Ecopolicy 14

LAND, CONFLICT AND LIVELIHOODS IN THE GREAT LAKES REGION

Testing Policies to the Limit

Chris Huggins, Prisca Kamungi, Joan Kariuki, Herman Musahara, Johnstone Summit Oketch, Koen Vlassenroot and Judi W. Wakhungu

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Abbreviations

CNRS	Commission Nationale de Réhabilitation des Sinistrés
DRC	Democratic Republic of Congo
MRRDR	Ministry of Resettlement and Reinsertion of IDPs and Repatriates
MINITERE	Ministry of Lands, Environment, Forestry, Water and Natural Resources
FRODEBU	Front pour la Démocratie au Burundi
MONUC	United Nations Mission for the Democratic Republic of Congo
UNHCR	United Nations High Commissioner for Refugees
PRSP	Poverty Reduction Strategy Papers
UPDF	Uganda People's Defense Forces

Introduction

This publication looks at the relationship between land tenure, land use, and population movements, and conflict, defined here as large-scale, violent conflict. The concepts are illustrated with case studies by the African Centre for Technology Studies (ACTS) on Rwanda, Eastern Democratic Republic of Congo (DRC) and Burundi.[1]

The relationship between land and conflict is intuitive. Historically, land has been significant in war in the form of a 'prize' of territorial control enjoyed by the victors at the expense of the vanquished – losing groups would often be forced to flee, relinquishing their homes, fields and properties. More recently however, increased interest in conflict analysis has revealed various complex relationships between control over land (and land-based resources) and conflict. Combatants involved in conflict within states – by far the most significant kind of conflict today – often claim that unequal access to land is one of the causes of violence. During conflict, land access is affected not just for belligerents, but for entire communities, who become targets of violence due to the ethnicization of conflict. And in post-conflict situations, the land and shelter needs of returning internally displaced populations (IDPs) and refugees must be carefully managed in order to avoid dangerous disputes and further violence.

This problem is compounded in many developing countries by the challenging structural nature of land ownership, which may include demographic pressure, gross inequalities between and within communities, inadequate land administration and different conceptions of land tenure according to different land use norms. Therefore, land policies in post-conflict countries – and indeed, across the world – should consider the possible destabilizing effects that can result from inequalities and inefficiencies. 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. For this reason, 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."[2]

This Ecopolicy is one of the outputs of a twelve-month research project, part of ACTS' continuing work on the "Ecological Sources of Conflicts in Sub-Saharan Africa". The first project, launched in the year 2000, examined the extent to which environmental resource scarcity and ecological stress contribute to

political conflicts in Sub-Saharan Africa. This project, funded by the John D. and Catherine T. MacArthur Foundation and the United States Agency for International Development (USAID), also aimed at enlarging the body of knowledge and information for conflict prevention and management, and promoting dialogue between environmental agencies and those engaged in conflict prevention and management. Consultative sessions were held with key government and policy maker constituencies to promote dialogue on the importance of environmental or ecological factors in political conflicts and the means by which these factors could be addressed in conflict prevention and management. The first phase of the project came to an end in July 2002, with the publication of case studies in a volume, *Scarcity and Surfeit: the Ecology of Africa's Conflicts*, published jointly by ACTS and the Institute for Security Studies (ISS).

Since September 2003, ACTS, in collaboration with other organisations including ISS, has conducted research into the issue of contested rights to land and natural resources in conflict zones, with an emphasis on areas affected by waves of outward and inward migration in Burundi, Rwanda, and Eastern DRC. The objective is to influence ongoing processes of peacebuilding, land reform and debates on land rights in the Great Lakes Region, particularly as they affect or are affected by displaced populations. Activities include desk and field research, and a regional multi-stakeholder conference to present findings to relevant government actors, international and regional organisations and civil society groups. Research findings will be published in various formats, including a volume to be released in early 2005. This publication summarizes some of the findings of this latest research, and puts them into a broader context which has been developed through reference to other studies.[3]

1. Land as a Source of Conflict in Africa

The relationship between environmental factors, including environmental change, and conflict has been the subject of intense debate over the past fifteen years or so. Major projects by research groups at the University of Toronto, University of California Berkeley, Center for Security Studies in Zurich, Swiss Peace Foundation, and the World Bank, amongst many others, have suggested that a control over number of renewable and non-renewable natural resources have been contributing factors in many conflicts. In the past decade, a number of processes have focused specifically on linkages between land and conflict. These include desk-based research projects, conferences, and the generation of toolkits and

conceptual frameworks. For example, 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 or reward 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.[4]

There are of course multiple views on the relationship between land and conflict. In particular, the issue of 'equity' is controversial: while common sense would dictate that unequal access to land (and other resources) between individuals is a likely cause of conflict, and some analysts argue that this is indeed the case; others have found no such correlation. To some extent these divergent opinions are inevitable, given the complexity of the issues; however, they may also represent methodological differences, with detailed micro-level case studies often suggesting a correlation; while macroeconomic analysis, which is less sensitive to human perceptions (as opposed to 'objective' indicators) tends to suggest otherwise.[5] One particularly important field is the analysis of inequality between 'groups' of different kinds: the definition of the group (e.g. along ethnic, religious, economic, or other lines) is a key variable, especially as perceptions of group identities change, for example through the 'boundary formation' activities of political entrepreneurs.

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 (popularized as 'us and them' relationships) and people mobilized for violent ends.[6] 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 more likely.[7] There is evidence of this in Ituri territory, Northeastern DRC. The effectiveness of mediation mechanisms was reduced after the Uganda Peoples' Defence Force (UPDF) started to support certain actors at the expense of others. After the arrival of the UPDF, land issues became triggers for extreme violence. The district authorities were compromised through their involvement in the conflicts, and hence lost the impartiality that is needed to mediate such conflicts.[8] The close connection between the authorities and the UPDF (based partly on exploitation of gold, livestock and other resources) at the start of the mass violence further

blurred the lines between the administration, military forces, and economic agents, making mediation impossible.

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. Any research on conflicts over and around natural resources risks over-simplifying the issues, as 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.

Colonization had a devastating effect on land use patterns in some countries, especially in Southern Africa, and the effects of land alienation, dualistic systems of land tenure and agrarian production, and racism are still felt today. Colonization, imperialistic resource-capture strategies, and resultant processes of underdevelopment (related to over-reliance on export of raw materials) remain important foci of analysis. In some cases, the role of international commodity chains in African conflict is quite obvious – exploitation of Columbium-tantalite in Eastern Democratic Republic of Congo (DRC), for sale to multinational companies and eventual use in electronic devices, has been documented by ACTS, amongst others.[9]

In terms of agriculture and pastoralism, the marginal way in which African economies have been incorporated into the world trade system, and the terms of international trade as dictated by agreements under the World Trade Orgainsation (WTO) and other frameworks, all limit the options open to communities, the indigenous private sector, and governments. Simultaneously, economic liberalization policies (associated with past conditionalities of international financial institutions and present economic 'received wisdom' following the collapse of the Soviet Union) facilitate the investment of international capital in African countries, not always to the benefit of the poor majority of inhabitants.

Hence, while addressing land-related issues, researchers and policy-makers should investigate the wider boundaries of the problem, and recommend solutions

with broader perspectives in mind. For example, while subsistence agriculture is the daily reality for perhaps the majority of the African population, this need not be so – movement of goods and labour, potential improvements in technological capacity, and the nature and level of investments from the developed world are all relevant questions.

The Multi-dimensional Nature of Land Issues

Land tenure encompasses a 'bundle' of rights. Land tenure is usually divided into the rights to use, enjoy the fruits of, and dispose of (or alienate, sell) property. In other words, there is a proprietary aspect (the right to 'hold' land) and also a management aspect. These aspects (with their innumerable sub-components) may or may not be the responsibility of the same person(s). Land tenure rights may be held by individuals or groups, depending on the rules of the system in operation. Customary systems, especially in situations where land is relatively abundant or dominated by pastoralist land uses, are often predicated upon group ('corporate') membership.

Land rights, like all property rights, are socially-mediated entitlements. They establish a relationship between the holder of property and a certain set of resources. The legitimizing norms and institutions of societies maintain this relationship over time, and defend it against trespass or other interference. Because of the numerous norms and regulations that make up property rights, they are, in the end, 'relationships between people'.[10] The stability and local relevance of social groups is then important for the security of existing rights to land. This explains the tenacity of customary forms of tenure, despite the fact that statutory law has largely ignored them (or even outlawed them), for decades.

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 kinds of struggles; for example, over mining rights, protected areas, hunting concessions, etc.[11] Control over such natural resources affects land uses and often, development of natural resources

for commercial purposes involves individualisation of communal (indigenous) rights, with loss of access resulting for some users.

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. The Rwandan land policy development process, for example, did not incorporate all the relevant ministries until relatively late. Key stakeholders within government would include, for example, the Ministry of Agriculture, Ministry for Local Government and Social Affairs, Ministry of Finance and Economic Planning, and the Ministry of Justice. However, the policy makes extensive reference to the centrality of the Ministry of Lands, Environment, Forestry, Water and Natural Resources (MINITERE) and there is insufficient reference to relevant institutional linkages and policy synergies (and possible policy conflicts). In such cases, intensive and systematic inter-Ministerial planning will be necessary to ensure that the policy can be implemented successfully.

In countries such as Burundi and Rwanda, land policies and laws are being reformed within a strategy framework that should be captured in the Poverty Reduction Strategy Papers (PRSPs), as well as other national plans (such as the Vision 20:20 document in Rwanda). In several countries, the general framework represented by the PRSP has not been given adequate detail through sectoral plans, and the trade-offs and opportunity costs involved in particular strategies have not been clearly articulated. For example, the Burundian Interim PRSP does not identify many concrete options for the planned agricultural specialisation, such as developing niche markets.

Indirect Causes of Conflict; Land Access and Structural Poverty

In 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. In Eastern DRC for example, vast amounts of fertile land have been alienated from customary tenure systems, to the detriment of local peasants; first by the colonial power, and then by customary

leaders in conjunction with a capitalist elite which emerged during the late 1970s. Land sales were facilitated by the co-existence of 'customary' and 'modern' land access systems, and became more frequent after the introduction of a 1973 land law, which discarded customary law, so that land occupied under customary rules no longer had any legal status. [12] The law was to be supplemented by a Presidential Decree designed to offer some security to customary land users, but the Decree was never issued. This forced most peasants into a position of general uncertainty about their legal access to land, and proved to be a perfect instrument for the politically or economically powerful to appropriate any land not yet titled. The traditional authorities became the privileged intermediaries for the sale of land, and the resulting insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, particularly in certain parts of North and South Kivu Provinces, which have high population densities. Poverty is a reason for many people's recruitment into armed groups: while they are rarely well paid, militia members or members of regular forces are able to sustain themselves by looting.[13]

In Rwanda, land scarcity is associated strongly with poverty, particularly because there are few off-farm opportunities available in rural areas today. Lack of land, largely due to land fragmentation through inheritance were key aspects of the 'structural conflict' that underpinned violent conflict. During the genocide, violence was directed not just at Tutsi, but also at some Hutu land-owners who were involved in land disputes. Also, many of those civilians who took part in the violence were the 'lumpen-proletariat' in urban areas; the dispossessed, such as the homeless, street vendors, and garbage collectors. The powerless suddenly became 'powerful', given a license to kill, steal, and rape with impunity.[14] It is highly likely that many of these people had migrated to Kigali and other towns due to lack of land access in their rural homes.

In the case of Burundi, while the discourse on the conflict is often dominated by 'ethnic' arguments, most informed analysts agree that the roots of the conflict lie in unequal distribution of economic resources and political power, which in effect results in relative deprivation and differential access to life chances and choices, including education, subsistence, security, leadership, and participation.[15] Agriculture, which forms the mainstay of 90 per cent of the population, is under-funded and neglected compared to the military and state-controlled industrial firms, some of which control the processing and marketing of coffee and other export crops. These firms benefit from low 'farm-gate' prices for agricultural produce (generally way below regional averages) and privileged access to foreign

exchange. They are also used to retain loyalty and 'buy-off' political opposition through politically-motivated appointments.

Land is also used as a system of reward in order to sustain political patronage systems. Contradictions and disconnects in the current land tenure systems continue to create loopholes that are exploited through irregular allocation of state land to individuals in positions of influence in government, military and the civil service. Competition for control of state power and related economic rewards in addition to pressure for reforms provoke the ruling elite to protect their position through repression and violence.

Therefore, in such cases, lack of access to land, and constrained livelihood options due to lack of market access and lack of access to agricultural technologies, contribute to poverty. Poverty is in turn a 'background cause' of conflict, which is generally held to make conflict more likely.

Interactions between Customary and State-Managed Tenure Systems

In many, if not most African countries, customary land tenure systems are far more prevalent than formal systems, covering more than 90 per cent of the total land area.[16] In Rwanda for example, something less than 5 per cent of the land area is formally registered, while the figure is below one per cent in the DRC. This is a fundamental issue at several levels of analysis and in several contexts, such as in post-conflict situations. In terms of land-related causes of conflict, it is highly significant because the mismatch between the conceptual basis of customary tenure and 'modern' tenure systems has in countless countries led to those with customary rights being dispossessed by those able to access formal, written systems, and hence acquire a formal title, lease, or other form of control over land.

In many African countries, attempts have been made to incorporate those holding land under customary systems under the 'modern' system, for example by making it mandatory to register land holdings and land transactions under the formal, centralized system. However, these have not succeeded, as the associated financial and transaction costs are great, and the benefits are often unclear. As a result, in most countries there are multiple and often overlapping land tenure systems, customary and modern. This often produces a situation of legal uncertainty.

Claimants under customary law may find their rights being challenged by others claiming under statutory law. In many situations, individuals will use whichever system suits them in order to gain access to land, a phenomenon known as 'forum shopping'. The long-term effect of 'forum-shopping' is the undermining of traditional systems.

Hernando de Soto has famously argued that the key to unlocking the potential of the developing world lies bridging the gap between informal and formal property rights, in order to unlock the potential capital available through loans, fungibility of assets, and other means.[17] De Soto's projection may be overly optimistic - it is perhaps unlikely that formalizing the ownership of a typical poor rural dwelling in Burundi, for example, and the half-hectare plot that surrounds it, will bring miraculous benefits to the owner (s/he may not be willing and able to offer it as collateral, and a bank may not lend on it at useful rates). However, the principle is generally important: in order to bring improved tenure security, the state must not simply impose an idealistic *de jure* system, but rather start with the *de facto reality*, where:

"property is used and protected by all sorts of extralegal arrangements firmly rooted in informal consensus dispersed through large areas… Creating one national social contract on property involves understanding the psychological and social processes – the beliefs, desires, intentions, customs and rules – that are contained in these local social contracts and then using the tools that professional law provides to weave them into one formal national social contract."

This approach – essentially an 'adaptation paradigm' of incremental change -- has been advocated for by African and Africanist scholars for many years.[18] In practice however, Western land tenure models have often been imported to Africa wholesale. While appropriate in formal urban contexts (though not in informal settlements), they simply do not fulfill the current needs of the majority in rural areas. Individualization of tenure, cadastral systems and land titling and registration can lead to confusion and create more uncertainty in a land tenure system than existed before these processes were implemented.[19] In some cases, the mere announcement of future land titling programmes can re-activate old disputes, lead to new disputes, and alter the ways in which land disputes are managed.[20]

In the most extreme cases of corruption and misrule, applying for land title can actually be more risky than remaining without it, dependent on custom or even

tolerated use. This is because once the application in the hands of those in the land administration, it may be a target for 'land grabbing', for example by double registration. At its most extreme, for example in the so-called 'kleptocracy' period of Mobutu's rule, one might legitimately speak of a state-sponsored 'informalization' of land tenure (through contradictory and retrogressive policies) in order to facilitate the process of land acquisition by favoured people.[21]

In situations where the administrative systems are more trustworthy, the likelihood of some resources users 'losing out' is still high. Factors such as great disparity in levels of education and differential access to state administrative organs (by geographical marginalisation or even due to class or ethnic discrimination) allow elites to 'work the system' to their advantage.[22]

In response to such problems, a number of countries have taken a different approach, and developed policies and laws in which either the land administration systems, the rights which are administered by these systems, or both of these things, are composed of different elements from different normative models.[23] In most cases, the emphasis of these changes is on moving the focus away from the central state as the owner and administrator of land, and onto local administrative units or communities. Decentralization of responsibility is therefore one important element. Customary rights are receiving unprecedented levels of attention from policy-makers, with considerable effort being made to recognize forms of communal land control, for example.

The proposed changes to the Land Code in Burundi include elements which may represent some moved towards an adaptive model. For example, the currently informal *Certificate de Possession,* which is essentially an agreement between seller and buyer, endorsed by a local authority, will be given legal recognition. This may bring increased security of tenure at local level – experience from Rwanda suggests that farmers do not necessarily require full title (e.g. the type required to use land as collateral) but rather require protection from expropriation by the state or competing land claims by neighbours and family-members.[24] This can be provided to a degree by a deeds-style system along the lines of the *Certificate de Possession*, as long as corruption at the local level can be controlled.

In DRC, despite a land law that does not recognize customary rights, some elements of custom have remained very influential at local level. When these customs have been ignored, the result has been rejection of claims to land. In the eyes of local people, the 'right' to allocate land – or at least to be consulted

before land distribution - belongs to them, through their customary leaders.[25] In order to avoid possible conflicts over land, an individual or group seeking to be granted a lease to a particular area, even a 'vacant' area, will typically consult the chief and the elders of the locality before applying to the Province. During local consultations, the local elders and influential people will be informed of the intended uses of the land, and will be requested to grant permission. A gift – largely symbolic – will be offered to the chief and elders, often consisting of a cow or goat, which may be slaughtered and eaten during the discussions.

This custom is reflected in the land legislation, which provides that when an application for lease of 'vacant' rural land is made, the authorities place a large advertisement:

"…with the aim of protecting the rights of traditional populations. The posting of a notice authorising this research needs to be done in the locality where the site is situated. The research should include the census of the people who are there or who are participating in any activity, as well as an interview with the people to hear their complaints and observations." [26]

Clearly, this does not provide local people with the right to veto the purchase. However, local practicalities often preclude strict application of the law. The Registrar of Land Titles for Bunia District stated that during the 'survey' of the land prior to a title being issued, the local people essentially had a *de facto* right of veto over the acquisition process. 'If the elders refuse, you can't do anything'. Other surveys have also confirmed that in practice, access first has to be granted by customary leaders before state leases can be issued.[27] The local people have an informal 'management' right, known colloquially as the *droit de regard*. This then suggests that the relationships between local people and their chiefs are crucial. Indeed, the Registrar implicated the local chiefs in several of the contentious land disputes. In an example from Komanda town, Irumu District, South-West of Bunia town, local people, and sources in related that the former *chief de collectivite* had, before the war, distributed land as a concession to a Hema individual, but that local people had not been happy with the decision.[28] They stated that the *chief de collectivite* had 'liked cows too much', suggesting that most if not all of any benefit to local people had in fact accrued to him. Before the conflict, there had been a series of court battles to overturn the Hema man's title to the plot, but all had been unsuccessful. This confirms that despite legislation and state rhetoric limiting the powers of the chiefs, they remained highly important players in the political economy of land. In Ituri, as elsewhere, the land issue pivots around the

nature of relationships between local communities, their chiefs, local elites, and political and technical state functionaries.

Some former government officials argue correctly that the 1973 law and the 1980 modifications are the only regulations governing land leasing in DRC, and the chiefs should not therefore have such a role. However, despite this official position, it seems that they are also aware of the importance of local custom. A former Provincial Governor, after initially denying that the right to veto or *droit de regard* existed, later confirmed its importance asked about land issues in Bas Congo, where inheritance runs through the maternal line, *"and all of the aunt's sons have the droit de regard*".[29] While in the eyes of the law, such local rights may seem like outdated custom, with no legal basis, the history of land management in Africa and across the world is replete with examples that prove that such customs cannot simply be 'legislated away'. For changes to occur in practice, legislation has to be accompanied by local consultations, awareness-raising campaigns, and effective implementation of legal provisions by staff who are sympathetic to local attitudes but also rigorous in their application of the law. Most importantly of course, in order to be followed, legislation must be designed in order to be practical and responsive to local needs, and build upon existing realities.

Historical Injustices and Land Disputes

In a number of African countries, particularly but not exclusively in the South of the continent, the colonial experience involved great disruption not just in terms of the imposition of Western models of land use, which differed radically from indigenous norms and values; but also direct expropriation of land. This was most obviously the case in Zimbabwe (where Europeans controlled at least half of the entire land area), Kenya, and South Africa (where indigenous Africans were moved from prime land into 'bantustans' on low-potential soils), and numerous other cases can be cited, including Nigeria, Malawi, Namibia, and Angola. In other areas, such as Eastern DRC, colonial powers encouraged, facilitated or forced Africans to relocate from their home areas to other places in order to provide labour on plantations or to set up smallholder systems of cash-crop production. As many of these immigrants originated from neighbouring Rwanda, they have found their land rights, and their citizenship, questioned since independence, and this has been a major factor in the conflicts there. If the citizenship question related to Kinyarwanda- and Kirundi-speaking communities in Eastern DRC is not fully resolved, it will be difficult to achieve long-term peace in the area.

In Kenya, Zimbabwe, and South Africa, a combination of colonial policies on land tenure and agricultural production led to the 'hacienda' or estate becoming the predominant form of capitalist production.[30] In the process of land alienation, some communities were affected more than others, and indeed some communities were dispossessed not only of their land but also their identity, as they were not recognized as autonomous communities.[31] Other communities such as the Twa, while being recognized as a group, have been systematically marginalized since colonial times and have lost access to land in DRC, Rwanda, and in Burundi, where about 53 per cent of the Batwa are landless.[32]

During the independence struggles (many of which, such as that waged by the 'Mau Mau' or Kenya Land and Freedom Army, were focused on restitution of lost lands), much of the anti-colonial violence was played out between those fighting for liberation and those working for the colonial government or for colonial farmers. The colonialists were adept at maintaining African forces as a 'buffer' between themselves and the liberation forces. This had the effect of dividing African communities, especially in cases where particular identity groups tended to dominate colonial security forces. They became associated with repression, and these associations may not have been quick to fade after independence.

In some cases, as independence approached, colonial authorities entrenched not only European property rights, but also those of the small African elite, in order to encourage continuity in political direction and land ownership patterns.[33] In Kenya for example, consecutive post-independence governments failed to address historical injustices over land, and treated land primarily as an economic good, rather than treating it in a holistic manner.[34] In a great number of countries, land has been an important currency in the politics of '(neo)patrimonialism', whereby politics is based on patron-client relations, maintained through the informal supply of goods and services by political patrons to their supporters.[35] In many countries, the end of the Cold War in the late 1980s, and the Structural Adjustment Programmes introduced soon after by the World Bank and IMF, reduced the external resources available for circulation in (neo)patrimonial systems, hence increasing the importance of local resources, such as land. This led to corruption within land administration systems and precluded the effective resolution of injustices over land. Land disputes and conflicts which originated due to colonial policies and liberation conflicts therefore continue to plague some countries to date.

Evidence from Ituri Territory in North-eastern DRC, which has been affected by violence between Hema and Lendu communities, as well as other groups, suggests that contemporary conflicts cannot be understood from a perspective that fails to include a strong historical dimension. Anthropological data suggests that controversies over land access existed before the colonial period. [36] However, the abundance of lands (in a situation of low population numbers) meant that these did not result in violence at the time.[37] However, there were evidently some tensions between the two groups, and a number of violent incidents occurred in the late 19th century and continued into the early 20th century.[38]

The treatment of the different groups under colonialism is the subject of some debate. Many observers argue that the Belgians favoured the Hema rather than the Lendu, perceiving the monarchical system and pastoralist lifestyle of the former as inherently 'superior' to the more segmented and agricultural society of the latter.[39] The vast majority of Lendu continued to rely exclusively on smallholder agriculture or provided cheap labour in the mining centers, and did not participate as actors in such networks of economic expansion. Members of the Hema community came to form the majority of the educated people in the district, tended to gain many administrative positions and also invested their cattle-based wealth in the vehicles, buildings and other investments necessary for commerce and trade. This tendency has come to represent an urban-rural divide between Hema and Lendu, and the desire of some Hema leaders for exclusive control of Bunia after 1999 represents the extreme nadir of this pattern.[40]

In the post-independence period, there is evidence that pastoral land, in some areas, was expanded at the expense of agricultural land.[41] During the 1960s, and at points during every decade thereafter, Lendu and Hema communities were involved in clashes over fishing and land rights. These were mostly addressed by customary leaders, though in 1993, troops were sent in to quell the violence. Predictably perhaps, they fought fire with fire, turning heavy artillery on Lendu villages.[42]

The early 1980s saw another change to existing land use patterns. The Bureau du Projet Ituri (BPI), a development project funded by international donors, sought to improve pastoral productivity, in part by delineating areas across the entire district as either 'pastoral' or 'agricultural' lands. BPI documents suggest that in many places, the delineation exercise was unproblematic, but in certain areas – for example, in the collectivity of the Lendu-Bindi, in Irumu – there was resistance to the exercise from cultivators.[43] The BPI urged the government cadres to put pressure (*faissent pression*) on the customary authorities, and to use their

influence on the agricultural population, to ensure that the exercise went ahead. The BPI certainly reflected a more general trend of 'top-down' governance within the country.

Djugu, the area in Ituri where conflict first erupted in 1999, is inhabited predominantly by the Gegere (generally known as the 'Northern Hema') and the Lendu (of which there are several local sub-groups), and is the most densely populated territory in Ituri. The fact that this was the area where large-scale conflict first broke out in 1999 fits with the theoretical rule-of-thumb that where population density is greater, boundaries are stricter with fewer 'buffer areas' to provide flexibility, and disputes more likely.[44]

There are a number of large colonial-era ranching and farming concessions located in Djugu. During the 'Zairianisation' process, which involved the handover of foreign-owned assets to Congolese, several Hema were reportedly granted ownership of the concessions. They were, because of the importance of Hema traders and politicians, influential within the Mobutu regime and able to take advantage of the networks of patronage and favouritism, in a similar fashion to many other ethnic communities during this period. A considerable amount of land was also owned by the church. The perception of some informants is that the church is also a Hema-dominated institution, and when church land was sold, Hema were given priority in purchasing it.[45] Of course, as they formed the majority of the trading and administrative class, members of the Hema community would be among the few locals with the necessary access to funds to purchase land, whether church-owned or otherwise.

According to most accounts, the main conflict surrounded the expansion of the concession borders. Another type of dispute could arise when colonial-era concessions were passing into the hands of Congolese owners, after being abandoned for some time: local chiefs and communities often assumed that ownership had reverted to them, whereas by law, it was still under the control of the state.[46] Another typical scenario involved the purchase of 'vacant' land, which, as described in the sections above, was an ambiguous category, due to the failure of the land law to define it adequately. In the words of one respondent, 'the state, the chiefs, the people – they all think that they own the land!'[47]

During the intense violence – during which some 50,000 people died in Ituri and half a million were displaced – large areas have been ethnically cleansed. However, in practice, communities need to trade with each other as the economy and food

security of the area depends upon symbiosis between agricultural commodities and livestock. Local markets are the practical focus for local peace-making agreements. In the Irumu District of Ituri, for example, certain areas have no livestock, which forces them to make access agreements with opposing groups in order to buy meat and milk. These spontaneous agreements should be supported, not just by NGO efforts to reconstruct market facilities and roads, but also by the United Nations Mission for the Democratic Republic of Congo (MONUC) in terms of security arrangements.

2. Land Rights During Conflict

Situations of violent conflict, though often different in character and cause, tend to have a universally acute impact on the land rights of civilians. It is well-established that in modern conflicts, 75-90 per cent of the casualties are civilians. Through political mobilization, use of economic incentives, activation of patrimonial networks and coercion, political and military leaders – often best described as 'political entrepreneurs' – manage to involve civilians in violence, and in Africa, specific personalities and movements become associated with entire ethnic groups. In turn, civilians belonging to these ethnic groups bear the brunt of violence.

Population Displacement During Conflict

For this reason, large-scale population displacement is a feature of many African conflicts. Africa constitutes only 12 per cent of the global population; however, 28 per cent of the world's refugees and just fewer than half of the 20m internally displaced people are found in Africa.[48] Both IDPs and refugees need assistance to resume their normal lives, and often require protection to ensure their physical security. While refugees receive considerable aid from UNHCR and other bodies, IDPs often remain at the mercy of the very regimes or non-state actors that have caused their plight. In 1951, the United Nations adopted the Convention Relating to the Status of Refugees, a legally binding treaty that, by February 2002, had been ratified by 140 countries. Internal displacement does not have an equivalent legally binding treaty.

However, the intense international advocacy efforts which have been made on behalf of IDPs in recent years have led to increasing awareness of these issues. The magnitude of the challenge represented by the phenomenon is evident in the

appointment of Dr. Francis Deng in 1992 as Representative of the UN Secretary-General on Internally Displaced Persons, and the development of the 1998 Guiding Principles on Internal Displacement. The guiding principles emphasize the right of IDPs to participate in planning and distributing relief supplies and in managing their return home and reintegration. The Guiding Principles, which are non-binding, have been incorporated into national legislation in Angola and are in the process of being integrated into Ugandan law.[49] These examples should be followed in other African countries, and supported by local by-laws, training, and information dissemination as necessary.

The reasons for displacement are multiple, and include not just the threat of attack, but also the deprivation and risk of hunger that comes with the loss of access to market, destruction of crops, and damage to the social fabric of societies. This suggests that whenever possible, peacekeeping forces should protect markets, trade routes, and property rights.

In many cases, population displacement is not an accidental outcome, but rather a strategy pursued by those engaged in war, in order to achieve 'ethnic cleansing'. In Eastern DRC, for example, entire communities have been forced from their villages and many houses have been burnt down. In the words of one local woman, the message is clear: "it means they don't want us to come back!"[50] Such actions may or may not be sanctioned by leaders, and may be carried out by 'civilians' as well as combatants. Conflict situations are always confusing, fluid and chaotic – in remote and marginalized areas, where the rule of law may never have been fully established, there is a particular risk that during periods of conflict, people will opportunistically attempt to seize land and property, or settle ongoing disputes.

One in-depth study of local level land access in Northwestern Rwanda provides a chilling account of this phenomenon.[51] In one particular commune in Gisenyi Province, land disputes were becoming more and more numerous in the years leading up to the 1994 genocide. Customary conflict mediators reported that about half of all the disputes being referred to them were over land, particularly over inheritance. Because of the sheer extent of land scarcity, many of these conflicts could not be resolved satisfactorily. In this particular commune, 32 people of a total population of 596 were murdered during the genocide period. Of these, only one was a Tutsi – she was the only Tutsi in the vicinity and the first to be murdered. According to researchers, the rest tended to be people who were not socially accepted or those who were resented by some people because they had large landholdings (in addition to those who were militia members and therefore

would have been directly involved in military conflict). This then represents a tragic, if typical feature of civil wars – the tendency for some local people to use the cover of confusion in order to 'settle old scores', many of which originate in social struggles for access to land.

In some cases civilians flee the conflict-area or the entire country, abandoning their homes: Rwanda and Burundi for example, have experienced multiple waves of displacement, with large proportions of the population residing in exile for years, or even decades. In other cases, people run to safer areas, but return regularly to cultivate their fields or try to maintain their property rights. In Northern Uganda, for example, large number of families operate as so-called 'night commuters', farming during the day but leaving for towns and army camps at dusk. Globally, there are currently 12 million registered refugees, and between 20 and 25 million internally displaced persons.[52]

Often, population displacement itself is a factor in future conflict. A great number of violent conflicts (including those in Rwanda and Burundi, for example) have involved members of exiled communities, often through cross-border raids. Frequently, an important aspect in this dynamic has been the ill-treatment and scapegoating of the refugees in the country of asylum – the treatment of Rwandans in Uganda, particularly under Idi Amin, is a case-in-point.[53] This suggests that defending the rights and livelihood options of refugees in a host country, and moving towards integration of those refugees into nation economic and social life, may help to reduce the risk of conflict in certain situations.

Land as a Sustaining Factor in Conflict

During conflicts, land is controlled and distributed by those with the military and political capacities to do so, in order to sustain conflict or achieve conflict-related ends. During chronic low-intensity conflict – which is arguably the most common form of warfare in Africa – the state may continue to carry out many of its functions, including land administration, but its capacity will typically be limited due to loss of human resources (through death, recruitment, or flight), loss of revenue, and lack of political will. Given this context, land policies (where they exist) will rarely be followed.[54] In areas which are not under state control, alternative 'policies' may even be put in place by rebel groups, or communities

which find themselves operating in an institutional vacuum, and hence relying on custom, negotiation, and occasional use of force. In Ituri Territory for example, a coalition of local elites and the Uganda People's Defense Forces (UPDF) was able to use force to decide disputes over land, which generally had an ethnic dimension. Ituri Territory, which was under the control of the commander of the UPDF in the DRC, was 'unilaterally' promoted to the status of a Province, and a Gegere businesswoman, Adele Lotsove, was appointed as Governor. The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo heard evidence to suggest that she '*contributed to the reallocation of land from Lendus to Hemas*'.[55] In some countries – in the Balkans for example – land laws have been passed during conflict to 'legalize' discriminatory land activities. After conflict has abated, one of the first tasks for the transitional authorities has been to abolish these discriminatory laws. In DRC, it was hardly necessary for wartime elites to pass new laws, given the loopholes already existing in the law, the amount of personalized power available to those in political control, and the levels of corruption within the land administration.

Alternatively, occupation of land and settlement during conflict may be influenced by the actual or perceived availability of relief aid. Indeed, international aid efforts are often manipulated by warring parties to their own advantage. In southern Sudan for example, whole communities have been forced or encourage to temporarily move in order to attract relief to a particular area, so that political entrepreneurs can benefit directly (through theft of relief items) or indirectly (through resulting political capital).

In North Kivu Province of Eastern DRC for example, since 1996, land has also shifted from a source of conflict, into a 'resource' used for the perpetuation of war. The most visible illustration is the confiscation by local commanders of land that they cannot legally claim. The example of Masisi District demonstrates the importance of land for the consolidation of alternative power structures. While the military campaigns of 'rebel' groups in 1996 and from 1998 advantaged the local Banyarwanda elites in their claims to land, the same land has become one of the crucial assets around which a new local power complex under control of the Banyarwanda elite has been constructed. This power complex offers a good example of how local elites have instrumentalised a context of state decline and conflict and have combined foreign and national support networks for their local interests. Access to land, in the case of Masisi, has several functions. It provides this new complex with the necessary economic basis, yet at the same time helps

to consolidate the support of the grassroots population, which in return is granted access to land. The informal governance structure that has emerged from the unequal resource attribution –and which include both military and political elements, foreign and local actors – has laid the basis for a further reinforcement of ethnic boundaries, as this structure is based on processes of inclusion and exclusion.

Land Rights of Women, Children and Marginalized Communities

In many parts of Africa, as elsewhere in the world, women lack equitable access to and control over land, due to the nature of customary regimes, limited access to education and cash, and other reasons. Most of the customary systems are patriarchal, where land is passed down generations through the male lineage. Women cannot therefore own land, although they have access to it depending on their relationship to the male owner, e.g., wife or daughter. Often, customary regimes that do provide some access to land, however insecure, are being undermined by land scarcity and the commodification of land. Individualization and registration of land often adds to the level of justice because the male head of household generally gains title.

The existing inequalities are often exacerbated during conflict. In Burundi for example, more than 44 per cent of households in the displacement camps are female-headed, due to widowhood, single parenthood often as a result of rape, or separation and divorce as families fail to cope with the challenges of life in displacement.[56] As in most African contexts where land ownership is based on patriarchal inheritance systems, women and widows are easily dispossessed, as male relatives demand that the women give up land upon the husband's death. Upon death or separation, many households now suffer reduced access to land, because identifying potential lands for cultivation and negotiating is traditionally a male role.[57] Finding land is particularly difficult for older widows who moved away from their home areas many years ago to be with their husbands. On returning to their home areas, relatives may not be found there, due to death or displacement; often they may be refused land.[58]

Women in camps have reduced access to land compared to the access they enjoyed before displacement. Alternatives to cultivation for a largely illiterate population are severely limited. Those who seek non-farm opportunities are often separated from their partners for long periods, which also lead to increased risk of HIV-

infection as they seek new partners or are forced into the commercial sex trade.
In Burundi, Article 17 of the Constitutional Act of Transition establishes the equality of men and women before the law, and the 1993 amendment of the code of the Person and the Family includes the right to joint management of family property granted to women and to the wife if the husband is absent. In practice however, women's rights are still limited, as most men tend to delegate land matters to their male relatives. Matrimonial arrangements, succession, legacies and gifts are all governed by customary law, which does not fully recognize women's land rights.[59]
Despite limited access to land, women are nonetheless expected to provide food and keep the families going in conflict situations, when their partners abandon them or go to fight.[60] Non-observance of women's property rights in spite of these responsibilities could breed resentment and apathy, and determine the role of women in post-conflict reconstruction and reconciliation. For instance, dispossessed women who do not find viable redress may support warring parties by providing food, money, clothes or indirect support by maintaining secrecy over their whereabouts, political support or information in the hope that when they come to power, they will address these grievances. Furthermore, they may be willing to 'donate' their sons to the war effort, especially when armed groups promise land as a prize for such sacrifice. Without an alternative source of income, women may send their sons to join armed groups, from where they support themselves through looting.
Sometimes, the changing responsibilities and socio-economic roles of women can be acknowledged at the family, community and national levels, therefore leading to an improvement in women's abilities to participate in governance of land and natural resources in the post-conflict context. For example, in Liberia, the Liberia Women Initiative was heavily involved in the peace process and maintained influence thereafter.[61] In Rwanda too, there has been much post-conflict political will for women to gain important political and socio-economic positions, partly as a realization that women shouldered a huge burden due to the number of husbands and fathers killed during the war and genocide, and the great number of male prisoners awaiting trial.

Sadly, however, a more typical story has been that of Eritrea, where the responsibilities and experience gained by women – who played a massive role in the victory of the Eritrean People's Liberation Front – have since the end of the war been denied them. Socio-cultural factors relating to gender stereotypes have prevented women from continuing to play a major role in society. This demonstrates that women's rights to land and decision-making powers cannot be

guaranteed merely by legal means, but only through a combination of political will, social change, awareness raising, and relentless lobbying and advocacy.

Rwanda is an example of a post-conflict country that has developed progressive legislation to improve women's rights to inherit land and other property. However, there are customary barriers to implementation, as many men believe that the law is unjust as women will then be able to benefit from land from two sources: her parents, and her husband.[62] Even some women believe that only a woman who is single or separated from her husband should claim land through inheritance, because of the extent of land scarcity.[63]

In Rwanda, access to land for women is often dependent on subjective community perceptions of their 'virtue', as judged against ideals of female behaviour. In addition to customary norms, Christian narratives have also been influential in shaping local perceptions of the secondary status of women.[64] In some cases, female survivors have been stigmatised due to alleged or actual sexual relations (including rape) between them and those who hid them or helped them to escape the genocide; the situation is particularly traumatising for them.[65] District administrators mentioned that the 'coping strategies' employed by those affected by landlessness included prostitution, due to the lack of other non-farm opportunities.[66] This is likely to establish a vicious cycle, where those judged 'unworthy' of gaining land then turn to 'unworthy' occupations: a self-fulfilling prophecy.

Interviews with local administrators in rural areas – who tend to be aware of the inheritance law - suggest that some women are retroactively claiming their rights, which were denied in past inheritance cases.[67] The same administrators also state that with the extra pressure on the land represented by the entry of women as legitimate inheritors of family land, the ban on sub-division of plots smaller than 2 hectares will be impossible to enforce.[68] Finally, while awareness of the law amongst officials is high, it seems that a large proportion of the general population may not be fully aware of the provisions of the law.[69]

Clearly, gender-based inequalities cannot merely be 'legislated away'. Customary attitudes and the pragmatic approaches of local administrators – who often combine statutory and customary law in their decisions--will determine how the law is implemented. In order for the inheritance law to be effective, the 'top-down' mindset which sometimes dominates the policy-making arena will have to be tempered by awareness of local realities. Monitoring of the implementation of

the law, by researchers who have experience in gender issues and are aware of the Rwandan gender 'narratives' (including the effects of the war and genocide on these), will be essential in order for it to have a positive impact. In addition, the high-profile gender equality campaign – which is highly effective in underpinning urban, middle-class rights – may not be as effective at the level of the *colline* (hill, equivalent to a rural neighbourhood), and a multi-dimensional approach to gender inequalities is necessary.

3. Land Access in the Post-Conflict Context

Land rights, along with related issues such as housing needs for homeless and other vulnerable populations, are key issues in post-conflict reconstruction. However, they are not always addressed in a comprehensive way due to the complexity of the factors involved, and political sensitivities. Nevertheless, there is growing awareness that land rights and related issues must be addressed not merely as a 'development' issue, years after the official end of hostilities, but actually during the 'emergency' phase, to the extent possible. FAO and several UN agencies (including UNHCR and UN-HABITAT) are currently developing guidelines and policies based on this understanding.[70] Key issues include broadening the mandate of peace-keeping forces to include protection of property rights; conducting research on related issues in order to prepare for eventual action, and identifying local and international personnel in order to plan for implementation.
A number of issues are significant when considering land issues in post-conflict situations, including: the inequities posed by gender issues, as widowed women and orphaned children tend to face increased responsibilities as heads-of-household but lack access to land; the return of refugees and internally displaced people, often without titles or other proof of ownership; the status of environmentally sensitive areas, especially where there is land pressure due to sudden refugee returns; the threat of landmines and unexploded ordinance in some areas; and the need for management of local inter-communal relations where civilian populations have often been the victims of violence, and where land claims have an inherently 'communal' nature. Despite all these problems, it is often recommended that some elements of post-conflict land reform are done rapidly – or even built-into peace negotiations – in order to avoid problematic issues 'festering' over time and triggering more conflict at a later date.[71]

However, the transition between 'conflict' and 'post-conflict' is never clear. In terms of the causes of violence, conflict may never be fully resolved; in terms of

the violence itself, it may continue sporadically well past the official declaration of 'peace'.[72] Certain areas may be particularly affected, and indeed may not come under the control of the post-conflict government for months, or years. This is especially true in Africa, where remote areas are inaccessible due to lack of infrastructure.

Another issue of particular relevance in situations where transitional governments incorporate former belligerents, who remain divided in terms of the national vision and development objectives. A common situation involves former military or political leaders being given control of particular ministries or institutions under the terms of a peace agreement. This leads to differing objectives in government being reflected by inter-ministerial struggles.

In Burundi for example, the Arusha Peace and Reconciliation Agreement provides for the establishment of institutions to facilitate repatriation and reintegration of refugees and related concerns towards a post-conflict dispensation. The National Commission for Rehabilitation of Victims of War (*Commission Nationale de Réhabilitation des Sinistrés*, CNRS), was thus formed, first as an autonomous agency with decision-making powers, but later subsumed under the Ministry of Resettlement and Reinsertion of IDPs and Repatriates (MRRDR). CNRS was established in February 2003 to replace the National Repatriation Commission, and is to work alongside other institutions including the Sub Commission on Land Issues, the National Fund for *Sinistrés* and Reception Committees of local authorities and security agents. Its institutional set-up is a result of a compromise between the dominant political parties, Front pour la Démocratie au Burundi (FRODEBU) and the group of ten (G10) parties that are associated with Tutsi interests. Frederick Bamvuginyumvira of FRODEBU (a Hutu-dominated party) chairs the Commission, which is under the institutional 'guardianship' of the MRRDR, which is headed by a minister from the Tutsi-dominated Inkizo party.

The strength of CNRS lies in the fact that it is a product of the Arusha Agreement and as such, enjoys some legitimacy and recognition by the signatories. Despite financial and logistical constraints, it has made significant inroads into addressing the short-term needs of IDPs in some parts of the country.

However, it has a number of potential weaknesses, most importantly its loss of autonomy, as its financial and administrative capacity was placed under the MRRDR. This greatly hampers its effectiveness, especially because its mandate conflicts or overlaps with that of the ministry. Indeed, the Commission established

to monitor implementation of the Arusha Accords sees this political compromise as a breach of the spirit of the Accords.[73] Some internal relationships within CNRS are also problematic. Given these dynamics, CNRS lacks the support and good will of some political parties, which perceive elements of its leadership as politically partisan. For instance, analysts have questioned the selection of a Tutsi army officer as head of the sub-commission on land, arguing that it does not bode well for an impartial and de-politicized process.[74] Moreover, the manner of appointment of some members of CNRS leaves a lot to be desired, as it appears professional competence was not a significant criterion of selection; as some of them may have bought cards of political parties just to get through to the CNRS, where they stood to earn a salary equal to that paid for the CSA's members.[75]

Repatriation and Restitution of Property after Conflict

Restitution of property to repatriated refugees and returning IDPs is widely acknowledged as a vital issue, and has been built into peace agreements for Rwanda (in 1993) and Burundi (in 2000), for example. However, it is a politically difficult issue to address at a regional or global level. For example, efforts to develop global norms or conventions linking restitution with the return of refugees – guaranteeing property rights as a condition for return – are controversial. A number of states feel that this may become a sticking point in future repatriations, and both hosting nations and some refugee-generating countries are keen to repatriate refugees speedily, for a variety of reasons (economic burdens, security issues, and environmental impacts are often cited).

The signing of the peace agreement (the Pretoria Protocol) between the Transitional Government of Burundi and the rebel group CNDD-FDD in October 2003 was seen to be the defining moment for ending armed hostilities, hence signaling a return to peace and the long-awaited repatriation of refugees and internally displaced persons to their country or homes.

However, there is a risk that the fragile peace currently being enjoyed in Burundi could be undermined by inadequate preparation to receive returning refugees, or ineffective and weak institutions for addressing land disputes, in the context of manipulation of grievances for political purposes. Unfortunately, there is a precedent for such a situation: in 1993, the first democratically elected president, a Hutu, embarked on a series of reforms soon after his election victory. He was sympathetic to the land claims of refugees, which threatened the interests of

powerful landowners. Land disputes related to the return of refugees significantly contributed to the deterioration of the political situation that culminated in a *coup d'état* and the assassination of the president.[76]

In Burundi, the issues involved in securing land and livelihoods rights for refugees and the displaced differ from case to case. For example, a significant number of refugees were landless before their departure from Burundi. Research in nine provinces by Ligue ITEKA, funded by UNHCR, indicates that about 17 per cent of returnees were in this category.[77]

It is particularly important to note that there are substantial differences between those who have been living in exile or have been displaced for a relatively short period – e.g. since 1993 or more recently – and those who left their hill in 1972, for example. Particularly in the case of the 1993 caseload, regaining access to their land may not be difficult. This is why most experts believe that some 90 per cent of land disputes are considered to be small, local, intra-family disputes which can be resolved without significant external (e.g. central government) intervention.[78] Nevertheless, even at this level, non-state intervention is necessary to prevent their exploitation by local politicians out to fuel ethnic conflict. Since 2001, some NGOs have initiated, in different parts of the country, mobile legal clinics in order to manage these infra-family conflicts.[79]

People who have been away from their lands for longer will have greater difficulty in gaining access to land. This applies especially to those who fled the country in 1972.[80] This implies a regional differentiation in the nature and severity of problems, as many 1972 refugees originate from the south of the country.[81] The situation of the long term refugees is particularly delicate because their land, especially that located in the fertile Imbo plains, was confiscated 'virtually systematically' by the government.[82] The expropriated land is now in the hands of other owners, who have a legitimate claim to it since they were issued with title deeds – in some cases, land may have changed hands several times. Other land was taken over by relatives, friends, neighbours or may have been resold. In some cases, relatives have subdivided or sold the land, and are now discouraging refugees from returning, through sending messages to the camps that security remains poor.[83] This demonstrates the importance of ensuring that refugees have access to impartial information from various sources, including information-gathering visits by refugees themselves.

Support for Dispute Resolution Mechanisms

Land disputes after conflict are often numerous, complex, and politically sensitive. Often, land records – where they exist- are destroyed or stolen by combatants, in order to undermine attempts to reconstruct the country. Those dispute resolution mechanisms which exist should be supported in various ways (e.g. logistically, technically, and politically). These will often exist at the local level, and indeed in countries such as DRC, Burundi and Rwanda, the main proof of land rights in rural areas tends to be oral testimony from respected neighbours and local leaders. Because such local institutions tend to have an influence on multiple sectors – including environmental issues such as communal grazing or woodland areas – supporting them may have knock-on effects on environmental governance more generally. However, support requires a well-informed approach because of the potentials for bias in decision-making.

In Burundi, as noted elsewhere, land belonging to refugees that has been left for many years has eventually fallen into the hands of relatives, neighbours, other displaced persons, or been expropriated by the government and re-allocated to other people. Some displaced persons return to find that their relatives who remained behind have sub-divided their portion either among themselves, ceded it to their sons, or sold it off. Those involved in disputes may seek to have them resolved by traditional dispute resolution mechanisms (*Bashingantahe*) or though the judicial process. Research in nine provinces by Ligue ITEKA indicates that of all returnees who have sought outside assistance in disputes, over half have approached the Bashingantahe. Almost as many (48 per cent) have approached the local administration, while 28 per cent had applied to the Tribunaux de Residence (the local court system).[84] These figures suggest that people are approaching more than one institution simultaneously; or that they have been referred from one institution to another. This is because a case cannot be made to the Tribunaux de Residence without the plaintiff first approaching the Bashingantahe.[85] The strategy of approaching more than one system (often known as 'forum shopping') can over time result in the undermining of some systems. The classic case involves a situation where local customary approaches are weakened because when their judgements are unfavourable to one party, that person will then go to a formal institution to try to get a different outcome.

Instances of corruption have been reported in both processes. In particular, the formal state justice system requires that plaintiffs have financial resources to see a case to the end, and apart from the lowest level (the Tribunaux de Residence)

it is an almost exclusively Tutsi institution. According to some reports, it lacks local credibility, especially in Hutu-dominated areas. From this perspective then, while aiming for a long-term rejuvenation of all state organs, it makes sense for land-related disputes to be primarily addressed at the local level, particularly through the *Bashingantahe*. However, some analysts question the role that the *Bashingantahe* could play in future, especially because many local people blame some *Bashingantahe* for failing to prevent the 1993/4 mass killings. Given these dynamics, it appears that attempts to invigorate the institution should include substantial local participation.

Addressing Different Kinds of Land Rights

Often, attempts to address problems of post-conflict land rights concentrate on particular kinds of land access and use – such as ownership rights over urban land, and ownership or use rights for agriculture in rural areas. However, other kinds of land rights may be important. In many African countries, grazing rights, fishing rights, and rights to use forest areas and products are important for particular communities. There are multiple users, engaged in multiple activities, on the same land.[86] These users may have different social or political status, so that some claims may be legitimate at all social levels, whilst others may be seen as illegitimate or merely 'tolerated'.

In conflict-prone contexts, the legitimacy of different claims may alter frequently according to political, conflict-related criteria, and due to the influence of belligerents. In parts of southern Sudan for example, Nuer and other communities have a seasonal fishing cycle which involves the creation of large fishing camps near rivers and marshes. The location of these changes according to the availability of water and fish; similarly, the location of seasonal grazing areas and 'cattle camps' varies according to climatic factors and relations with neighbouring communities. In the Great Lakes, communities such as the Twa rely heavily on non-timber forest products (traditionally taken from areas which may now be protected conservation zones). Such rights – which do not represent claims to ownership but rather seasonal access – may be overlooked by an emphasis on permanent buildings, farm plots and commercial market-based activities.

Policy-Making in Post-Conflict Contexts

Policy-making in post-conflict circumstances is subject to the lingering effects of conflict. These challenges are social, economic, and political. In the Great Lakes Region, the loss of human capital and institutional knowledge due to conflict has been a problem, and the financial burden of 'emergency' reconstruction and relief efforts have also limited investment in longer-term policy research and development. However, perhaps the most important challenge, particularly for a sensitive domain such as land tenure which affects every household in the country, is the incorporation of the views of all stakeholders in policy-making, whilst simultaneously maintaining government control of a process that is potentially volatile.

In most parts of Africa, non-governmental actors have started to play an important part in the policy-formulation process, due both to their importance in the implementation of such policies (often a result of access to external funding sources) and to their technical capacity in particular areas. Despite the existence of a plethora of NGOs and community-based organisations (CBOs), many of them highly effective individually, in general civil society in the region is as a whole divided and somewhat disorganised.[87] Civil society organisations, like any institutions, function through networks which rely on trust and mutual support, which have been undermined by the legacy of violence.[88] As in other countries, though perhaps to a greater degree, dependence on external funding limits their ability to plan and implement long-term programmes. There is also, as is true of other sectors, a rural-urban divide, and some urban-based organisations do not maintain strong grassroots links.[89]

This has repercussions beyond the policy-development phase. The test of any land tenure reform process is not the quality of the policy or legislative frameworks, but the extent to which the policy is effectively implemented. The style of governance in the country then becomes all-important in any assessment of whether the political will exists, at various levels, to ensure that policy will be implemented evenly and effectively. Rwanda provides one example of how governance and land policy remains overshadowed by past conflict.

The Arusha Accords of 1993 may have recognized the political importance of land but did not provide adequate consideration of land access and distribution. As part of the negotiations it was agreed that people who were outside of Rwanda for 10 or more years would not claim right on the property they held before

leaving Rwanda. At the same time it stipulated that all Rwandans had rights to property. When the genocide was stopped and the post-genocide government was established, there was a large inflow of Rwandans who had fled the country. Those who left due to violence and repression in 1959, 1963, 1973 and other years entered Rwanda in large numbers starting from 1994. As mentioned above, they are generally known as the 'old caseload', are almost all Tutsi, and numbered about a million.

Many of these people occupied lands belonging to those who had fled Rwanda during the genocide. On their return, those who had fled in the immediate aftermath of the war and genocide – who are almost entirely Hutu and became known as the 'new caseload' – tried to access these same lands. In many cases, the official government policy of land sharing was followed, though this was sometimes problematic in practice.

The present problems of access are therefore those of contested rights to land that arose from largely political happenings in the past. The old caseload, many of which have little or no land, is perceived by government officials to 'continue to feel cheated[90]' that their property was distributed to others by the government after the 1960s, largely through a process known as *amasambu ya demokrasi* – '*plots of democracy'*.[91] Some members of the new caseload, who have shared part of their plots with returning old caseload families, may be unhappy because they now have smaller plots than those they possessed before 1994. Moreover the sharing process was not supported by any written legislation. Those who shared land - and any capital investments on the piece of land, such as coffee plantations or banana stands - were not compensated.

The Land Policy, in its section on the historical background to the land issue, notes that many people were landless even prior to the civil war and the events of 1994. As has been documented elsewhere, many people have become landless through distress sales of land, or sheer land scarcity within a family, resulting in some sons being unable to inherit land.[92] Other forms of landless including those depending on renting or sharecropping need to be addressed. Women, particularly widowed, divorced or single women, are also vulnerable to landlessness. The government has noted this elsewhere.[93] It is also possible that some of the 'new case' refugees were unable to gain access to lands when they returned – it was not unknown for someone to be falsely accused of being involved in the genocide in the years after 1994, and this discouraged some people from claiming their land rights too vociferously.[94]

However, after this historical section, the policy defines the landless specifically as 'old case' refugees who have returned: Rwandans who fled the country in 1959 or later and stayed outside the country for more than 10 years.[95] No other type of landless person is mentioned.

The policy's solution to the problem of landlessness is redistribution of Private and Public State land, including non-occupied, escheated and unexploited reserves. It is apparent that if such a land reserve will be reserved only for the 'old case' refugees, then this definition and the approach to the solution will appear biased towards one social group. It is true that this group is genuinely a major victim of the land problem in Rwanda. Analysts have noted that the '10-year rule' and the provision for formation of grouped settlements (villagisation) in the Arusha Accords seem to violate the property and housing rights of the 'old case' refugees, under international law.[96] The rights of the 'old case' refugees has already become one of the most visibly controversial aspects of the policy.[97] However, the issue of landlessness is much wider than this, and will continue to expand as relative land scarcity increases. The policy is silent on how, and by who, the land reserve will be allocated: firm criteria need to be set in place and a balance needs to be struck between centralized authority over the process (which would have the drawback of insufficient detailed knowledge of local situations) and local authority, for example, through the District land commissions (which would risk bias through personal links with those affected).

In addition, the conflict and genocide has – understandably--led the government to frown upon any mention of ethnicity. This has made life difficult for those advocating for improved land access rights for the Batwa–a minority social group in Rwanda who were traditionally hunter-gatherers and have been largely denied land tenure security since colonial times–are also not mentioned. Historically, as other communities encroached upon forests, the Twa were forced to retreat into smaller and smaller pockets of land. LandNet Rwanda, a network of NGOs, has been advocating for greater appreciation of the Twa as a marginalized stakeholder group, but it seems that they have yet to be heeded, and the 'ethnic' issue is one dynamic in this situation.[98]

Overall, there is a need to redefine the issue of landlessness. It is imperative to establish the extent, rate of growth, and the nature of landlessness in Rwanda, and the coping strategies arising from it. The policy perhaps requires a timeframe for distribution of the 'land reserve', as the number of landless people will continue to grow in the future. A fuller exploration of the phenomenon would inform a

holistic and comprehensive policy on landlessness, with an accountable system and clear criteria for allocation, that will not lead to social tensions and would hence mitigate a latent source of future conflict.

4. Conclusions

Evidence supports the contention that, "land issues are almost always part of the conflict, and ignoring these could lead to a non-sustainable land administration system, and even threaten the post-conflict situation in general".[99] The situation in any country, and indeed in different parts of single states, is unique. However, there are some general patterns that are often evident in post-conflict situations. Access to land for many people is often fundamentally altered. The most visible aspect of this is population displacement; often due to systematic ethnic cleansing. However, the direct use of force to alter patterns of land access is only one of a number of process involved. Land tenure is a system of rights and responsibilities– essentially, a social contract between people. Conflict changes social relationships in profound ways, and perceptions of mutual rights and responsibilities between individuals, social groups, and the state are altered due to changes in perceived legitimacy of institutions and obligations. In countries such as DRC, Rwanda and Burundi, the role of local leaders – both traditional and 'modern' – are key to this.

External support for land administration systems in Africa often focus on titling programmes and other activities which aim to provide maximum security of tenure for commercial activities in urban areas as well as large rural farms. While there is some justification in this approach–based on the assumption that improved tenure security will lead to increased domestic and foreign investment, and hence economic growth – it should not be pursued at the expense of the rights of the rural majority. Given the threats to rural land rights – from intimidation, from 'land grabbing' by non-violent means, and from sheer lack of access to information, and justice, especially for women – these should be prioritized. As stated earlier, the solution will not be found in the extension of 'urban' solutions (i.e. titling) across the country, but rather a process of adaptation and melding of customary and 'modern' systems.

The case studies demonstrate that the long-term social and political consequences of forced displacement and re-allocation of land belonging to those who have fled have been exacerbated by the lack of an effective legal framework for land

allocation and distribution. This has led to great uncertainty about the security of tenure. More profoundly perhaps, even those situations with a clear (if insufficient) legal framework have proven problematic, not just due to corruption, lack of enforcement capacity and lack of political will, but also due to a fundamental conceptual disconnect between state systems and customary systems. Because of this, there is a need for all activities related to land to look not just at the *de jure* systems, but at the *de facto* realities on the ground, which may differ widely across a single country.

A range of important questions remain about the nature of policy reforms necessary to address land issues in order to prevent violence, during and following conflict. The transition between 'conflict' and 'post-conflict' is never clear. In terms of the causes of violence, conflict may never be fully resolved; in terms of the violence itself, it may continue sporadically well past the official declaration of 'peace'.[100] Certain areas may be particularly affected, and indeed may not come under the control of the post-conflict government for months, or years. This is especially true in Africa, where remote areas are inaccessible due to lack of infrastructure. In such cases, given the long-term nature of insecurity, land issues in remote areas should not be neglected until 'peace' comes. Solutions, no matter how imperfect, should be found.

Another issue of particular relevance in situations where transitional governments incorporate former belligerents, who remain divided in terms of the national vision and development objectives. A common situation involves former military or political leaders being given control of particular Ministries or institutions under the terms of a peace agreement. This leads to differing objectives in government being reflected by inter-ministerial struggles. Much more research is needed on the politics of policy-making in such difficult institutional environments, especially in terms of the role of civil society organisations, the most effective means of external support, the mechanisms for consultation and participation of local people, and the timing of policy processes in the transition from open conflict to 'normal' development activities.

Finally, it is clear that despite the surge in interest in addressing land issues in post-conflict contexts, each situation is still being tackled in *ad hoc* ways. There is an urgent need for the UN and other agencies to develop a systematic set of guidelines and policies for post-conflict land administration and assistance for land and property issues arising due to conflict and population displacement. This has been recognized by experts in this field including UNHCR and UN-HABITAT

personnel, and efforts are underway to develop such guidelines and policies.[101] Improved convergence by donors and international development agencies on best practice in conflict-sensitive land policy design is also necessary.

Recommendations

1. In many post-conflict situations, the operation of land markets is unlikely to benefit the poor due to the distorting effects of war and displacement and the massive disparities in income in the country. The operation of land markets should be carefully monitored in order to identify trends, and means to mitigate some of the negative effects. It would be preferable that the Rwandan land policy, and the Land Code in Burundi, should limit the size of land holdings per individual in order to help redistribute land resources. The current law in Burundi should be amended to include a provision allowing for equal access to land and property for women, while in Rwanda the legal framework is better but implementation remains problematic.

2. In many countries, there remains a lack of knowledge of land policy and law amongst the general population. In countries such as Rwanda, it is also unclear how much different components of the new land administration system will cost, and hence how financially feasible they are. The land policy should therefore be piloted in limited areas, and the results monitored, before being applied more widely. Based on the pilot experiences, the government should be ready to amend the land policy. This is also true of Burundi and may also be necessary in DRC if the land law is altered.

3. Countries such as Burundi and Rwanda are under such severe demographic stress, because of lack of off-farm opportunities, that innovative agricultural and rural development strategies may be required. However, given the tensions evident in post-conflict societies, implementation of land policies should not be based on compulsion, and the government should ensure that implementation does not lead to increased landlessness.

4. Civil society organisations should be involved in policy implementation, especially awareness raising and dissemination of the key aspects of policy; capacity building; and monitoring of the socio-economic and gender impacts of policies. The ability of civil society to contribute to the process of policy development and implementation is different in each country, but in general

there are large gaps in capacity between a) urban-based NGOs and rural organisations, and b) national and international organisations. Access to information on land-related issues, especially for IDPs and refugees, is a key issue which local and regional NGOs can address. It is important to build the capacity of local NGO networks to advocate for the land rights of the poor, and the absence of other effective mechanisms for non-governmental input, civil society capacity should be one factor influencing the timing of the policy development process.

5. There is a move in countries such as Rwanda and Burundi to decentralize some aspects of land administration and decision-making to the local level. This is a positive step, but in order to represent the poor majority, the composition of the land commissions should include representatives of those 'voiceless' sections of society who are most easily marginalized as well as those with greater technical and planning abilities.

6. The Guiding Principles on Internal Displacement, which are non-binding, have been incorporated into national legislation in some countries.[102] These examples should be followed in other African countries, and supported by local by-laws, training, and information dissemination as necessary.

7. Post-conflict governments, especially those with negative experiences of multi-party systems, are understandably slow to democratize after conflict. However, a more transparent dialogue within each country on governance and post conflict reconstruction is important, particularly in light of the tendency towards increasing economic and political dominance of urban-based elites. Effective implementation of a fundamental and sensitive issue such as land will not be possible without transparency.

8. Despite the involvement of some inequitable alienation of land, or in conflicts, customary mediators and chiefs retain some legitimacy, particularly in areas where many local people question the legitimacy of higher-level state organs. They must therefore be involved in the mitigation and ultimately the resolution of land conflicts, but only through a process of open discussion about the role of various parties in the land access crisis. Local institutions should be revamped and strengthened, with membership decided through participatory means, in order to reduce the risk of political interference and corruption. In addition, legal clinics for land-related disputes should be supported.

9. Land issues at national and regional levels cannot be addressed sufficiently by 'projects', but only as part of a wider, long-term process of network-building between local, national and international institutions in order to build a constituency for peace and justice. The should involve a sustained but low-profile programme of engagement by donors, informed by close grassroots involvement and research.

10. In the DRC and indeed in other countries, land issues are so sensitive, complex and important that they cannot be managed simply by a 'technical' process (even when this involves consultation with civil society). Instead, society in general should have much more say. For example, a commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.

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

12. Regional economic cooperation should be supported. It is important that the regional and international community facilitate the free movement of labour in order for certain areas of the Great Lakes Region to overcome problems of land scarcity. Whilst there remain serious political obstacles, with continued negotiations and the support of the international community, mutually beneficial terms could be identified.

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

Notes

1. Summaries of these are available as "Policy Briefs" on the ACTS website,www.acts.or.ke. Full versions will be published in collaboration with the Institute for Security Studies, Pretoria, in 2005.
2. Juma, C. and Ojwang, J.B. (eds) (1996).
3. It does not attempt to provide an exhaustive study of the relationships between conflict and land: for such an approach, the reader is directed to some of the material in the references section, particularly OECD (2004).
4. See e.g. OECD (2001), Lewis, D. (2004), Thompson, N. (2003).
5. Pons-Vignon and Lecomte, (2004).
6. See e.g. Pons-Vignon and Lecomte, (2004).
7. See e.g. various chapters in Buckles, D. ed. (1999).
8. ACTS interview with former administrator, Bunia, April 2004.
9. See Moyroud, C. and Katunga, J., 2001.
10. Meinzen-Dick, et al (1997).
11. Moyo (2003).
12. Law No. 73/21 of 1973, later amended and supplemented by Law No. 80/8 of 1980. See also Aide et Action Pour La Paix (2004).
13. See for example Van Acker, F., and Vlassenroot, K., *op. cit*.
14. Prunier (1994), Ohlsson, L. (2001).
15. See for example, Ndikumana, L. (2004).
16. Deininger and Castagnini (2004).
17. De Soto (2000).
18. See eg. Bruce and Adholla, eds (1994).
19. Barry, M. and Fourie-McIntosh, C (2001).
20. Lund, C. (2000).
21. Deininger (2003) refers to state-sponsored informalization, through not in specific reference to DRC.
22. See Plateau, J-P. (1996).
23. See e.g. Delville, L. P. (2002).
24. See Musahara and Huggins (forthcoming).
25. This is locally referred to as *droit de regard*, the right to "look after" the land - though in the eyes of the law, the term *droit de regard* refers to rights of management enjoyed by either the state (in which the correct term is 'eminent domain') or the landowner.
26. Aide et Action Pour La Paix, *op. cit.*ACTS translation.
27. See e.g Kane, M. L., Ayachi, M., Ennahli, L. 2004.
28. The 'chef de collectivité' was killed in an ambush on his vehicle during the conflict.

29. Interview, Bunia, February 2004.
30. The Hacienda model involved a large estate owned by a colonial individual but worked on by peasants with access to only small household 'gardens' for their own use. See Deininger, K. (2003).
31. The Sengwer community of Kenya are one example: see e.g. *Memorandum from Sengwer of Kenya presented to Constitution of Kenya Review Commission*, July 2002 http://www.ogiek.org/sitemap/memo-seng-1.htm#3.2
32. The overall national landlessness figure, for all ethnic groups, is 15 per cent. See Jackson, D. (2003).
33. See Field-Juma, A. in Juma, C. and Ojwang, J.B. (eds) (1996).
34. See Kenya Land Alliance (2004).
35. See Chabal and Daloz (1999).
36. The use of the terms 'Hema' and 'Lendu' is a shorthand for a more complex reality: there are in fact numerous sub-groups within the Lendu, who are identified according to their geographical location, including the Lendu-Pitsi, Djatsi, and Tatsi of the North, and the Ngiti (or Bindi) of the south. The Hema also have sub-groups such as the Hema Boga of the South, who became sedentary at an earlier point than other groups (Bureau du Project Ituri, 1982).
37. Lobho, J.-P (1971).
38. Asadho (1999) and Johnson, D.(2003).
39. Asadho, *op. cit.*; Sematumba, O. (2003).
40. Kassa, M., *op. cit*. Even as late as mid-2004, despite almost a year of much-improved security, not all Lendu, Nande or Mbira inhabitants had returned to Bunia town.
41. Bureau du Project Ituri (1982).
42. Sematumba, O, (2003).
43. Bureau du Project Ituri, *op. cit*.
44. see e.g. Leisz, S. (1998).
45. Sale of church land has been, since the 1973 land law, technically illegal, as the state is the owner and the church is merely a leasee.
46. Under Congolese law, all land belongs to the State. Use rights are conferred through leases of up to 99 years.
47. This anecdotal evidence is also supported by Buoyalimwe, M. (1990).
48. Crisp, (2000).
49. See UN-IRIN (2004).
50. Interview with local woman, Bunia, Ituri Territory, April 2004.
51. Andre & Plateau (1995).

52. Lewis, D. (2004).
53. See Prunier, G. (1996).
54. See Augustinus and Barry. (2003).
55. See e.g. United Nations, *Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, New York, 2001.
56. Often, gender roles change. Trauma, alcohol abuse and poverty predispose families to situations of stress and domestic violence, which ultimately leads to divorce or separation. See Kamungi, Prisca, *The Lives and Live-Choices of Internally Displaced Women in Kenya*. Nairobi: UNIFEM, 2001.
57. Sabimbona, S. (1998).
58. Interviews, IDP camp near Bujumbura, May 2004.
59. FAO and IFAD, (2003).
60. Burke, E., Klot, J and Bunting, I. (2001).
61. UNCHS (1999).
62. As stated above, widows are not always able to keep their former husband's land after his death, due to pressure from his relatives. See Burnet, J. (2000) and Pottier, J. (2002) In addition to customary norms, Christian narratives have also been influential in shaping local perceptions of the secondary status of women.
63. Burnet, J. (2000).
64. See Burnet, J. (2000) and Pottier, J. (2002).
65. Many women who have been raped are no longer seen as eligible for marriage. Hamilton, H. (2000).
66. Interviews, Butare, April 2003.
67. Interviews in Butare, April 2004. In fact, the law is not retro-active, though this may not be widely understood.
68. Interview with land specialist in Kigali, May 2004.
69. Burnet, J. (2000).
70. See for example Thompson, N. (2003).
71. See Kitay, M. (1998).
72. Thompson, N. (2003).
73. Interviews, Bujumbura, May 2004; and International Crisis Group (2003).
74. International Crisis Group (2003).
75. For some members of the CNRS are known for extremist political positions and have questionable backgrounds in terms of human rights.
76. Nkurunziza, J. D. and Ngaruko, F. (2002).
77. Ligue ITEKA (2003).

78. Interviews with Francois Ngendahayo: Minister of Repatriation, Reintegration and Reconstruction; Terence Nahimana, M. P.; and NGO personnel. Bujumbura, April 2004.
79. These NGOs include Global Rights and League ITEKA.
80. Most of the refugees who fled due to violence in 1988 returned to their hills within six months.
81. Nyanza-Lac and Rumonge are the classic cases of especially problematic areas.
82. International Crisis Group (2003).
83. Interview with IRIN staff who had conducted research in the refugees camps in Tanzania.
84. Ligue ITEKA (2003).
85. However, cases involving very valuable property may go directly to the Tribuneaux.
86. See e.g. Cousins, B. (1996).
87. As in other countries, 'civil society' is often wrongly associated solely with NGOs. By definition however it should include any association or social groups outside of the realm of government.
88. Danish Ministry of Foreign Affairs (2001).
89. See e.g. Management Systems International (2003).
90. The quote is from the Draft Land Policy.
91. See Republic of Rwanda Ministry of Lands (2004) see also Catherine Andre (1998) who identifies the issue of returnees as a possible source of social tension.
92. See for example Andre C., Plateau, J-P., (1996).
93. Republic of Rwanda (2002).
94. According to human rights organisations, many people detained soon after 1994 were innocent victims of property disputes, and were some of those who 'disappeared' in the early post-genocide years. See Pottier (2002). With the improvement in social relations over the last decade, it is possible that some have been able to reclaim lands.
95. Section 5.1.2.3 of the draft land policy.
96. See for example Jones, L. (undated).
97. See Bugingo, S. (2004).
98. See Burnet, J. (2001).
99. Zevenbergen, J. and van der Molen, P. (2004).
100. Thompson, N. (2003) *Access to Land in Post-Conflict Situations: an Analytical Paper*. FAO, Rome.
101. 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.

102. See UN-IRIN (2004).

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