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Dealing with land issues and conflict in eastern Congo: towards an integrated and participatory approach

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This briefing is a revised version of the note 'Land Issues and Conflict in Eastern DRC', prepared for the DRC Affinity Group and published by the Social Science Research Council. It is drawing on the conclusions of an international seminar on land issues and conflict in eastern DRC, held in Brussels in September 2012

Introduction

There is an increased recognition that land issues are a key driver and sustaining factor of conflict in eastern DRC. Scholars and practitioners have identified a number of critical land-related factors contributing to violence and conflict, including a huge diversity of land governance forms; the existence of overlapping legal frameworks and the weakness of the statutory land law; competition between indigenous and migrant communities; limited access to arable land in demographically dense areas; the weak performance of the administration and justice system in the reconciliation and arbitration of land disputes; growing stress on local resources caused by massive displacement; the expansion of artisanal and small-scale mining; and increased competition between elites for the control over land and the consequent land concentration.

Since the official end of the Congolese war in 2003, several initiatives were developed by international

and local development organizations that deal with conflict-related land issues. Most of these initiatives have a focus on mediation of local-level land disputes and on legal protection and assistance. While these efforts have had some positive impact on small land related conflicts between individuals, they have limited effect on the structural causes of land disputes.

In December 2011, the re-elected Congolese President Joseph Kabila recognized the need for a more comprehensive policy and land reform, and expressed his engagement to reduce the number of land related conflicts in eastern DRC. The Congolese Prime Minister Matata Ponyo affirmed that a revision of the existing land law is needed to be in accordance with the socio-economic development ambitions. One of the outcomes of this renewed attention for land issues was the national seminar on land reform, which was organized in July 2012 in Kinshasa by the Congolese Minister of Land, in collaboration with UN-Habitat. The aim of this national seminar was to promote an inclusive framework for dialogue between different stakeholders in order to reach a consensus on a land reform process, to identify the challenges, opportunities and constraints of an effective land management and to develop a short-term and long-term roadmap of a land reform process. During this seminar, it was agreed that a new land policy, including a revision of the General Property Law of 1973, was required and a detailed roadmap for a participative land reform was adopted.

Since this national seminar, several discussions and workshops have been organized by different stakeholders, and additional research has been

commissioned to document the land governance context. Progress was also made on the adoption of the roadmap. A comprehensive land reform process is slowly taking shape but depends on the institution of a national commission that has to guide this process. The decree on the creation and organization of the ‘Commission nationale de la réforme foncière’ (CONAREF) was signed on 31 May 2013.

This paper highlights some of the key links between land governance and conflict in eastern DRC, provides an assessment of current initiatives and presents a number of policy options.

Land issues as trigger of conflict

In eastern DRC, land issues are closely connected to dynamics of violence and conflict. The poor governance of land allocation and transfers has been a source of structural violence in the entire country, but it is mainly in the Kivu provinces and Ituri that this has led to massive violence. A context of multiple and contradictory land rights, a weak governance framework and a failing justice system have had a considerable impact on the socio-economic and legal position of rural populations. It has also led to growing confusion over land rights and access. In most cases, the consequent disputes and disagreements have remained limited to the individual level. But in certain areas, land issues have been a major source of conflict between different communities.

The Congolese wars have only reinforced the importance of land issues in local conflict, with references to land being a key ingredient of mobilization efforts by armed groups. But land has also turned into a resource of war and of speculation to the advantage of politico-military elites. The effects of these dynamics, however, tend to vary from place to place depending on the local history, the composition and density of the population, the local governance context and administrative organization, and the implication of politico-military elites.

Most studies define ‘the land problem’ as a result of contradictions in the existing legal framework and the lack of a transparent land governance framework. As in many other contexts, access to and use of land are governed in the DRC through a multitude of systems, practices and institutional

frameworks, including a statutory land system, customary systems and a variety of informal land governance practices. These systems lack harmonization, have different legal statuses and are based on different rules, rights and obligations.

The effects of these contradictions are further worsened by the lack of a true land policy. Land tenure policies are based on often conflicting documents and statements, which explains why there are no clear standards for the registration of land. This, in turn, leads to confusion, tension, competing claims of ownership or user rights, and, ultimately, various forms and degrees of violent conflict.

A complicating factor is the ambiguity about the exact duties and competencies of customary chiefs. Given their double status as representatives of the traditional order and heads of the local administration units, customary chiefs have always played a prominent role in the distribution of land. Furthermore, the local authority and legitimacy of these customary chiefs has been seriously affected by their involvement in the selling of communal land (often without informing the communities they are supposed to represent), their dubious position during the war (some have supported rebel groups while others have left their territories) and their involvement in local networks of patronage.

The Congo wars have had a devastating impact on the already very fragile land governance context and have exacerbated the negative effects of the existing legal framework. A first impact is the disappearance of any reliable land regulating or legal protection mechanism for small farmers. The justice system today has a very marginal role in resolving land disputes because it is extremely fragile and affected by corruption, and thus considered as completely unreliable by parties in conflict. But also customary justice mechanisms have lost much of their credibility and capacity.

A second impact is the radical change, during the war, of land access patterns, partly as a result of forced displacement, but also because of the loss of authority of customary chiefs and administrations to the advantage of a new class of politico-military strongmen. Land turned into a new source of speculation and of rent-seeking activities, which was facilitated by the institutional vacuum created by the collapse of the Congolese state. In the Kivus, politico-military leaders came to be deeply involved

in land-grabbing strategies, either to redistribute land to their supporters or to confiscate ranching land for their own benefit. In order to consolidate their control over land transactions, rebel groups also tried to further reduce the power of customary chiefs, or have created new administrative entities and boundaries and instituted parallel power structures.

An issue of concern remains the return of refugees to their areas of origin. Particularly the recent return of Tutsi refugees from Rwanda to Masisi and Kalehe has instigated new land claims and has intensified tensions between local communities. In these areas, lack of legal protection, weakness of the local administration and lack of available arable land causes renewed competition and tension, and has affected ethnic cohabitation and security conditions. In North Kivu, there have been several moves by high-ranking military officers to organize and encourage the return of refugees or to facilitate the migration of large groups of people to other areas, in some cases with the complicity of customary chiefs. This has gone hand in hand with a forced redistribution of land to the advantage of refugee-returnees, which has caused renewed tension between different communities and mobilization by armed groups.

Experiences in resolving land tensions

Donors and local organizations have increasingly recognized land issues as a key priority, and many organizations have piloted activities dealing with land-related conflicts. Donors have also acknowledged the importance of land conflicts in DRC and the need to develop adapted strategies. This has led to a great variety of perspectives, approaches and strategies, including small-scale activities founded purely on voluntary effort as well as sustained and comprehensive large-scale interventions.

Three different approaches can be distinguished. A first and most important group of interventions includes initiatives at a local level that respond to specific disputes and focus mostly on community-level mediation and reconciliation, which by far is the most common form of intervention. Some of the existing mediation initiatives were implemented to respond to specific events, such as the return of refugees or displaced people and their claims on land. Most of these mediation committees specialize in land conflict mediation, but also tackle other

disputes. While many organizations support community-level mediation of land disputes, the majority of disputes treated are those types, which are not likely to result in large-scale violence.

A second group of interventions focus directly on land governance aspects. Several NGOs have attempted to help communities register land or have tried to provide legal ‘accompaniment’ for those smallholders seeking title deeds to their land. Attempts have also been made to link customary and state systems and to develop local land registers, which would ‘formalize’ transactions approved by customary chiefs.

A final group of initiatives focus at policy and legislative levels and include the vulgarization of the land law and related legal frameworks, but also advocacy efforts by Congolese civil society to change this framework.

Each of these initiatives has had some positive impact on local conditions of land governance. Even if in most cases their impact is limited in scope and time, local initiatives provide an essential alternative and respond to a direct need in areas where land governance is weak and justice mechanisms are either corrupt or absent. One of the strengths of local level initiatives is their inclusiveness and their participatory approach, which gives them a significant level of local legitimacy. The effects of these initiatives can even go beyond land governance issues as their inclusiveness also provides some opportunities to larger-scale reconciliation and peace-building.

Existing approaches have limited effect though on the underlying causes of land disputes, which in most cases are left unaddressed either because considered to be too complex or because of a lack of impact on powerful actors involved in these conflicts. Also, when land-related disputes are affecting larger-scale ethnic cohabitation, current initiatives tend to have limited impact. There is also a lack of coordination between the multitude of initiatives. Each initiative starts from its own objectives, logics, methodology and strategies, leading to multiplication and increased competition. The role of donor agencies is also often experienced as crucial, which causes concerns about the sustainability of initiatives once donors are no longer involved.

Policy options

A transparent and responsible land governance framework is an essential ingredient of a comprehensive strategy of conflict resolution and peace building in eastern DRC. This strategy needs to address the causes of land conflicts but also to facilitate a land reform process. However, such reform process should not stand on its own and should be linked to a larger strategy that aims at improving the general governance context and at strengthening the justice apparatus. Also, this reform strategy is a long-term ambition and far from being achieved. The roadmap that was adopted in Kinshasa in July 2012 should be considered as a starting point, but its success depends on the right follow-up decisions, strategies and initiatives as well as the necessary political will from many key actors. It creates a window for change but without true political commitment risks being a long-term process with a very uncertain outcome. A first step is the institution of a national land reform commission; at the end of May 2013 a decree was signed that stipulates the details for the creation, the organization and functioning of this commission. In order to be effective, this commission needs to represent all the main stakeholders.

Other land reform examples in similar contexts have revealed that such processes usually take much longer than expected, tend to be too centrally controlled (with national land commissions as obstacles to, instead of instruments of reform) and not always tackling the key issues. The real challenge thus is to assure that policy reform has a real output. This requires the entrenchment of a land policy in a well-designed and effective legal framework, but also a transformation of policy and the strengthening of the larger governance framework and justice apparatus.

To have a longer-term impact in eastern DRC, there is of course a minimum of stability and security needed. It should also be recognized that local realities need to be taken into account: what is good for one part of the country is not necessarily a priority for other parts. And this process will also challenge people's positions, claims and power. Land is a key issue framing the conflict in eastern DRC and tackling this will open Pandora's box, exposing a plethora of other issues. But it is a critical condition to create some form of stability

and should be part of any comprehensive approach to the current crisis.

During a seminar held in Brussels in September 2012, participants concluded that a land strategy should be based on two main principles: (i) a collaboration with and reinforcement of the state, which is a critical condition to a successful policy; (ii) an integrated and participatory approach, which is based on 'learning by doing from the bottom-up' rather than starting from a top-down reform process.

Such participatory approach will be time-consuming and will only have effects on the mid- or long-term. On the short term, existing mediation efforts should be supported, be revised and strengthened to also have an impact on larger land disputes and to tackle the 'collective' and inter-communal aspects of land disputes. These efforts also will be more effective if these are credible, rooted (at least partially) in local understandings of land tenure systems as well as state law, and supported by local and higher-level authorities.

The international community should play a specific role in this process and reinforce existing capacities at the national and local level. It should support the further development of the road map and the land reform process, and provide specific technical assistance to the Ministry of Land Affairs. It should also reinforce coherence between different land governance approaches and initiatives through the creation of a coordination mechanism.

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