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Introduction: land and property problems in peacebuilding

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Land and its associated real estate often cause serious disputes in war-torn societies. In Burundi, Hutu refugees returning to their home villages after a thirty-year absence saw that their family lands had been occupied by migrants from other regions. In post-war Bosnia and Herzegovina, property rights became a major source of social conflict, as these had often been appropriated by the time the original rights-holders returned. While problems with land and real estate exist in any society, they tend to be markedly exacerbated in conflict-affected situations, characterised by unstable security, weak governance and loss of proper documentation, as well as the presence of large numbers of refugees and internally displaced persons (IDPs). Such problems with the basic requirements for living, if not properly addressed, may destabilise the fragile political order and hinder the return to peace. Tackling these problems should therefore be regarded as an important challenge in consolidating peace. This book refers to these issues as 'land and property problems', and explores the realities on the ground in order to suggest the

appropriate measures that can be taken to ensure peace.

This book has three main objectives. First, it attempts to analyse the nature of land and property problems in conflict-affected countries through an in-depth examination of eight case studies (Bosnia and Herzegovina, Burundi, Cambodia, Colombia, Rwanda, South Sudan, Timor-Leste and Uganda). While there is a considerable range of variation in the nature of the problems, each chapter, written by an area specialist, clarifies their characteristics in terms of causes, actors and patterns. Secondly, the book tries to elucidate the policy measures that have been implemented in order to tackle land and property problems. In many conflict-affected countries, land and property problems are not a new challenge, and a number of measures have already been implemented not only by governments but also by the international community and civil society. Some of these have been effective and some have not. In the following chapters, typical responses will be presented and analysed. Thirdly, based on analyses of the nature of land and property problems and the policy measures used to address them, we will examine the lessons learned and desirable measures for consolidating peace.

In this introduction, I begin by clarifying the perspective of this book and its importance

as well as uniqueness. In the next section, I will offer a definition of land and property problems in order to elucidate the target of our analyses. Next, the necessity of analysing land and property problems in the context of peacebuilding is explored. Here, the close relationship between land and property, statebuilding and peacebuilding is highlighted. Then I provide some background information to the case studies. First, the main reasons for land and property problems in conflict-affected settings are illuminated, and the necessity of analysing both factors directly connected to armed conflict and those not directly connected will be stressed. Secondly, major policy interventions to alleviate these problems are examined. Finally, a brief summary of each chapter will be presented.

Land and property problems in peacebuilding

The notion of the 'land and property problem' has a wide scope. Conceptually, property refers to the 'relationship between and among persons with regard to things' (Moore 1998: 33). In the real world, this means any physical or intangible entity that is owned by an individual or a group, such as a community or state. The owner has a bundle of rights, which are generally protected by political authorities – typically the state – so that he or she can derive benefit or income from the entity. Land is one such property. From the perspective of this book, land is particularly important. Land is indispensable to people's

survival, whether in urban or rural settings. It is not only the most basic means of making a livelihood, but also a critical resource in politics as well as a social basis for identity formation. Land is of cardinal importance in developing countries, where a huge number of people depend directly on land for their everyday life in agriculture and cattle raising; and it is mostly in such developing countries that serious armed conflicts have broken out and efforts towards peacebuilding have been made. Our use of the term 'land and property' should not be understood as a simple juxtaposition. Rather, it is intended to emphasise the importance of land.[1] Our focus on *land* and property is based on the conviction that everyday security for ordinary people is crucial for the establishment of durable peace.

In the context of violent conflicts, the most visible 'land and property problem' may be sharp disagreements over competing rights to property, such as those between returnees and secondary occupants. Some of these visible conflicts may be brought before conflict resolution mechanisms, including courts. However, behind the visible, recordable and often violent conflicts over land and property, a huge number of tensions exist between persons and/or groups. These tensions may not be palpable, since they are not necessarily brought before the courts and may only be expressed through verbal complaints or impatient grumblings. Yet this kind of discontent may be mobilised by some trigger and

result in eruptions of violence. We call the visible and recordable tension 'conflict', while the term 'dispute' will be used for discontent that may not be clearly expressed, though the distinction between the two is often blurred.

Land and property problems are not necessarily confined to inter-human or inter-group tensions. Insecurity of property rights may also be caused and aggravated by the lack of capacity and/or willingness of the state. Recognition and protection on the part of political authorities are indispensable for the effective exercise of property rights. When the value of property rights is critically high, as with land and housing, the political authority protecting these rights needs to have the status and power to assume its responsibilities. In today's world, it is typically the sovereign state that endorses and protects land and property rights, but other customary authorities, including local communities and extended families, also often play an important role. However, such endorsement and protection are severely undermined in the case of state dysfunction, which has often been observed in developing countries and is exacerbated by armed conflict. In addition, there can be excessive disparity in property ownership. It is well known that great inequality in land holding in Latin American countries has constituted a major cause of armed conflicts. In short, the scope of analysis needs to be sufficiently broad to understand the whole

picture of land and property problems which threaten peace.

Activities for consolidating peace are called 'peacebuilding'. This is a relatively new concept that has developed since the 1990s (UN 1992). Peacebuilding is not simply the absence of war. We understand the concept as 'activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war' (UN 2000: para. 13). From this perspective, peacebuilding should be regarded as a long-term process that accompanies substantial social transformation, largely overlapping with long-term social changes for a positive peace, which refers not only to the absence of physical violence but also of structural violence (Galtung 1969). Although positive peace per se is a difficult objective to achieve, efforts to curb structural violence are indispensable in preventing the recurrence of war.

Dealing with land and property problems is one of the crucial elements in peacebuilding. The main reasons for this are threefold. First, land and property problems have a significant influence on the lives of huge numbers of people. Considering the enormous impact that these problems have, they should be given high priority among the policy

measures taken for peacebuilding. Secondly, the causal relationship between an armed conflict and property problems is two-way and interactive. While an armed conflict can lead to significant land and property problems, it has often been observed that land and property problems have been behind large-scale violence, even if they are not direct causal factors (Homer-Dixon 1999).[2] Ignoring the problems, therefore, can endanger the fragile peace of war-torn societies. Thirdly, dealing with such problems is important as it contributes to social change for durable peace. Such policy measures as ensuring property rights, enhancing gender equality in land ownership and improving land governance are essential not only for alleviating land and property problems, but also for improving social welfare in general and inducing positive social change. We consider such changes to be crucial for the consolidation of peace in conflict-affected societies.

Problems over land and property are relatively new topics in peacebuilding debates. Although the importance of this issue was recognised in several peace negotiations in the 1990s,[3] related debates have been considerably promoted in the 2000s, as indicated by the establishment of the Pinheiro Principles (UN 2005), which focus on the property rights of displaced people, as well as numerous academic publications (Unruh 2003; Leckie ed. 2008; Pantuliano ed. 2009; Leckie and Huggins 2011; Unruh and Williams eds

2013). Through these efforts from practitioners and academics, the topic has attracted increasingly serious attention. With the aim of making a contribution to the debate, this book particularly stresses the importance of adopting a long-term perspective in the analysis of land and property issues in peacebuilding. The authors attempt to illuminate the structural causes of the problems and assess policy measures in the case study countries by paying close attention to the development of state–society relations. In other words, we try to understand the problems and evaluate policy measures in the context of statebuilding, which is now considered to be the core element of peacebuilding. This approach, we believe, enables light to be shed on the root causes of land and property problems in conflict-affected situations, and suggests appropriate measures for their alleviation.

Let me make a minor caveat with regard to terminology. Though the term 'peacebuilding' is frequently used in this book, the focus of our studies is not limited to post-conflict countries in the strict sense. The reason is twofold. First, it is not only very difficult to provide a rigorous definition of 'post-conflict', but it is often futile as the shift from war to peace tends to proceed gradually and moves back and forth. In addition, peacebuilding includes attempts made before the complete cessation of armed conflict for the purpose

of its mitigation.[4] This is why we believe that significant implications for peacebuilding

can be drawn from the case study on Colombia, where civil war has continued for five

decades.

Peacebuilding, statebuilding and land and property problems

Peacebuilding and statebuilding

For a long time, problems over land and property have attracted great interest in many

academic fields, including philosophy, economics, political science, law and development.

However, it is only recently that the topic has become the subject of ardent debates within

peacebuilding. Since the publication of the 'Agenda for Peace', most of the activities

carried out under the name of peacebuilding have aimed at alleviating the direct legacies

of war and/or improving various levels of governance. The former includes the

disarmament of warring parties, destruction of weapons and assistance for refugee return,

while activities such as monitoring elections, encouraging efforts to protect human rights

and strengthening democracy fall into the latter (UN 1992: para. 55). Although the UN

document put forward the idea that an agricultural development project linking warring

parties could be a good example of post-conflict peacebuilding,[5] there are not many

examples of this kind in past peacebuilding activities. During the early 1990s, peacebuilding activities were mainly carried out by UN agencies and its peacekeeping missions, and were characterised by the standard strategies of democratisation and marketisation (Paris 2004). During this period, attempts to tackle land and property problems were rarely made. Nevertheless, efforts that culminated in the adoption of the Pinheiro Principles in 2005 were initiated in the 1990s, clearly motivated by the experience of armed conflicts that had erupted during the period, particularly the conflict in Bosnia and Herzegovina.

Since the mid-1990s, with the increasing involvement of development actors, peacebuilding has seen a significant change in its activities. On the basis of their experience in long-term commitment, donors have actively promoted institution building. The mainstreaming of security sector reforms (SSR) was one of the most outstanding examples in this context (Smith 2001; OECD 2007a). Donors' focus on institution building derived from concern over the state capacity of failed states,[6] namely countries in crisis due to internal conflicts and economic stagnation.[7] Moreover, the awful shock of 9/11 attracted international attention to the issue. State dysfunction is now perceived to be a serious concern for international security. Following urgent calls to deal with failed

states (Mallaby 2002; Crocker 2003; Rotberg ed. 2004; Eizenstat et al. 2005; Fukuyama 2005), the international community has become increasingly involved in statebuilding, which is now regarded as an integral part of peacebuilding (DFID 2005; USAID 2005; OECD 2007b). In the statebuilding project, which has an ideological basis in liberalism, democracy and the market economy are promoted, as these are supposed to enhance a constructive relationship between state and society (OECD 2007b; 2008; Whaites 2008). In other words, not only the state's capacity to provide security and social services, but also its legitimacy in the eyes of its citizens are critically required in order to establish sustainable state–society relationships and prevent the recurrence of armed conflicts (Manning and Trzeciak-Duval 2010).

However, the results of statebuilding have not been as successful as was expected. Recent projects of international statebuilding have often been condemned for failings including neglect of local ownership, bias in favour of state security to the detriment of human security, weak governance, poor human rights records, increasing economic inequalities and endangering subsistence economies (Paris and Sisk eds 2009; Newman et al. eds 2009; Richmond and Franks 2009). As a consequence, state fragility continues to be a serious challenge for the overwhelming majority of conflict-affected countries. The

causes behind the disappointing results are various, but the fragility derives fundamentally from the difficulty in establishing constructive state–society relationships (Takeuchi et al. 2011). Some conflict-affected countries have faced serious difficulties in enhancing state capacity, particularly in maintaining political order in their territories. Countries such as Afghanistan and the Democratic Republic of Congo (DRC) have not been able to establish governmental control over their territory in spite of the huge amount of resources that have been injected. Other post-conflict countries, which have succeeded in enhancing the state capacity to restore order, face problems with state legitimacy. Although the overwhelming majority of conflict-affected countries have introduced democratic institutions since the 1990s, the quality of their governance has often been questioned. In particular, the process of political monopoly and social exclusion has been observed in many such countries (Zürcher 2011).

The latter point may be understood as a tension between peacebuilding and statebuilding (Rocha Menocal 2011). As Tilly (1992) argues, coercive power strengthens as a state develops its organisation. It is necessary to enhance the state's capacity for controlling territorial security and deterring armed conflicts. However, if the rule depends only on coercive power and lacks legitimacy in the eyes of its citizens, it is questionable whether

such statebuilding could contribute to peacebuilding. As the 'Arab spring' has clearly shown, an oppressive regime, which appears to be stable and successful in deterring people's discontent, may suddenly collapse. Sustainable peace cannot materialise without state legitimacy, which derives not only from formal procedures but also from a wide range of other elements, including custom.[8] This perspective is deemed to be particularly important when we examine statebuilding with regard to land and property problems in conflict-affected settings.

State and property problems

A connection between the state and property is essential, as has been repeatedly emphasised in classics of political philosophy. However, there are a variety of understandings with regard to the relationship between the two. For instance, John Locke states that every human being is able to have property through his own labour, and the most important function of the state is to protect property rights.[9] Possession of property is the basis of citizenship and civil society, to which the state is required to be accountable. On this point, Thomas Hobbes makes a completely different assumption with regard to state and society in positing that a human being does not have property unless the state, namely the sovereign, recognises him or her and provides it. Property rights in land

therefore originate from the arbitrary distributions of the sovereign.[10] His argument does not assume the existence of a citizen who derives property rights from his labour. For Hobbes, the state deals not with citizens but with subjects, who cannot establish property rights without permission of the sovereign. In other words, with total control of the social order, the state has dominant power over the provision of property rights.

As one of founders of liberalism, Locke's ideas on the state–society relationship as well as property rights are basically adopted by the logic of liberal peacebuilding and statebuilding as advocated by the international community (OECD 2008). On the contrary, the sombre picture described by Hobbes seems to fit with the realities of today's conflict-affected settings. If the administrative capacity to maintain order is weak, property rights remain unstable due to the state's fragility in general. However, while property rights endorsed by a strong authoritarian state may be stable as long as the regime exists, these rights may be completely denied when the regime collapses and the next regime establishes its own property order. This is what we have observed in countries such as Burundi, Cambodia, Rwanda and Timor-Leste.

Although the ideas of the two philosophers contrast, two implications can be drawn. First,

the functioning of property rights depends critically on the nature of the state, namely the state–society relationship. This has been repeatedly stressed in North (1981), who demonstrates that the state's role in ensuring property rights has been a decisive factor in the economic development of European countries.[11] Conversely, the weakness of the state exacerbates property problems by reinforcing legal pluralism (Unruh 2003).[12] The second implication is that enhancing the legitimacy of the state vis-à-vis its citizens will be crucial in ensuring property rights over the long term. Today, a despotic state tends to have a much more difficult time surviving in comparison with the age of Hobbes. Once the sudden shift of political power takes place in such a country, it will cause a drastic change in the property order. Therefore, attempts to secure property rights in peacebuilding are inseparable from efforts to establish a sustainable state–society relationship, which in turn ensures a stable property order. In this regard, enhancing state legitimacy in statebuilding will be crucial as a policy measure for tackling land and property problems.

Land and property problems in recent debates

From the middle of the 2000s, the importance of land and property in peacebuilding began to be stressed in a number of research projects, which can be roughly classified into three

categories. The first group consists of research on housing, land and property (HLP) rights in post-conflict settings (Leckie ed. 2008; Pantuliano ed. 2009; Leckie and Huggins 2011). Strongly motivated by humanitarian concerns, and urged on by the adoption of the Pinheiro Principles in 2005, this research insists on the necessity of taking HLP rights into consideration in post-conflict peace operations, particularly in humanitarian actions as well as peacekeeping operations. The second category includes research focusing on land problems in relation to local communities in conflict and fragile situations (Unruh 2003; Huggins and Clover eds 2005; Shanmugaratnam ed. 2008; Anseeuw and Alden eds 2010). Based on the micro-level anatomy of livelihoods in conflict-affected settings, this research succeeded in clarifying the structural causes of land problems and the way ordinary people could survive in war-torn societies. Among recent work in this category, a book edited by Unruh and Williams (2013) deserves special attention, as the volume includes a number of interesting case studies and provides important policy implications. The third group consists of research on critical approaches to peacebuilding debates. Criticising liberal peacebuilding and donor-led statebuilding for neglecting the needs and logics of local communities, these academics have emphasised the importance of local ownership as well as human security in peacebuilding (Richmond and Franks 2009; Newman et al. eds 2009; Richmond 2009; Newman 2011). Although they do not

necessarily discuss land and property problems explicitly, their logic, stressing particularly the significance of human security in peacebuilding, inevitably implies the value of tackling land and property problems.

While the contributors to this book have learned a lot from previous literature, our framework of analysis is unique. We completely agree with the view of the first group of researchers, who emphasise the significance of HLP rights, but the timeframe of our analyses is much longer. Searching for the causes of property problems in the past, often going back as far as pre-colonial times, we tried to understand the structural and historical reasons behind current land and property problems, and examined policy measures from the viewpoint of their contribution to durable peace and sustainable statebuilding. We also share a common perspective with the literature in the third group, emphasising the significance of human security in peacebuilding. While research in the third category tends to adopt a theoretical approach to peacebuilding, our main objective is to explore policy implications from in-depth case study analyses. The methodology and the perspective on research of the second group may be the closest to ours. The difference, however, lies in our stance on analysis: this book looks at land and property problems in conflict-affected settings through the framework of the state–society relationship. The

authors therefore share an interest in historical and structural approaches.

Causes of land and property problems

The following case-study chapters clarify the nature and causes of land and property problems as well as policy measures taken to tackle the problems in each country. This section and the next will therefore present an overview of these two points. With regard to the causes of the problems, two different kinds of factors can be singled out. In conflict-affected settings, factors directly caused by the armed conflict tend to be intertwined with factors not directly related with it. Analysing both of these types of factors is indispensable to understanding the mechanism of erupting land and property problems.

Factors directly caused by armed conflict

Violent armed conflicts are likely to inflict damage on land and associated real estate and paralyse the administration that governs land issues. Administrative institutions and documents relating to property titles may be intentionally destroyed. In Timor-Leste, land administration offices were attacked by pro-Indonesian militia and documents were systematically destroyed and carried off in the course of the violence that followed the referendum in favour of independence in 1999. The administration was entirely paralysed

as virtually all the senior civil servants, who were either non-East Timorese or anti-independence, fled to Indonesia (Fitzpatrick 2001: 3). The intentional attacks on title documents indicate that property rights are often so strategically important that they become the targets of destruction in war.

Displacement caused by armed conflicts is a critical trigger of land and property problems. While an intense armed conflict naturally forces people to abandon their homeland, displacement has often been the purpose of the violence rather than its consequence. The 'ethnic cleansing' in the former Yugoslavia was such a case. In Colombia, a huge number of peasants[13] have been forced to leave their homeland as a result of the activities of both paramilitary and guerrilla groups. Displacement has been especially exacerbated by the actions of the paramilitaries seeking to control key areas for the benefit of the drug industry (Thomson 2011: 344). Government policy may also cause massive displacement. In northern Uganda, while the rebel army (the Lord's Resistance Army, LRA) was undoubtedly a source of insecurity for inhabitants from the mid-1980s, it was in 1996, when the government forced civilians into 'protected villages', that the displacement crisis began there (Rugadya 2006: 2).

Displacement can trigger serious problems related to land and property, which may be occupied by others during the absence of the original owners. In cases in which the displaced people do not have clear evidence of property rights, their return is likely to cause competition over claims for a plot of land. As land registration has not yet been carried out in the majority of developing countries, returnees tend to face disputes over land in conflict-affected settings. Obviously, competition over land claims becomes more intense as the period of displacement lengthens. Unfortunately, long-term refugees have not been the exception in the contemporary world (Crisp 2000). In Rwanda, the victory of the Tutsi-led rebels (the Rwandan Patriotic Front, RPF) in the civil war in 1994 triggered the return of a tremendous number of Tutsi refugees who had escaped their homeland around independence in 1962. Following the conclusion of a peace agreement in 2000, Burundi has seen a massive return of Hutu refugees, who had fled the country after 1972.

Returnees may have no place to settle if their birthplaces have been occupied by others during their long absence, or if they did not have land before the displacement. A tremendous number of refugees returned to Afghanistan after the Bonn Agreement in December 2001, and landless returnees were not unusual: 'more than 1.4 million

returnees, or just over 60% of all returnees between March 2002 and October 2003, were landless' (Ozerdem and Sofizada 2006: 86). In Cambodia, property rights were systematically denied under the Pol Pot regime (1976–79). As the mass slaughters and massive displacement that took place in the 1970s and 80s led to general confusion in the country until the conclusion of the peace agreements in 1991, refugees often did not know where exactly to go when they returned to the country.[14] Many of the returnees settled in the areas near refugee camps in Thailand without effective land rights, and they have seen their social status become marginalised as time has passed (Eastmond and Öjendal 1999). Returnees may have tense relations with inhabitants who remained behind, because their experiences during the armed conflict were quite different and even contrasting (Unruh 2003). In particular, in countries that have experienced ethnic conflicts, returnees and original inhabitants often have different ethnic affiliations, thus making their coexistence more complicated (Huggins 2009; Jansen 2011; Fransen and Kuschminder 2012).

In addition to visible effects such as physical destruction and displacement, armed conflicts often produce invisible changes to norms among people by transforming power relations.[15] Territorial control by an armed group will make existing rules and norms invalid, as we have seen in many wars and revolutions. The two entities in Bosnia and

Herzegovina created by the Dayton Peace Agreement (Republika Srpska and the Federation of Bosnia and Herzegovina) have different norms in favour of their majority ethnic group, rendering the property rights of minority groups in each entity extremely vulnerable. This is the main reason why many of them chose not to return to their place of origin even after the restitution (Von Carlowitz 2004; Williams 2006; Jansen 2011). The two entities in Bosnia and Herzegovina are clear and visible legacies of the war, but legacies that influence norms in this way are often invisible. In Rwanda, where the Tutsi-led RPF took power in 1994, Tutsi returnees have been privileged in gaining land from Hutu neighbours. Needless to say, this policy of 'land sharing' could be carried out because the RPF monopolised state power following its victory in the war. In South Sudan, after the conclusion of the Comprehensive Peace Agreement (CPA), soldiers, officials and IDPs of the Dinka people, the largest ethnic group in the former rebel and current ruling party, the Sudan People's Liberation Army, often claimed rights over the lands of other ethnic groups, on the grounds that they 'have bought the land during wartime with the buckets or tins of their blood' (Leonardi 2011: 217). Here, land was demanded on the basis of two logical notions: compensation for the sacrifices of their ethnic group members during the civil war and the group's advantageous position in post-war politics. The claim could be made because the war and the CPA have transformed power relations

among communities in South Sudan.

In order that a property right delivers benefits for its owner, it needs to be endorsed and protected by the political authority. The state is the most common and the most important among a variety of political authorities, though these may take on other forms such as a traditional community and a rebel group. An armed conflict tends to have a considerable impact on the power relations within a state. It may lead to a total power shift as in the case of Rwanda, South Sudan and Timor-Leste; power sharing following a peace deal as in Bosnia and Herzegovina and Burundi; or a power shift in a limited territory as in the case of Colombia. A sudden shift of political authority will cause a collision between the property rights endorsed by the previous regime and those established by the new forces. In addition to such a 'diachronic' collision of property rights between new and old right holders, an armed conflict may cause 'synchronic' collisions, if one or more rebels occupy part of the national territory and assert their rule as well as their own property order, as in the case of the eastern DRC (Autesserre 2010). In short, in disrupting the existing political order and state governance, an armed conflict promotes conditions of legal pluralism, 'with different sets of normative rules regarding land, property, and territory intricately bound up in the conflict itself' (Unruh 2003: 353).

Factors not directly caused by armed conflict

Legal pluralism, which is exacerbated by armed conflicts, constitutes a significant

background to the land and property problems erupting in conflict-affected settings.

However, legal pluralism with regard to land can be observed in many developing

countries, in which customary authorities exist more or less independently from the state

and play important roles in land distribution. In the same vein, conditions contributing to

undermine land governance, such as the weak rule of law, identity politics and corruption,

can be found not only in conflict-affected settings, but also in many countries, particularly

in developing areas, where there is no outright armed conflict. Moreover, factors directly

related to armed conflict may not play a significant role in current land and property

problems in conflict-affected countries. For instance, the majority of land disputes both

in Rwanda and Burundi derive from intra-familial problems such as inheritance (Van

Leeuwen 2010; Takeuchi and Marara 2011). In short, as the causes of land and property

problems in conflict-affected settings are in part common to those in normal settings, the

former must be understood in continuity with the latter. This perspective is indispensable

in seeking methods for the alleviation and resolution of such problems. In this regard,

three factors independent from armed conflict deserve mention, namely the nature of the

state, strong demand from the private sector and the vulnerability of customary land rights.

Since property rights need to be endorsed and protected by the political authority, it is a corollary that the nature of the state has a strong influence on the function of property rights. Deininger and Feder point to three governmental functions indispensable for ensuring land rights security: unambiguous definition and enforcement of property rights, provision of reliable information and cost-effective management of land-related externalities (2009: 235). These requirements, however, are not so easily met in developing countries, particularly in conflict-affected settings, in which state capacity tends to be weak almost by definition. In addition, the problem often lies less in the limited administrative capacity per se than in the politically biased practice of land governance, which often privileges the elite or a particular group. Although applying the concept of neo-patrimonialism (Médard 1982; Chabal and Daloz 1999) to conflict-affected countries in general would be an exaggeration, it is true that arbitrary distribution of land has been regularly carried out as a means of maintaining patronage networks.[16] The fact that 'property rights are not "guaranteed," protected, or relatively insulated from political decision making by prior constitutional fiat' (Boone 2009: 196) has formed the general background of the land and property problems plaguing not only conflict-affected

settings, but also developing countries in general.

Strong demand from the private sector is another important factor in land problems. Due to the recent global rise in demand for food and raw materials, caused mainly by the rapid economic growth of emergent countries such as China and India, interest in farmland has escalated, causing large-scale land acquisitions. In Latin America, commercial agriculture in areas such as soybeans and livestock has developed considerably following the liberalisation of markets and trade in the 1980s. Southeast Asian countries, particularly Malaysia and Indonesia, have recently seen their palm oil production soar. In these regions, a marked increase in agricultural production has been made possible by turning a high volume of land into farms, plantations and ranches. Circumstances have also drastically changed in countries in transition from former socialist regimes, in which the dissolution of collective and state farms has produced smallholder farms on the one hand, and large-scale integrated companies on the other. Large-scale land acquisition has been especially conspicuous recently in Africa (Cotula et al. 2009), although reliable statistics are lacking. In relatively land-abundant African countries such as Ethiopia, Mozambique and Sudan (both North and South), as well as in Asian countries such as Cambodia, an enormous amount of land has been recently 'acquired' by domestic and foreign actors

(Deininger and Byerlee 2011: chap. 2). Large-scale land acquisition and the subsequent eviction of inhabitants has been one of the central causes of the protracted Colombian armed conflict. Although extensive expulsions have not been widely observed in African countries, their potential danger is quite obvious.

The third issue to be considered is the vulnerability of customary land rights. In conflict-affected settings, land disputes tend to break out in areas where customary land tenure prevails. Either land conflicts between returnees and secondary occupants, large-scale land acquisitions or land disputes over inheritance are likely to take place in areas under customary tenure. The most important reason for this is the ambiguity and instability of land rights. Customary lands have hitherto been virtually governed by customary authorities including local communities and extended families, but in many countries these have been categorised as state lands and therefore the state has had the formal power to distribute them. As people who use the land every day do not have formal titles, they tend to encounter enormous difficulties in claiming their rights once they have fled the place as a result of armed conflict. In addition to conflict-related problems, tenure security in customary lands has been in danger because of a complex mixture of factors affecting local land governance including rapid population growth, weakened solidarity in local

communities, increasing demand for farmland and the patrimonial nature of the state. Securing customary lands has been, therefore, one of the central issues in recent debates and practices in land governance. This point will be discussed in the next section.

Policy measures for tackling land and property problems

Analysing and assessing the policy measures taken to tackle land and property problems in conflict-affected countries is a main objective of this book. As land and property are fundamental issues for human societies, the range of related policy measures will be extremely wide, including promotion of agricultural technologies, job creation, urban planning, investments for infrastructure and so forth. Clearly, a narrow policy focus will not resolve land and property problems. While completely acknowledging this point, we confine ourselves to examining only policy measures directly relating to land and property problems, since limiting the scope of our arguments will make comparisons among the case studies more effective. As a thorough examination of the policies and their assessment will be carried out in the concluding chapter, only brief background information about three related policy fields is provided here.

The first policy field is concerned with direct assistance for the displaced. These policy

measures are implemented to assist victims of forced migrations, which are the direct

consequence of armed conflicts. There is a wide range of assistance of this kind, but

recently the paramount importance of restitution tends to be stressed. It was particularly

after the experience in post-war Bosnia and Herzegovina, where the restitution of housing

was one of the most critical issues, that restitution and other assistance for the displaced

began to attract particular attention from the international community. The success of the

restitution process in Bosnia and Herzegovina led to the adoption of the Pinheiro

Principles in 2005 at the UN Economic and Social Council (UN 2005). Although the most

thorough and effective way to assure returnees' property rights is through restitution, the

conditions that enabled the implementation of restitution in Bosnia and Herzegovina are

not necessarily prevalent in other countries. In fact, for the majority of conflict-affected

countries, systematic and organised restitution such as that carried out in Bosnia and

Herzegovina would be very difficult, not only because of resource constraints, but for

reasons including, in particular, ambiguity over which properties should be returned. This

is why various types of policy measures have been established to assist returnees. Such

policies include land sharing (Rwanda and Burundi), land allocation (Cambodia) and

housing arrangement (Rwanda). To assess these measures, we need to know the

conditions in these countries as well as their historical context. Each case study analyses

these points.

The second area of policy intervention is related to conflict resolution mechanisms. Against the backdrop of an increase in land and property disputes caused by the return of large numbers of refugees, measures have been taken to strengthen the capacity of conflict resolution mechanisms. A number of countries, including Bosnia and Herzegovina, Burundi and Cambodia, have established organisations that specialise in the resolution of this kind of conflict. Reinforcing conflict resolution mechanisms is important, as it contributes to the reduction of social tension, thus promoting peace and reconciliation. However, we should note that such mechanisms cannot address the social structure that frequently causes land and property problems. In addition, in many conflict-affected countries, the justice sector tends to be subordinated to the state and judgements may follow the intentions of the state authority. In this case, strengthening a conflict resolution mechanism may only contribute to the empowerment of a means for repression. A real challenge for policy intervention in conflict resolution mechanisms is to figure out how to enhance their capacities for effective judgements and execution, while at the same time ensuring their political impartiality.

The third issue is concerned with measures for ensuring the property rights of vulnerable people. While these policy measures do not directly derive from armed conflicts, they can have considerable effect in improving the situation by addressing the major causes of land and property problems. It is, however, important to note that the approach to strengthening the land rights of the poor has markedly changed since the end of the Cold War (Boras et al. 2007; Sikor and Müller 2009). In the Cold War era, land reform referred first and foremost to the redistribution of land for the benefit of the poor. The same practice of land redistribution was adopted in the two opposing capitalist and socialist camps, though the ideology buttressing the policy was in contrast. In capitalist countries such as Japan, the Philippines, South Korea and Taiwan, land was redistributed to tenants and landless farmers for the purpose of attenuating rural poverty and breaking down pre-modern social subordination. The redistribution of land with clear property rights was expected to reduce social unrest and foster conservative farmers, thus resisting the invasion of communism. Redistribution of land was systematically pursued in socialist countries as well. The purpose here, however, was to create collective farms and to abolish private property rights so as to further the establishment of socialism and communism. In addition, in countries such as Algeria and Egypt, the nationalist regimes which emerged out of wars of independence or revolution, often adopting leftist ideology, undertook land

redistribution through appropriation from the old elites (Borras et al. 2007; Lipton 2009).

However, since the 1990s, property rights reform, rather than redistribution, has been mainstreamed among approaches to land reform. The policy aims at ensuring land tenure for people living mainly in rural areas through indirect legal as well as administrative measures, rather than direct redistribution. The major reasons for this change were threefold. First, the effectiveness of customary land tenure was increasingly recognised and appreciated. Research has emphasised the relative efficiency as well as the flexibility of indigenous customary land and resource use arrangements (Feder and Noronha 1987; Ostrom 1990; Bruce and Migot-Adholla eds 1993). In contrast to the stereotyped image, indigenous land tenure systems function rationally and cost-effectively and are capable of adapting themselves to social changes, including population increases and the development of a market economy. The World Bank economists, who were once strong advocates for the establishment of private property rights, also began to recognise the efficiency of communal land tenure systems (Deininger and Binswanger 2001; Deininger 2003). Secondly, practices of land redistribution in the Cold War era were severely criticised. Redistribution policies under the socialist regimes were completely repudiated and reversed following the end of the Cold War. Even in capitalist countries, the policy

has often been blamed for such problems as inefficiency and corruption.[17] Thirdly, the

positive effects of land tenure security for economic development were widely recognised.

The trend was underpinned by the theoretical development of institutional economics

(North 1981; 1990), and reinforced by other influential works such as that of De Soto

(2000).

A number of land tenure reforms have thus been carried out and many new land laws have

been promulgated since the 1990s. Unlike the experiences in the capitalist camp in the

Cold War era, when a standardised policy promoting land registration to establish private

land rights was uniformly applied, approaches to ensuring land rights today vary, as the

failure of such a one-size-fits-all policy has been widely recognised (Green 1987; Platteau

1996; Place and Migot-Adholla 1998). Rather, the importance of ensuring various rights

over land has been stressed (Le Roy et al. eds 1996; Toulmin and Quan eds 2000;

Benjaminsen and Lund eds 2003). As a result, a number of countries, including our case-

study countries, have officially recognised customary land rights (Alden-Wily 2011).

While this is a significant change, it should be remembered that protecting customary

rights has always been difficult in practice (Otto and Hoekema 2012). Even in the event

that community land governance is officially endorsed, as in Tanzania, its effectiveness

is questionable.[18] In other cases, such as Rwanda and Burundi, policies recognising customary tenure aim mainly at establishing private property rights, while whether this is an adequate approach for land governance in these countries is debatable. Effective methods for land governance must address the different conditions that a given country and its inhabitants face. We would therefore echo Otto and Hoekema's statement that 'the way forward should be based on careful assessments of the very specific local situations within a country' (2012: 21).

The attention paid to land governance has recently been on the rise, particularly following a surge of food and energy prices in the late 2000s and large-scale land acquisitions. In this context, attempts have been made actively to coordinate land policies throughout the international community and to develop policy tools for the elaboration of land governance. A number of guidelines have been proposed. While the most conspicuous result of this process is that initiated by the Food and Agriculture Organization of the United Nations (FAO 2012), similar attempts have been made by other actors. The African Union Commission, the Economic Commission for Africa and the African Development Bank, established in 2006, launched the Land Policy Initiative, which has produced important results on this issue in terms of knowledge management and policy

mainstreaming (AUC–ECA–AfDB 2009; 2010; 2011). In addition, private actors have

developed their own guidelines for investment such as the Equator Principles and

Santiago Principles. [19] Policy tools for the assessment and improvement of land

governance have been developed either by international organisations such as the World

Bank and UN-Habitat (Deininger et al. 2012; UN-Habitat 2012; Byamugisha 2013) or by

donors (USAID 2007; 2011; 2012). Although these policy tools and guidelines focus on

land governance in general, they have significant implications for measures taken to

tackle the problems in conflict-affected settings, because the nature of such problems is

considerably affected by the quality of land governance. For this reason, a policy tool

particularly focusing on 'land and conflict prevention' (Bruce and Holt 2011) is very

useful. Moreover, these guidelines and policy tools afford valuable insights for alleviating

possible tensions between statebuilding and peacebuilding.

<Figure 1.1 (Map: case study countries) and Table 1.1 (Basic data of case study countries)

around here>

Case studies

This book comprises eight case-study chapters. The location of the eight countries

discussed and some basic data relating to them are indicated in Figure 1 and Table 1. Table 1 shows that the countries vary considerably in terms of population size, land area, population density, level of national income, international commitment in the form of Official Development Assistance (ODA) and their level of political liberty and civil rights (as estimated by Freedom House). However, the countries share a common feature: all of them have experienced serious armed conflicts. The armed conflict is still ongoing in Colombia, and peace is not well consolidated in countries such as Burundi and South Sudan. Peacebuilding is the primary policy goal in all of these countries.

The causes, progress and the conclusion of the armed conflicts are again quite different among the eight case studies. Land and property problems were important backgrounds for the armed conflicts in Colombia and Rwanda, but the situation was not the same in the case of other countries. While Rwanda's civil war ended in a one-sided victory, armed conflicts were brought to an end through international mediation which resulted in the installation of power-sharing mechanisms in Burundi, Bosnia and Herzegovina and Cambodia. In Bosnia and Herzegovina, South Sudan and Timor-Leste, it has been the newly independent states that have dealt with daunting tasks in the post-war period. These differences have affected the state–society relationship and the nature of land and property

problems.

By comparing countries with experiences of serious armed conflict, this book aims to gain a deep understanding of the causes of land and property problems in such settings as well as policy measures to address them. We do not claim that our selection of eight case studies covers the entire pattern of property problems in conflict-affected countries. However, we believe that in-depth analyses and comparison of the cases will enable us to identify the general characteristics of the problems, conduct balanced assessments of policy measures and attain our final objective of distilling elements that contribute to durable peace.

The case-study chapters start with South Sudan, which gained independence after a long civil war. This new country suffers from disorganised land governance. Although the 2009 Land Act has a progressive nature and has widely recognised the validity of customary land rights, huge tracts of land were seized before its enactment, and the execution of the law has been always difficult due to the weak state capacity. In addition, the power shift at the state level resulting from the war has impacted on ethnic relations regarding land, thus exacerbating antagonisms between ethnic groups. The predicament that this country

is caught in derives from multi-dimensional collisions including those between customary and statutory property orders, various customary rights, and returnees and secondary occupants, as well as politically powerful and powerless groups; these issues are commonly observed in many conflict-affected countries.

Chapter 3 deals with Uganda, whose northern region was devastated by a long-term civil war that lasted until the mid-2000s. The analysis of factors in the post-conflict land disputes reveals that they are closely related not only to the civil war and societal transformation, but also to national policies and the nature of the state. Factors such as displacement, the death of elders, population increase and the erosion of traditional authorities have been closely intertwined with factors such as people's distrust of the southerner-led government and the commoditisation of land. In other words, the eruption of land disputes in northern Uganda has taken place as a consequence of the statebuilding under Museveni.

Chapter 4 examines the case of Rwanda. After the military victory of the former rebel RPF in the civil war, the regime, which is mainly based on the minority Tutsi ethnic group, has delivered remarkable results on land-related policies. In spite of severe problems

including high population pressure and extreme land shortages, it has succeeded in providing the huge numbers of Tutsi returnees with land and housing, securing women's land rights and proceeding rapidly with land registration. Moreover, it has so far controlled the outbreak of returnee-related land disputes. Assessments of these consequences are not simple because they have been the result of authoritarian and top-down policy interventions by the RPF. In order to sustain the positive results achieved under the RPF regime, the authors argue, serious efforts should be made to enhance state legitimacy in the eyes of all nationals, including the majority ethnic group, the Hutu.

Chapter 5 discusses Burundi, in which a strict power-sharing mechanism between ethnic groups, mainly Tutsi and Hutu, has been introduced as a consequence of the civil war. A specialised conflict resolution mechanism, the CNTB, was established to mediate in land disputes between returnees and secondary occupants. However, as the former Hutu rebel party CNDD-FDD has dominated the government, its political influence has extended over the CNTB, thus ensuring that its policy systematically favours Hutu returnees. This change in the nature of the conflict resolution mechanism has caused the politicisation as well as the intensification of land and property conflicts.

Chapter 6 discusses the case of Bosnia and Herzegovina, which has often been cited as a laudable example in that acute property problems after the armed conflict were satisfactorily resolved, particularly as a result of the serious engagement of the international community. However, we should be cautious about deeming the Bosnian case a simple success story. In addition to the well-known fact that the restitution did not necessarily result in the return of refugees and IDPs, property problems in the country remain contentious, as the author convincingly argues with the examples of the apartments of the Yugoslav National Army, restitution of nationalised properties and the distribution of state properties, as well as agricultural land use. These difficulties illustrate uneasy statebuilding in Bosnia and Herzegovina.

Chapter 7 examines the case of Colombia, in which an enormous disparity of land holdings has been one of the central causes of the five-decade-long civil war, exacerbating in turn population displacement as well as land deprivation. Although attempts at land redistribution have been repeatedly made, they have produced only poor results because of the obstruction of the elites. Recent policy measures to clarify property rights for vulnerable people in rural areas as well as to promote restitution were undoubtedly positive steps. In addition to institutional reform, the authors stress, it is crucial to address

the unequal politico-economic power structure, which lies at the centre of not only the land problems, but also the protracted civil war.

Chapter 8 deals with Cambodia, which has recently suffered an eruption of land disputes despite relative political stability and rapid economic growth. Exploring the reasons, the author stresses the importance of the statebuilding process under the Cambodian People's Party (CPP), which took power after the fall of the Pol Pot regime in 1979. While abolishing all pre-1975 land rights, the CPP regime, which at the outset embraced a socialist ideology, provided plots of land equally for all nationals in the mid-1980s, but subsequently recognised private land rights during the transition to a market economy following the end of the Cold War. As the CPP's hold over power has been consolidated, the disparity in land holdings has increased, causing considerable discontent over land holdings. Elite capture of state institutions, weak governance and rapid marketisation are major elements behind this.

Chapter 9 discusses the case of Timor-Leste. Following long and harsh domination under Portugal and Indonesia, the country gained independence only in 2002. A centuries-long history of external rule has created complex land and property problems, not only because

property rights deriving from different contexts (customary, Portuguese and Indonesian) compete with each other, but also because large-scale violence has seriously damaged the regulation of property because of large-scale population displacement as well as the intentional destruction of property records. While various attempts have been made since independence to reconcile competing rights and establish a new property order, these efforts are still in their infancy. This young state therefore faces enormous challenges.

On the basis of these eight case studies, policy measures to address land and property problems are comprehensively examined and evaluated in the conclusion, and reflections made on their general policy implications. We will not propose a panacea. The current land and property problems in conflict-affected settings are too complex to be solved with a wave of a magic wand. What we wish to emphasise in this volume is that the general background of land and property problems needs to be clarified and understood in order to elaborate appropriate and effective policies for tackling them. Detailed case studies like those in this volume will certainly contribute to this objective.

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[1] We thus use the terms 'land and property problems' and 'property problems' interchangeably.

[2] Although to state that the Rwandan mass killings in 1994 were caused by land problems would be an obvious exaggeration, it was true that land scarcity helped the ethnic mobilisation and ordinary people's participation in the slaughter (André and Platteau 1996; Uvin 1998). In addition, land problems have often exacerbated local level violence, thus connecting it with a national level armed conflict. A typical case can be found in the eastern part of the Democratic Republic of the Congo (DRC). While the area has seen land problems dating back to the colonial period, local conflicts over land have become much more complicated and aggravated during the civil war since the 1990s, thereby resulting in intractable instability and the eruption of ethnic violence (Mathieu and Willame eds 1999; Autesserre 2010).

[3] For examples of peace agreements touching on issues of land and property in the 1990s, see the chapters on Rwanda, Burundi and Bosnia and Herzegovina.

[4] Unlike the understanding of peacebuilding in the 'Agenda for Peace' (UN 1992), in which the concept was framed in terms of activities specifically in the 'post-conflict' phase, we agree with the 'Brahimi report' (UN 2000: para. 13), which considers that peacebuilding activities can begin before the complete cessation of hostilities.

[5] As a peacebuilding project in the aftermath of international war, an idea of 'projects that brings States together to develop agriculture' was indicated in UN 1992: para. 56.

[6] There is no clear difference in definition between 'failed states' and 'fragile states'. We use the two terms interchangeably.

[7] On the one hand, the 1990s saw a number of serious armed conflicts particularly in Africa, Eastern Europe and the former Soviet Union. Problems involving failed states were serious concerns of the international community (Helman and Ratner 1992–93; Zartman ed. 1995). In case of the World Bank, the 'Post-Conflict Unit' was set up in 1997 for dealing with recovery after armed conflicts. On the other hand, contrasting economic performances between African and East Asian countries aroused keen interest in the institutions and governance (World Bank 1989; 1993). In this context, weak governance has been considered a major cause of the failure of economic development. Concern over the state as well as governance therefore derived from both political and

economic reasons.

[8] OECD (2010: 8) identifies four main sources of legitimacy: 1) input or process legitimacy, which is tied to agreed rules of procedure; 2) output or performance legitimacy, defined in relation to the effectiveness and quality of public goods and services; 3) shared beliefs, including a sense of political community, and beliefs shaped by religion, traditions and 'charismatic' leaders; and 4) international legitimacy.

[9] In his *Two Treatises of Government*, Locke stated: '(a)s much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, inclose it from the common' (Book II, para. 32). With regard to the role of the state, he stated: '(t)he great and chief end, therefore, of men's uniting into common-wealths, and putting themselves under government, is the preservation of their property' (Book II, para. 124).

[10] According to Hobbes in *Leviathan*, 'where there is no coercive power erected, that is, where there is no Commonwealth, there is no propriety [*sic*], … but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them: and then it is also that propriety begins' (chap. 15). With regard to the possession of land, he stated: '(i)n this distribution, the first law is for division of the land itself: wherein the sovereign assigneth to every man a portion, according as he, and not according as any subject, or any number of them, shall judge agreeable to equity and the common good' (chap. 24).

[11] Previously, economists tended to explain the creation of property rights by the logic of cost-benefit analysis. For example, Demsetz (1967: 350) stated that 'property rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization'. He considered that rising resource values led to the creation of private property rights when the benefits of private ownership outweighed the costs. However, as Fitzpatrick (2006) pointed out, in the reality of developing countries, the rise of a resource value has not necessarily established private property rights systems. In order for property rights to function, the state is expected to protect them and exclude illegitimate claimants in favour of the legitimate holders. Without such state action, the rise of a resource value will put it under open access. In fact, the state often does not play this expected role in developing countries, particularly in the case of conflict-affected countries. Demsetz's theory totally lacks consideration of the state or political

aspects. Careful consideration of political factors is indispensable for the analysis of property rights.

[12] Legal pluralism exists in all countries, as Moore (1973) pointed out, and it does not directly cause property problems. However, the legal pluralism that derives from state weakness will destabilise the property order as a whole, thus exacerbating property problems. With regard to legal pluralism, see also Griffiths 1986.

[13] In the Colombian context, the term 'peasant' has connotations of small-scale and subsistence-level agricultural producers.

[14] This means that refugees did not know where they could acquire land rights. In many post-conflict countries, this is a serious problem, particularly for young returnees who do not know their father and women who have lost their husbands.

[15] Here, we use the word 'norms' in its sociological sense, namely the common standards or ideas which guide members' responses in all established groups. This term may describe actual rather than expected behaviour (Michell ed. 1968: 125–6).

[16] For a case study in Africa, see Boone 2007. For Cambodia, see Global Witness 2007.

[17] It is, however, important to notice that not all of the redistribution policies have necessarily been discarded. With regard to the excessive disparity of land holding that is observable in Latin America and southern Africa, the land redistribution policy has been naturally regarded as legitimate and necessary (Tucker et al. 2004; Lipton 2009).

[18] More than a decade after the passage of Tanzania's land act, which formalised village-level customary land rights, only 7 per cent of villages have received a certificate of village land (Deininger and Byerlee 2011: 102). For the Tanzanian case, see also Alden-Wily 2012.

[19] The Equator Principles is a risk management framework developed by private financial institutions for determining, assessing and managing environmental and social risk in projects (http://www.equator-principles.com/index.php/about-ep/about-ep, accessed 17 August 2013). The Santiago Principles were set up in a similar vein by the International Working Group of Sovereign Wealth Funds (http://www.iwg-swf.org/pubs/gapplist.htm, accessed 17 August 2013).