At the local level, increasing rates of poverty can be expected if the range of economic opportunities is not increased, which in tandem with increased land scarcity, will exacerbate struggles over land and resources. This could have a destabilizing effect, which could be manipulated by those with a vested interest in promoting fear and violence. Those who are pessimistic about governance in Rwanda today might agree with the viewpoint expressed by one member of civil society, that due to the pressures of land scarcity and the frequency of land disputes, the government is "sitting on a volcano".

A key reason for the lack of consensus over governance in Rwanda is the polarization of viewpoints which has taken place, especially within Rwanda, but arguably also within the development and academic

communities. The most dangerous aspect of this polarization is the continued influence of racist or genocidal ideologies, especially amongst some Rwandan Hutus in the diaspora, but also within Rwanda itself, albeit to a limited degree. Partly in response to this extremism, the Government of Rwanda has prioritized the consolidation of consensus and unity in order to make its counter-narratives more effective. However, the confidence and optimism with which policies are often presented and discussed, and the pressure for conformity within government (and, to a lesser extent, within civil society), tends to curtail the political space for discussion of alternatives. Many actors, both within and outside of government, practice self-censorship. This is linked to the faith government personnel have in planning, and a general tendency for top-down decision-making.

## *Conclusions and Recommendations*

The ways in which these issues are handled will have a great effect on levels of social tension in Rwanda in years to come. The policy emphasis on land markets and individual registration of land may lead to many land parcels changing hands. If livelihood choices remain limited and incomes deteriorate it is possible – unless checks are put in place – that the wealthier minority will eventually 'buy out' poor land owners. According to neo-liberal 'received wisdom', which underpins much of the thinking behind the policy, this is not a problem because the new poor (and landless) would seek employment in the larger commercial farms which are expected to develop. However, there are no guarantees that the labour market will expand sufficiently for this balance to occur, or that those employed on such commercial farms will themselves be poor or landless. If no other regulations are drawn up in order to protect the rights of the poor, such as reasonable ceilings of holdings, and allocation of some land to those who are landless and jobless, a large, impoverished mass of people may result. This would be extremely dangerous.

Often, the main criticism of Rwandan policy is not that it is inappropriate – for the government has a cadre of talented individuals, especially at the highest levels – but rather that it does not indicate the extent, and the nature of the challenges that Rwanda faces. There are no easy solutions. Therefore, the trade-offs and risks involved in land tenure reform should be spelled out in order to enable discussion and true consensus-building. The modalities for implementation of policy cannot be entirely formulated from offices in Kigali – they must be negotiated and adapted according to the complex and variable realities experienced on the ground, across the country.

## *Short term recommendations:*

1. The land policy should be piloted in limited areas, and the results monitored, before being applied more widely across the country.

Based on the pilot experiences, the government should be ready to make amendments to the land policy. Because the ecological and social structure of land ownership varies across Rwanda, the policy and land legislation should be allow for local variations. Citizens should be empowered to influence the policy without their comments being filtered through many layers of bureaucracy.

2. Assumptions regarding the 'irrelevance' of customary systems, particularly those related to clientship in Northwest Rwanda, should be tested through empirical research prior to implementation of the policy.
3. Implementation of the land policy should not be based on compulsion, and while it is recognised that some rise in the number of landless people may be inevitable (due to land scarcity), the government should ensure that implementation of the policy does not lead to increased landlessness.
4. Systems should be put in place for effective consultation with various line ministries and the provincial and district administration, who will be instrumental in drawing up the more detailed regulations which will guide policy implementation. There is also need for greater synergy between the policy on environment and the draft land policy.
5. Civil society organisations should be involved in a number of aspects of policy implementation, including awareness raising and dissemination of the key aspects of policy; capacity building (particularly of local dispute resolution mechanisms); and monitoring of the socio-economic impacts of land consolidation and villagisation. Monitoring by researchers who have experience in gender issues and are aware of the Rwandan gender 'narratives' (including the effects of the war and genocide on these) will be essential in order for the policy to have a positive impact on women's rights.
6. 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 policy. District administrators, community development committees, and local agricultural associations and CSOs should be involved in an awareness-raising effort to reduce the negative impacts on women and children's rights.
7. The composition of the land commissions – or the sub-committees that will probably be established for this purpose – should demonstrate the appropriate mix of local citizens. This should include members of those 'voiceless' sections of society who are most easily marginalized (such as the poor, the elderly, and vulnerable women) as well as those with greater technical and planning abilities.
8. 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 established, with clear criteria for allocation. While household plans for land utilization would be a good tool for development, any requirement for such plans should not result in the marginalization of the illiterate or poor.

### *Longer term recommendations:*

1. 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.[292] Effective implementation of a fundamental and sensitive issue such as land will not be possible without transparency.
2. There is a need to create a more effective mechanism of advocating for land rights as well as engaging government over policy issues. Currently, members of LandNet Rwanda are active, but 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.
3. There is an urgent need to evolve a workable policy and strategy to promote non-farm activities as a long-term conflict mitigation approach and response to land problems. This should be based on realistic projections of the possibilities involved, rather than an overly optimistic model, because of the large number of people who may become landless through consolidation and related processes. This should involve regional as well as national solutions, and the East African Community, COMESA, the African Union and other organisations should be directly involved in this effort.

## ENDNOTES

1 Herman Musahara is a lecturer at the University of Rwanda, Butare. The report was reviewed by Kizito Sabala.

2 J Lind and K Sturman (eds), *Scarcity and Sur feit: The ecology of Africa's conflicts*, ISS/ ACTS, Pretoria/ Nairobi, 2002.

3 A Kairaba, *Rwanda country case study*. Paper presented at a World Bank Regional Workshop on Land Issues in Africa and the Middle East. Uganda, April – May 2002; and J Bigagaza, C Abong, and C Mukarubuga, Land scarcity, distribution and conflict in Rwanda, in J Lind and K Sturman (eds.) *Scarcity and surfeit: The ecology of Africa's conflicts,* ACTS Press, Nairobi/Institute for Security Studies, Pretoria, 2002.

4 Interview with two of Rwanda's most significant 'development partners', April 2003 and February 2004.

5 Natural Resources Institute, Rural Development Institute, LandNet Rwanda, Oxfam GB and others have been involved in policy analysis, often on behalf of MINITERE and Rwanda's development partners.

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8 The government gives a figure of 937,000 people.
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14 See for example C Andre, Terre Rwandaise, Access, Politique et Reforme Foncieres, in F Reyntjens and S Marysse (eds), *L'Afrique des Grands Lacs. Annuaire 1997–1998*, L'Harmattan, Paris, 1998.
15 The other subheadings are: history of armed conflict, governance and political instability, militarization, population heterogeneity, demographic stress, economic performance, human development, environmental stress and international linkages.
16 While this approach is useful, as it combines a wide range of information, the way in which some of the indicators are interpreted could be questioned. For example, high rates of urbanization are seen as leading to a high risk of conflict, through the rise of unplanned, unserviced settlements which have "negative impacts on the social and biophysical environment". While some would agree with this interpretation, the Rwandan Government, and others, would not: after all, the government has made increased rates of urbanization a key part of their strategy for development. Peter Uvin argues that the controls, which were placed on urbanization during the Habyarimana regime, were a constraint to families with small plots of land seeking alternative livelihood strategies. Similarly, the analysis of 'ethnic diversity' simply assumes that a high degree of ethnic diversity correlates with a high risk of ethnic conflict. Accordingly, Rwanda, with only three ethnic groups, is given a medium risk rating (while Tanzania, which has relatively few 'ethnic' problems, is given a high risk rating).
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18 The other issues selected for analysis were: the dynamics of citizen participation in public affairs; and the community-based *gacaca* process.
19 Clingendael Institute, *Conflict analysis paper for Rwanda,* October 2002.
20 *Imidugudu* is the Rwandan term for the 'villagisation' process, explained later in this report. *Gacaca* is a community-based justice

system especially established to try alleged *genocidaires*.

21 *The East African*, 16–22 August 2004.

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23 C Andre and J-P Plateau, *Land relations under unbearable stress: Rwanda caught in the Malthusian trap*, Centre des Recherche en Economie de Developpement, Namur, Belgium, 1995.

24 See for example D De Lame, *Une Colline entre Mille Ou me calme avant le tempete: Transformations et Blocages du Rwanda Rurale*. Musee Royale de L'Afrique Centrale, Tervuren, 1996. The National Ombusdan reported that the majority of cases received concern land disputes and settlement issues. See M Kazoora, Ombudsman Meets District Officials, *The New Times*, Kigali, 16–18 February, 2004.

25 Republic of Rwanda, *Brookings initiative in Rwanda*, Minitere, 2001a.

26 Umutara and Kibungo, which were fairly sparsely populated prior to 1994, experienced large numbers of returning 'old case' refugees after the genocide.

27 Interviews, MINITERE, April 2004. Rwanda has 11 provinces (excluding Kigali) and 106 districts. Other administrative boundaries (in order of descending size) are sector and cellule.

28 Interview in Kibungo December 2003. The candidate did not succeed and his use of ethnic divisionism to seek support from voters was condemned openly in other parts of the country

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31 See Republic of Rwanda, 2001a, op cit; Human Rights Watch, *Uprooting the rural poor in Rwanda,* Washington, DC, 2001.

32 Interview with NGO personnel, Kigali, August 2003.

33 Interviews with members of civil society, 2003.

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37 C Andre and J-P Plateau, 1995, op cit.

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42 C Donovan, E Mpyisi and S Loveridge, *Forces driving change in Rwandan smallholder agriculture, 1990–2001*. Food Security Research Project and Division of Agricultural Statistics, MINAGRI, Kigali, 2002.
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55 L Melvern, *A people Betrayed: The role of the West in genocide in Rwanda*, Zed books, London , 2000.
56 Management Systems International, *Rwanda democracy and governance assessment*, USAID Office of Democracy and Governance, 2003.
57 See for example Christian Aid, 2004, op cit. P Uvin, *Wake Up! Some policy proposals for the international community in Rwanda*, 2003.
58 See for example Human Rights Watch, *Preparing for elections: Tightening control in the name of unity*, Human Rights Watch Backgrounder, 2003. Those who accuse MDR of being divisionist point out that political language in Rwanda is often indirect and symbolic, making it fairly opaque to outsiders. Also, they argue, MDR was not united, but rather had a moderate side and a hardline

side which was unable to dissociate itself from *Hutupower*. The Liberal Party was Tutsi-dominated and took genocide survivor's rights as its rally-point. See SIDA, 2004, op cit.

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64 See for example International Crisis Group, 2002, op cit.

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107 Amongst those who argue that pre-colonial Rwandan society was harmonious, with; "occupational groups. No classes" is Basil Davidson. See J Pottier, 2002, op cit. The so-called 'ten cow rule' may have been used in some cases (along with physiological and other indicators) but it seems impossible that it was used across-the board, as there were too few cows in the country for each 'Tutsi' to own ten. See J Pottier, 2002, op cit, and G Prunier, 1994, op cit.
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224 See for example, Liversage, 2003, op cit.
225 This argument is found in the PRSP and MINITERE officials also support it.
226 See for example C Andre and J-P Plateau, 1995, op cit.
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243 S Van Hoyweghen, 1999, op cit.
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245 Draft Land Policy, 2004, p 19.
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247 Interviews, Kigali and Butare, April 2004.
248 The Land Law states that "all landowners are required to register their land"
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263 Under this tradition, a father could give a daughter land as a farewell gift on getting married.
264 Under this tradition, the chief in charge of land would give land to women who were abandoned by their husbands.
265 J Pottier, 2002 op cit.
266 See for example G Prunier, 1995, op cit.
267 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 A Kairaba, 2002, op cit.
268 Children of polygamous marriages will also be excluded from legal inheritance rights. J Burnet, 2001, op cit.
269 As stated above, widows are not always able to keep their former husband's land after his death, due to pressure from his relatives. See J Burnet, 2001, op cit, and J Pottier, 2002, op cit.
270 J Burnet, 2001, op cit.
271 See J Burnet, 2001, op cit, and J Pottier 2002, op cit.
272 Many women who have been raped are no longer seen as eligible for marriage. H Hamilton, Rwanda's Women: the Key to Reconstruction, *Journal of Humanitarian Assistance*, 2000.
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274 Interviews in Butare, April 2004. In fact, the law is not retro-active, though this may not be widely understood.
275 Interview with land specialist in Kigali, May 2004.
276 J Burnet, 2001, op cit.
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282 Draft Land Policy, 2004, op cit.
283 S Van Huyweghen, 1999, op cit; L Jones, 2003, op cit.
284 A hot debate followed reports, which alleged that that government was forcing people into villages, with government supporters citing

the importance of security concerns in the process. See Human Rights Watch, *Uprooting the rural poor in Rwanda*. Washington, DC, 2001.

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292 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.

# Land reform in Angola: Establishing the ground rules

JENNY CLOVER

## INTRODUCTION[1; 2]

Over three years have passed since the signing of the Luena Memorandum of Understanding, the peace accord between the rebel National Union for the Total Independence of Angola (UNITA) and the Government of Angola, which brought to an end 27 years of civil war. When hostilities ended there were 3,8 million internally displaced persons (IDPs) in the country; now nearly all IDPs have returned to their areas of origin and the majority of those who have not are expected to remain with their host communities. By early 2005 some 280,000 refugees who fled to bordering countries had returned home; around 53,000 remain in camps in bordering countries while estimates of those who remain settled outside the camps range from 83,000 to around 200,000. The transition is expected to last another two to three years until most of the population is stabilised.

In the rural areas of Angola, which suffered enormous hardships as a result of the civil conflict, the challenges are far from over. In fact they are just beginning. More than three quarters of Angola's population lives on less than one dollar a day, and most of these live in rural areas where poverty is pervasive; some 85 percent of rural populations live off subsistence agriculture, in the absence of safety nets. Conditions remain particularly harsh, a number of factors hampering recovery and development of the rural areas, despite some progress in increasing access to people living in 'emergency pockets'. There are limited and fragmented social services and staffing of the health and education sectors remain problematic. The lack of markets is a reflection of transportation problems, a consequence of the limited and uneven progress that has been made in rehabilitating infrastructure such as roads and bridges. A consequence of this is the high retail price of food, which is unaffordable for the majority. The lack of market networks often prevents surplus produce from being transported to areas where they could be sold. Overall, inadequate government funding for the education, health, and social security, welfare and housing sectors, which continues to be geographically uneven, is a critical factor in the pervasiveness of widespread vulnerability in the rural areas.

It is still difficult to determine what might qualify as "normality" in Angola. The situation since the end of the war in 2002 has certainly held a greater promise of peace than any other period since the beginning of the independence struggle in 1961. Yet for this very reason these three years have certainly not been representative or normal in the modern

Angolan context. This may seem an idle quibble, but it serves to emphasise that independent Angola has yet to establish its peacetime character. Hence, the importance of now laying down the foundations for broad-based recovery and peace-building, which is the link between security and development and which is finally being recognised as such.

Building a sustainable livelihood is extremely challenging under such conditions. A key component in (re-)building rural livelihoods that are dependent on natural resource use, is access to and tenure of land.

> *People's rights to access land constitute basic building blocks for enhancing and sustaining their food security. Moreover, land rights are an integral part of social capital, giving people the foundation on which to assert self-determination within their society, culture, agro-ecosystem and economic context.* [3]

In the rural areas, access to sufficient quantity and quality of land is problematic as there are few alternative economic opportunities to subsistence farming. Inequality in access to land is an issue of crucial importance, which is only now starting to receive attention. Opportunities in the urban areas may be marginally better, but the peri-urban community around the major cities is the largest (some 60 percent) and fastest growing sector of the population, and many people in these areas are in an ambiguous legal situation as regards their land tenure. [4]

Angola's protracted period of war kept such concerns off the political agenda, but pressure on the government from civil society to reconsider legislation has grown. Highest on the agenda is the issue of land grabbing by elites. During war land is worth little in commercial terms, but a more stable environment since 2002 has made the appropriation and regularisation of natural resources in strategic areas a fundamental concern. Land plays an extremely important role in development and reconstruction, over and above basic shelter and security. Especially in the urban areas, the "rising prices of land values represent an important source of wealth – individual, collective, private and public….It is a source of income and a versatile component in survival strategies." [5]

The disruption of land occupation in Angola has been very severe: since before independence, Angola has been struggling with issues related to land access, equitable distribution of land and tenure security; "more recently elite interests and political factors feature prominently in areas where there are acute land conflicts between private and community interests; and many 'communities' are not historically linked to the land in question but have occupied it after being dislocated from other parts of the country".[6] "In fact, 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."[7]

## THE SOUTHERN AFRICAN CONTEXT

While there are many aspects of land tenure and tensions that are quite distinct to Angola, the country is not alone in facing these issues – tensions around land redistribution have been festering in the Southern African region for some time. The issue of land grabbing by elites is not only an Angolan one; it is an increasingly pressing concern across the region, even where new legal frameworks protect existing local land rights.

In her paper entitled "Design for Equity: Linking Objectives with Practice in Land Reform", Ruth Hall poses the question of why land reform policies in Africa aiming at equity regularly result in inequitable outcomes. Hall concludes that what we see too often is that efforts to redistribute rural land to the rural landless have tended to reinforce existing forms of inequality, and in cases have given rise to new forms of inequality within beneficiary communities.[8] Sue Mbaya[9] has also highlighted that land grabbing and the enclosure of customary lands by powerful indigenous elites and corporations that are acquiring land and property at the expense of the poor is on the rise in most countries in Southern Africa.[10]

Poor people have limited access to assets such as land, capital, labour and skills, so if economic growth is to benefit them it must raise the returns of the few assets they hold. Provided the agrarian structure plays a positive role, agricultural growth can and does reduce poverty and inequality. This makes land the most basic livelihood security for many people. Land laws and policies have a profound effect on the growth of a country, the levels of income inequality and wellbeing of its people; they impact on sustainable growth and the economic opportunities of most people in Africa, most particularly the poor.

One aim of the liberation struggles in Southern Africa was the redistribution of land to redress historical and racially based inequities. However, achievements since independence in most of these countries have fallen far short of expectations. Most countries have pursued a range of strategies and approaches to land, which included redistribution and nationalisation. The latter has frequently followed similar objectives to those of the colonial states – a desire to acquire absolute authority over land allocation. Weak managerial and administrative capacity meant that trusteeship by the state has too often translated into political patronage so the benefits of policy improvements have tended to accrue to people who are politically advantaged. The other reality is that land reform has been slow: for political reasons, because of the complexity of land tenure issues, and also because governments have failed to allocate the financial and human resources needed to address the land situation in their countries.

Donors have also shied away from committing funds to land reform, as highlighted by the European Commissioner for Development and Humanitarian Aid, Paul Nielson.[11] In part this seems to stem from the political sensitivity of land tenure, with fluctuations in donor attitudes

about the importance of the land question and how it should be addressed. Donors have found it increasingly difficult to justify the allocation of aid resources to land reform in the region; their reasons for this are linked to shifts in world opinions about the orientation of markets, or the role of governments. For example, the belief in the greater efficiency of large farms imposed serious constraints on progressive land policy in non-settler states before and after independence. This belief also discouraged land reform, even though rising land ownership imbalances exacerbated land shortages and land degradation; increased rural poverty was the result. Given reasoning, however, is 'the lack of viable policies and programmes on the part of African governments', as well as policy trends away from the pro-poor agenda that donors feel should be the focus of land reform policies, this despite donors having urged a number of governments into a policy of land titling (individualisation of tenure), on the grounds that customary rights would never be able to provide sufficient basis for agricultural development.[12] In recent years there has been controversy around issues of equity (or poverty focus) versus productivity, which have become competing objectives, and have become antagonistic in practice.[13]

The World Bank now sees the land question as a legitimate item on its poverty reduction agenda, in part because of the failure of the Bank-initiated Structural Adjustment Programmes to live up to the promise of rural development. In the last five years especially, land reform has become the most controversial issue to come out of Southern Africa because of Zimbabwe's efforts to terminate the colonial division of land. Here, as in other parts of southern Africa, public perceptions of land reform have shifted from that of a fight for the redistribution of land as a development issue only, to that of a need for restitution and justice as well, as is reflected in the increased calls for the reform of both legal and administrative aspects of land rights.[14] In several countries in eastern, central and southern Africa important new land tenure laws have been promulgated in the last decade and are in the early stages of implementation.[15] These reforms are addressing fundamental issues, such as land policy principles, land tenure and distribution. The process of reforming land laws includes the redefinition of how property rights in land are allocated and who can use what resources and for how long. Also important are the issues of the legal recognition of customary tenure rights and the strengthening of the rights of tenants, as well as land management and use, land administration, and overall legal structures. These are salient issues to varying degrees in the southern African countries, regardless of the differences in the way that English, French and Portuguese colonial policy treated customary tenure systems, because of the prevalence of dualism and the similarity in effect.

## HISTORY OF LAND TENURE IN ANGOLA

After emerging from 27 years of vicious and protracted civil war, Angola's government introduced a draft Land Act and draft Territory

Law in July 2002, three months after the negotiated peace settlement was signed with UNITA. The impetus for this was in part a reflection of the growing number of land conflicts that had occurred over the previous ten years, and which had resulted in increasing awareness on the part of the government that the existing 1992 land law was deficient in many ways, and not generally well known by either the public in general or by farmers.

A closer examination of Angola's history of land tenure reveals the potential for recovery that exists in this sector, and also highlights the threat that land in post-war Angola could become a major source of conflict.

## *The pre-colonial period*

In common with many other countries in Southern Africa, the division of land in pre-colonial Angola corresponded to a system of communal possession of land in which any member of the community had the right to cultivate one or more parcels of land occupied by the community. This right would not be lost by the members of the community or group even if the land was temporarily abandoned. Where there was greater demographic pressure, families established closer, more permanent ties to their land that equated to specific rights – much like a bond or socially accepted legal norm that assumes the value of a title.

## *Angola's land regime under the Portuguese*

The first categorical establishment of state primacy comes from 1856 when a distinction was created between land belonging to the state (in other words the Portuguese crown) and 'fallow' land. After the Portuguese abolished the slave trade in Angola in 1858,[16] the colonial government began using concessional agreements, granting exclusive rights to a private company to exploit land, people and other resources. In 1900 there were less than 10,000 whites in Angola, most of whom were degrédados – convicted criminals sent from Portugal to Angola. Despite Portuguese expansion, Africans controlled trade in the plateaus of the interior.

At the end of the nineteenth century, a more systematic development of legislation was pursued, with the introduction of a new concept of 'vacant' land, in addition to finding ways to deal with land that had entered the private system. 'Vacant' lands were in effect lands that were 'owned' by indigenous collectives and could not be sold to private citizens without the authorisation of the state. In practice this meant giving limited rights in a political and legal sense to indigenous communities.

Increasingly, political and administrative measures were directed at the submission of Angolans to Portuguese sovereignty and their integration into the monetary economy and the colonial market. In his review of Portuguese legislation between 1880 and 1920, Pacheco states:

> *The most conspicuous of these measures concerned the payment of taxes, compulsory cultures and different modalities of forced labour. Conflicts between indigenous communities and Portuguese administration appear from that period on, due to abusive occupation of lands by merchants or colonial enterprises, principally in the area between Malange and Luanda.*[17]

There were ambiguities and contradictions resulting from the concept of 'vacant' lands. The principle of the existence of specific areas of land for the exclusive use of indigenous populations (whilst making the remainder available for European settler concessions) that appears for the first time in the 1920s does not, however, mean that land was recognised as the property of the indigenous people.[18] The authorisation requirement by the state was a reflection of the social structure prevalent in the colony, which comprised the categories of indígena,[19] assimilado[20], people of mixed race (mestiços)[21] and, at the top of the hierarchy, white Portuguese.

The legislation was unclear and open to interpretation in that it recognised the existence of land for exclusive use by indigenous people without attributing to them property rights, whether collective or individual. In practice, state control over the sale of land meant limiting (both in a political and in a legal sense) the rights of indigenous communities. Colonial authorities justified the duality of the law as defending colonial rights and interests and at the same time respecting the uses and customs of the indigenous people, but this justification also contradicted the proclaimed intention of conceding Portuguese citizenship to all Angolans without distinction – provided they became "assimilated", of course.

## *Modifications to the land law: the 1930s*

The late nineteenth century law met with strong opposition and was therefore modified in the mid-1930s. The new legal definition of so-called 'vacant' lands was that they must have been unexplored, 'não explorado', or abandoned for at least ten years. This meant that 'vacant' lands "owned" by local communities fell outside the newly defined categories of the modified 1930s law. It did not mean, however, that lands for the exclusive use by indigenous populations, were recognised as the property of the indigenous. The change in the law opened up for discussion two important issues that remain relevant today. First, what kind of recognition is given to those (individuals and collectives or communities) who have rights to land through customary law? Second, what kind of relationship can exist between different types and forms of law?

The diverse land-use systems that developed varied according to different ecological regions. However, they were also transformed or modified as a direct result of systems imposed by the colonial government in keeping with its own political and economic objectives. Between

1900 and 1940, only 35,000 Portuguese emigrants settled in Angola, and most worked in the cities. In the rural areas, Portuguese settlers found it difficult to make a living, owing to fluctuating prices and the difficulties in obtaining cheap labour for their cultivated lands. As a result, they often suspended their operations until the market prices rose, and instead marketed the produce of Angolan farmers. The communal land systems in the eastern half of the country were a reflection of this area's semi-subsistence agricultural economies. Portuguese farmers were rare in this area; it was home to only 10 percent of the Portuguese population. In the pastoral and agro-pastoral regions of southern Angola where low demographic pressure permitted permanent communal use of land by indigenous groups, communal property was more widespread.

Where there was well-defined agricultural production, individual or family parcels were the norm: in the commercial agricultural areas of the north-west (Uíge, Kwanza Norte, Bengo, and parts of Kwanza Sul) greater demographic pressure resulted in a very different and diversified system, characterised by the more permanent possession of land by community members.

In the 1920s the indigenous communities contested the expropriation of their land for cotton, and again in the late 1940s disputes followed the expansion of coffee plantations (stimulated by price increases). In the wake of World War II and the rapid growth of industrialisation, Portugal developed closer ties with its colony and by 1940 it absorbed 63 percent of Angolan exports and accounted for 47 percent of Angola's imports.[23] When the price of Angola's principal crops – coffee and sisal – jumped after the war, the Portuguese government began to reinvest some profits inside the country. Portuguese citizens were encouraged to emigrate to Angola, where planned settlements (colonatos) were established for them in the rural areas.

The immigration of Portuguese increased in the 1950s, as did the expropriation of lands, which served the drive to establish farms and plantations to grow cash crops for export. This was matched by an ever-growing contempt towards the rights and interests of the indigenous populations. By 1960 the Angolan economy had been completely transformed, boasting a successful commercial agricultural sector (as well as a promising mineral and petroleum production enterprise and an incipient manufacturing industry) that continued to grow in strength. Coffee, which was the main export until it was overtaken by oil in 1973, was the major export crop, growing in the higher altitudes in the north, where the plateau slopes down towards the Congo basin and the climate is warmer. It was grown by some 2,500 large commercial farmers and around 250,000 peasant families during the early 1970s. With around 600,000 ha under coffee, Angola was the fourth largest producer in the world, its output totalling some 200,000 tons a year. In the early 1970s Angola was also the third largest producer of sisal. Cotton was grown in the provinces of Malange, Kwanza Sul and Bengo. Other crops cultivated were sugar cane on large plantations in the coastal areas, tobacco, oil palms and citrus fruits.

At the height of the colonial period there were 300,000 colonial families who occupied 4,5 million ha of land, and used only 11 percent of this, while 4,3mn traditional families occupied 4,5 million ha of land and utilised 60 percent of this.[24]

## The scramble of the 1960s

The start of the 1960s marked a watershed period prompted by UN criticism of forced labour, coupled with racial discrimination as enshrined in the indigenous statutes. Uprisings in Luanda in February 1961 marked the beginning of the liberation war. In March, northern Angola became the scene of a major insurrection by large numbers of BaKongo farmers joined by local plantation contract workers. They attacked both whites and assimilated populations, whether black or mulatto, "evidently regarding these as mere agents of the Portuguese".[25] In September 1961 the indigenous statutes were abolished, effectively making all Angolan people equal citizens before the law, at least on paper if not in practice. The following year, colonial labour regulations were revised and regulations were introduced to prevent the alienation of native land and end compulsory cultivation.[26] For the first time there was open concern that tensions could erupt between settlers, plantation owners and indigenous people, the resolution of which lay in the colonial government legitimising the occupation of land by the plantation owners. Legal solutions lay in the application of indefinite concepts such as fallow lands, uncultivated lands, vacant lands – all these types of land not owned by anyone became available. Europeans were given title to the land they occupied if the properties had been developed for a continuous period of 20 years, while land areas occupied by the local population (residential or agricultural) were recognised and protected as 'reserve' areas.

The latter areas were classified by the legislators as 'second class lands' and were susceptible to demarcation in a ratio of five times the area that was effectively being occupied, but only on a communal basis. 'First class lands' referred to the areas of actual villages or settlements and 'third class lands' were those that fell outside of either of the first two categories. It was these 'third class lands' that were available for concession, and, at least legally speaking, this was permissible by both Europeans and Africans.[27] Legislative and administrative weaknesses, coupled with the fact that few Africans were in a position to meet the formal registration requirements for the granting of concession titles, meant that the majority of Africans could not take advantage of titles in the third class areas. In effect, Europeans on the whole maintained their fazendas (commercial farms) as de facto freehold, rather that as de jure freehold. In 1973 a new Land Law declared that all lands that were not privately owned or in the public dominion, were available for concession, except for those areas under customary tenure.

In the Central Plateau, the most densely populated agricultural region, a scramble for land which began in 1965, resulted in a decrease in the size of family units of peasant farmers from an average of 8.9 ha to 5.6 ha by 1972. Dependent on abundant labour, many estates integrated entire villages into their lands, thereby harming subsistence cultures. It was the injustice of such actions that inflamed many Angolans with nationalist ideas, and injected sympathy for the armed struggle. The cattle-farming and sisal-producing areas of the south and south-west were severely affected by foreign agriculture, resulting in indigenous pastoralists being pushed increasingly onto marginal lands. Appropriation of land became one of the main drivers of discontent, resistance to the Portuguese growing with increasing calls for independence. Portugal responded with counter-insurgency measures, among the most damaging of which was the implementation in 1967 of a resettlement programme that involved the grouping of dispersed Africans in eastern and north-western Angola into large villages. By 1974 more than 1 million peasants has been moved into resettlement villages, causing widespread disruption in rural Angola and a breakdown in the agricultural sector.

## *The post-independence period*

The period of transition to independence from November 1975 was particularly chaotic for the commercial agricultural sector as almost all the country's skilled manpower fled Angola, abandoning thousands of fazendas and small businesses, including the entire rural trading system. In terms of the Constitutional Law introduced by the post-independence People's Movement for the Liberation of Angola (MPLA) government (Article 11), all natural resources became the property of the state; that is, the state became the owner of lands that were not definitively privately owned, and the state as owner could now transmit to others the right of land use. Procedures for abandoned private land to be appropriated by the state, 'because of the unjustified absence of the proprietor for more than 45 days', were applied. Article 13 states that "All the juridical effects of acts of nationalisation and confiscation performed under the auspices of a competent law are considered valid and irreversible without prejudice to what is provided for in specific legislation on re-privatisation." [28] Some peasants and farmers were able to recover much of the land that had been appropriated through recourse to due legal process.

Part of the reason that no specific land laws were drafted may lie in the perception that tenure was not an issue because so much land was seen to be available: "Communities effectively ceased to lack lands, and land problems apparently ceased to exist."[29] Under the imposition of a single-party political and socialist economic model, the farms that had belonged to white commercial farmers could be nationalised (and in some instances consolidated) into large state farms and trading companies. Some farms

were given to communities organised in terms of a co-operative system, in which case members would split their time between their own land and the co-operative farm. However, "many of the state companies set up after the settler exodus and nationalisations in 1975–77 failed to maintain operations, and the rudimentary attempts at centralised planning led to serious resource misallocations and inefficiency".[30] By the mid-1980s most of them had collapsed and been abandoned.

## The privatisation era

The early 1990s marked a radical change in governance with the transition from a single-party system to a multi-party democracy and the adoption of a new economic model, one of a market economy that effectively reduced the state's role in the economy.[31] The economic model required a land market and a legislative framework appropriate for the development of a private sector, able to attract foreign investment in commercial farming and cattle breeding. In fact, the cultural and legal dichotomy that existed in the colonial period continued in terms of property. What is evident, in fact, is that economic failure had undermined the legitimacy of the socialist state, leading over time to de facto liberalisation and privatisation, with elites linked to the state and the military finding an increasingly profitable interest in liberalisation.[32] In the series of so-called privatisations during this period, powerful politicians obtained concessions for potentially lucrative property and land, although in theory these remained state property. As we shall see, this led to an erosion of ordinary people's rights in a situation of legal ambiguity.

## Law 21-C/92: The law of concession or so-called "Land Law"[33]

On 28 August 1992, 17 years after independence, Angola adopted its first land law. Part of a raft of legislation passed in the few months before elections, it was approved in the absence of any public debate and by a legislature that still had no popular mandate. This lack of consultation reflected the authoritarianism inherent in a history of both colonialism and the centralisation of political and economic power of the one-party era.

It must further be noted that the government had scant experience in this field, there being few similar points of reference within the region from which to draw, so the limitations and potential of the "Land Law" must be viewed within their historical context. A fundamental issue of contention with the Land Law is that it accepted the 'colonial' cadastro (property register) and provided a legal framework to re-operationalise it; this essentially can be seen as reflecting the need by political actors to maintain control of access to land and natural resources (especially non-renewables) in order to finance their development agendas. Conflicts that had emerged in the Lunda region, "land of the diamonds", between UNITA and government soldiers, are a likely reason for the apparent

lack of transparency. Urban land issues were almost completely ignored, despite the fact that since the 1950s migration to the cities had been a common phenomenon.[34] The 1992 law, however, did contain a number of positive aspects. In the preamble it stated clearly that local community land rights would be protected, and it recognised different forms of land access, including ownership rights acquired through colonial law for non-nationalised land, state authorised concessions between 1975 and the proposed new law, and use and usufruct could be transmitted between persons, or through inheritance. However, as Fernando Pacheco[35] highlights, the law was not rooted in any formal, written policies that might have explained the priorities to be promoted through land use, tenure or transactions. Instead, it was based on old concepts and reflected the old ideals of state central-planning principles. Furthermore, it was not so much a land law as a set of regulations for access and titles that failed to include community traditions or customary law rights of small farmers, or recognise squatter rights in the urban areas. It did not address the central issue of the dual character of the formal land tenure regime. "Associations or co-operatives occupying former estates, or populations that recuperated lands that belonged to them before Portuguese occupation are unable to regularise their rights, and the legal status of communities remains unclear in terms of ownership of communal land. The tenure rights of different actors especially regarding the use of natural resources were not defined."[36] The rights of both the colonial-era land holders of tenure rights whose property rights has not been nationalised, and the post-independence concessions that had been awarded by the state since 1975 were, however, recognised. Relations among all concerned sectors, including state administration and local powers, were not defined or regulated, and guarantees for agriculture loans were not described.[37] The necessary mechanisms through which 'protected tenure rights' could be registered or upgraded were not introduced. That these issues were not taken up was due in large part to the outbreak of civil war and the ensuing 10 years of instability. The regulations to operationalise the law were approved several years later, but never pubished.

### *The implementation of Law 21-C/92*

In effect, implementation of the land law did not reflect either liberalisation or security of tenure for smallholders. A highly controversial process of privatisation of the previously large state sector began that was carried out in a poorly conceived and disorganised way. "From being a potential candidate for a market economy, Angola passed swiftly through a process of privatisation by the nomenklatura, in which the disciples of Lenin were transformed, overnight, into businessmen in the western mould, taking control of a large part of the state's resources and managing the remainder according to their prerogative as representatives of the people."[38]

During the period that ensued, new forms of "state" patronage – or crony capitalism – emerged as a few wealthy individuals gained control

over vast natural resources. Privatisation entailed the division and selling off of 33 state-owned coffee plantation companies into about 400 farms, sold to would-be commercial farmers. This also took place in the cattle ranching areas in the south-west. Conflicts first emerged here between commercial farmers and local communities in the early 1990s, simmered throughout that decade, and have since increased, most notably in the latter half of 2003. A dispute that arose over land rights in the Gambos, western Huíla, in 1999, was the first indication that a serious land crisis was brewing. Effectively it was a land grab, benefiting well-connected families of the politico-military elite at the expense of small peasants who had been occupying and tilling much of the land of the former state farms on an *ad hoc* basis, without land titles, since the mid-1980s. Consultation did not take place, which led to a growing resentment and uncertainty among the peasant farmers and pastoralists, the latter finding their land cordoned off by new landowners who limited their movement. The Ministry of Agriculture and Rural Development (MINADER) has conceded that up to 1999, more than two million hectares of land in the whole country had been granted to commercial farmers (close to half the surface given to commercial agriculture before 1975) which largely remains unused.[39] There is little evidence about where these concessions are located because of the lack of transparency by the government registration system.

The economic transformation that started at the end of the 1980s resulted over time in important changes in the overall situation. Policy and practice served to recreate the pre-independence structure, with politicians largely assuming the role of the colonisers. The dualistic character of Angolan society continued, with differentiated treatment of so-called indígena (the peasant farmers) and the assimilado (the ruling class). In the absence of formal institutions, disconnected practices continued in rural areas; although traditional authorities were given consideration, this occurred outside of any legal or institutional framework. The de-legitimising of the role of the traditional leaders (sobas), which began during the colonial period, was continued. Government policy was to give priority to the new commercial farmers rather than to small-scale peasant farmers, which would have done more to raise production, alleviate poverty and reduce household food insecurity than the low-wage employment provided by the *fazendas*. It has been argued that for the government it was a priority to gain and maintain control over natural resources that would finance their development activities.[40]

As highlighted by Paulo Groppo,[41] the 1990s marked a period in which the cleavage between legality and legitimacy (the social acceptance of the laws), began to grow. Land laws cannot be drafted in a vacuum; they must draw upon the values and aspirations held by society if they are to address the gap between legality and legitimacy that has been a source of friction in many African countries, a consequence of more than 90 percent of land remaining outside the existing legal system.

## *Divisive approaches*

Sensitive to these cleavages, the National Directorate of Territorial Planning (DNOR), which was the department responsible for issuing titles, appointed the United Nations Food and Agricultural Organisation (FAO) in 1999 to work in partnership with MINADER to recommend revisions to Law 21-C/92. Their mandate was to interpret the "spirit of the law", with the specific intention of recognising the customary rights of communities, defined more broadly than just "cultivated lands". On-the-job training was provided in methodology, the results widely publicised, and a public meeting held in September 2000. (It remains questionable, nevertheless, whether those most affected – the rural and poorest sections of the population – knew about these processes.) This initiative resulted in the first titles being granted in March 2001 to communities that recognised land defined in social terms, not narrowly in topographical terms. However, immediately after the first title was granted, President José Eduardo dos Santos appointed his own advisor to prepare a new draft land law, parallel to the MINADER process of redrafting the land law. The result of this was a draft that was not entirely approved by the government, but pushed through party channels by Dos Santos for approval. In many ways this draft was considered to be inferior to the very law that it was supposed to improve on, and it failed to take account of the FAO/MINADER process.

## *Draft Land Act and Draft Territorial Planning Law of 2002*

In December 2001 an ad hoc Land Commission was formed to combine the two drafts. Approval by the Provincial Governors and top MPLA structures resulted in the draft Land Act and draft Territorial Planning Law being introduced in July 2002.

The government set a three-month period for public consultation on the content and effect of the draft. Civil society was quick to take up the challenge, pointing out that land may appear not to be as great a priority for the elite, members of parliament or the judiciary, as it is for the poor. It is, in fact, more accurate to say that land is a priority for both groups, but that their priorities are different. A more circumspect viewpoint suggests that the sense of urgency may stem from the need of elites to "regularise the land grabs" that had been taking place. The nationally based Land Network (Rede Terra), established in August 2002, and the Huila Provincial Land Forum appealed for continued discussion, and succeeded in pressurising the government into allowing an indefinite period of public consultation.

Subsequently, and in spite of these promises, President dos Santos reiterated in his 2003 New Year message that the draft would go to parliament for approval as soon as possible. In his address he stated the urgency of the land law as it would serve to "define the forms of

ownership of lands, as a factor or production of extraordinary importance to the poor rural population and will also permit the reconstruction of the farming sector and re-define the selective credit policies, with stress to the micro-credit that is a very effective way of combating against poverty in the rural areas." [42]

In December 2003 the Cabinet approved revisions to the draft Land Act that contained several improvements, notably recognition of and partial protection of the traditional collective rights of rural communities. However, there were also changes that could have very negative implications:[44]

- Expropriating rural communities' land would now become a legal possibility because of 'private utility' motives – rather than just for public interest, as before.
- All citizens, families and communities would have to complete the official process of legalising their land tenure situation (securing 'title hold') within one year.

Several key gaps and problems also persisted, carrying certain risks among. these:

- That there is a difference in status between people living in rural communities and all other citizens in their informal occupation of land.
- That all the investments of the urban poor (through building houses) risked being lost, and the majority of them would become illegal.
- That new – stronger and more discretionary – powers are given to the state, and to a lesser degree to traditional authorities.

In essence, the effect was to weaken, not strengthen, property rights for the poor, and in many instances might result in deeper impoverishment. Weaker and less secure tenure also limits political empowerment. Simultaneously, the position of the authorities has been strengthened. In June 2004, MINADER announced its intention to enforce the land use legislation of 1992 which requires that land conceded by the government be put to effective use, and to subject production on such land to national development requirements. Articles 7.4 and 64 of the 2002 draft law also expressly provided that property rights will be extinguished if the land is not used in conformance with land use dictates.[45] In cases where it is deemed that agricultural farms are not being used or 'exploited', owners risk losing their land to 'those who need it'. These provisions had not been enforced for more than a decade as a consequence both of the war and of the inability of ministerial administrators to investigate land usage. Because all land belongs to the state, these provisions give the state wide discretionary powers to determine whether a concession should be granted and for how long licenses may be issued. Time frames are generally up to 45 years. Approval is granted by the relevant ministry, which considers each request on a case-by-case basis, though in the case of petroleum (hydrocarbon) mining the approval of the cabinet is required.

## *Approval of the 2002 Land Law*

In the meantime, approval of the Land Bill was postponed, while public debate continued. The government maintained that the urgency of the law was such that its adoption would probably precede acceptance of Angola's new constitution, which is currently under review. Additional impetus for public campaigns and consultations came from the recent formation of another consortium, in southern Huíla, of twelve NGOs dealing in land matters (the Huíla Provincial Land Forum). Their purpose was to promote debates on the issue, gather contributions to the bill on territory's management and develop actions of advocacy in defence of community rights.

A step closer to adoption of the draft law was taken on 10 August 2004 when the Land Bill was approved by the National Assembly, [45] but not signed into law. During the discussion by the specialised commission, MPs pointed out the lack of guarantees for the rural population as well as the need to clarify issues of original ownership of land, to define ownership of natural resources existing on land owned privately and to review the lands confiscation and nationalisation acts of the national citizens. [46] It remained effectively in a state of 'limbo' until 18 December 2004 when the Land Act was finally passed into law and promulgated in the State Gazette.[47]

## *Post-conflict normalisation: An overview of potential fracture points*

Angola now faces the monumental challenges of post-conflict normalisation, the achievement of which must rest on a foundation of restoring trust to society. Poverty reduction is an integral part of rebuilding trust; development projects in turn are more likely to bolster peace in areas endowed with high levels of 'social capital'. For peace and stability to prevail, the needs arising from underdevelopment and huge inequalities must be addressed during this (re)construction phase. Land access is a key element in the process.

The research findings of Deininger and Squire[48] and Deininger and Olinto[49] show that land ownership inequality retards the rate of economic growth: it creates low and insecure incomes for the rural poor, thereby retarding human capital accumulation and growth, and at the same time acts to buttress high and potentially increasing levels of income inequality over time, creating a vicious circle of growth and inequality. It can also create exclusionary patterns of growth that deepen inequality over time, magnified via their impacts on the accumulation of human and physical capital by the least well off members of society.[50]

But Angola's history around land issues, in addition to these enormous challenges, raises a number of questions about the role of the land act. These questions include whether it will contribute to addressing the country's urgent needs and the expectations of civil society, and whether

instability could be triggered if these expectations are not met.

More specifically, the challenges facing the new land legislation relate to its potential to contribute positively to broad-based recovery; alternatively, the risk that it will compound and/or complicate current land issues, possibly triggering conflict by aggravating old, underlying structural tensions. This highlights: the need to identify the sources of potential grievances; the conditions that could shape the emergence and the character and levels of conflict; the intentions of the legislation; who decides; and, who benefits from the legislative changes.

In 2003 out of 175 countries, Angola ranked 164th on the United Nations Development Programme (UNDP) Human Development Index. Average life expectancy at birth is 40 years; less than 50 percent of the population has access to basic health services; only 38 percent have access to clean drinking water.[51] The World Bank has noted that years of war have increased inequality in income and assets and the IMF estimates that some 70 percent of the population lives under conditions of 'absolute poverty'. [52] Angola's Gini Coefficient of 0.62 in Luanda is, in fact, close to South Africa and Brazil's which are 0.62 and 0.60 respectively.[53] The high incidence and intensity of poverty also reflect the failure of the formal economy to generate livelihoods for the majority of people, households diversifying their incomes with a mix of formal and informal employment or relying entirely on informal work or commerce.

A crucial dimension of poverty in Angola has been insufficient public spending on pro-poor social and economic infrastructure and services, and the consequent breakdown of public services, as evidenced by the low allocation of the annual budget to health, education and welfare services. This now seems to be changing: in the 2004 budget, the social sector was allocated 33 percent, the largest share and an increase of 9 percent compared with the previous year; the defence and public order sector followed with 32 percent, a reduction of 5 percent.[54] The government has in effect delegated its responsibilities for providing these services to humanitarian agencies. Not only are the Angolan people far from realising their right to development, but for many, it is the right to survival that is immediately at stake. Women, in particular, face enormous difficulties in making a living, even though Angola possesses an unusually high proportion of woman-headed households. So, while the emergency resulting from chronic conflict and political instability has passed (although pockets of extreme and urgent need still exist), Angola now faces a persistent structural emergency.

## *Resettlement of IDPS and refugees*

The successful resettlement and reintegration of uprooted populations is a critical component of rebuilding a peaceful society. The civil conflict has caused repeated and massive internal displacement over the years, the first huge population upheaval having begun with the start of the anti-colonial struggle in 1961. Such displacement has disrupted land occupation, with the problem being compounded by the 1992 land law

changes that allowed private ownership and resulted in land falling prey to powerful economic interests.[55] In the interior, there have been competing claims for land restitution from returning refugees and internally displaced people, as well as those who acquired lands under previous regimes and those who lost them. The reasons for these competing claims are rooted in legislative shortcomings (with ownership unclear, ordinary people's rights to use land have been dramatically reduced), as well in underlying socio-economic inequalities.

Increased calls by returning refugees from neighbouring countries, displaced people and former combatants displaced during the conflict, for land restitution and the resolution of arising land disputes, are highly probable and will aggravate these tensions. The government has a responsibility to protect the rights of "new caseload" refugees to the land they were forced to abandon, but social nets to protect those most vulnerable are weak or non-existent. As stated by the UN in Principle 29 (2) of the Guiding Principles Rights :

> *Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possession which they left behind or were dispossessed of upon their displacement. When recovery of such property is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.* [56]

Perceptions that good land is widely available are false; in many areas it is of poor quality and unworkably remote or fragmented. It is only in the Central Highlands that soil fertility is high, and even here there are places where fertilisers are needed to compensate for the marked degradation of soils; elsewhere, larger areas of (less fertile) land are needed in order to guarantee subsistence. Large areas are also remote from markets and services. As there is little surplus land upon which to settle any significant number of IDPs, resettlements have been imposed and in some cases the newly displaced peasants are settled on lands that belong to pastoralist communities. Many of the returning IDPs and refugees will wish to settle in those areas that are more accessible – these are the areas where many of the large farms or plantations are to be found and which have their origin in land concessions given to European farmers during the colonial era.[57] In accordance with the concepts of communal rights to the use of land, the members of these communities will be able to reclaim their land use rights, within the territorial limits of their respective communities. These could threaten political programmes and improvements among groups as ex-combatants return to live in villages among citizens against whom they only recently waged war, and ethnic, political and gender tensions come into play at the local level, adding controversy to community claims.

> *It is thus possible that the importance of land as an asset for household survival, competition between peasant and commercial farming, low soil fertility, the limited extent of rural areas with adequate rainfall and*

> *services, and the limited capacity to effectively regulate land access could lead to conflicts over land. While communities always promise the allocation of land to new returnees, the mechanisms by which this is done, and the quantity and quality of land given, are obscure.*[58]

Another frustration for returnees is not having sufficient capital to cultivate their lands, increasing the risk that the land will remain unproductive for some time. A common argument presented to support the usurpation of land is that it is not productive [59]. As will be made clear in the following section of this paper, peasant farmers are seeking return to their land at exactly the same time that land is under greater pressure than ever before from commercial interests.

## The land-grab

With peace, people are beginning to appreciate the true economic potential of land, and with this has come a wave both of land grabs and of the erection of fences to demarcate farms, which in most cases do not have a clear boundary. It is in the process of defining clear boundaries that the problems start. Land conflicts, unheard of 10 years ago, are now occurring increasingly between residents and internally displaced people (IDPs), and between commercial farmers and pastoralists.

Since 1997, land has been grabbed in the fertile Kwanza Sul province near Luanda, and in the relatively peaceful south-west where there has been a proliferation of ranches and commercial farms.[60] Bledsoe and Pinto point out in their report[61] that many of the traditional cattle raisers and farmers, believing much of the land in the colonial concessions to be rightfully part of the traditional lands, have reclaimed use of old colonial farm concessions. In addition, conflicts are occurring and will continue as government grants news and renewed concessions of the colonial parcels, or as landowners or concessions holders from the past (especially post-1991) reappear and reassert their rights. Thousands of hectares of land, once solely the territory of pastoral people and their cattle, have become fenced in, now the private property of wealthy new landowners, including government officials. Traditional cattle raisers require more land to sustain increased numbers of cattle, but the carrying capacity of the land has been reduced as the total number of cattle have increased significantly over the years. As commercial cattle ranchers encroach upon lands of traditional cattle raisers, cattle corridors are being closed. Pastoral leaders say the land has been taken illegally and their traditions and customs, passed down over centuries, as well as their livelihoods, are under threat. Commercial farmers have reclaimed the use of old colonial farm concessions; they now occupy this land in addition to the traditional community lands.

New fences, as evidenced by the number of newly cut ('green') poles observed in late 2003, have been erected in the Gambos area of Huíla province[62] with little or no regard for consultation with communities.

Conflicts have arisen as communities have been forcibly removed from their land to make way for the fences (with no compensation), community access to water cut, community land relinquished in exchange for water rights and even small villages enclosed on farms with right of tenure secured in exchange for labour (often at rates as low as 200 Kwanza [US$2] per month), and cattle corridors closed off. Likewise, the King of the Gambos is now contesting a case in which the community has had its land enclosed by fences on three sides. Provincial government authorities[63] insist that in such cases, compensation must be provided by the land owner in the form of infrastructure and services (such as schools and clinics) for the community, but that the role of government institutions can only be to monitor, not to enforce implementation of these requirements.

In addition, a score of Portuguese investors, members of the Chamber of Lusophone Farmers (CAL) will reportedly soon receive farming and ranching concessions in the rich Central Highland Huambo province.[64] Reports of conflicts between peasants and commercial farmers are expected to increase in frequency as communities claim that their traditional lands have been demarcated as private farms and awarded as concessions to other communities or individuals. Large tracts of land that were once communally farmed are now in the legal possession of individuals, a case in point being a 312,000 ha farm in Humpata (Huíla). Elite interests and political factors feature prominently in areas where there are acute land conflicts between private and community interests; it is these same elite groups and individuals who are reluctant even to lease the land to the displaced or other poor people in case of future ownership claims. It has been claimed that powerful landowners in various parts of the country influenced the location of some camps for displaced people (deslocados), to provide pools of cheap labour for their farms.[65]

Because people do not know their rights, be they land or labour related, they remain vulnerable to exploitation. Access to land and secure tenure are essential to effective peace building and post-conflict reconstruction, as the social reintegration of communities will depend to a great degree on their ability to resolve land conflicts and to receive IDPs, ex-combatants and refugees without prejudicing their own livelihoods. The country is now in a period when expectations are high. Set against a backdrop of massive poverty, there is the risk that should the great promises brought by peace be frustrated, social tensions will rise.

There is a well-founded belief that sometimes land is contested "on the face of it" for agricultural use, while the claimants' real interest lies in its potential for mineral exploitation – diamonds, asphalt, gold or manganese. Nevertheless, there is also some cause for optimism. During a FAO programme being carried out in Northern Huíla in 2003, a land claim for 5,000 ha presented against the community by a member of the military elite was successfully contested on the basis that he was not from the area; the piece of land in question had in fact been mined for gold during colonial times.

## Peri-urban land

There are also many problems related to urban and peri-urban land as irregular development is widespread and unquantified. There is also an increasingly active market in urban and peri-urban residential properties. Pressure on the outskirts of the principal urban centres has often resulted in land conflicts as land ownership became private, but without titles: people have papers showing they bought the land, but no title deed. Under the constitution, the land belongs to the state, but people have surface rights. Over the years there has been substantial migration to the cities such that today rates of urbanisation exceed 60 percent and the peri-urban community is the largest of this sector of the population,[66] and the fastest growing. Many of these people have purchased plots of land (in good faith) through informal markets, occupying without title, though not illegally in terms of the protection offered under the civil code.

Peri-urban Lubango (Huíla province), for example, has experienced a growing number of conflicts in recent months, involving both communities and residents of old colonial farmsteads being forcibly displaced.[67] On the outskirts of Luanda cases have recently been reported of communities being forcibly removed (in contravention of the government's Norms for IDP's) to make way for new developments, and promises of new housing as compensation failing to materialise. The potential for conflict is compounded because so far the government has failed to make land officially available on the commercial market, except for middle- and upper-class housing, or new commercial developments; land is not demarcated for the growth or development of musseques, (zones of self-built houses) and expansion and removals are disorganised. Hence people are increasingly "squatting" in areas that are devoid of any services, further aggravating levels of poverty. Allan Cain, the director of Development Workshop, an NGO concerned with urban development, highlights a critical concern that the new Land Act "risks annulling all these informal occupations and making all of those people who occupy land informally, illegal. These rights need to be articulated and regulated, and rules need to be set up. Regularising land rights will unblock a lot of people's own capital for improving their housing conditions."[68] In early December 2003, Amnesty International called for a moratorium on compulsory evictions, claiming that more than 5,000 people had been forcibly removed from their homes in three incidents between 2001 and 2003.[69]

## Food security and revival of agriculture

An abjectly poor population, returning refugees and IDPs lack sufficient food stocks, seeds, tools and livestock. Unable to resume normal agricultural production in the near future, they have little chance of feeding themselves. While many have continued to have access to food aid, this aid is generally not being provided in their home communities. In mid-2002 the UN estimated that at least 4 million people were

vulnerable to famine, half of whom were dependent on aid. A year later some 15 percent of all Angolans – more than 2 million – remained highly vulnerable and entirely dependent on external food assistance to survive. World Food Programme vulnerability assessments carried out in mid-2004 indicated that there were signs of increasing food production, but some 1.05 million people remained food insecure despite the distribution of seeds and tools to over 600,000 families. Logistical constraints, the lack of rural markets or sufficient inputs, and the inaccessibility of some areas, continue to constrain food production. The revival of agricultural activities is also severely affected by the large number of land mines that litter the countryside (estimates vary from 7 million up to 15 million[70]), affecting access and undercutting food production as vast stretches of land are not yet safe for cultivation.

Furthermore, because Angola has experienced a loss of critical assets and capacity it is likely that it will continue to rely on humanitarian assistance for some time to come. Many ordinary Angolans have, in fact, begun to see the NGOs and their donor patrons as the main provider of basic social services, humanitarian relief and resources for rehabilitation, rather than the state. MINADER is hugely under-resourced. It does not have sufficient staff, they are underpaid, generally are unable to operate in the field for want of vehicles, and have no funds to provide support in the form of extension services, seed banks, tools, or grain storage facilities. Given that the 2003 Inter-Agency Consolidated Appeal (CAP) for Angola was the last and the 2004 Consolidated Appeal for Transition[71] received less than 60 percent of its appeal for US$262 million, it is critical that efforts to assist in the recovery of agriculture be effective in enabling vulnerable households to produce their own food, and not depend only on general food distribution. Current pledges to the World Food Programme (WFP) are insufficient, and until the government is seen to be assuming responsibility, fewer donors are willing to fill the gap. It is unacceptable that a country as rich as Angola should be dependent on the international community. As Douglas Steinberg, director of Care, Angola, stated in April 2003:

> *Were the government to fully account for its resources and allocate them to meet Angola's humanitarian and development needs, the Angolan people would face a radically different future. Until the government assumes its responsibility, few are willing to fill the gap. In either case, external funding is likely to diminish over time, particularly as Angola transitions from an emergency to a development context*.[72]

To give perspective to this it is worth reflecting that Angola has shifted from being a net exporter to a country heavily dependent on international food aid. In the early 1970s Angola exported more than 100,000 tones of maize each year, yet by the 1990s the country was producing only about half of its cereal needs. Coffee exports in 1993–97 were on average about one percent of their level in the early 1970s.[73] Cultivation of most other cash crops, including sisal, sugar cane, cotton and tobacco has almost

ceased. With a mere three percent of eight million hectares of arable land estimated to be under cultivation, the country can only produce a small amount of its total food needs. For several years the WFP has been delivering food to an average of one million people each month.

While the MPLA did little to promote peasant agriculture after 1975, it is the war that has truly ravaged the agriculture sector, agro-processing and domestic trade. There has been a critical loss of assets and capacity – key agricultural, health, education and transportation infrastructure have collapsed or been destroyed. Much agricultural land has been untended and left fallow for years or rendered useless by landmines. Seeds and tools (including animal traction) are scarce, and inputs almost entirely sourced from relief agencies. Labour is also scarce in some areas as more than half of the households are headed by women. Many women-headed households have high dependency ratios with elderly and young to care for.

There is now no longer a unified national market; it has been replaced by a coastal enclave economy. Most of the rural areas have receded into a very basic form of subsistence economy, more or less completely cut off from markets. There are several causes for this: most obviously, the extended state of insecurity over the past three decades, the extreme shortage of skills, macro-economic instability and uncertainty, distortionary policies, and the severe and prolonged deterioration in physical infrastructure and services. Road and rail infrastructure has been severely damaged, and the cost of air transport from the hinterland to the coastal towns is exorbitant. The net result is that since independence, the non-oil sectors of the economy have been in prolonged recession.

Most rural people do not have access to a sustainable income base outside of agriculture, and the high unemployment levels exacerbate the demand for land. Even if food becomes available in the local markets, most households will not have the cash to buy it. There is an urgent need to diversify and expand the agricultural and the non-agricultural base of rural households. The use of natural resources as a central part of livelihood strategies is not only limited to agriculture and the full-time cultivation of land. A wide variety of habitats and resources constitute "commons" that contribute to rural livelihoods – water for domestic use, livestock and irrigation; grazing and browsing for livestock; wildlife habitats providing food and medicine; building materials; edible plants; or raw materials for products and handicrafts. There is also a range of potential economic activities that can take the form of sub-contracts, joint ventures or leasehold agreements associated with ecotourism, wildlife based enterprises or commercial forestry.

## *Prerequisites for a new policy*

For the first time in almost three decades, Angola is now in a position to realise its tremendous potential. Establishing food security is the main means for stabilising the population and a vital step in moving from humanitarian relief towards broad-based development. The

government of Angola believes the country will be agriculturally self-sufficient within three years.[74] Certainly agriculture, and land tenure, are prerequisites not only for immediate recovery, but also for obtaining the longer-term benefits of diversification. This, however, necessitates a thorough and early reconsideration of policies, a key component of which is property rights. If the rights of the poor are not strengthened, they will continue to lose out to the wealthy and powerful through land grabs, and they fail to recover the natural capital that they lost in wartime.

Debate and consultation are critical to the process leading to the approval of a land policy and a new land law; the drafting of workable law requires genuine involvement of all categories of stakeholders, both government and non-governmental institutions, central and local institutions, communities and private sector organisations. Most Angolans are illiterate and poor, and have little or no knowledge of the law and their legal rights to property. They therefore stand little chance of standing up to powerful public representatives. It is therefore critical that the process be characterised by an open and democratic approach, negotiated and not imposed. It is, furthermore, critical that the methods of consultation include translation into mother tongue where necessary, an analysis of the history of ownership, cultural links and population movements, as well strong community empowerment (as opposed to NGOs merely facilitating the processes).

Women's rights and other gender-related issues also need to be addressed in all discussion of land policy. Women are particularly vulnerable because massive displacement has resulted in a disproportionately large number of households headed by women. Women, who are essentially temporary custodians of land passing from father to male heir, are without land rights as customary rights leave land in the control of men; upon divorce, separation or death, a woman faces the risk that the husband's family takes everything of value (including land) from the wife. Women also have the least social power and no effective decision-making powers, as evidenced by recent reports that women and female-headed households returnees are being disadvantaged by being allocated lesser quantities of land than men. The introduction of formal legal rules, though land reform and titling and registration, cannot afford to fail to recognise the rights of women.

Under the 1992 Land Law a centralised vision of the state as controller of the economy prevailed, and so participation of civil society was not considered a necessity. Now, after so many years of civil conflict there is a strong need for people to be better educated and informed about their land rights and the benefits of a land law, for advocacy and for broader consultation. For the first time in Angola's history, a law was open for public debate, and for this the government must be commended, although credit must be given to the role of the NGOs and media in raising public awareness. Various studies were conducted and the Land Act did go through several revisions, but it was nevertheless more a question of

government imposing its ideas, than a process of consultation or of taking on board the suggestions from civil society and NGOs. Furthermore, the level of debate in parliament was considered to be poor, with voting along party lines indicating little engagement in the subject matter. MPLA members voted in a solid block in support of the adoption of the land law, while the opposition either voted against, or abstained.

There is a need for a formal land policy that guides creation and implementation of the priorities to be promoted through land use, tenure or transactions. There are no formal, written policies that describe these. As already indicated, the 1992 Land Law did not reflect either liberalisation or security of tenure for smallholders. Again, with the new Land Act, there is uncertainty over a possible conflict of interests over intent: social equity and the preservation of traditional ways, or economic development. There is also the need for coherence among a range of related laws: those related to land, natural resource management, water, forests and fisheries for example.

A central and fundamental issue is the need to integrate land policy into a development strategy that is part of a wider social and economic development vision. In the rural areas this would be reflected in the protection of existing local land rights and at the same time the promotion of new investment that is needed so badly. The country needs to build market economies, to move from subsistence farming to commodity production, and to create infrastructures to support small- and medium-scale enterprises, particularly rural markets and trading networks. A major challenge facing the country is adjusting to the rapid urbanisation. Luanda alone has almost one quarter of the national population,[75] and a recent study has indicated that its population may reach 5,4 million by 2010.[76] What this calls for is greater attention to urban planning, investments in urban infrastructure and the development of low-cost housing on serviced sites. It is estimated that some 80 – 90 percent of the urban population do not have legal title and the government lacks the capacity to survey and provide titles in the three-year time frame that has been set. The implications of this are that the vast majority of urban dwellers will become informal occupiers of their land. In effect this will "criminalise" the poor majority.

Land activists maintain that the new law gives greater priority to the economic rather than the social value of land. Communities see land as representing not only their guarantee of survival, but also their culture and heritage; "Social representations of land and land tenure systems give structure to the relation between man, land and agricultural production."[77] There is a growing belief that the government is unable, or unwilling, to reconcile such a vision with its own approach, which is informed by a technocratic and purely economic view, and which excludes the community social and rights-based value system and fails therefore to respect traditional law.

It is important to recognise and value the role of customary systems and those who manage them, without institutionalising them and

removing their inherent flexibility and legitimacy in the eyes of the local people. The very real possibility of an active and informal land market within and between traditional communities cannot be overlooked. If formal laws do not correlated with customary and traditional realities, there is the risk that these will be ignored by the traditional communities. However, while the only real communal lands in Angola exist in areas of low demographic pressure (primarily in the eastern and south-eastern half of the country), there is an important caveat to be added here: the caution against re-investing power in local traditional leaders, who have shown little support for women's rights.

There is considerable merit in developing the very good potential for commercial agriculture, but this should not be used as a guise for the increasing number of land takeovers. Huambo and Bié provinces have seen a revival of claims for old fazendas, purchased at 'knock down prices', with local populations being pushed onto poorer land or reduced to being employees.

In the opinion of the Minister of Assistance and Social Reinsertion, João Baptista Kussumua, one of the main challenges of the post-war period is the revival of rural communities and reactivation of their economy, which he says is central to a strategy of reducing poverty.[78] But if the law satisfies only agro-industrial needs (which in all likelihood will justify the concessions already given to favoured people), and does not ensure the protection of rural community interests, such as water rights, a new social conflict could emerge. Agricultural rehabilitation, generally considered politically neutral, can easily take on political dimensions, in which case rehabilitation is clearly not enough. It has been suggested that the seeds of the next conflict lie in precisely this outcome, should the call for investment by the coastal people who own land in the traditional Ovimbundu territories on the Central Plateau be met.

The government must develop an equitable, consistent land-use policy balanced between agri-business and smallholders. At the same time, policy with respect to agriculture should not see the agrarian economy split into two, namely modern and traditional, but rather see the two as complementary and engaged in a dynamic interaction based on partnership and shared resource use. The issue is particularly important in ensuring stability of the process of re-entry and reintegration of displaced people. While land per se does not ensure the means of making a living, it is a safety net that should not be threatened. Policy needs to promote both equity and productivity, identifying how these can complement each other. Issues of equity need to permeate all aspects of policy, and not be limited to vague statements, which invariably translate into a gap between vision and reality.

Another concern is the capacity of state structures to perform the devolved responsibilities that are envisaged by the new land law – juridical, regulatory, fiscal, cadastral and to fulfil their judicial and administrative responsibility at all levels of government to resolve the huge number of land disputes. Angola inherited limited experience of

governance and public infrastructure at the time of independence, and the human and physical capital that did exist was decimated by war. The mandates of certain ministries overlap, and there have also been tense and poorly defined relationships between provincial and central level institutions. Angola now needs to develop a transparent, functioning, efficient and effective land administration system that also integrates the reality of customary land management systems into formal national legislative and administrative frameworks.

The cadastro or legal land registry has not been updated since 1975 and negotiations for the granting of land have not always been conducted in an appropriately formal and objective manner. As already noted, the chaotic administrative history has made it possible for elites to take advantage of local communities. A user-friendly dispute resolution system is needed, for without negotiations it is more likely that tensions could develop into open conflict. Negotiation and consultation processes to harmonise formal local government and traditional customs are also needed. As questions of land reoccupation are best handled by local land management structures, with little intervention from the state, decentralisation is critical as it would militate against the development of inter-institutional issues (national level versus provincial level) and other problems that could lead to conflict. Consensual agreements can be reached if the appropriate guiding framework and adequately trained facilitators are in place.

Not only is the country struggling to rebuild its legal and administrative framework, but there is also a concern that the requirement of only three years (itself a concession by government, which previously stipulated one year) for people to apply for the regularisation of their right to the land they are occupying, cannot easily be met. [79] Access to information is still limited, and many people still have no formal identification documents, either because they have lost their papers in the upheaval of war, or because they have been living in areas controlled by UNITA and inaccessible to state employees. Others have been refugees in neighbouring states. The vast majority of people do not have the necessary papers providing legal ownership of property. While the new law seems to make it easier for the relatively well-off to secure urban housing property rights, it increases the vulnerability of disadvantaged communities as it does little to address the issue of land held informally. The risk then is that informal landholders will be illegal occupants of the land they live on. The government needs to establish a process for extending formal land rights at no cost to those occupying irregular urban and peri-urban lands. As Allan Cain, has stated:

> *In the major cities, especially around the capital, Luanda, many families who fled fighting in the countryside ended up occupying or buying land on the informal market from people who usual had no legal title to it. In peacetime, this is now prime property for commercial interests and the poor run the risk of being turned out of their homes as businesses with deep pockets clamour to snap up city-centre and suburban real estate.*[80]

It is worth noting that such a process seems already to have begun, as evidenced by evictions in Boavista (July 2001)[81], Soba Kapassa (December 2002)[82], and Benfica (March 2003). A report by Amnesty International entitled "Mass forced evictions in Luanda – a call for human rights-based housing policy" issued in November 2003 called for a moratorium on forced evictions, claiming that over 5,000 had been forcibly removed from their homes in three mass evictions between 2001 and 2003. In the report they raise the concern that the "system for registering land and housing almost collapsed during the war and was unable to cope with the expansion of households in Luanda."[83] As appositely stated by Melville, "…if those who benefit from the legislation are the already well-connected, whose principle motivation for exercising their property rights is speculative, then the economic growth driven by the development of private land-ownership will be diverted away from those most in need and most capable of delivering results.…The privatisation of government-owned real estates also provides a further opportunity for the well-connected to acquire private property rights at nominal cost, to force up rents and to force out residents who were occupying rooms and apartments beyond the scrutiny of the wartime state."[84] In a similar vein, there needs to be an inventory of all natural resources in the country, systems and training set up for administrative matters such as participatory methodologies, geographical information systems, monitoring and evaluation. The law circuitously permits the mere classification of land as being within or needing to be within the public domain, to be a sufficient declaration that the land is needed for a public benefit.

In the absence of a freehold system, concessions are granted but these come with a number of conditions. This gives the government considerable technical leeway. Concerns have been raised by land activists with regard to the many different reasons presented for the taking of land, in the absence of an expropriations law.[85] Under the new law, government tools for expropriating confiscated land are, in fact, greatly increased. There is also no principled way for determining just compensation because there is no land market and there is no land valuation function or expertise. In effect this is tantamount to a reduction of rights. However, the government has promised that these concerns have been heeded and will be detailed in the by-laws that have yet to be developed. Development Workshop, is playing an active role in discussing with government the importance of consultation and the establishment of clear rules for expropriations and compensation.[86]

## *Final thoughts*

Angola is characterised by huge inequalities in wealth, which have increased because of the country's recently developed oil wealth. As appositely stated by Rafael Marques, "(the) country's wealth is so vast as to make it impossible to create a strong enough commitment on the part of the international community to encourage the adoption of a macroeconomic stabilisation programme which would restore the economy

to the eventual benefits of its people. Mineral wealth has corrupted the decision makers."[87]

While structural conditions do not in themselves imply that conflict is inevitable, cleavages in the social system can lead to violence if events that provoke, accelerate or create instability occur on top of structural realities. In such situations, any meaningful empowerment of one group of people is likely to be perceived by some other group to be at their expense. This brings into question whether the Land Act has the potential to accentuate wealth disparities, capitalising on poverty. In other words, is the intent of the law and the economic agenda behind the current land issues designed to favour a narrow elite, or will it act to reduce disparities, such as those that are particularly acute in the former UNITA-controlled areas of the central highlands? The agricultural populations in these areas are the most seriously affected by economic policies that favour urban areas and the most severely penalised by oil-induced distortions.[88]

Angola is set to continue with the (incomplete) transition from a centralised economy to a market economy.[89] However, precisely because the MPLA and UNITA – the two parties which define and dominate mainstream political discourse – do not have any substantive differences of opinion with respect to Angola's future, in the absence of the required level of debate there is a political vacuum[90] This makes it all the more important that the transition to a free market system be accompanied by changes in the way that land resources are managed and owned, failing which land allocation could prove to be inequitable, to sustain the colonial legacy, and to be difficult or impossible to reverse. Central to ensuring the credibility of peace will be to change economic policies that favour a narrow elite, who in their behaviour are barely distinguishable from the old Portuguese colonial masters. Frustrated expectations, the consequence of policies that favour a narrow minority, raise the likelihood of tensions being triggered.

The most pressing need is to halt the ongoing concession process, which lacks transparency. It is a process that tends to award concession to relative few who have access to the laws, rules and mechanisms, as well as access to credit.[91] The practice of making large land concessions to a privileged few has made possible the continuation of the former communist ruling class in its role as an elite. With regard to the issue of state land, the law needs to provide a definition of the nature of state land title, and clarify state rights to land and natural resources.

Concerns have been voiced about the continuation of the land grab, which began in the late 1990s when a few wealthy individuals gained control over vast natural resources. Circumstances are changing rapidly in the country and the changing economic conditions are likely to increase competition for access to land. The rapid changes in social mobility may also result in a breakdown in social consensus and open the door for possible conflicts. The likelihood of tensions is raised even more when there is confusion and conflict between customary rules and modern laws.

There are numerous questions about who is receiving the major land concessions and for what purpose. This also raises the question of whether the new law is deliberately failing to be definite – is the covert intention to leave the bureaucrat with greater discretionary powers that will serve to ensure vested interests are not tampered with? An encouraging development in February 2005 was the announcement by President dos Santos of the formation of two presidential commissions to review Angola's economic and urban planning legal and regulatory regimes to ensure that both reflect Angola's new economic realities.[92]

The potential for Angola to move from conflict to reconstruction and then sustained development is greater than ever before. Nevertheless, there remains a risk that the country will be condemned to further decades of poor governance and localised violence if challenges such as those outlined in this paper are not addressed. As the Commission on Human Security states in its recent report, "Cease-fire agreements and peace settlements mark the end of violent conflict, but they do not ensure peace and human security… [the] chance that renewed violent conflict will erupt … is even higher when control over natural resources is at stake." [93]

In the end human, security depends on the interweaving of various dimensions: during periods of reconstruction, the focus has to be on addressing poverty while engaging in economic policy reform. Issues of reform and reconstruction cannot be compartmentalised into separate strategies developed under different ministries. If recovery is not broad-based, it can increase inequality by allowing an elite to strengthen its position while poor communities stagnate. Conflict will also be determined by the potential for political groups to mobilise on behalf of the marginalised, especially when they have external support. With the FAO, the World Bank and other agencies now committed to the concept of community tenure it seems likely that more and more communities will agitate for land rights.[94] This is of particular relevance in noting that land tenure is not only a development issue; it is also a rights-based issue – that is, rights to land are not just a source of economic production, but are also a basis of social relationships and cultural values, and a source of prestige and often power.[95] Addressing the issue of land tenure reform in terms of equity and justice cannot occur separately from broader political reform and economic transformation. It is only by giving people real rights that they can engage fully in development.

## ENDNOTES

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2 The author would like to thank the following people for their invaluable assistance in the course of the research undertaken: Dr. Allan Cain, Director of Development Workshop, Dr. Paulo Groppo, Land Tenure Systems Analysis Officer, FAO, Rome and Dr. João Porto, Head of the African Security Analysis Programme, Institute for Security Studies.

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13 R Hall, op cit, p 3.
14 Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. It constitutes a set of rules defining rights of access. Cited in *Land tenure and rural development,* FAO Land Tenure Studies, No. 3, Rome 2003, p.7.
15 Namely, South Africa, Mozambique, Uganda, Tanzania, Zambia, Rwanda, Malawi, and Zimbabwe. Recent laws in Uganda, Lesotho and Namibia have placed land on the constitutional agenda.
16 The Portuguese used Angola principally a source for the thriving slave trade across the Atlantic and by the 1700s Luanda had become the greatest slaving port in Africa.
17 F Pacheco, ibid.
18 The principles of Portuguese occupation were based on administrative differentiation of groups. However, cultural assimilation effectively prevented most indigenous people from becoming 'civilised Portuguese'. This racially based discrimination was consecrated in the Statute of Indigenous Peoples of the Portuguese Provinces of Angola, Mozambique and Guinea. Almost everything was regulated in a specific way for whoever did not have Portuguese citizenship. See F Pacheco, ibid.
19 *Indigena(s)* – An African or *mestiço* without *assimilado* status – that is, uncivilized. Before the abolition of the status (and the distinction

between it and that of assimilado) roughly 99 percent of all Africans were *indígenas*. Ibid.

20 *Assimilado(s)* refers to those Africans and *mestiços* considered by the colonial authorities to have met certain formal standards indicating that they had successfully absorbed (assimilated) the Portuguese language and culture. Individuals legally assigned the status of *assimilado* assumed (in principle) the privileges and obligations of Portuguese citizens and escaped the burdens, e.g., that of forced labor imposed on most Africans (*indígenas*). The status of *assimilado* and its legal implications were formally abolished in 1961. Library of Congress, in <http://memory.loc.gov/frd/cs/angola/ao_glos.html>

21 *Mestiço(s)* was the term used alone in a social context for the offspring of a mulatto and a white – mixed white and African ancestry. Several varieties, depending on the nature and degree of mixture, was recognised by the Portuguese and *mestiço*. Most *mestiços* were urban dwellers and had learned to speak Portuguese either as a household language or in school. Ref: Ibid

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# Land tenure, land reform and conflict in Sub-Saharan Africa: Towards a research agenda

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The case studies in this volume come from African countries with different histories, cultures, and economic structures. As pointed out in several studies, there is a great range of local variation in land tenure arrangements, even in relatively small countries such as Burundi. The importance of history is evident, as is the need for country-specific analysis. Effective responses to land tenure insecurity and conflict can only come via the involvement of those involved, particularly local governance institutions.

Despite the great variety of experiences in different countries, some common themes can be identified.

The first of these is the importance of disputes over land rights in relation to the wider dynamics of violent conflict. The case studies have demonstrated that in many areas land disputes, and lack of access to land for sections of society, have contributed to poverty as a structural cause of conflict. Insecure and limited access to land has contributed to poverty which in turn has provided the ideal circumstances for conflict. Access to land by the poor has been limited by processes including alienation of land from customary systems and land concentration by the rich (for example in Zimbabwe, Angola, and eastern DRC), fragmentation and 'miniaturisation' of farm plots as a consequence of population increase (e.g. Rwanda and Burundi) and inequalities arising from the tensions between customary and statutory systems which are in simultaneous operation (most countries). The arbitrary, unaccountable and often illegal way in which land issues have been managed by agents of the state at various levels represent a wider governance malaise in some countries.

In some cases war has transformed the role of unequal land access from a structural 'background' cause, to what may be called a 'resource of conflict'. In eastern DRC, which has seen a decade of war, this is evident in the most recent phase of a long process that started with former president Mobutu, who regularly rewarded loyalty with land. In additon, local elites who did not want to be part of Mobutu's patronage system and preferred instead to build up their own power base also rewarded followers by extending control over land.

In the current Congolese context, control over land implies the ability to employ force in defence of 'title'. For Masisi (North Kivu) for example, it is argued that in the aftermath of extensive depopulation at the end of the 1990s, there was an influx of returnees from Rwanda and other parts of the DRC who were able to cultivate as 'squatters' on ranch

land. When the original landowners tried to reclaim their rights, some squatters who would not, or could not, pay rent were forcibly evicted by the landowners. However, others used force to be able to stay, and it appears that local authorities have given weapons to some communities in order to make them enter into an alliance, a process by means of which control of land is in effect exchanged for political loyalty.

Here we must add that we are still in the early days of improving our understanding of this notion of land as a resource of conflict; a lot more research will be needed to ascertain its full scale and impact. To put this in the context of Ituri, for example, there are two issues that remain unsolved or insufficiently understood: will the warring factions be willing to surrender their arms and relinquish control over the areas/lands under their command? Second, to what extent will displacement become permanent? Regarding this second point, there is a real danger that the large-scale displacement of, for example, Bira people – displaced from Bunia and places like Mandro, Solenyama, and Badiya – might become a permanent feature of Ituri's ethnic map. By August 2004, Nyankunde (once a heterogeneous town) was almost exclusively Bira – as neither Lendu/Ngiti nor Hema were present – and it hosted thousands of Bira IDPs *from elsewhere*.[1] Whether the displacement of ethnic Bira is reversible is difficult to say. Perhaps some shifts will be short-term, others not so. Much will depend on what happens in Bunia, a town still divided in two and ghetto-ized. The likelihood of permanent displacement – and hence of extensive land grabbing by powerful members of other communities – is 'confirmed' in the plan for relocation along ethnic lines that UPC commanders circulate amongst themselves, a plan also made public at certain peace seminars.[2] It is clear that MONUC – unable to prevent violence against civilians and itself frequently under attack from militia groups in Ituri, is currently having difficulty in carrying out its peacekeeping role. All the same, the risk of ethnic cleansing strategies succeeding in the area requires that UN troops be empowered (through the appropriate mandate, the required military strength, and adequate training and information) to defend the housing, land and property rights of civilians. Ideally, UN forces would make preparations and take action to prevent 'ethnic cleansing' while fighting is still occurring.

If certain ethnically-driven displacements become permanent and Ituri enters a phase of *enhanced apartheid* (more rigid and more violently enforced than during Belgian rule), there will be plenty of evidence to back the analytical claim that access to land is being used as one of the elements in the 'reconstruction' of identity. The repercussions of permanent displacement could be far-reaching in the context of reconciliation. The challenge here is not dissimilar to what certain areas in Rwanda may have to face if *implemented* villagisation or consolidation results in poor people losing their land. In Burundi too, there is a tendency towards parts of the country becoming ethnically homogenous, with large swathes of countryside becoming largely Hutu, and the Tutsi minority feeling secure only in urban areas. One of the challenges to

reconciliation efforts is to address the land issue in terms of the changes in land access which have occurred since the violence began and also to ensure that issues of 'security' can, as far as possible, be separated from those of land rights. In other words, households should be able to rely for their safety on national security forces, as well as a general sense of reconciliation. In the short term, this will be achieved only through a process of integration of former rebel forces into the regular army and the dismantling of any 'parallel structures' of command which threaten civilian government oversight of the army. In order to bring about more fundamental change however, the discourses of fear, retaliation and 'pre-emptive action' must be challenged through dialogue and nation-building. Eventually, ethnic militias should be banished from the region – though this will not be an easy task, as small-arms are plentiful and many areas are difficult to secure because of their remoteness.

Reconciliation carries a strong research challenge: not only do we need to be clear about who has lost what, and who has gained, but on what basis the initial entitlement was made. In other words, custom means different things to different people; which is to say that 'customary land rights' and 'ancestral land' are concepts around which uncertainty, and perhaps contestation, exist. Customary rules, *as we know them from colonial records or scholarly publications,* must be seen for what they are and have always been: constructs, codified (set in stone) at a particular point in history, and not immune to contestation. For example, if we take the boundaries of ancestral land: such boundaries often exist only in people's memories, and some people are better 'qualified' to remember than others.[3]

In the same vein, 'tradition' too has its ambiguities, as Henry Bernstein has noted for South Africa's former Bantustans.[4] Traditions may be invented, as we know, and they are being invented *even today*, as Steven Robins learned in the context of a successful, post-Apartheid land claim made by the Khomani San.[5] When they made their claim in 1999, this San group were regarded as 'traditional bushmen'; later it turned out that they were relatives from the diaspora with a charismatic leader and a shrewd lawyer. Faced with the evidence, many a champion of 'indigenous rights' needed to come to terms with the fact that identities, traditions, communities continue to be (re-) constructed.

In the introduction we raised the idea of evolutionary theories of land tenure. It was suggested that accurately characterising tenure systems as they actually operate on the ground, and identifying the ways in which custom might be 'integrated' with formal systems, is more problematic than is often assumed. The survival and evolution of custom, and its interaction or competition with statutory regimes associated with elites in national capitals, is of considerable importance for what is often termed 'national unity' in the post-conflict context. While no one suggests that customary systems, and regional differences between them, have remained static (and there *is* a lack of recent research), *the memory of difference lives on*. For example, in some areas, different tenure

regimes were effectively imposed through conquest. The memories of this can be reactivated (and distorted) for specific, possibly harmful political purposes. This happened, for instance, in Rwanda in 1961 when the officially abolished *ubukonde* land tenure system was formally reinstated. In other words, although not many people today have a clear picture of what 'remains' of the pre-1920s difference, from a conflict point of view the cultural aspects of land access remain highly significant. Our point is that *remembered* land systems can be used to forge social difference *today*. We would suggest that it remains important to acknowledge the class-based social differentiation which governed land access in pre-colonial periods before, and to remember that some aspects of customary practices will continue to have an influence. What matters, too, is that such a watering down of historical complexities may become an excuse for political opponents of some African governments to point a finger at those in power today, accusing them of cultural insensitivity. Land policies should not give demagogues encouragment to rethink – and exaggerate – past differences.

In many countries the link between land, identity and memory is complex and prone to manipulation. It is important to note here that in many areas of the continent, land-related arrangements are secured principally through verbal contracts and testimony neighbours and customary leaders, and titles generally do not exist. Under these conditions, sharecroppers and tenants are easily 'relabelled,' and existing arrangements overturned. The same fate has befallen the Banyamulenge, who despite living in South Kivu for over a century, came to be labelled as ungrateful immigrants from Rwanda before being chased off their lands. Whether it happens in the Kivus or in Rwanda, the re-labelling of social identities is a powerful device for economic exclusion and political domination. Power-hungry politicians never encounter great problems when the 'ethnic other' needs to be constructed for the sake of political and economic reward.

A number of chapters have raised the very real possibility of powerful elements of society – typically politicians, soldiers, or administrators – manipulating circumstances during wartime in order to benefit from the displacement and impoverishment of certain groups. This occurs, for example, when IDPs who lack access to land serve as a pool of cheap labour for those with land, or act as a 'magnet' for aid and relief which (directly through theft, or indirectly through tax and trade) benefits the surrounding community. In Angola, it seems that some powerful landowners influenced the location of camps for displaced people to provide pools of cheap labour for their farms. In eastern Congo what emerges from literature by anthropologists and historians, is that warlords (commanders in rebel armies, militia leaders) often control people because they control the land on which these people live.[6] Put differently, in today's conflicts in eastern DRC, warlords mobilise soldiers because they control the unfree labour of that vast section of the population which is unprotected. If you occupy a territory, you – or the political

leaders to whom you are allied - have a claim on its people. Control over unfree labour is also the key to understanding the various forced labour regimes found at mining sites under rebel or militia control.[7] In eastern DRC, unfree labour exists because the majority of the population is extremely poor and faces high levels of personal and group insecurity: the ever-present threat of *eviction from ancestral land* appropriated by powerful elites. Such insecurity generates a need for protection, which feeds into the phenomenon of ethnic militia discussed above.

To return to the themes raised in the introduction, one of the concepts emerging as a point of consensus in the land policy debates is the need to link customary to statutory ('formal') tenure systems.[8] Customary leadership structures will doubtless play an important part in many countries for years to come. However, as several chapters demonstrate, there is a danger of 'falling into the snare of romanticism'[9] in assuming that local customary systems are necessarily legitimate and appropriate. In parts of eastern DRC, local chiefs have over decades presided over the alienation of community land from the customary system and yet have objected when individuals seek to escape the 'tribute' system by buying land. The chiefs – in conjunction with politicians, administrators and business people - must take part of the blame for the bloody conflicts that have erupted. Since the return of a measure of stability, the same chiefs have been influenced by political authorities. Nevertheless, the institution of the chief remains an essential and central part of the local governance framework. In Angola, the central government has been generally engaged in undermining the role of the customary leaders, and the policy on resettlement of IDPs and refugees gives the government the responsibility to identify appropriate parcels of land. Refugees returning home from neighbouring countries, look to the customary authorities for guidance on where to settle, access being based on the oral testimony of elders and former neighbours.[10] Because this informal system functions, local administrators support it. More work needs to be done to develop a gender-sensitive analysis of the reliance on custom, both here and elsewhere.

Many of the most high-profile reports on land-related conflict have emphasised the importance of local and 'informal' dispute resolution mechanisms. Existing structures are never perfect, but it is vital to build upon what does exist, while being aware of the limitations and biases. In North Kivu province of eastern DRC, a *Barza Intercommunautaire* (inter-community meeting or discussion) has been in operation for several years. The *Barza* is composed of customary chiefs and opinion-leaders and has had some successes, but is seen as influenced by some political authorities, which has undermined its effectiveness and caused the failure of attempts to replicate it in other areas, such as South Kivu.[11] In Burundi, the *Bashingantahe* has also lost some credibility through ineffectiveness in the face of violence, but it remains an indigenous mechanism with some potential. The best means to support such structures may not be through large-scale funding (which can be prone to

politicisation), but rather through careful, strategic support at the grassroots level. In many cases, there are structural links between institutions managing local land issues, and those mandated to resolve disputes. Often, where custom remains strong, the same local governance institution will oversee both aspects of life. This means that the linkages between land tenure and conflict should not be artificially severed through narrow 'sectoral' policies or interventions.

Research from Rwanda, Burundi and elsewhere demonstrates that, unsurprisingly, disputes over land and the myriad challenges relating to land use, environmental sustainability and fragmentation of plots, tend to become more frequent and more challenging when population density increases. It has often been considered that Africa is a land-abundant continent, and that availability of arable land is rarely if ever a limiting factor in agricultural production. However, the cases of both Angola and eastern DRC highlight the dangers of generalising. In Angola, for example, large areas of uninhabited land are at present too remote from markets and infrastructure to be viable for settlement without considerable investment. In Ituri, eastern DRC, major land-conflicts have been a reality despite the low population density. Often land conflicts occur not just because of the economic consequences of disputed land transactions (such as alienation of land from customary systems) but also because of their symbolic value. People living next to land to which they used to have access, but is now off-limits, may be prone to strong emotional motivations.

In the future, peri-urban settlement, especially informal 'slum' areas, will become more significant and debates over whether to assist slum owners to gain formal security of tenure, on the one hand, or seek to dismantle the slums and provide alternatives, on the other, will take on extra urgency. The threat of large-scale evictions will become more ubiquitous, as was seen in Luanda, Angola, and represents a form of violence against some of the most vulnerable members of urban society. In other countries, such as Kenya, informal settlements have been the scene of violence between landlords, local gangs, and the police, often due to arguments over levels of rent, the perceived impacts of 'slum upgrading' projects, attempts at 'land-grabbing', and other problems. In many cases, politicians are indirectly implicated in violence, often through the mobilisation of gangs.

Some of the chapters suggest that post-conflict situations demand investment in dispute resolution mechanisms and perhaps also a review of legislation and policy to ensure that the poor are not dispossessed of their lands through various means. One of the consequences of peace is that large areas which were previously insecure and hence unsuitable for investment, suddenly become amenable to private development. The result is that the price of land increases, and with it, the temptation to grab land. In Angola this is occurring in both rural and peri-urban areas. In Burundi, land prices in some areas rose by half within a few months of the peace accord, forcing some people to cultivate marginal areas as they

were unable to access fertile land. It may be difficult for governments to regulate land markets in order to buffer the effects of pre-conflict population movements and the attendant land speculation, but indirect influence may be possible, for example through carefully-planned resettlement policies. At the least, the state and the international community should focus on this issue as part of a 'do no harm' approach.

Several authors were struck by the continuities in governance carried over from colonial times until today, despite independence struggles, rebellions, and the effects of global political change. In many cases, despite the revolutionary rhetoric of liberation movements and new governments, the state risks being once again 'captured' by a small politico-economic elite, and governance is once more determined to a large degree by the politics of patronage. In parts of the Great Lakes Region some analysts are comparing those in power to the monarchies of pre-colonial times, who ruled by decree and the considerable might of their military forces. It should be recognised, however, that in some countries, despite the very real ethnic divisions experienced in day-to-day life, modern elites are differentiated from their forebears by their ability to forge alliances across the ethnic divide in order to further their politico-economic interests. Time will tell whether such alliances represent a real shift or merely 'marriages of convenience'.

In terms of control over land, the evidence that elite interests are dominating policy-making in several countries has been documented, as evidenced by increasing consolidation of land by the rich, displacement of the poor through various processes, and increasing 'power distance' between the rural masses and the urban elite. Despite the moves towards peace in several countries, it has been argued that the exploitative systems of natural resource extraction which developed during years of war and tyranny have not been effectively overhauled. Instead, the principles remain the same, though the system has gained extra legitimacy through approval by parliament. Questions should be raised about the degree to which such decisions represent the will of the people.

To some extent, these views might be judged unfair, especially with the optimism around NEPAD, and the willingness of several countries – including Rwanda, for example – to be assessed under the Peer Review Mechanism. Regional organisations are demanding higher standards of governance and attempting to address conflict between member-states, often with some success. Also, there is a new brand of leadership in many countries, which is comfortable with the terminology of empowerment and participation that is so beloved of NGOs and the international community. There is an undeniable level of professionalism in the plans, strategies, and policy papers produced by governments, through processes of consultation and debate with civil society. Policies in several countries include aspects of decentralisation, seen by many as more effective and empowering than old 'top-down' models.

All this is true, and there is indeed some basis for optimism in many countries across the continent. In both Angola and Rwanda, for

example, local organisations (often with support from international NGOs) have been able to gain more influence over land policy development, through constructively engaging or pressuring the government. However, even when policies have included a measure of consultation with civil society, some aspects remain highly controversial, particularly the efforts to encourage investment by commercial interests. In Rwanda, the extreme fragmentation of land has resulted in a plan for consolidation of plots. In conjunction with provisions for controls over land-use through masterplans, and priority granted to 'professional' farmers, there are fears that many peasants may lose their lands to richer and better politically-connected members of society. In Angola, too, there are fears that land-use plans and the government bias towards large commercial operations, in the name of macroeconomic growth, may in practice result in expropriation of land from local communities.

Clearly, African countries are faced with a dilemma, and the viability of current agricultural structures as drivers of economic growth is in question, especially when land scarcity may make it impossible for many households to survive through subsistence agriculture in the near future. The question is not just one of subsistence as opposed to commercial production, however; the terms upon which commercial investments will be made, the extent of regulation of the sector, and the relations between local labour and large landowners, will all be crucial.

As ever, the challenge is in the implementation of the policies, the extent to which public consultation truly results in mutual learning by different stakeholders, and the degree of political will which lies behind well-crafted public statements. Across Sub-Saharan Africa, the reality for some time has been one of policies and laws being only partially (and often arbitrarily) implemented, for many reasons. The result has been a complex and fluid mixture of elements, customary and statutory, interacting differently according to the personalities involved and the local ecological, historical and political circumstances.

This great variation is hardly captured by theoretical models and national-level research projects. Through the course of the research for this volume it has become clear that academic and policy-related debates lack empirical, field-based information on key issues, especially from areas that have been affected by conflict. For example, we see the influence of relatively few research projects on much of the discussion of changing customary practice in Rwanda (in this volume and elsewhere) and which, of course, represent experiences from particular geographical locations at particular times in history.

Though research is scanty, the problem is greater than just insufficient information. Some information *is* being gathered; the problem is that this rarely finds its way into international or 'mainstream' discourse. There is a wealth of knowledge at the local level, though it is not always captured in writing. One only has to think of the energetic (though often highly polarised) state of civil society in parts of eastern

DRC. Legal aid clinics – such as the mobile services provided to returning refugees in parts of Burundi – also represent a wealth of experience at local level. As African governments and the international community grapple with ways to address the challenges of securing the land rights of the poor and preventing future conflict, it is vital that local experiences are included in these debates.

## ENDNOTES

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