



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

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

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



**Participants at the Conference**

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## Conference Proceedings

### 1.0 Introduction

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

#### 1.1 Conference Aims

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

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

Secondly, the conference was designed to contribute to the body of knowledge in this field through comparisons between different countries. Presenters were requested to make reference to current events and processes, in order to ensure that our discussions are topical and analysis could be useful for advocacy approaches. Certainly, the situations in Darfur, Somalia, and Zimbabwe, which were discussed by presenters, demand urgent attention. In Kenya and several other countries, land policies are currently being formulated, providing important opportunities for advocacy.

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

### **(Customary) Land Tenure under Situations of Land Scarcity & Commodification**

- How can rights of multiple users, especially women, be protected?
- Is land concentration and sale of land by the poor inevitable? What policies might be put in place to manage these phenomena?
- What is the most appropriate system to achieve tenure security in rural areas (e.g. deeds, titles, other forms of registration)

### **Land Policy Reform in Post – Conflict Contexts**

- When is a post-conflict country 'ready' for land reform or development of a land policy? What are the criteria to judge "readiness"?
- What are the appropriate roles for the international community in supporting that process?
- What mechanisms can be put in place to manage relations between civil society and government relations?

### **Refugee Repatriation/IDP Return and Land Access**

- How should land and property rights issues be addressed in peace negotiations and agreements?
- What are the merits of alternatives to land claims: resettlement, compensation, and non-farm livelihoods options?
- How can refugees and IDPs be more involved in decision-making?
- What are the most appropriate institutional arrangements (e.g. centralized/ decentralized approach)

### **Mechanisms for Management of Land – Related Disputes**

- What are the merits and challenges of building capacity of different mechanisms (e.g. state, 'customary', and NGOs)?

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- If many mechanisms are working simultaneously, how can the contradictions between them be addressed so that they do not undermine each other?
- What legal or policy frameworks can be put in place to facilitate the operation of effective dispute-management mechanisms?

### **Migration, Citizenship and Land Access**

- Can regional links, including movement of labour, reduce the problems posed by lack of land and contested citizenship?
- How do customary norms, national laws, and international human rights law interact, and what can be done to avoid conflict?
- How can such sensitive issues, touching on national sovereignty, be influenced for the better?

### **Off-farm Livelihoods and Technological Innovation<sup>1</sup>**

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

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

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

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

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

### **2.1 Keynote Address**

Following Prof. Wakhungu's address, the Permanent Secretary in Kenya's Ministry of Lands and Housing, Eng. Mwongera, made the Keynote Address. Eng. Mwongera noted that in the last few years, Kenya has acted as host and mediator to neighbouring countries whose citizens have come to blows over the allocation of land and natural resources. Indeed, Kenya is not without its own land conflicts. Therefore, he emphasized, the importance of this meeting could not be underestimated.

The Permanent Secretary pointed out that in sub-Saharan Africa, land is central to economic and social development. In the 20<sup>th</sup> Century, most countries experienced rapid population growth, slow economic development and environmental degradation. In the process, many parts of Africa changed from being land abundant to land scarce. In many cases, customary land administration was weakened, but has not been replaced by satisfactory statutory arrangements. Unresolved conflicts over land and other natural resources increasingly undermine the capacity of poor to produce food. The poor and vulnerable are rarely able to defend themselves against the more powerful.

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

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and technologies were stultified and social structures, themselves dependent on control over land and natural resources, severely weakened by the purge or co-option of our traditional leaders.

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

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

Where large areas of productive land had been alienated by colonial settlers (e.g. Kenya, Zimbabwe, Namibia, South Africa), the main drivers of land policy development have been essentially political. Economic drivers entered the arena with donor agencies who argue that, if agricultural and urban developments are to be sustainable, fundamental changes in land policy and land law are necessary. In several other countries in the region (e.g. Botswana, Namibia, Mozambique, Ghana and most recently in South Africa) social and cultural drivers have pressed for the preservation and/or the reconstitution of traditional leadership structures to support land administration in rural areas.

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

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

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

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

### **2.2 Conference Overview**

Following Eng. Mwangera's welcoming address, Chris Huggins, a Research Fellow at ACTS, presented an overview of some of the issues to be discussed. He noted the enormity of the impacts of violent conflict on the African continent. In the words of Koffi Annan, Secretary General of the United Nations, "Since 1970, more than 30 wars have been fought in Africa, the vast majority of them intra-State in origin...The consequences of those conflicts have seriously undermined Africa's efforts to ensure long-term stability, prosperity and peace for its peoples."<sup>2</sup>

Since the early 1990s, he reminded the participants, parts of Africa's Great Lakes Region have experienced political strife, armed conflict and population displacements with severe humanitarian consequences. Despite progress towards peace in all the countries of the region, most recently in Burundi and DRC, sporadic violence continues in some areas, particularly in the Eastern Democratic Republic of Congo (DRC). Recent events around the borders of these countries, and statements by national leaders, remind us that achieving peace demands a constant effort.

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Contested rights to land and natural resources are a very significant element in the dynamics of conflict in the region. This has been recognised by regional heads of state in the Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, which states that illegal exploitation of natural resources is one of the causes of the endemic conflicts in the region. Further, the Declaration acknowledges the link between peace, environment and development, and commits the regional heads of state to: “promote rational management of land resources, sustained and sound management of vital regional natural and environmental resources.” Population movements – involving voluntary migration as well as forced displacement - are significant factors in some conflicts, and the return of refugees can pose challenges to post-conflict reconstruction. Localised environmental degradation (e.g. wildlife poaching and deforestation) is identified as a cause of tension between groups in some areas. The need to resolve controversies over land and natural resources must therefore be a pivotal element of wider efforts to end violent political conflicts in the region.

In response to this, Mr Huggins suggested, there has been increasing interest in recent years in the possible links between land access issues and violent conflicts. For example, in 2002 a major World Bank study and conference on land issues in Africa included discussions and papers on conflict and post-conflict situations.<sup>3</sup> The OECD DAC guidelines on *Helping Prevent Violent Conflict* refer to land issues as a root cause of conflict; USAID’s guidelines on *Conducting a Conflict Assessment* note that land is an important tool in violent political struggles between elites; and 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.<sup>4</sup>

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. At a recent meeting on *Housing, Land and Property Rights in Post-Conflict Societies*, experts in this field including UNHCR and UN-HABITAT personnel emphasized the urgent need for the UN and other agencies to develop such systematic policies.<sup>5</sup> Improved convergence by donors and international development agencies on best practice in conflict-sensitive land policy design is also necessary.

Mr Huggins briefly mentioned some of the themes which often reoccur in discussions on land and conflict. Causes of conflict are often categorized as either structural or proximate in nature. Issues related to control over land can be either of these. In

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some countries, lack of access to land is a major livelihood constraint for many people. In parts of the Great Lakes Region, the inhibiting effects of inequitable access are exacerbated by general land scarcity. Particularly in areas suffering marginalization due to political and geographic factors, or where major local grievances exist, poverty can be an underlying reason for recruitment into armed groups. Militia members or members of regular forces are able to sustain themselves by looting.<sup>6</sup> Land scarcity, in the absence of off-farm livelihood options, is therefore often a structural cause of conflict in parts of Africa.

He recommended that we should remember however that not all land scarce countries, or areas with unequal land ownership, suffer conflict. In general, it is clear 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 organization and cleavage which enable “boundaries” to be formed and people mobilized for violent ends.<sup>7</sup> Also, the nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence: if they are seen as partial or ineffective, violence is likely.

Land can also be a proximate cause of conflict: e.g. when land disputes, tenure insecurity, or inequality in land access are recognized as grievances, which (often in combination with other factors) can motivate violence. Ituri territory in North-eastern DRC may be an example of this. Of course, Africa is not alone in this: such issues are also important in many parts of Latin America and Asia.

Mr. Huggins raised the question: what are the reasons for tenure insecurity, inequality, and other problems? In Africa as elsewhere, a key problem relates to the mismatch between customary land tenure systems, which are undergoing changes related to modernization and globalization, and state-managed systems based on western models. Attempts to simply impose ‘western’ models on rural Africa have largely failed.

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. Land is therefore by definition an emotional issue, and linked to cultural and other values.

Land issues may also be “embedded” within other struggles; for example, over mining rights, protected areas, or hunting concessions.<sup>8</sup> Control over natural resources affects

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land uses and often, commercial development of natural resources involves individualisation of communal (indigenous) rights, with loss of access resulting for some.

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 requires a multi-sectoral approach and considerable inter-ministerial coordination, which is not always achieved, hence the frequency of inter-sectoral conflicts which have impacts at the local level.

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 migration, 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 presenters will shed more light on these over the next two days.

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 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 at the “local” or “national” level – 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 globalization, and has indeed been massively affected by foreign influences for over a century.

It is for the reasons outlined above that 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.”<sup>9</sup>

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

There were three kinds of presentation made at the conference. The first category was commissioned papers on specific country experiences, and several of these are summarized in this report.

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

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

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

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

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

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

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

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

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she mentioned that UN-Habitat is currently developing a global network of land tools developers, and it is important that African perspectives are included in this effort.

The third category of presentations related to those by government civil servants. Mr. Frédéric Bamvunginyumira, President of the CNRS in Burundi, presented a pilot scheme for the resettlement of IDPs, returning refugees, and landless people in Burundi. The scheme involves the construction of villages (rather than the customary dispersed housing) and has several components including construction of houses, provision of social centers and services, and training in vocational skills. The plan is for the settlements to become self-sufficient after some time through income generation. There were several questions from the floor regarding the sustainability of the exercise, the origins of the idea, and the dissemination of information about the scheme to the general public. Mr. Bamvunginyumira argued that training would enable residents to become self-sufficient; explained that the NGO he previously headed had developed the idea, and that the scheme was donor-funded; and explained that he had appeared on Burundian television to explain the programme, but would continue in his information dissemination efforts.

### **3.1 Summary paper presentations**

#### **3.1.1 Land-related conflicts in Kenya: policy and legal implications (Summary)**

*Odenda Lumumba, National Co-ordinator, Kenya Land Alliance (KLA)*

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The manner in which individuals or groups in Kenya hold, use, occupy, possess or have access to land since colonial rule to the present is a history of how land lies at the heart of many potential and violent conflicts. Land-related conflicts in Kenya stem from colonialism, which not only imposed alien land tenure relations in Kenya, but also introduced conceptual, legal and sociological confusion in the traditional tenure systems then prevailing in traditional Kenyan society before the advent of colonialism.

The colonial regime in Kenya proceeded from a land-related conflict assumption that customary land tenure systems were inimical to modern imperatives of agricultural development or indeed to the then colonial settler economy. Henceforth, colonialism embarked on three events i.e. expropriation of land through a process of alienating large tracts of land, dispossessing indigenous people of their land and imposition of English Common property law and transformation of customary land law and tenure. These three processes are the beginning of the land-related conflicts that Kenya has experienced up to today. Precisely, the land-related conflicts became prominent when Kenyans of African origin were crammed into native reserves from 1926 and were exacerbated when the process of individualization of tenure in the reserves in the mid-1950s started with a deliberate aim of completely transforming African communal tenure relations into individualized land holdings.

The land-related conflicts in Kenya continue to be pronounced because both the economic and legal frameworks upon which the relegation or intended extinction of customary land rights was based have failed the test of the time. Land relations in many parts of the country are still actualized on the basis of customary law even where such land is registered under Registered Land Act. Thus, the land-related conflicts are prevalent due to the fact that the instrumentality of English/Common law has failed to socially engineer an irreversible movement from communal tenure to individual tenure.

The bottom line, therefore, is that land related conflicts in Kenya are a persistent issue that must be comprehensively addressed by the ongoing National Land Policy Formulation Process.

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

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

At independence the government was faced with the land related conflict of how to settle the landless and displaced people. The conflict situation was exacerbated by the fact that the government did not abrogate the colonial legacy but instead retained policies and laws inherited from the colonial regime with regard to land ownership and use. Even the lands that were availed for redistribution to the landless Africans were at the market place under the policy of "willing buyer, willing seller."

Resettling the landless through settlement schemes or process has further generated land-related conflicts because since 1970s the government reverted to a system of Settlement Fund Trustees, which due to corruption and mismanagement has generated further conflicts in settlement schemes where the squatter problem has been used to settle the politically correct individuals, leaving squatters quarelling over the very lands that were meant for their settlement. The land buying companies and farming cooperatives have caused land-related conflicts because they have been abused by politicians as a means of swindling land-hungry peasants.

The other land-related conflicts in Kenya manifest themselves through what is commonly known as the human-wildlife conflicts. Gazettement of large tracts of community lands as national parks, national game reserves and conservancy sanctuaries has excluded communities from such lands, and permanent and potential land related conflicts occur between communities contingent to wildlife areas and the KWS as an agent and directly between human beings and wildlife.

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The use of ecologically sensitive areas such as forests and riparian reserves is emerging as another major cause of land-related conflicts between conservationists and beneficiaries of illegal and irregular allocation of such lands for political patronage. The sustainability of our major rivers is threatened as we tend towards privatization of water resources and wetlands.

The other land related conflicts arise and concern the extraction and mining of mineral resources, mainly because the government has legislatively excluded mineral resources from land rights of communities contingent to mining areas. This deplorable scenario does not answer the concerns of sharing of benefits from mining and mineral resources.

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

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

### **Institutional, legal and policy recommendations**

1. The government in consultation with all actors in land related conflicts should embark upon an all-inclusive, comprehensive, realistic programme of resolving historical injustices on a long-term and permanent basis.
2. The government shall ensure that the position of customary tenure and land rights deriving there from within Kenya's legal system are clearly stated in the new constitution.
3. There is need to review and consolidate the registration law and systems in Kenya to remove grounds for land-related conflicts caused by a) the wrong premise upon which land registration was conceived in Kenya by the colonial state and b) the multiplicity of statutes governing dealings in land.

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4. There is reason to undertake a comprehensive audit of the resettlement programme. Other than settling for agricultural production purposes only, new innovative ways of utilizing land by the landless should be designed.
5. The government shall identify land uses that are inextricably dependent on communal or customary tenure in the country. In so doing the government shall cater properly for pastoralism as an economic activity and way of life.
6. To avoid impunity and escalation of land-related conflicts, the government should embark upon the process of resettling all people who were displaced from their lands due to the land clashes.
7. The government shall enact laws that recognize and protect rights of communities' contingent to natural resources such as water, forests, wildlife, minerals, fisheries and rangelands; and to protect the intellectual property rights of indigenous people over the genetic resources found in their habitat in accordance with the provisions of the Convention on Biological Diversity.
8. There is every reason for nurturing good governance in land administration and management. Therefore, colonial inherited institutions, laws and procedures and norms, which do not allow Kenyans to express their concerns and fight for their interests within a predictable and relatively equitable context, are a form of bad governance that has exacerbated land conflicts that must be repealed.
9. There is need to establish appropriate institutions for dispute resolutions and access to justice within communities and between communities and all other land users.
10. All land tenure regimes as outlined in the draft new constitution should be accorded equal treatment and recognition in the Kenyan law system. The government should facilitate the growth of a vibrant mortgage institution not only based on individual tenure but all tenures; and whose realization is hinged on entrepreneurial skills or experience in credit management other than only on security of tenure conferred simply by the proprietor's land title.

The land tenure and conflicts prevention, mitigation and reconstruction in different African countries need to place and interpret the land issues within a specific and particular historical and social context and moment. This would help sort out the land related conflicts without applying or copying generic land reform solutions to intricate land problems.

### **3.1.2 Land tenure and inter-ethnic conflict in Darfur (Summary)**

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Darfur region is the scene of the worst humanitarian crises in the world today. A legitimate question to be asked in this case is whether the current conflict is somehow related to competition over natural resources; notably land. This paper is an attempt to answer that question.

Darfur region (with its three states) occupies the north-western corner of Sudan and amounts to one fifth of Sudan's total area. Ecologically Darfur contains diverse features ranging from a typical desert environment in the north to rich savannah marshland in the south. Darfur is inhabited by an ethnically diverse population. Ethnic distinctions in Darfur, as is the case for Sudan in general, are not that clear cut. Following the two main sub-divisions, the population in Darfur can be broadly divided into those of Arab descent, and the local, non-Arab indigenous inhabitants of the region. It is important to note, however, that the word "Arab" represents a cultural rather than a racial identity.

The indigenous Darfurian tribes consist mainly of settled farmers and small-scale traditional cultivators of whom the Fur are the largest ethnic group. They were the founders of the Fur Sultanate and the traditional rulers of the region. The other non-Arab ethnic groups are the Zaghawa nomads, Tunjur, Meidob, Masalit, Berti, Tama, Mararit, Mima, Daju, and Birgid.

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

With the exception of urban and very limited cases in the rural areas almost all land in Darfur is utilised according to customary tenure systems. It is believed that before the establishment of the sultanate by the Keira dynasty, land was communally owned in a manner similar to many African communities. Each individual or family had the right to get access to land for settlement, cultivation, grazing, hunting and to get wood for building or fuel by virtue of community membership. Once a person has occupied a piece of land on which to build a house or cultivate, that land continues to be recognized as his property.

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Sultan Musa Ibn Suliman, who was the second ruler in the Keira dynasty (1680 – 1700) is said to have introduced a new system of granting land titles i.e. estates, called *hakura* (Arabic, plural *hawaki*) to encourage *fugara* (religious teachers) to settle in Darfur and preach Islam. Merchants from the Nile Valley were also given estates in recognition for the promotion of trade with Egypt and Riverian Sudan. In later stages, the *hakura* system developed into a powerful tool for the consolidation of state power.

Sultans were able to ensure the loyalty and support of tribal leaders by issuing seal bearing documents (written in Arabic), confirming the authority of a chief over his people and his rights to manage the land that falls within the territory of the tribe. Usually such documents also describe the boundaries of the estate being granted. Army leaders and state officials were also granted land titles from the return of which they had to meet their expenses since no regular reward system was in existence.

Thus, while land was previously communally held, the development of the *hakura* system shows some parallels with the feudal system. Later, land charters used the expression “*iqta al-tamlik*” i.e. concession of property rights which makes the *hakura* similar to a freehold. Title holders were able to extract customary dues (*ushur*, equal to one tenth of farm yield from those who cultivated their land through an agent/ manager called ‘*sid-al-fas*’ (master of the axe). The latter would manage the estate by allocating pieces of land for settlement or cultivation.

Because nomadic land use rights were less individual specific, it remained closer to the early forms of communal rights. An individual nomad does not need to manage his own particular piece of grazing land because he does not stay in one place anyway. Moreover, the nomadic mode of life requires that pastoralists be given passing rights through special corridors in the tribal lands of sedentary groups. This was done through special arrangements between the traditional leaders of each party and according to which the customary rights of each side were observed. Such relationships even developed into a form of interdependence between the two communities. Until the outbreak of the current inter-ethnic civil war, many nomads used to keep animals for their sedentary friends. Their friends on the other hand would reciprocate through gifts and giving access to the remains of agricultural produce, which makes good fodder.

There are several factors affecting land utilization patterns:

1. Drought.
2. Increase of human population.

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3. Increase of animal population.
4. Population migration (internal and external).
5. Increased commercialization of farming.
6. Market-oriented livestock breeding.

These result in the following consequences:

1. Expansion of millet cultivation beyond the agronomic dry-boundary.
2. Expansion of perennial cultivation in clay and alluvial soils around *wadi* (water courses).
3. More land put to permanent cultivation (less rotation).
4. Blocking of animal migration routes.
5. Decreased access to water sources for animals.
6. Land degradation.
7. Decreased grazing land.
8. Overgrazing and deterioration of rangeland.
9. Damage to crops by animals leading to conflicts.

Disputes from the 1950s to the 1970s, which were of low intensity, sporadic 'tribal' raids and skirmishes, have transformed since the mid-1980s into high intensity, persistent and large-scale armed conflicts. Whereas the early confrontations were easily contained and resolved, current conflicts have proven too unwieldy to manage through traditional methods of conflict control.

Since the mid-1980s the occasional minor skirmishes over water and grazing land have gradually expanded in intensity and frequency and have developed into fully-fledged warfare. Thousands of human lives have been lost in an unprecedented bloodshed; whole villages have been wiped out and burnt, property looted and plundered. Different conflict management strategies were followed by the different governments of the day, but their efforts proved ineffectual, and, on several occasions, the central government has been accused of actively supporting one group against another.

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The current full-scale civil war in Darfur started in 1985 at the height of the drought that ravaged the region; first between the Zaghawa and the Maharia camel pastoralists of the upper northern desert belt, against the settled Fur farmers; and later between all the non-Arab farming communities of the Jebel Marra area against a broad coalition of virtually all Arab nomads.

Contrary to the earlier, localised skirmishes over water and grazing land, the post-1985 conflict has shown a systematic drive by the nomads to occupy land in the central Jebel Marra massif. The nomadic

'scramble' from the impoverished Dars into the rich agricultural central heartland is the cause of the continuing conflict; it is the contest of the drought-stricken for the green oasis. The conflict is being fought primarily over the control of a thriving resource base in the middle of a zone of scarcity. It is a classical ecological conflict.

Settled farmers and pastoralist nomads are 'casually' interlocked in a complex solidarity/strife relationship with each other. They exercise mutual solidarity in times of normal hardship, but in times of severe hardship, when bodily survival is literally at stake, they engage in mortal combat. The armed conflict that has been raging since the mid-1980s in the Jebel Marra massif in Darfur is a typical ecological conflict along distinctive ecological borders; in this case the border of the semi-arid planes used by 'Arab' pastoralist nomads and those of the 'wet oasis' of Jebel Marra of the settled Fur farmers (Suliman, 1999).

Factors of the Current Inter-Ethnic/Civil War in Darfur:

The multiple factors affecting the on-going war in Darfur can be classified according to their relative importance into three categories:

a) Root causes:

1. Lack of development
2. Lack of democracy

b) Direct causes:

1. Resource competition (mainly over land).
2. Competition by local and educated elite for political office.
3. Armed robbery.
4. Government treatment of people as not as citizens but as members of tribes.

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5. The politicisation of native administration.
6. Government intervention to reorganize tribal administrative boundaries.

c) Catalytic factors:-

1. Drought and desertification.
2. The Libyan-Chadian conflict.
3. The Chadian civil war.
4. International immigration (mainly from Chad).
5. The spread of modern arms.

### **3.1.3 Land tenure and conflict in Somalia: issues from the Somali Peace Process (Summary)**

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Somalia is one of the worst cases of state collapse and state failure in post-Colonial Africa. This paper will show that *deegaan*— land and its resource base — is significant to understand the conflict in Somalia as the conflict involves many clans and sub-clans with shifting alliances to gain leverage in the conflict and to stake stronger claims over particular areas.

The Somali National Reconciliation Conference held in Kenya from October 15, 2002 to October 14, 2004 was intended to include deliberations on key areas of contention including land and property disputes. However, this did not get the attention it deserved. Instead it was politicized. This is because the conference delegates found land and property disputes too sensitive to address. This therefore remains a significant barrier to reconciliation in the country.<sup>10</sup>

#### **Conflict and environment: an overview**

In the absence of a recognized central government formal laws regarding land tenure and land reform have been replaced. Instead there is a combination of Islamic Sharia laws, Somali customary law and the pre-1991 penal code which was widely in the use for the past fourteen years for solving land problems in most of Somalia. There is also widespread armed occupation in much of central and southern Somalia, particularly the inter-riverine agricultural areas of Middle Shabelle, Lower Shabelle, and parts of the Juba Valley. However, this 1990s land problem scenario is not new to Somalia. While armed militiamen and their faction leaders are the main actors in this specific land problem in war-torn Somalia, in pre-civil war Somalia former government officials, whether from pastoral or agro-pastoral clan backgrounds or not, swept into the valuable irrigated riverine areas of Lower Shabelle and parts of the Juba Valley, laying claims to state farms and private plantations by using the state machinery. Armed occupation is mostly done for political reasons since political power in Somalia roughly correlates with control of a larger or ecologically more valuable geographic area. This is a repetition of pre-civil war pictures but in a more lawless and anarchic situation.

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

The expansive pastoral rangeland of Somalia remains a commons area, where claims on water and grazing areas are seen as very communal and are possessed by clans and not by individuals. However, in some pastoral areas, private claims of land ownership are being made. This is common in 'Somaliland,' 'Puntland' and in parts of central Somalia where the wealthier and in this case more powerful pastoral households want to reserve good grazing areas for the dry season for their exported livestock. Local authorities have been unable to stop this trend.

The Transitional National Government (TNG) formed in Arta, Djibouti in 2000 made no changes in the land and property issues in Somalia. It failed to exert its control in Somalia during its three-year term. In the northern parts of the country, the unrecognized Republic of Somaliland' and the self-autonomous "Puntland State of Somalia" are the only polities in Somalia with the capacity to pass and enforce laws. In "Somaliland," the two houses — the parliament and the council of elders — have in the recent past enacted land tenure legislation into law. In this case,

"Somaliland" farmers have been granted full ownership of their agricultural plots, as opposed to the 99-year leases which the previous Somalia government allowed. In addition, the United Nations Development Program (UNDP) is now working on a very effective cadastral survey project. This project aims to define farm plots with precision and it provides laminated title deeds with full details of ownership, including a photo of the owner.

One other major problems in the country is that of urbanization. This phenomenon is occurring in most cities throughout Somalia, mainly in major cities. People are experiencing a land rush as local municipalities are accused of issuing multiple title deeds in "Somaliland" and in "Puntland" with the most powerful obtaining land. The case in Mogadishu is even more disturbing. The TNG gave out both public and private land, whose rightful owners have been displaced by the civil war, to individuals and other private entities.

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### **Deegaan, Politics and War in Somalia: A Summary**

In 2001, the African Centre for Technology Studies (ACTS) commissioned a study on the ecological sources of conflict in the Great Lakes and the Horn of Africa regions including Somalia. The Somalia study identified and assessed the extent to which ecological factors were sources of conflict in Somalia.

Several lessons could be drawn from the study. Firstly, *deegaan* is clearly important to understanding the dynamics of conflict in Somalia. Although the exact extent of its importance is impossible to quantify, it became very clear that *deegaan* plays an important role in the onset and duration of conflict in Somalia. Secondly, local competition to access and control certain *deegaan* articulates with national level conflict to control the state as control of *deegaan* plays a critical role in determining political strength at the national level. Thirdly, control of *deegaan* plays a critical role in the unmaking of old power and the formation of new contractual agreements and power in Somalia following the collapse of the central state. Finally, there is a custom, incorporating dialogue, negotiation and reciprocity that can serve to constitute new policies and processes for conflict prevention and management.

### **The Mbagathi Peace Process**

Kenya, under the auspices of IGAD and along with Somalia's two other frontline states, Djibouti and Ethiopia, sponsored a national peace and reconciliation conference held in Eldoret in October 15, 2002. This process produced a 275-member transitional federal assembly, a president and a prime minister. This is a process that did not receive the local and international expertise and other necessary inputs for the various core issues that are at stake in the Somali setting.

The then IGAD Technical Committee chose the members of the committees from among the delegates. The working group of the land and property rights concluded that problems of land ownership and property in general formed the core of the disagreements between the colonial administration and the local communities in Somalia particularly those who settled along the Juba and Shabelle rivers, those in the northwest, northeast and in central regions of Somalia. This led to the 50-year leasehold agreement of 1924 signed between the traditional elders and the Italians lasting up to 1974. The agreement had grave consequences for the subsistence farmers and the pastoralists alike. The two groups lost their rights to land ownership, which were taken over by the urbanites from big towns and other organizations serving foreign interests with foreign funding.

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According to the committee's report, land grabbing worsened in 1975 through the land reform legislation, which placed all land and other public property under state control and further laid the foundation of appropriation of land and property by those in positions of power. Similarly, the civil war has inflicted damage on the individual rights of the citizens. In 1991, militias invaded the agricultural belt and appropriated agricultural land by force. They displaced those who were unable to defend themselves and who thus lost their livelihood. Land grabbing was not limited to agricultural land only. It also included plots, residential areas, business buildings and other properties in major towns and centers. Public buildings and properties of the state were overrun and taken over as well, either by individuals, groups or clans who own it individually or collectively.

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

The committee advised the federal government to form and institutionalize a proper land tenure system and cooperate with other governments with experience of land ownership (i.e. pastoralism, settlement and farmlands). It also called for the international organizations such as the International Organization for Migration (IOM) to assist in the return of Somali professionals in the Diaspora and provide incentives to those willing to return.

Due to the comparatively high casualties among men to women in the civil war and the fact that women are often left as sole breadwinners, the committee recommended that special attention be paid to the female held properties and their safety.

The committee recommended the formation of a commission with representatives from various ministries and representatives of the local, district, regional and federal governments so that they can adopt a holistic approach to investigate the problems and come up with recommendations of resolving them.

Once the plenary was reconvened in May 2003, the reconciliation committees presented their reports to the plenary where delegates debated them and the

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necessary amendments were made. A Harmonization Committee was engaged to bring together all the reports and produce a single coherent document from the six working committee reports. The Harmonization Committee's report was rejected by the "Leaders Committee." Except the draft constitution, the management of the peace process did not follow up any of the findings and recommendations of the working groups. It has become part of Somali history. The will is not there for anybody to courageously use it or apply it to the current Somali situation due to the sensitivity surrounding land and property rights in Somalia.

### **What next?**

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

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

The JVA is in conflict with the Somali Patriotic Movement (SPM) over the ownership and administration of the coastal town of Kismayu and its environs and Mogadishu is one of the most highly contested areas in Somalia where almost each and every Somali clan claims at least partial ownership, particularly the Habar Gidir, Abgal and Murursade on one side and the traditional Benadiri on the other side. In addition to the above, Hiran region does itself have a potential conflict over land disputes between the Hawadle and the Galje'el sub-clans.

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

## **Conclusion and Recommendations**

Most civil institutions, particularly the Somali ones, cannot endure the stresses of armed conflict. This is especially the case for land tenure institutions where issues of land were a significant component of the cause and maintenance of the conflict. What was needed in the Somali peace process, was recognition of the difference between pre-conflict, post-conflict, and recovery tenure issues; and the opportunities that exist for engaging multiple approaches to land and property that will, in time, especially when supported by legal reform, move to a more solidified social, political, and legal environment within which land and property issues operate.<sup>11</sup> What is more important to the Somali peace process, and to the newly elected TFG, is the need to put up beforehand mechanisms that ensure equitable access and legitimate land tenure institutions able to embrace issues of existing land and property disputes between groups or between individuals who may view land resources very differently, possess profoundly different evidence with which to pursue claims, and may have participated or sympathized with different sides in the conflict. In this case, revising national policy to incorporate functional aspects of a peace accord involving land and property is frequently an important part of the post-war endeavor.<sup>12</sup>

There is also a need to address the psychological and perceptual aspects of the conflict — i.e. core areas such as land and property disputes — before addressing the constitutional and institutional aspects of the conflict. Now that the peace process has come to an end and nothing really substantial has been done about issues of land and property disputes, there is a need to form an independent land and property commission to investigate problems, recommend and draw action plans and oversee the implementation of the commission's recommendations.

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

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

### **3.1.4 A case of Rwanda**

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

However, discussions in the paper go beyond 1994, as far back as the colonial times of the 1880s. The writer finds that the colonial time is actually the origin of the Rwandan conflict. The main concern of the colonial authorities was to control Rwanda's economy through political management. The complete control of the economy meant the control of land as the main source of the economy. In order to achieve this, the colonisers played the ethnicity card – to divide and rule.

The major driving interest of all regimes in Rwanda, starting with colonizers is being in control of the main resource of the country, the Land. Elite power struggle for control of the State, links land and conflict in Rwanda, where historically, control of the State is the principal factor for rights to access, use and ownership of land. The question of who controlled decisions pertaining land as the main resource of the country was the key issue underlying conflict leading up to the 1994 genocide. Soon after the war, higher ranking officials in the interim government made the land grabbing for personal gain a priority interest.

Currently Rwanda has five major land issues, which include: scarcity of land; population pressure; environmental issues; insufficiency of human, material and financial resources; and lack of proper compensation mechanisms.

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

Soon after the national election held in August 2003, the government has embarked on finalising the national land policy and law as the priority areas in the country, in terms of national economic development, peace and reconciliation. The land policy

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was approved by the Cabinet in February 2004, and the law endorsed by the Parliament in November 2004. However, the government does recognise that land tenure is one of the most complex and socially sensitive question faced by the current government and Rwandans in general (Minister of Lands, 2004).

The new government continued to use the land policies and laws inherited from the former regime, a dual system with customary (applicable to about 90 percent of all rural land, though this is abolished in the new land policy and law on the basis that the system fragments the land further through inheritance) and statutory land tenure system (written law governs land under urban administrations, trading companies and registered religious bodies) is still in operation. However, there have been other new developments, since 1994.

During the Peace Negotiations between the former regime (Habyarimana) and the opposition including the RPF, since the driving factor of the 1990 war was about the return of Rwanda refugees, it was agreed that a new resettlement plan for returning refugees be put in place known as 'Umudugudu' (grouped settlement), to cater for the returning refugees. '

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

Under the Umudugudu program, the houses are grouped together, and the farming field also grouped together, with each family member able to identify their own plots (of 1 ha.) People living in these Umudugudu have expressed concerns that the fields are far from their homes and lack of infrastructure. In the Umudugudu programme, the implementation has slowed down because of lack of financial resources by the government, since the international community withdrew the support, for provision of the basic requirement: infrastructure.

Sale of small farmers' plots is also on the increase. Since there is no more land, and the poverty level among small rural farmers is deepening, the urban elite have taken the opportunity to buy more land from these small farmers, leading to landlessness.

The current government has also initiated the process of putting in place a new land policy and law (Land Reform), since the government found a lot of gaps in the existing land policies and laws. The new land law was approved by the cabinet in February 2004, and the land law was endorsed by the parliament at the beginning of November, 2004 and is currently with the Senate, and is hoped that it should be finalised by end of November 2004.

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Main objective of the land policy and law processes in Rwanda, is to strengthen security of tenure of all Rwandans– through giving land titles to all land owners (Minister of Land, 2004). The new land policy and law abolishes completely the customary rights. However, both the law and the policy state that, all current land owners including the customary, will be the rightful owners once the law is passed.

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

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

Another important element for the initiative of the current government is the recognition of the grassroots participation, as the PRSP states that 'The process of allocating title will need to involve the communities....it may be both cheaper, and more transparent, to conduct a survey which settles titles in each community on a particular occasion, rather than allow individuals to apply opportunistically to register particular parcels of land'.

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

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

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### ***Suggestions***

1. Since peace initiatives in the region, including Rwanda have failed because of focusing on the ethnicity issues as the root cause of the conflict, the initiatives should focus more on natural resources, particularly land as the major causes of the conflict in the region. Such a strategy will address the issue of unemployment for the youth which normally combined with inflation and existing resource competition provides a breeding ground for conflict.
2. Given the current major problem of land scarcity in Rwanda, strong and urgent programmes for population growth control, off-farm activities, and agriculture intensification should be introduced, nationwide, so that even the elite can learn to look for other opportunities of gaining wealth other than just grabbing and purchasing land.
3. The issue of land sharing should be analysed with a lot of caution, in a post-conflict situation, if peace and reconciliation is to be achieved. Not only the rural poor with small farms should experience the program of land sharing, even the elite with huge amounts of land should be willing to share some of their land with the landlessness instead of aiming at even acquiring more.
4. Land as a conflict issue **MUST** be integrated into the programmes of Unity and Reconciliation and the Human Rights Commissions;
5. Rwanda is almost treated as a model for democracy in a post-conflict situation, because of the systematic pace towards democracy. However, the challenge now is to decentralise the land rights which historically has been a highly centralised and political issue. More equitable access to land is intimately linked to more equitable sharing of power.
6. The issue of expropriation is a very thorny issue, should not be implemented with no strategic plan and budget in place, because this encourages urban landlessness.
7. Rwanda has made a very good progress in the process of developing both the land policy and the law; however, putting these documents in place is not an end itself. Based on experiences from elsewhere, implementation of the land policy and land law is the most challenging part of the whole process. Hence, inclusiveness focusing the grassroots is crucial to the success of the implementation process.
8. Land conflict and dispute resolution mechanisms should be a key element for the land policy and land law, for the success of the implementation. The Land

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Commissions and other dispute resolution channels should be as close and owned to the grassroots as much as possible.

9. Last but not least, governments in post-conflict situation should politically make a genuine commitment towards fighting the existing inequalities over land rights, if the issue of conflict that has characterized the Africa region is to be permanently resolved.

### **3.1.5 Limitations of the legalistic approach in solving Zimbabwe's land problems**

***By N. Marongwe, Centre for Applied Social Sciences, University of Zimbabwe***

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

Over the years, Zimbabwe's land reforms were largely stalled by the highly legalistic approach of the process. Land acquisition disputes between the Government of Zimbabwe and the white farmers were largely settled through the courts. On the part of the white farmers, the courts were always seen as the only available option that was used to contest the acquisition of their farms. Indeed there are many analysts who believe that the white farmers realized and exploited the weakness of the government in managing such a highly legalistic approach to land acquisition. Technical hiccups that include procedural flaws (e.g. incorrectly spelt names of property), complex and lengthy land acquisition processes and lack of capacities by the courts were used to frustrate land acquisition by many of the white farm land owners.

As a result, in the later half of the 1990s, the Government of Zimbabwe was increasingly making threats to seize white owned commercial farms unless the British Government agreed to fund land reform. As the government stepped up efforts to acquire more land, white farmers also went into overdrive in appealing against the acquisition of their farms in court. In 1997, the government gazetted over 1471 farms for acquisition and redistribution under the country's land reform programme. Out of these, about 42% were later de-listed as they did not meet the then laid down land acquisition criteria. Only about 35 farms measuring 70 000 hectares were subsequently acquired and compensation was paid for (Moyo 1998). In the face of increased legal

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challenges by white farmers contesting the acquisition of their farms and the procedural flaws associated with the legalistic approach to land acquisition, government displeasure became more pronounced as it announced that it would not allow the law to frustrate land reforms.

The trajectory of Zimbabwe's land reform from a legal perspective can be broken into three paths. The first reflect the period between independence in 1980 to early 2000 when the country had a solid and extremely rigid legal framework governing land acquisition. During this period, the government respected private property and the land reform battle was fought in the courts. Whilst the court battles were ongoing, local level land conflicts continued to escalate. Moyo (1995, 1998, 2000) elaborates on how land occupations/squatting/illegal settlements developed over the period, reaching peak periods during election periods.

The second trajectory started in early February 2000 when nation-wide land occupations, which were later to evolve into what is now referred to as Fast Track<sup>13</sup> resettlement, sprung into motion with the support of the state (Marongwe 2002). This represents a period where the laws governing land acquisition were frozen for a period of not less than one year, and the Government of Zimbabwe ignored its own laws and allowed occupation of mainly white owned large scale commercial farms. This was virtually a period of lawlessness as the land occupations that took place were characterised by high incidences of conflict at the local level. For instance the mere fact that the land occupations were strongly associated with politically instigated violence on the farms created the basis for all other mishaps to flourish. Thus criminal behaviour that include murders and attempted murder, child abuse and rape cases, torture, public/political violence, burning of property etc have been prevalent on the farms. Physical conflict was perhaps the most visible form of confrontation and it is because of such mishaps that Fast-Track resettlement has largely been deplored nationally and internationally. On the other hand, psychological conflict and tension has been inflicted on both the white farmers and the new settlers (Marongwe 2004).

The third pathway started when the government instituted far reaching legal reforms in an attempt to normalize the illegal land occupations (in retrospect), the landmark being the enactment of the Rural Land Occupiers Act of 2001. This phase, which runs to the present moment, is characterised by land conflicts of a diversified nature.

The legalistic approach to land reform has failed the country. Each phase outlined above gave birth to a wide-ranging set of problems whose solutions lie outside the legal framework, yet few analysts have noticed this, including the policy makers.

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

Events in the country since the year 2000 tell a story of how the 'safe haven' turned into 'villain' for them. For those who can see and observe, a more proactive approach on the part of the then white landowners could have saved the country from falling into the current predicament. A less confrontational approach characterized by less reliance on the use of the litigation route, and supported by genuine land offers could have been all it took to avoid what is now commonly referred to as the Zimbabwean crisis. Even the debate on the rule of law needs to be recast given the Zimbabwean context. As mentioned in the paper, equally important in the discussion is whose law, what is a good and bad law and who is defining it!

It needs to be emphasized that based on the Zimbabwean experience, the purely legalistic approach to land acquisition is essentially about creating winners and losers. In the final analysis it is a winner take-all situation. This approach, as already noted, ignores the social/moral and political consequences of land reform and more importantly, does not create space for other conflict management techniques to be tried and tested. The approach can therefore be designed or manipulated to suit the interests of one side of the equation, a situation that nurtures the development of conditions that either ignite or are supportive of violent conflicts over land. The approach does not recognize the importance of having dialogue between those with the land and those with out. In Zimbabwe, it was only during the 2000 land occupations that the white farmers were confronted directly on their farms by "the landless blacks." By then, it was already too late for any meaningful dialogue to take place. Also, the highly legalistic approach is somehow divorced from reality, is largely non-participatory in nature and can hardly be democratized. In light of the Zimbabwean experience,

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re-distributive land reform, which is solely based on the legalistic approach, has proved to be a failure. First it was the white farmers who benefited. Then the tide changed and the government “ran amok” and went for the extremes in effecting legal reforms. Yet the land problems have not been solved and land conflicts are quickly transforming into an issue amongst blacks themselves, as opposed to the struggle between blacks and whites as before.

### 3.1.6 Land tenure and land reform in Sub-Saharan Africa: towards a research agenda (Summary)

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

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

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

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

Mackenzie's observations on the introduction of freehold tenure or contract production regimes is of direct interest to the current situation in Rwanda. Freehold tenure – often based on land consolidation and then registration— does not pre-empt existing rights. What emerges in reality, Mackenzie tells us, is 'a complex picture in which

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

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

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

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

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

I draw attention to this debate for two reasons. First, international and national policymakers are (re)discovering African custom, and seem to be doing so in a peculiar

way (see below). Second, the national discourse that dominates debates on land reform in Rwanda is a discourse inspired by the World Bank and the FAO.

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

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

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

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

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

What resulted was a perception that customary law was coherent, static and overly legal. In other words, distinct meanings in Western law were used to describe characteristics of customary *systems*. Customary law, as it emerged as a concept, was thought to be 'a different kind of primarily legal system carrying out many of the same functions as formal [Western] law' (Whitehead & Tsikata 2003: 75). It is that kind of perception that some influential policymakers and policy-making bodies are today rediscovering.

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In contrast to this overly legalistic approach to customary land tenure, anthropologists and historians acknowledge that many diverse practices exist regarding land and access to land. There is broad agreement that:

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

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

Another contested (analytical) issue is the strength of women’s claims to land. Many authors have reported that the way women access land is through marriage. Husbands devolve land to their wives for farming. This view is restrictive. Other authors argue that it is not the husband (an individual) we need to focus on but the husband’s kin group. It is from the latter:

that wives get land and it is this kin group that may in some circumstances protect her claims. Women often also retain some residual land claims in their own kin groups as well as frequently obtaining land by loan or gift from a wider circle of social ties. That women get land through many social relations bears emphasis because *some policy discussions assert that women get access to land as wives and go on to argue that their claims are weak because of this*. (Whitehead & Tsikata 2004: 78; emphasis added)

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

That said, it is very important that we should also bear in mind that land use has changed over time, especially with the introduction of new crops and forms of agriculture, and that change has resulted in increasing contestations between men and women. The weight of evidence suggests that economic changes, e.g., through privatization, have generally diminished women’s access to land (Whitehead & Tsikata 2003: 78). Whitehead & Tsikata explain that this ‘development’ has come about ‘because women suffer systematic disadvantages both in the market and in state-backed systems of property ownership, either because their opportunities to buy

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

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

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

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

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

To give an example of what is meant by the evolution of customary inheritance, I turn to how Agnes Quisumbing's counters the oft-heard complaint that Akan inheritance practice 'implies that wives do not have secure rights to their husbands' land in the

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case of death or divorce' (Quisumbing *et al*, 2001: 158). Her argument is that that situation is now changing:

Recently, [Akan] husbands have increasingly transferred land to their wives and children as a gift during their own lifetime if their wives and children, especially wives, have helped in planting [cocoa] trees. The individualization of land-tenure institutions was strengthened further by the Intestate Succession Law (ISL; PNDCL 111) in 1985, which provides for the following division of the farm: three-sixteenths to the surviving spouse, nine-sixteenths to the surviving children, one-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. (Quisumbing *et al*, 2001: 158)

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

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

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

### **Future research**

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

- The contemporary significance of 'custom' and 'customary law/systems';
- Competing discourses of landlessness;
- Memory and the boundaries (and meaning) of ancestral land;
- Group displacement and land conquest in relation to reconstructions of identity;
- Land as a resource of conflict;
- Unpacking 'customary rights' (focusing on 'rights' and struggles);
- Women's land claims;
- The mixing of 'customary' and 'statutory' law in land claims, possibly linked to identity claims.

### **3.1.7 Land tenure and conflicts in Burundi (Summary)**

*Lucy Nyamarushwa , Ligue ITEKA, Bujumbura, Burundi*

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

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

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

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

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

1. Unmarried or divorced females are continually harassed or ill treated by their brothers who don't want them to have access even to a small portion of land.

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Things often worsen after the parents' death because the brothers can definitely expropriate their sisters.

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

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

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

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

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

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

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

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Another crucial problem is that of people who have been exploiting public land under the systems of emphyteusis (contract granting possession of land for long period on certain conditions) and usufruct, in the Burundian land law the two systems can extend to 99 years. So a person who has been exploiting public land for such a long time and who doesn't know anything about this law, finally considers this land as a family land as it is even exploited through generations. Finally, when the government seeks to recover this land, even in the public interest, there is a "wrestling match".

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

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

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

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

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

For both refugees: of earlier times and the recent ones, they all find their lands occupied by others when they come back home. For refugees of the 'Nineties, things are not

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too complicated because if the local authorities are effective, they help them recover their lands; however some authorities are even involved in land alienation. There are regions then, where refugees of 1993 have not recovered their land yet and are then supported by friends or relatives (e.g. Kinundo province).

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

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

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

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

### **3.1.8 Human-centred environmental security in Africa (Summary)**

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Africa entered the 21<sup>st</sup> century facing a security and development crisis of immense proportions. It is the continent hardest hit by growing poverty and inequity - average life expectancy has declined from 50 to 46 since 1990 and in most of sub-Saharan Africa one in 10 children die before age five. It is threatened by the lack of access to resources: the loss of arable land, water scarcity, over-fishing, deforestation and loss of biodiversity present enormous challenges for sustainable development. War and violent conflict have resulted in massive displacement of people and diversion of financial resources away from vital sectors, posing a significant barrier to development. Peace is often fragile, making it difficult to apply the term "post-conflict" to many countries.

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

For many of Africa's peoples, the State has long since ceased to be the provider of security, physical or social. In fact, weak governmental institutions appear to be a more important cause on the causal pathway to conflict. The global environment has also reconfigured in a number of ways in the last 20 years: with globalisation the concentration and centralisation of power has grown, and with it the geographic spread and degree of insecurity.<sup>14</sup> It must not be forgotten that globalisation implies exclusion as much as it does inclusion. The world is facing a global environmental crisis, and, inseparable from this, a crisis of growing global inequality and growing poverty. These urgent and unprecedented environmental and social changes pose huge challenges and all the signs are there indicating a need for society's cross-sectoral attention to the environment as an underlying security issue.

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

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respond to the validity of this shift in security thinking, a paradigm shift that requires answers to the central questions of—*whose security, security from what, insecurity how?*

### **Environmental security**

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

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

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

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Implicit in these “greed or grievance” debates are that environmental factors can and should be integrated into traditional security affairs in so far as they threaten national interest. The issue then is not seen to be environmental degradation or scarcity *per se*, but the fact that it poses a security concern because of the potential for violence or conflict. This “*environment-and-security*” debate offers only a partial broadening of the security agenda: what is to be secured remains predominantly the survival of the state.<sup>15</sup> Such an approach is consistent with conventional notions of national security, which do not necessarily guarantee the security of individuals and communities.

In contrast to the statist approach is the argument for a more interdisciplinary and integrative approach that sees environmental security as a crucial component of the broader concept of “Human Security”— it identifies the individual and, by extension, the collectivity, as the referent object of security. It has not necessarily—brought clarity, precisely because of the elasticity arising from a broader concept of environmental security. The relationship between the environment and security is complex one in which many factors play a role: cause and effect of tensions and vulnerabilities are multi-dimensional, and the links between the various components may be direct or indirect. 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.”<sup>16</sup>

Examination of connections between environment and human security is based on three premises:

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

Two of the key factors that have contributed to tension and insecurity throughout the world are *poverty and inequity*. Environmental change has direct and often immediate effects on well-being and livelihoods. Insecurity often arises from conditions of inequality and impoverishment, such as is seen when political and economic power relations affect society-nature interconnections as evidenced by ‘resource capture’ and ‘ecological marginalisation’.

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*Scales.* The third premise is that environmental security problems must focus on the ecosystem level, not simply political boundaries. Creative solutions are called for. Furthermore, while the challenge of environment and security is principally a challenge at the domestic level, it is a challenge common to the region, as well as for advanced industrialised countries which carry much of the responsibility for global environmental change.

### ***The value of applying a Sustainable Livelihoods Framework as an analytical tool***

Assessing the nature of linkages between the environment and security is challenging because of the complexity of multiple interactions and feedbacks – the environment is background to tensions, sometimes a channel leading to tensions, and sometimes it triggers tensions. This has led to calls to look more closely at two main research shortcomings – the empirical and the theoretical - as much of the research, particularly as it relates to environmental change and conflicts - has been seen to be speculative.

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

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

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A major strength of the framework is that people are seen as dynamic actors, not as vulnerable and helpless victims, able to adapt to trends and cope with shocks. However, it is the (crucial) concepts of social and political capital,<sup>17</sup> of differentiation, applied in a livelihood framework that provides a nuanced understanding of the differences in power and voice, and the disparities in access and entitlement to resources that exist between households and individuals. It recognises that entitlements are affected by gender, and also that livelihood strategies do not necessarily entail a win-win scenario: the livelihood strategy of one household may bring positive results, but at the expense of another household.

Understanding the structures and processes of institutions, both formal and informal, is an important component of a livelihoods framework. The power relations that are embedded in these arrangements are critical to the social and political negotiation processes that determine access - restrictions and opportunities - to resources. In other words, the problem is not so much one of resource endowments or geography, but also a problem of institutions and governance. Inequitable access to resources, discriminatory pricing policies and lack of control are often more important than resource scarcity itself.

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

### **Conclusion**

The field of environmental security studies is still largely an emerging one. There are ambiguities, but this does not mean that we should not pay more attention to understanding environmental change and its relationship to human security. This is not an argument for a redefinition of international or national security, but for a greater appreciation of the nature of certain threats and of a more comprehensive approach to the politics of security. *The emphasis also needs to shift away from focusing on conflict as an outcome of resource scarcity, to the prevention of resource scarcity, and to be more concerned with social disruptions than with violent conflict as the principal sources of insecurity.* This calls for the urgent need for mitigation against

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the causes, and management of, environmental insecurities arising from threats such as degradation and climate change. Implicit in this is security of the environment, valuable in its own right and not merely as a set of risks, *and* as a crucial component of human security. Implicit in the term Human security is that it prioritizes achieving freedom from fear and freedom from want *urgently*. It also implies moving beyond a needs-based focus, to a rights-based focus.

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

Implicit in a concept of environmental security which does not prioritise national security and the issue of conflict above the needs of those who are most environmentally insecure is recognising the importance of environmental cooperation – that is of not overlooking the potential for trust, harmony and cooperation arising from the nexus of security and environmental issues. Focussing only on threats overlooks the environmentally related opportunities available to improve human security.<sup>18</sup> We need to “seize upon the opportunities presented by the environment, in recognition of its inherent value, and its deep connections to human beings, societies and economies.”<sup>19</sup> The future imperative of coping with uncertainty, complexity and change is all we can be sure of.

### **3.1.9 Oxfam and land in post-conflict situations in Africa (Summary)**

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

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Oxfam's approaches to land in post-conflict situations tend to be pragmatic responses to individual situations, highly dependent on local contexts. This paper focuses on 5 brief case studies of what Oxfam actually did in Zimbabwe, Mozambique, South Africa, Rwanda and Angola.

On Zimbabwe, the Oxfam Land Advisor's review of the first decade of land reform was highly critical of the Zimbabwean Government, for only paying serious attention to land issues when there was an election to be won, and of the British Government, for seeking to constrain any radical redistribution of land. The article concluded by warning that Namibia and South Africa would be next in line for such constraining treatment.

In Mozambique, Oxfam International lent its support to lobbying for a progressive land law, and then campaigning to spread awareness of its existence and what communities needed to do in order to claim those rights. There emerged a quite remarkably open and consultative process of law making, culminating in the 1997 Land Law (*Lei de Terras*) which was followed by an equally remarkable campaign of public awareness (*Campanha Terra*) to help people understand their new rights under that law, supported by a range of international NGOs including Oxfam.

When apartheid was finally overthrown, most donors poured money into the new South African government, as there was an assumption (which proved false) that, by contrast to its neighbours, the local NGO sector was very strong and so needed little support. Oxfam withdrew its funding from land sector NGOs and played no part in supporting the new, highly ambitious land reform programme, except at a very local level in Kwa-Zulu Natal. The recent emergence of a Landless Peoples Movement (LPM), drawing some of its inspiration from Brazil's MST, renowned for its land occupations, and from Robert Mugabe's 'fast track' seizure of farms in Zimbabwe, may indicate the dangers of leaving redistribution to the mercy of market forces.

In Rwanda, Oxfam got engaged for the initial few years after 1994, with particular emphasis on the new government's villagisation policy, and supported activities by a Rwandan NGO, RISD. Soon after this Oxfam withdrew from national land issues to engage in conflict management and peace building work at a local level. However, Oxfam urged DFID spend some money to provide much needed technical support to

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MINITERE, which they did. This was both a highly intelligent use of technical assistance and useful exposure to other post-conflict situations.

In Angola, with Oxfam International support and encouragement a land network, *Rede Terra*, has taken shape and over the past two years has sought to engage with government and donors in order to try to introduce some checks and balances in favour of the poor.

Rede Terra and Oxfam International have apparently won some concessions, with the draft land law presented in December 2003 showing considerable improvements on earlier versions, including recognition of and partial protection of the traditional rights of rural communities. The extent that the law will either be enforceable or seriously address growing land conflicts in both urban and rural areas must remain seriously in doubt. But a serious attempt has been made to consult with communities and to persuade the Angolan Government to take a long term perspective and avoid sowing the seeds of future conflict

In conclusion, there is no Oxfam strategy as such in dealing with land in post-conflict situations, but there are a number of common themes:

- *The need to do everything you can, at all possible levels, to cement the peace.*
- *The need to be – and to be seen to be – even-handed.*
- *The need to adopt a pro-poor, long-term perspective on land issues.*
- *The need to build capacity within civil society.*
- *The need for awareness campaigns to help make women and men become aware of what rights they already have or may be about to acquire.*
- *The need to build capacity within government policy making and planning.*
- *The need, in politically sensitive environments, to work at creating space in which land issues, which are always highly emotive, can be discussed.*
- *Last, individuals really can make a difference.*

## **4.0 Group discussion reports**

### **4.1 (Customary) Land Tenure Under Situations of Land Scarcity and Commoditization<sup>20</sup>**

#### **Is customary land tenure about rights?**

- Customary law is a pre-colonial system of land governance, which was not abolished, but changed and was influenced by colonialism; it provides a set of rights and procedures for dealing with matters such as disputes
- In some contexts, customary law is not pre-colonial, but an evolution over time that doesn't have much to do with colonialism; customary power structures are not based (necessarily) on distribution of land, but may involve e.g., raising taxes, paying tribute, etc.; the content of customary law has changed over time depending on the context
- Customary law is a system for management of people's use and access to land; it is not the idea of property rights in the modern sense; land did change hands and people did account for others' uses of the land; e.g., pastoralists and cultivators; it was a management system related to social groups; i.e., it is not individually oriented; not a fixed/rigid system, but rather fluid and dynamic; it can accommodate later events, including colonialism and indirect rule; administrative units combined with units related to land because of the need to manage conflicts related to land, but there was no official movement or shift in tradition
- **DR. Congo** – power to allocate land is vested in the customary chief who is the chief of the collectivité, which is the administrative nucleus of the national administration; his power is entrenched in the constitution; however, the law also says that all land belongs to the government and does not except the collectivité, therefore people at higher levels of government take advantage of the law to allocate land within the collectivité; there is a tension between the law which says that the land belongs to the government whereas the local chief still has power to allocate land within his jurisdiction; the creation of a land commission would ensure that these issues are clear.

**How does custom change when leaders are compromised by conflict?  
Who safeguards custom when legitimate leaders are no longer  
legitimate?**

- **DR Congo:** the involvement of the customary chiefs may have prevented conflict by resisting allocation at higher levels; politicians intervened for their own interests and the customary chiefs today are not legitimate; the real hereditary family of the chief is forced out of the village; customary chiefs who resist allocations can be arrested or armed groups may intervene; they have tried to control the customary systems in place; they did not want to create new systems; but they cannot control (the customary systems) from outside; identity is based on knowing who you are, where you are; there is still a parallel structure/leadership which is in power returning and clarifying the constitutional power of the customary chiefs would solve the problem
- **Angola:** Traditional chiefs are nominated by the government, but there can be a parallel chief at the local level and a real chief protected by secret/no one knows to which family he belongs

**What is the future of customary law? Should it be retained? Does it  
contribute to human security or detract from it?**

- Customary law is not just about allocation of land, but also mediation in conflict and dealing with community issues
- When people make claims under customary law they make claims simultaneously to “what is remembered” (customary law) and to written/statutory law; often people resort to statutory law when they do not get the desired outcome at the traditional level
- Customary system refers to social groups; the customary chief is recognized by those who are beneath him; however, there may be situations where the customary chief represents a minority of the population (e.g., where the majority is migrant); which law applies?
- It is possible to have multiple customary systems in one country; e.g., **Northwest Rwanda:** *Ingikingi* system (grazing land) was abolished in, but *Ubukonde* (agricultural land) system continued; under both systems land passes through inheritance from father to son, but there was a difference in the power of the chief to allocate land

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- Some customary law may not be friendly to women (E. Congo); however, there may be systems; e.g., matrilineal system in some regions (W. Congo), which may be more friendly to women
- **Rwanda:** traditional chiefs no longer exist; administration is through the mayors/bourgemestres and passes through written law; the land tenure system is one in which people own land through inheritance; there is a need to combine written law with a process of decentralization; recognize the role of mayors; where there are chiefs (as in DR Congo), it is possible to entrench their power in the new law through decentralization
- **Eritrea/Ethiopian Highlands:** The Dergue wanted to destroy the customary system, but it continues to exist; in Eritrea there were two systems of customary land tenure under the first system women could not own land unless the husband died and they had no other source of income; under the second system women had right of land ownership; however these rights were not automatic; i.e., women had to claim their right and it was decided by “wisemen” who were involved in conflict/dispute resolution; traditional courts exist and government has empowered them indirectly by referring cases/disputes to them
- Limits of customary systems: integrating diversity of structures/systems into a single body of law; prevent migration when there is population pressure because migrants cannot claim rights as “foreigners” (e.g., E. Congo, problem of migration)

How can multiple rights of multiple users, especially women, be protected?

- Through a participatory system; e.g., where the chief is a member of the local land commission; i.e., representative
- Problem of writing/rewriting statutory law where women are left out
- The government can legislate, but it will not work unless the local chiefs are convinced about the rights of women e.g., **Uganda:** good law, but no awareness; **Eritrea:** at the rural level, the government has *promulgated*, but there was awareness-raising at the local level for women to inherit; i.e., *implementation* through the community structure; **Rwanda:** women are able to inherit land by law, but the law also prohibits subdivision of land into parcels smaller than one hectare, therefore practically, women may not inherit (i.e., where there are many children)

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- Need to constitutionally entrench (rights); educate women; where custom is strong, insist that customary chiefs are not above the law and limit their power; increase level of education of the chiefs
- Is individual title the only solution? – group registration e.g., through families; consolidation; protection against those who challenge the situation

Is land concentration and sale by the poor inevitable?

- **Eritrea/Ethiopian Highlands:** in the rural areas, entitled to own land, but cannot sell it; assistance is provided within the community; those whose income depends in the urban areas cannot own farmland in the rural areas
- **Rwanda:** people are allowed to sell land, but the entire family has to consent (to avoid speculation); i.e., wife and children above 18 years; there are procedures at the district level (district land officer and land commission) to investigate and verify that there is consent
- **DR Congo:** government forces people to sell their land for urbanization; e.g., may be required to sell if they cannot fulfill building requirements (zoning)

What is the most appropriate system to achieve tenure security in rural areas (e.g., deeds, titles, other forms of registration)?

- Need to define tenure security; e.g., registration/title versus security from conflict
- Forced migration and displacement changes the equation; registration changes the character of land (i.e., it becomes freehold)
- Need to go beyond the registration paradigm; intermediate adaptations may allow people to invest at the local level without disenfranchising other groups
- There may be different preferences and circumstances depending on the context; e.g., pastoral (communal preference) v. agrarian systems (individual preference); Rural or “peasant” (unregistered) versus modern “investment” or “urban” (registered)
- Even within communal systems there is a need to recognize borders/markings; however, traditional markings are not included in the government system, therefore someone in the city can allocate pastoral land; there is a need to identify so-called “vacant” land; sale of communal land may be prohibited, but registration allows

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for investment purposes (i.e., beyond micro-credit) and identification (i.e., memory can fade)

- **Sudan:** customary land is not considered “registered” but is recognized by people in the community; ethnic conflict can arise between cultivators and pastoralists who use the same land; registration alters migration patterns and also gives absolute rights to one group; however there is also low investment capacity for unregistered land; i.e., vertical development and infrastructure

### Final Comments

- There is a need for responsible and forward-looking leadership to manage land for present and future generations
- Provide means for people to develop what has been allocated to them

Some were: Against sale of communal land in principle because the state of the economy is such that people would be impoverished, but it is important to give security through registration and inputs (investment)

Others posited a *‘Neoliberal response’* – subdivision may achieve the same result; off-farm livelihoods require collateral, therefore some may have to sell the land to invest outside and escape rural poverty trap

: instead of pressurizing people to sell land, government can assist with development

In–**Angola** there was a consultation process for the new land law. Only in 2 zones did people support communal land and for the community authority negotiating/dealing on their behalf; the majority believed they owned the land and came long before the state; but the law was the reverse (i.e., not representative of a majority of views)

In **Eritrea**, in the rural areas government has recognized that it will not touch the land because a lot of people will sell if they are pressurized, but they cannot survive in the urban areas; different scenario in peri-urban areas; registration (security) and investment needed; on fragmentation, family members leave (rural areas) and land is consolidated by those who remain; you lose your rights when you leave.

## **4.2 Land Policy Reform in Post-Conflict Contexts**

1. When is a post conflict 'ready' for land reform or development of a land policy?  
What are the criteria to judge 'readiness'?
- land reform is necessary when there are large numbers of people displaced by conflict
  - land reform should be promoted when there is a legal and regulatory vacuum.
  - Where policies exclude some members of societies, land reform should be used to promote participation
  - When there is immense pressure of people wanting their land after war e.g. in Burundi.
  - When the supply of land mismatches the demand-land reform is necessary to address land scarcity
  - Rampant poverty among people who depend on land, there should be reform by which access to land will improve access to social services like education.
  - Land reform should be sequenced after restoring security in a country and disarming groups that threaten security
  - The legitimacy to undertake reform should be clarified by promoting an inclusive dialogue especially where warring factions still want to control vital resources
  - Populations' movements should be minimized before land reform
  - Institutions should be set up and alignment of different groups should precede reforms
  - Where land was part of the conflict, reform should come as early as possible
  - Stabilization of the country should factor in land reform
  - Land reform is necessary where existing laws are irrelevant to post-conflict situations or a lot of corruption and fraudulent practices surround land titles and transactions
  - Land reform should be contextual. It should be timed according to situations obtaining in a country e.g. security is an important prerequisite in DRC
  - Land reform should be sequenced after rehabilitation of infrastructure, capacity building, information gathering and policy analysis

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2. What are the appropriate rules for the international community in supporting that process?

- Should offer technical support
- Assist in promoting the exchange of information with other groups in other countries
- Advice on how to engage government
- IC has the responsibility to understand the situations and root causes
- Refrain from influencing the process e.g. Burundi, DRC, Angola
- Offer financial support
- Should give budgetary support where there is lack of resources e.g. Somali
- Can assist in research and capacity building
- Facilitate the inclusion of other stakeholders in the process especially the civil society.

3. What mechanisms can be put in place to manage relations between civil society and government relations?

- A forum for dialogue should be put in place
- Identification and definition of civil society is necessary to remove the ambiguity of what is anti-society
- yard sticks of cooperation should be government devised
- civil society should organize itself to be able to deal with government
- platforms which civil society will operate should be built
- Capacity should be mobilized at all levels including all elements of civil society to strengthen the 'watchdog' function of civil society.
- Monitoring and evaluation is important and tool kits have to be assembled
- Civil society should clean itself if it were involved in conflict such as genocide

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- Mechanisms to show that civil society is not an enemy or spy are important-civil society needs to demonstrate that they have the capacity to advise governments
- Alternative space for dialogue should be created for the civil society.

### **4.3 Mechanisms for Management of Land-Related Disputes<sup>21</sup>**

#### Building capacities of dispute settlement mechanisms

- There is a need for concrete examples of dispute settlement mechanisms and the extent to which they are productive as well as reflections on experiences
- **Tanzania:** system of (formal) courts beginning with ward tribunals, primary, district, high court and court of appeals; informal mechanism where traditional leadership is strong; process can take up to three years and there is a backlog of cases; recent legislation created specialized court for land matters, but it is recently established and there are no concrete examples; need to build capacity of the judiciary to deal with cases otherwise they lose legitimacy
- **Zimbabwe:** accessibility is a problem; courts are at the provincial level; it is rare that people bring disputes to the court; legal representation (i.e., lawyers) is also a problem; people rely on traditional leaders/village heads; inheritance is often a family affair and there is no reporting to village/head chief or follow-up on legal issues; women may be evicted after husband's death
- **Rwanda:** four levels of dispute resolution (not in hierarchical order): (1) courts; (2) ombudsman's office; council of districts; (4) ministerial commission, including ministries of land, local administration, agriculture and internal affairs; courts do not function properly; ombudsman's office is more efficient, but centralized (i.e., in Kigali) with no representatives at the local level; also lacks capacity; there was legal reform, but there is a backlog of land-related and genocide cases; *Gacaca courts* seemed to be effective and have been revived, but mainly for genocide cases; could include land cases but women would not go, only men; new gacacas have elected women and need to include them more
- **Tanzania:** traditional courts do not address conflicts related to *registered* land; both judicial and informal mechanism; land disputes at the community level v. individual level

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### **Political interference in judicial mechanisms**

- **Uganda/Kenya:** political interference with the judiciary and weak judiciary; e.g., Karamoja v. Teso case studies where politicians took over the matter and enacted by-laws restricting access by one group to disputed land
- **DR Congo:** judiciary has aggravated the conflict because of corruption; need for capacity building at two levels: (1) judicial reform including hiring new judges and magistrates; salaries and incentives to control corruption; (2) capacity-building in the rural areas; e.g., literacy levels of litigants and assisting traditional courts to do their work, including training of judges (on procedural matters as well as equitable justice)

### **Role of civil society in dispute settlement mechanisms**

- Need to classify NGOs and clarify roles (1) advocacy in community conflicts; e.g., pastoralists v. cultivators; (2) community hearing groups; NGOs may help to coordinate and promote understanding (e.g., in pastoral communities), but meddling may be harmful (e.g., in agricultural communities)
- **Kenya/Uganda:** National Land Alliance plays a role in advocacy as well as alternative to politicians
- **Sudan:** customary courts presided over by a chief as well as community hearing groups that can sit without the chief's presence
- **Angola:** associations (CBOs) that are "self-representing" mechanisms; e.g., when there is conflict between the community and an outside interest, where the groups are developed and well-managed, they can stop the conflict; they have the ability to negotiate because they are united; they also have previous experience with NGOs e.g., setting up and capacity-building

### Simultaneous and confusing dispute settlement mechanisms

- Addressing weaknesses of customary system of law and differing results in various forums
- **Somalia/Sudan:** land commission needs to go to the field and engage in process of consultation (recommendations at Mbagathi are not the same as what is on the ground)

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- **Kenya:** registered and unregistered land cases may be dealt with differently; e.g., women are not encouraged to inherit land and traditional leaders may disinherit whereas courts recognize women's right to inherit
- **Rwanda:** ombudsman's office resolves contradictions (including authority to nullify judicially decided cases); set up to resolve injustice, not just land issues; fight against corruption in the justice system v. **Kenya** where the decision of the court prevails; reflection of weaknesses in resolving conflicts; lack of effective mechanisms for dispute resolution at the local level (including advocacy by civil society); local leadership perceived to be the culprit in land disputes where in fact it should mediate; increased prevalence of land-related cases (80-90% of ombudsman's cases)

### **Contradictions, challenges and inhibitions of different dispute settlement mechanisms**

- The law must be clear; instead of simply referring cases to the customary courts, lawmakers should legislate and give guidance on how cases should be handled/ manage disputes
- NGOs can help at the grassroots level with sensitization; i.e., where to go and who to go to with disputes

### **Legitimacy of dispute resolution mechanism in post-conflict contexts**

- Legitimacy is not just a question of legality
- Systems may be imposed; communities may not take cases to the dispute settlement mechanism
- Institutions may be directly created by political parties (i.e., partisan) There is a need to depoliticize local level institutions
- **Uganda:** CBOs wanted a regional umbrella to partner/mediate with NGOs, governments; etc., organizing people at the regional and national level; i.e., set of representatives organized by the community and able to speak on their behalf.

**Recommendations for legal and policy frameworks for effective dispute settlement mechanisms**

- **Somalia:** (1) need to resolve political instability; (2) need to establish independent land commission with access to records and field research to compare notes and find out what is happening on the ground; (3) need to harmonize legislation (combination of Islamic/Sheria Law and Code); need coordination among different types/mediums of conflict resolution; e.g., joint committees and clear appeal process/hierarchy; participation and consultation with communities; i.e., experts' views may differ from views/expectations of community
- **Rwanda:** intermediate level dispute resolution mechanism (Abunzi)
  - instituted through the constitution and elected by the local people at the sector level; mandated to deal with land issues
- Need for land *policy* before land *law* (see e.g., Uganda and Sudan)
- **DR Congo:** law exists but there is no presidential decision to give guidance on how the law will be applied; land commission needed to discuss contradictions in allocation of land and resolution of disputes
- **Kenya:** Ndungu Report suggests abolishing unilateral allocation by the president
- **DR Congo:** bad leadership, bad governance and corruption; government in power is not in control of the entire country; how to manage conflict in the region not governed
- Poverty in local leadership and regional interference; international interference
- Implementation of recommendations

**4.4 Off-farm Livelihoods and Technological Innovation**

Definition: Off-farm is a peasant, who might work as an employee in another farm or related activity.

Non-farm activity"– jobs outside farming not as technician. Non farm needs skills/capacity.

So the distinction from both activities has to be made. We should not concentrate exclusively on crop/animal production. Do subsidiary activities such as delivery,

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processing, services etc. More effort should be put in marketing and agricultural production. Malaysia was used as an example. In the 1960s 80% were dependent on farm activities yet 20% are now. Allotment of land was given to investors/multi-nationals to produce IT/rubber etc. They are a number of countries importing labour, from India etc.

- This can only be achieved through education/technical education. Unfortunately the worst students go for technical education. Expansion of technical education, which is the best gateway to social development.
- “Can we harmonize it with other policies such as land reform”? Is it within the mandate of land reform?
- Some participants a bit worried about the concept that Agrarian development is not working. All nations have passed through it. Technological development is not necessarily perfect as there is a lot of poverty even in the USA. In the centre of our efforts we need to put people in the front. In Malaysia people do not have freedom and work as slaves.
- The HIV issue has been forgotten in the meeting. People assume that all is well and when an endemic occurs most people will die and children will have no parents. So what is land reform? Land reform alone cannot exist without being dynamic and interfacing with health, agriculture etc/other sectors. So it should not be static and needs a human face.
- We have also to take into consideration non-farm activities to get/give services to the farmers such as technicians, builders, small alternative/appropriate tools technology
- We need to think in terms of short term and long term. We cannot forget about technology. In Malaysia are the people working so hard to share resources equitably or not?
- We cannot talk about technology without education. PSPR also has to be included in the equation.
- There is need for economic cooperation to improve the function of regional markets
- Africa needs to develop integrated development, planning, democratization and security assurance
- Also to revive high speed urbanization, need to have decentralized economic development and women should not be missed in this technological development. Women might be marginalized.
- Education should target low-level income groups/communities.

## **4.5 Migration, Citizenship and Land Access**

Due to pressures of time, discussion of this vast topic was brief. Participants noted that:

Improved regional links, including movement of labour, is one of the ways for the Great Lakes countries to avoid land-related conflicts. The issue has already been discussed in some diplomatic fora, including within the United Nations system. For example, it has been noted that in Western Tanzania land is relatively abundant and it has been suggested that some could be made available for cultivation by farmers originating in neighbouring countries.

However, borders have rarely been made sufficiently open through appropriate arrangements and policies. According to participants, 'xenophobia' has been noted in a number of countries not just in the Great Lakes but elsewhere in Africa and indeed in Europe.

Reference was made to problems stemming from the drawing of borders by colonial powers during the Berlin Conference, particularly in the case of the DRC which was left with a complex situation.

It was noted that in Angola, on the contrary, there are few challenges related to issues of nationality despite the presence of many people from other countries (e.g. Namibia and the DRC)

Due to the tendency for unscrupulous actors to politicize ethnic and citizenship issues for political gain, participants identified political stability as a key foundation for effective progress. African States must respect each other's borders, create a climate of trust between them selves in order to move towards regional solutions. The Economic Community of the Great Lakes Countries (CEPGL) has failed to be effective because of lack of political will and trust. Political stability and maturity is also a prerequisite for developing domestic laws which match relevant international legal principles and laws on human rights.

There is hope: it was remembered that the current system of free movement within Europe was virtually unthinkable in previous years. Diplomatic and other problems were overcome within the last twenty years in order to make labour movement within the European Union a reality.

## **5.0 Conclusions**

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A final plenary session was held to discuss gaps on the existing knowledge, and ways in which the problems identified and debated in the conference may best be addressed.

Mr. Chris Huggins of ACTS noted that it was difficult to effectively summarize two day's worth of ideas, but he did identify some of the key issues arising from the conference discussions as follows:

Issues:

- Most presenters identified legal and policy means to addressing land-related conflicts. Because every conflict is different, legal and policy instruments will also differ. There are no uniform country solutions. While necessary, good laws and policies are not sufficient. Participants noted the historical, socio-cultural, and cross-border nature of conflicts. Sustained multi-sectoral approaches are needed.
- Customary land tenure systems dominate in most parts of rural Africa, but we rely heavily on dated anthropological accounts of these systems in order to understand them. Are we generalizing too much about the nature of customary laws? How much do we really know about the realities of contemporary customary land tenure?
- Many of the participants have emphasized the importance of off-farm livelihood options and technological advancement. An example of a 'success story' of economic transformation was Malaysia. However, others were skeptical of the relevance to Africa of such examples, and also concerned with the negative effects of urbanization and 'social engineering' which may be associated with such change. The key question is whether land-based (generally agrarian) development is working in Africa.

Possible ways forward and institutional links:

- The Blair Commission for Africa, as mentioned during a presentation and ongoing at the time of the conference.
- The UN/AU Conference on the Great Lakes Region

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- even if it may not deliver on all of its ambitious aims, it is opening the way for dialogue and action on the links between the environment and conflict.
- Moves are underway within UN-Habitat and UNHCR to emphasize the importance of housing, land and property rights in post-conflict situations, and UN personnel are eager to link up with organisations such as those present. There are also efforts to develop various decision-making and planning tools on land issues, though these have not yet been adapted to suit African realities. It is important that the UN and other major organisations benefit from the experiences of those present in order to enhance their approaches.
- The Pan-African Programme on Land and Resource Rights (PAPLRR) is currently coordinated by ACTS, and provides a platform for information exchange and dissemination. Perhaps some participants may be interested in learning more about it.<sup>22</sup>

Following Mr. Huggins' suggestions, various participants from a range of countries made contributions. Several of them emphasized the need for more opportunities such as that represented by the conference, to meet other land, development and conflict specialists from the region in order to network and learn. Participants added the following specific comments:

- People are exposed to HIV/AIDS due to poverty, as a result of conflict. This issue needs more attention and research.
- There is good-quality research going on in Africa, but which is not widely recognized, due to constraints of funding, language, and institutional linkages, particularly in conflict-affected areas. Mechanisms for exchanging ideas are important so that information is disseminated to all the countries in question, and to the wider international community.
- There are many resettlement and 'villagisation' schemes in the region and therefore we need to produce a study on these issues. How can we expand discourse on land issues to incorporate issues like resettlement and repatriation?
- Land has more importance rather than its productive capacity. Other things have to be resolved not only through land reforms but also through political reforms – good governance is the key.
- ACTS work, which is based on 'scientific' approaches, is offering good policy recommendations. In order to ensure that these recommendations are

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implemented, they should work with organizations on the ground, and also influence larger organizations such as Oxfam GB [which was represented at the conference].

- ACTS has expanded their work from the national to regional level, and so other institutions should do the same. Due to processes such as migration, population displacement and globalization, land issues cannot solely be seen from a national perspective.
- We need to further examine the land issues arising in on-going peace processes, such as those being negotiated in Kenya (e.g. Sudan and Somalia peace talks)
- The land rights of IDPs are a major issue in Africa. At the international level there are some laws and guidelines to address the issue, but they are not always applied. Dissemination of such guidelines is important – e.g. in the case of DRC—there are also documents in Kiswahili. We should see how to apply international law to solve this problem once and for all so that it does not spread into the entire continent.
- Governments should adopt what was presented in this conference and sensitize other institutions on possible ways forward.

The Closing Address was delivered by Prof. Goran Hyden, a member of ACTS Governing Council and an authority on governance issues in East Africa and elsewhere. Prof. Hyden, who had attended much of the meeting, noted that the multi-disciplinary approach and the regional nature of the discussions enabled land issues to be seen within a broad context. This which is important, he emphasized, as land is at heart a governance issue, a political issue, as well as an economic and social issue. Prof. Hyden also praised the quality of the research and presentations made. He finished by making an observation of the role of a key crop – bananas— in the demographic and political formation of several areas within the Great Lakes region, including Rwanda, Burundi, and parts of Uganda. The success of the banana as a staple which can provide multiple crops per year, prevented out-migration from these fertile areas and may even have encouraged in-migration. It is perhaps ironic, he noted, that the areas of the old 'banana kingdoms' are perhaps victims of their own success – the current land pressure stems from the success of agriculture in the past. This example illustrates the need to analyze livelihood systems in order to fully understand the somewhat paradoxical challenges faced today.

## **Notes**

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1. This question was added in response to comments received during the course of the conference, and hence sub-questions were not formulated.
2. United Nations (1998). Report of the Secretary-General: The causes of conflict and the promotion of durable peace and sustainable development in Africa. Report to the Security Council. New York
3. World Bank (2002) Proceedings of a Regional Workshop on Land Issues in Africa, Kampala, Uganda: April 29 - May 2, 2002
4. See e.g. OECD (2001) The DAC Guidelines: Helping Prevent Violent Conflict . OECD, Paris; Lewis, D. (2004) Challenges to Sustainable Peace: Land Disputes Following Conflict. Paper presented at Symposium on land Administration in Post-Conflict Areas, April 29-30, 2004. Geneva; Thompson, N. (2003) Access to Land in Post-Conflict Situations: an Analytical Paper. FAO, Rome
5. This was the conclusion reached at the UNHCR/UN-HABITAT Expert Roundtable Meeting on Housing, Land and Property Rights in Post-Conflict Societies: proposals for their Integration into UN Policy and Operational Frameworks, held in Geneva in November 2004.
6. See for example Van Acker, F. and Vlassenroot, K., (2001) Youth and Conflict in Kivu: Komona Clair, in: Journal of Humanitarian Assistance, 2001.
7. See e.g. Pons-Vignon, N. and Lecomte, H.S. (2004) Land, Violent Conflict and Development. OECD Working Paper No. 233 8 Moyo, S. (2003) The Land Question in Africa: Research Perspectives and Questions. Paper presented at Codesria Conferences on Land Reform, the Agrarian Question and Nationalism (Gaborone, October 2003/Dakar December 2003)
9. Juma, C. and Ojwang, J.B. (eds) (1996) In Land we Trust: Environment, Private Property and Constitutional Change. Initiatives Publishers, Nairobi/ Zed Books, London.
10. Interview with Qassim Bursaliid, November 2004.
11. To paraphrase Jon Unruh. See Unruh, J. "Land and Property Rights in the Peace Process" at [http://www.beyondintractability.org/m/Land\\_tenure.jsp](http://www.beyondintractability.org/m/Land_tenure.jsp)
12. See The World Bank and The Carter Center (WBCC), From Civil War to Civil Society: the Transition from War to Peace in Guatemala and Liberia (Atlanta: the World Bank and The Carter Center, 1997).
13. According to Utete Report (2003), around 11million hectares of land has been redistributed to some 135 000 smallholder and commercial farms.
14. J. Barnett, The Meaning of Environmental Security: Ecological Politics and Policy in the New Security Era, Zed Books, 2001, p. 122.

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15. Elliot, L., 1998: *The Global Politics of the Environment*, Macmillan Press Ltd, London, p.231.
16. Lubchenco, J, *Entering the Century of the Environment: A New Social Contract for Science in Science*, Vol. 279, 23 January 1998, p. 491.
17. Social capital looks at the social entitlements of an individual– the potential and actual resources associated with networks and relations that an individual can mobilise for his or her benefit. It cannot be assumed to always be something positive per se. Political capital determines the access to and influence on larger institutions in society, of how individuals are able to capture resources and political advantages through patronage networks. Ref: B. Korf, *Ethnicised entitlements in land tenure of protracted conflicts: The case of Sri Lanka*, 9th Biennial IASCP Conference on “The commons in an age of globalisation”, June 2002.”
18. Khagram, S., Clark, W.C., and Raad, D.F. *From the Environment and Human Security to Sustainable Security and Development*”, *Journal of Human Development*, vol. 4, No. 2, July 2003.
19. Khagram, S., Clark, W.C., and Raad, D.F. *From the Environment and Human Security to Sustainable Security and Development*”, *Journal of Human Development*, vol. 4, No. 2, July 2003.
20. Special thanks to the Chairperson: Prof. Johan Pottier; and Rapporteur: Ms. Wakio Seaforth
21. Special thanks to Mr. Vincent Shauri (Chairperson); Ms. Wakio Seaforth (Rapporteur)
22. See <http://www.acts.or.ke/paplr/index.htm>.

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