

PREVENTING CONFLICT THROUGH IMPROVED POLICIES ON LAND TENURE, NATURAL RESOURCE RIGHTS, AND MIGRATION IN THE GREAT LAKES REGION

AN APPLIED RESEARCH, NETWORKING AND ADVOCACY PROJECT

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Introduction

Since the early 1990s, parts of Africa's Great Lakes Region have experienced political strife, armed conflict and population displacements with severe humanitarian consequences. Despite great progress towards sustainable peace in all the countries of the region, sporadic violence continues in some areas, particularly in the Eastern Democratic Republic of Congo (DRC). Conflicts in the Great Lakes Region are highly interlinked, with political and military alliances, refugee movements, and ethnic solidarities tying the fates of the countries of the region. Processes to resolve and pre-empt violent conflict in all these countries are vital in order to bring regional peace.

While violent conflicts in the region have clearly revolved around political struggles for the control of the state, generally involving the mobilization of ethnic identities, recent research has pointed to the significance of environmental variables in triggering and sustaining struggles for power in the region. The importance of these variables has recently been tested empirically by the African Centre for Technology Studies (ACTS) under a project entitled "Ecological Sources of Conflict in Sub-Saharan Africa". Research was undertaken in Rwanda, Burundi, DRC, Sudan, Somalia and Ethiopia; and published in June 2002 in a book entitled *Scarcity and Surfeit: The Ecology of Africa's Conflicts*. The research revealed the urgent need to incorporate ecological concerns in regional and international efforts at conflict prevention, management and resolution. Chapters of the book are available in electronic form on the ACTS publications webpage, http://www.acts.or.ke/outreach_pubs.htm.

Contested rights to land and natural resources are a significant element in the dynamics of conflict in the region. Population movements – involving voluntary migration as well as forced displacement – are significant factors in some conflicts, and land disputes arising from the return of refugees can pose challenges to post-conflict reconstruction. Localised environmental degradation (e.g. wildlife poaching and deforestation) are identified as causes of tension between groups in some

areas. The need to resolve controversies over land and natural resources must therefore be a pivotal element of wider efforts to end violent political conflicts in the region. For this reason, ACTS is conducting research on these issues in Rwanda, Burundi and DRC by working with local researchers in each country, as well as organizations including the Institute for Security Studies (ISS), Pretoria; LandNet Rwanda; Partnership for African Environmental Sustainability (PAES); and Forum on Early Warning and Early Response (FEWER).

This USAID-funded project's primary goal is to influence positively, through advocacy with relevant stakeholders, ongoing processes of land reform and debates on land rights in the Great Lakes Region, particularly as they affect or are affected by displaced populations. It is important that stakeholders in each area are able to learn from each other's experiences. This will be achieved through research, networking and advocacy with a variety of actors, including government departments, civil society groups and non-governmental organizations.

Research on land and conflict

There has been increasing interest in recent years in possible links between land access issues and violent conflicts. For example, a major World Bank study and conference on land issues in Africa included discussions and papers on conflict and post-conflict situations.¹ The Food and Agriculture Organization (FAO) produced a number of conceptual "toolkits" for understanding and analyzing disputes and conflicts over land.² Others have situated land issues within a broader framework of "entitlements" which are the embodiment of socially-sanctioned claims in legal and economic processes.³ The entitlements approach has also contributed to the development of frameworks for analyzing livelihoods, which conceive of land and natural resource assets as one of a range of elements contributing to livelihoods strategies.⁴ When these strategies are challenged through reduced land access, conflict may arise.

Other studies have looked at the role of land administration, including land reform and/or redistribution, in post-conflict situations.⁵

A survey of the literature reveals a wide range of definitions of key terms, a diverse array of approaches for describing and analyzing the issues, and a broad and often contradictory assortment of conclusions, recommendations and policy ideas.

For example, there are various understandings of the very concept of linkages between land tenure or land access and conflict. When researching these links, some writers have looked specifically for conflicts which are overtly "over" or "around" land rights (i.e. land is a proximate cause). Others have pointed out that access to land is one key determinant of the level and extent of poverty, which may be associated with a high risk of violence. **Land tenure can therefore be one part of a complicated combination of structural factors contributing to violence.**

Another important factor in tracing possible relationships between land, poverty and conflict is that the true "value" of land cannot be judged by the size of plot, quality of soil and geographical location. It is only seen clearly through an analysis of land within the livelihood system, which is limited or enhanced by "external" factors such as access to agricultural inputs, transport and water-conveyance infrastructure, credit facilities and seeds.⁶

More fundamentally, perhaps, access to land is more than just an economic issue; it is an important indicator and symbol of social rights, obligations, and status, both within and between households. In Burundi and Rwanda, for example, due to, "the exploitation of the environment as an integral, indeed the crux of feudal relations. . . the use of land and ownership, as well as exchange laws have shaped the perceptions of the social groups in the continuing conflict in the country".⁷

In recent years, there has been greater awareness that the effects of HIV/AIDS, including illness and premature death of breadwinners, has impacts on land use and land ownership patterns. These land use changes include a decrease in the area cultivated due to illness, and a shift to less labour-intensive land uses.⁸ Access to land is also altered, as households caring for

people with AIDS are more likely to lease out their land, enter into sharecropping agreements, or lend land to others. Such households are also more likely to lose land, either through formal or informal sale, abandonment of land, or having land forcibly taken from them.⁹ It is also important to note that access to land affects people's vulnerability to HIV infection. Limited access to land forces individuals to seek off-farm income, which often involves migration and may separate spouses for long periods. In many areas, widows without children as well as divorced women are denied access to land. In an attempt to purchase land, and without other means of generating income, some may turn to the commercial sex trade.¹⁰

While there is a lack of firm data, it is feasible that impoverishment, as well as the psychological effects of AIDS and the destruction of social restraint mechanisms due to household break-up, contribute to the generation or perpetuation of conflicts.

One important conceptual issue recurs in literature on land tenure in Africa. There are aspects of land use and land access which are more common in "traditional" African societies than in the West. These include, for example, multiple use regimes, with multiple users; as well as flexible tenure arrangements which are "stable" but may alter over time. The first problem with the way that these are often treated is that they may not be fully understood as they are often complex and require considerable research to be fully "mapped". The second problem is that even if identified, such aspects are not well-captured by Western concepts of land use and land tenure. The most obvious form of **conceptual disconnect** is that African resource use is often based on common property regimes, while Western property rights law and theory is founded upon the central importance of individual rights.

ACTS is in the process of further investigating these issues, in addition to examining policies, laws and practices related to migration and refugee status, in order to lay out the conceptual framework for its research in the three countries. As this conceptual framework is developed, ACTS is also identifying specific research areas and questions for attention. Some of these are summarized below.

Land issues in Rwanda

Almost everyone in Rwanda has undergone an experience of forceful displacement, and many have had to reclaim lands which they have left. Government policy has directed people to share land resources (often through state-guided "villagization"), or has opened up protected public lands for resettlement. Despite people's general willingness to share land, there are many land disputes at the local (intra- and inter-household) level. The National Unity and Reconciliation Council found that land disputes are "the

greatest factor hindering sustainable peace".¹¹

Land is scarce. Population density has increased from 101 people per square kilometre in the early 1960s, to 303 people per square kilometre today, with some districts supporting 1000 people per square kilometre.¹² In 1960 the average size of a family farm holding was 2 hectares; in 2001, almost 60 per cent of households had less than 0.5 ha. By 2020, the population is projected to double to 16 million, which will reduce the already tiny plot sizes by half. Clearly, subsistence livelihoods are already at risk and may become unviable.

In Rwanda, there are two types of rights of access to land: private individual ownership, regulated by statutory law; and customary access, regulated by indigenous systems in rural areas. Changes to the customary systems under the monarchy (around 1870) and attempts by the Belgian authorities to standardize the monarchic system and apply it to those areas customarily administered by lineage leaders resulted in more rigid and exploitative relationships between land owners and land users. This also made access to land a factor of differentiation between the Hutu and Tutsi.

The so-called "Social Revolution" of 1959 and the associated violence resulted in many Tutsi leaving the country and widespread re-distribution of land. The government claimed to have dismantled feudal structures, but the new state elite misused their power to gain access to land and cheap agricultural labour. In the rural areas of Rwanda, client-based land relationships still exist, and have in some cases evolved into "monetary clientelism", where the power of the patron is based on his or her links with the monetary economy. In most cases, individual land rights predominate, and sale and rental of land is increasingly common, even though sale is, technically, illegal. Research in Gisenyi Province, 1988 – 1993, found that about 65 per cent of all land sales were "distress sales", to cover essential household expenditures.¹³

There is therefore a situation of **judicial uncertainty** and associated tenure insecurity linked to land disputes. The flexible nature of customary systems, which often enables them to maintain general social cohesion, has to varying degrees been overwhelmed by the sheer scale of the changes in recent years.

Inequitable distribution of land, in tandem with fundamental land scarcity has been identified as one of the aspects of historical economic domination and exclusion that created deprivation and social tension and prepared the way for violence. During the genocide, extremist politicians urged people to kill Tutsi and moderate Hutu in order to gain access to their land. In some cases, those who led the killings were rewarded with land by politicians.

Currently, different areas are affected by different kinds of challenges. In many cases, "local arrangements" were made regarding distribution or sharing of contested lands. Sometimes, coercion was used to ensure that people accepted certain arrangements. These

local variations in the nature of disputes mean that a 'one size fits all' policy approach may not be appropriate to local situations.

Because of a history of autocratic governance and current political issues, there is a general lack of information on the perceptions of local people. Therefore, it is difficult to gauge the effects of land disputes on local communities and inter-group relationships. However, the historical significance of land and frequency of disputes suggests that **effective land reform and land management is key to long-term peace in Rwanda.**

The draft Land Bill and Land Policy (currently under discussion in Parliament) aim to tackle some of the challenges, mainly through facilitating "land consolidation" in order to bring economies of scale and encourage non-farm activities. However, it is not yet clear how such a process will take place or if it would be beneficial to all. It is important that the processes by which priorities for improvement, and mechanisms for them to be put in place, can be identified at the local level. **It is also important that local capacity for implementation of these instruments is strengthened** if they are to be effectively implemented. During the research, ACTS will concentrate on the policy aspects of both of these issues: land reform and local administration.

Land issues in Eastern DRC

Since the start of the colonial period, the Democratic Republic of Congo (DRC) has suffered misrule and economic sabotage. In the mid-1990s, as former President Mobutu attempted to retain power through brutality and repression, an alliance of foreign-backed rebel forces swept across the country from the east and installed Laurent Kabila as president in May 1997. Soon after, as a result of internal power struggles, and (related) external relations with Rwanda and Uganda, a "second Congo war" broke out, again in the east of the country. The humanitarian impacts of the violence have been truly horrific. The International Rescue Committee estimated in mid-2003 that 3.3 million people had died in the war since 1998 – the majority of them in the eastern part of the country, particularly the Kivu.

In response to these events, peace processes have been underway since the very first weeks of the "second Congo war" in 1998. The most significant was the Stakeholders Peace Talks in Lusaka, July 1999 which eventually resulted in the establishment of the Transition National Government in 2003. However, despite this progress, violence has continued in parts of the east, especially in Ituri. Meanwhile, in North Kivu, there are reports that tensions are high.

The fighting in the east involves numerous factors. An important aspect of this conflict is the control of local economic structures by armed groups and the exploitation of natural resources. These include minerals (especially coltan, gold, and diamonds), timber, and wildlife. These have been well documented: **issues surrounding access to agricultural and grazing land have been less well-researched**, despite being important factors in the Kivus as well as in Ituri.

A recurring theme in the Kivus is the contested political/civil status of non-autochthonous “immigrant” communities. Their civil and political status is intimately bound up with access to land. Some Rwandaphones migrated there in the 17th century, whilst others migrated more recently.¹⁴ In Masisi District, for example, both Hutu and Tutsi populations migrated there from Rwanda in colonial times, partly to work on European plantations.¹⁵ The political power of Rwandaphone populations were instrumental in the legislative elections of 1960. Political competition, combined with a new influx of Rwandan refugees from Burundi in 1963-4, led to a surge of anti-immigrant feeling. This was the background against which the 1964 Constitution was drafted, which restricted citizenship to “those persons who could show that one of their ancestors was a member of a tribe... established in the Congo prior to 1908”. However, the political influence of numerous Rwandaphones in the 1970s and 1980s altered the de facto situation, and some Rwandaphones acquired large tracts of land. This was often seen locally as a challenge to the authority of local customary leaders, who demand tribute for land which is held under customary “lease”.

In order to understand the current situation, it is necessary to understand the mechanics of colonial rule.¹⁶ The colonial state governed and administered land through two systems – the first, civil law, was operative in the urban areas, and was the prerogative of the Provincial government. The second, customary law, was operative in the rural areas, and was implemented by the traditional authorities. This “bifurcated” model which is still in place today, tends to simplify a situation that is extremely complex: a “bewildering range of conflicting laws and legal interpretations” makes the civil land tenure system open to confusion. The General Property Law of 1973 had put all land theoretically under the ownership of the state and had theoretically abolished the customary tenure systems.¹⁷ This law was open to abuse and has led to many people being evicted from “ancestral” land, which is then privatized.

In Ituri, N.E. DRC, a variety of factors are involved in the conflict. External actors have encouraged violence for commercial gain, but a local land dispute is at the root of the violence. **Control over access to land is one important instrument of political and economic domination** used by elites (of various ethnicities and

nationalities) to disempower sections of the local community and guarantee labour availability for various profitable “projects”, such as looting, gold mining and security for commercial networks.¹⁸ In a more abstract sense, the re-construction of identity (i.e. centred on ethnicity or locale, rather than for example class or gender) is another instrument of coercion. Often, because of the significance of land to livelihoods and forms of “belonging”, access to land is one of the elements of the “reconstruction” of identity.

One of the challenges to reconciliation efforts is to address the land issue in terms of the changes in land access which have occurred since the violence began. In Ituri, it has been noted that many gold mines are now controlled by Lendu militia, while individual Hema may have accessed more land in certain areas. Thousands of people have been displaced, and their relocation in a time of peace will also have to be carefully managed. Issues of land tenure will only be solved through dialogue and negotiation between the people involved. However, this will have to be done in tandem with **a review of political representation of ‘non-autochthonous groups’; land tenure systems (civil and customary)** and studies of the way that systemic problems have interacted with historical specifics and local power-struggles. A prerequisite for local peace will be an attempt to build the capacity of local people to critique existing legal and administrative structures and actively advocate for their needs.

Land issues in Burundi

Burundi has been embroiled in violence for decades, and has been particularly hard-hit by the civil war which has been going on for the last decade. At least 300,000 people have died as a result of violence during that period and a total of 1.2 million people have been displaced from their homes. There are 281,000 internally displaced people while 789,000 Burundians live in Tanzania.¹⁹ In November 2003, the transitional national government of Burundi and the CNDD-FDD rebels signed an agreement endorsing political, defence and security power sharing. The rebel group which remains opposed to negotiations with the government: the FNL, is under considerable pressure to negotiate.

Land is significant to conflict prevention in many ways, but primarily perhaps because of the great challenge posed by the possible return of refugees, mainly from Tanzania. Population density is high, averaging 230 people per km² but as high as 360 persons per km² in some areas.²⁰ Over 80 per cent of rural households have less than 1.5 hectares of land, and the average land holding in 1982 was reportedly 0.39 ha.²¹ Population pressure has led to exploitation of marginal lands which makes livestock and agricultural productivity increasingly fragile. In addition, forests have been devastated and soil productivity is on the decline, especially

on small farms which are intensively cultivated.

Land tenure in Burundi currently has both customary and modern systems operating in parallel, and with some overlapping and hybrid systems in place. The 1986 Land Tenure Code requires all land, and all land transactions, to be registered with the state. However, the state lacks the financial resources to implement or disseminate the Land Tenure Code. As a result, customary tenure regimes are still very influential in rural areas, and land holdings remain largely unregistered.²²

Under customary law, women have unequal access to land (e.g. they can rarely inherit land). Many studies of inequality and conflict do not take women’s issues into consideration, arguing that women do not participate in violence. This assumption is problematic because civilian populations may provide direct or indirect support to armed forces. Growing up in female-headed households with restricted access to land and in extreme poverty, children are more likely to become involved in conflict, either for financial or for ideological reasons.²³

The government of Burundi has tended to focus on land fragmentation and environmental degradation as the main land-related problems.²⁴ Notwithstanding the significance of these two challenges, other land-related issues have great salience to long-term conflict prevention. These include **internal displacement, the likely return of the refugees, the problems of land administration, controversial state expropriation of land and “land grabbing” by individuals.**

Land may be directly contributing to conflict; anecdotal reports suggest that some rebel groups use the promise of increased access to land to enlist people.²⁵ The displacement of large numbers of people also creates opportunities for illegitimate use of abandoned lands, though it is unclear to what extent this is a contributing factor to conflict.

The economic and political exclusion in Burundi is based on tight networks of kinship and patronage, with strong links between the civil service, military and the private business sector. **Land is one of the currencies of patronage** and is also one of the ways in which diverted monies are invested. If this continues to be the case, it could undermine a political transition process.

Land administration is key to resolving some of these problems. The system is multi-tiered, starting at the local level, with the *Bashingantahe*, (a council of respected persons) made up of eminent males at the local level. Some members of these ‘wise councils’ have been appointed for reasons of political influence rather than local legitimacy.²⁶ The legitimacy of some chiefs and commune administrators has also been compromised due to the conflict. Therefore, local level land disputes are less easily resolved.

The formal land registration system is far from perfect. Flight of human resources

is a major problem. Double-registration of plots, corruption and nepotism are also in evidence. At the judicial level, which is the ultimate guarantor of land security in the country, corruption is a problem, due partly to low salaries paid to judges.²⁷ As a result, some land disputes take extremely long periods in the courts.

There are many issues relating to the repatriation of refugees that must be tackled urgently, given the moves towards peace in the country and the very real possibility that refugees will return soon. It will be useful to look at the role of **conflict management mechanisms** such as the *Bashingantaha* in assisting administrators and citizens at the local level in managing some of the land disputes that are likely to arise.

Institutions have been charged with managing these issues during the transition process, but doubts have been raised about their ability to do this due to political, technical, and financial factors. International support for policy development as well as implementation may be necessary. In the long-term, land scarcity is likely to become one of the most significant issues affecting the country and will be exacerbated by environmental deterioration. The challenge is to **add value to farm production and identify off-farm opportunities** in a variety of sectors, for example, through infrastructural development, market access, and counterbalancing the patterns of regionalism that have characterized politics and development in the country.

Conclusion

ACTS is currently conducting research into these issues in collaboration with ISS, Pretoria, and will disseminate the results in September 2004 through electronic and published material as well as a conference. Comments, contributions and opportunities for information dissemination are welcome. ACTS would like to thank USAID for funding this project.

Notes

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23. In some conflicts – for example in eastern DRC – many households voluntarily 'provide' at least one son to local militia groups. These may be a form of livelihood strategy for the family, as the son will be fed and clothed by the militia (or will take his provisions by force), relieving the burden on the family.
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The African Centre for Technology Studies (ACTS) is an international policy research organisation based in Nairobi, Kenya. The Centre's mission is to enlarge the range of policy choices for Africa's sustainable development. Its activities focus on implementation of technology policy-related provisions of Agenda 21 and the conventions of biological diversity, climate change and desertification. ACTS' research and capacity building activities are organised in four programmatic areas—Biopolicy, Environmental Governance, Climate Change and Capacity Development. The Centre works with UN bodies, universities, NGOs and governments around the world. Its member states are: Kenya, Malawi, Malta and Uganda. The International Centre for Research in Agroforestry (ICRAF) and the Third World Academy of Sciences (TWAS) are also founding members of ACTS.

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