

ENSURING LAND ACCESS IN POST-CONFLICT SITUATIONS

PRESENTER: JEAN DAUDELIN¹

Introduction

Most conflicts in the world today affect poor countries. In fact, poverty is one of the strongest predictor of conflict and war [Collier and Hoeffler-1998; Stewart-1999]. At the same time, poverty and dependence on agriculture are also very closely related: most poor live in rural areas and the poorest countries of the world are the most rural and they depend massively on agriculture to ensure the survival of their population. These very broad correlations do not constitute a model. What they do, however, is call the attention of anybody interested in poverty and in conflict to the problem of land and to its relation to the predicament of those caught in a jail of want *and* fear.

This paper pursues two objectives: 1) it outlines a basic analytical framework that would help assess the potential conflict impact of programs and measures currently being implemented or planned and 2) it identifies lessons learned about links between land policy and violence.

The work is based on an extensive review of literature and in particular on a series of case studies that were done in recent months, using a common basic frame of reference [Bastian-2002; Cooper-2002; Cubides-2002; Durocher-2002, Gatunange-2002; Isaac-2002]. The countries studied are Cambodia and Sri Lanka in Asia, Burundi and Mozambique in Africa, Palestine in the Middle-East, and Colombia and Guatemala in the Americas. All have recently found themselves, or are still engulfed, in conflicts where land, in one way or another, has been an issue. As the next section will make clear, however, and the title of this paper notwithstanding, pre-conflict, conflict, or post-conflict situations are not felt to call for distinct frames of analysis. Conversely, the lessons and insights they enable us to generate are relevant to all the situations where land is a potentially inflammatory issue: from the forests of British Colombia to the marshes of Burundi and the highlands of Central Vietnam.

The paper is divided in two sections. The first one outlines an analytical framework that brings together insights generated by empirical work on specific instances of land-related conflict and more general

¹ The views expressed in the papers and comments included in this document are those of the authors and are made available here for purposes of discussion only. They may not represent the views of the institutions they are affiliated with or the World Bank, its Board of Executive Directors, and the countries they represent. This version is a first draft. The results from some of the case studies have not all been factored in and as a result, section 2 is rather less comprehensive than it should and will be in the final version of this paper.

research on the dynamics and determinants of conflict in general, including the most recent work on economic agendas in conflict. The second one literally brings this framework back to earth by looking at specific problems that appear to have a bearing on land-related conflict and outlines policy insights and lessons that can be derived from the preceding analysis.

Land and violence: an analytical model

The constellation of issues related to land can usefully be organized around three basic problems: access to land, security of tenure, and distribution of land holdings. Departures from adequate access, secure tenure and fair distribution of land, or attempts to address them, often directly create tensions. However, it is primarily through the differential impacts of these problems on various groups within given societies that real conflict potentials emerge. For the latter to become manifest and for conflict per se to develop on any significant scale, finally, exogenous factors need to intervene and a political mobilization to occur.

Core issues

The number of specific issues related to land and agriculture is infinite: land reforms, land administration, access to credit, environmental degradation, technological innovation, intellectual property, administrative capacity of the state, crop substitution, effective functioning of land markets, natural disasters, quality of the land registry, dislocation of traditional communities, tax system, cultural preferences, trade liberalization, and so on. Trying to *directly* explore the links between every one of those issues and conflict is, from the start, a losing proposition. What we propose instead is a prism through which all those issues arguably need to pass to generate tensions and conflict potentials. The faces of this prism are access to land, security of tenure, and the distribution of land holdings.

Access: Access to land has a number of meanings.² In its most basic form, it points to the ability of willing farmers or breeders to obtain land on which to plant and harvest or pasture on which to graze their herd. Defined as such, lack of, or inadequate access to land is a very common problem, from land poor countries with high population densities, such as Burundi or El Salvador, and relatively land rich areas with massive rural populations, such as in much of South Asia, to land-rich countries with relatively low population densities in rural areas, like Brazil. Demographic and natural factors play a role in limiting access, as in Bangladesh, but social and political dynamics are also very important. A case in point is Colombia where, at the turn of the century, land was acquired in massive quantities by a minority of landlords to ensure an adequate supply of labour for their estates [Legrand-1998: 35-7].

The problem of access, however, is broader than that of landlessness. Fragmentation ends up making access meaningless, when parcels become too tiny to sustain a family, as in Chiapas [Favre-2001], or

² For a comprehensive overview, which does not however tackle conflict per se, see Alain de Janvry et al. eds.-2001.

when succession rules in situations of extreme density, as in Burundi, often leave sons with barely enough space to build their house [Gatunange-2002]. Neither should access be thought as strictly related to ownership per se, as it covers the whole range of property rights and arrangements, from grazing rights, share cropping, usufruct, and all possible forms and modalities of leasing.

Finally, access to land *under any arrangement and in any quantity* only takes on meaning when embedded within a broader constellation of factors, such as access to seeds, agricultural inputs, credit, transport infrastructure or, critically, as in Palestine, water [Isaac-2002].

Security: The issue of embeddedness is inherent to the question of security of tenure, for the latter results from its inscription into a sound and reliable institutional context. It is related in other words to social and political regulation or, as current fashion would have it, to governance.

Tenure security, however it is attained [Platteau-2000] is critical for a number of reasons. Among many others, it may for instance have an impact on investments, which are often discouraged by insecurity, access to credit, which is facilitated by sound titles, incentives for resource conservation, which grow with security, as well as crop selection, which are constrained by insecure tenure.

Institutions matter here perhaps more than in any other areas of land policy. While generalization on this scale is no doubt risky, tenure is possibly becoming less secure than ever before. It finds itself caught between the common—but not universal—breakdown of customary systems and attempts, by weak national states, to replace or do away with them.

The situation is difficult in poor transition countries, such as Cambodia, where the basis of traditional systems has been broken and new legal regimes are shaky [OXFAM UK-2000; Cooper-2002]. It appears, however to be most critical in Africa, where “the laws and customs which have in the past assured farmers’ land rights” are under pressure [Atwood-1990], while the states that claim to replace them rarely have enough administrative capacity [Deininger-2001] to replace them, when they are not simply “failed,” or “informal” [Jackson-2002 ; Chabal & Dalloz-1998]. In such cases, all too frequent, one would be entitled to speak of a state-sponsored “informalization” of land tenure. In many instances, moreover, it is state actions themselves that create insecurity by instituting a legal pluralism that enable some to challenge customary systems by resorting to state authorities [Lavigne Delville-2000:100]. The Americas are not immune to these shocks and ambiguities, especially in areas and countries where indigenous peoples have a strong presence or strong legal claims to the land, which means in fact much of the continent, from Colombia and Brazil to Guatemala and Canada [Durocher-2002].

Distribution: Unequal distribution is the most traditional topic in the debate about land and violence and it is the issue that has driven most attempts at land reform [McElhinny and Seligson-2000]. This problem is

central to the discussion of land in the Americas [Carter and Salgado-2001] but it is also acutely real in Southern Africa, particularly in Zimbabwe and South Africa [Human Rights Watch-2002], where a small minority of people still control most of the land that is proper for agriculture.

Problems of distribution are not confined to large countries with massive farms and small populations. They also affect, often with even more disastrous political consequences, smaller countries and densely populated areas, such as Chiapas, El Salvador and Palestine.

Collective property, in particular state farms and state-sponsored cooperatives, used to be a significant component of the discussion of distribution, but market mechanisms now universally dominate policy initiatives and attention is now focused on the impact of liberalization on the distribution of land between small and large land owners.

A few caveats: These core issues are not objectively given, universal, or independent from one another. They are socially constructed and framed, their meaning changes according to the social, geographic and historical context and finally, they are inter-related. It goes without saying that the acuity of these problems and their very existence implies that they be socially recognized and framed as realities and issues in a given social context [Berger and Luckmann-1966]. The mountain of literature on socialization and decades of work by social activists testify to the very subjective nature of these issues and to the fact that they need to be socially recognized as problems to become objects of action. This is perhaps most obvious in the case of distribution, as access and security have such brutal implications for survival that the threshold of their social existence is extremely low. However, research on disenfranchised groups, such as the Twa in Rwanda and Burundi, and Dalit in India, as well as much compelling work on gender has shown that the issue of access to land for as important a group as women, for instance, is far from even being defined as a problem in many societies and even until quite recently, in academic work and policy interventions.

Beyond the basic constructed nature of these phenomena, access, security and distribution are very much context dependent. Factors such as the type of crop, its productive cycle, irrigation needs and pest resistance can drastically alter the “security needs” of a peasant. Compare dry and wet rice or coffee and bananas and think of the world change implied by the sedentarization of cattle owning pastoralists.

Finally, the three issues are often profoundly inter-related: Weak tenure security often feeds concentration, environmental degradation [Fearnside-2001] and thus often leads to landlessness or confinement to land of poor quality. The obverse has also been suggested, with secure individual freehold a sound basis for sustainable small-scale agriculture and consequently a bulwark against concentration.

Debate on the latter, however, suggest that such inter-relations are possibly case-specific and that they need to be verified empirically in each case.

Land and violence

As a rule in public policy, all good things do NOT come together, choices need to be made, and a price paid. Interestingly, this does not appear to be true for the basic tenets of land policy, at least in theory: secure and well-distributed access to land appears to be sustainable economically, environmentally and also politically, as such arrangements are exceedingly stable. South Korea, Taiwan and Costa Rica have shown how stable politically such a structure can be. Moreover, it is has become conventional economic wisdom that as a rule, there is no return to scale in agriculture [Binswanger, Deininger and Feder-1995; Quan-2000: 41] and that secure property rights—either customary or formalized [Toulmin and Quan-2000; Platteau-2000; Binswanger and Deininger-1997]—foster productive and environmentally sound agricultural practices.

The countries just mentioned, however, are well-known exceptions. Land is simply not abundant enough in many regions of the world to guarantee large enough plots to all households. Market distortions of all sorts [de Janvry and Sadoulet-1989] have conspired against the family farm and political dynamics against equitable distribution of land.

Harsh realities notwithstanding, much research suggest that secure and fair access to land is the point of reference of much land policy design and of the basis of many peasant organizations' and political groups' reform programs and/or rhetoric.

From the standpoint of conflict and violence, however, departure per se from this ideal template does not appear to be sufficient. The key issue, noted over and over again, is the way in which these departures affect various groups of people differently. To paraphrase and generalize the title of a paper by Michael Carter, Keith Wiebe and Benoit Blarel, the issue is access for whom, security for whom and distribution from whom to whom? [Carter, Wiebe and Blarel-1994]. The key, in other words, is the differential impact of land policy.

In the next few sub-sections, we will thus examine the issues of the differential impacts of land policy, the mechanics of differential impacts and finally the links between differential impact and conflict.

Differential impact: Land policy has different implications for different groups in society. Three social categories have particular relevance here: gender, class and ethnicity.³ The biased and discriminatory

³ This list is by no means comprehensive. One category whose relevance it would be most interesting to explore is age, or more precisely generation. Bernard Nietschmann has shown how the exclusion of retirees from the distribution networks of sea turtle meat has fed generational tensions in the communities of Nicaragua's north-Atlantic Coast, contributing to the weakening of their social integrity [Nietschmann-1973?]. One could call this differential access to resources and social capital.

nature of most customary and formal tenure systems is well established in the literature, leading for instance Ingrid Yngstrom to speak strictly of the “*insecurity*” of tenure that women are facing in Africa [Yngstrom-2002:21]. This is not a peculiarly African problem, however, nor even a developing world one, as recent legal reforms in Canada, for instance, were designed with “farmers’ wives” in mind. The problem is not confined, either, to security of tenure, as women are often simply denied access to land, either through succession rules or in the process of formalization of tenure.

Class differences in access, security and distribution of land is a classic theme in social sciences [Moore-1966; Skocpol-1979]. Problematic access and poor security of tenure for the peasantry, as well as concentration of land ownership, are typically the rule in developing countries.

Land policy, finally, also affects distinct ethnic groups differently. There are extreme cases, in former colonial countries such as South Africa and Zimbabwe, where ethnic boundaries defines radically different modalities and degrees access to land and where the concentration of land holdings in the hands of one group is a clear heritage of discrimination in state policy regarding land.

The mechanics of differential impact: Max Weber understands legal norms as State guarantees for somebody’s claim to entitlement, over and against everybody else’s [Weber-1978]. In the same way, Adam Przeworski’s pun about “democracy as a contingent outcome of conflict” [Przeworski-1988] could be extended to all institutional arrangements. The same obviously holds for those arrangements that are not institutionalized and thus result from the more direct exercise of power and violence. Land policy is obviously no exception and indeed “land laws (...) have been first and foremost the products of politics, not of ‘objective’ considerations of what is best for economic or social or sustainable development” [McAuslan-2000:92]. Moreover, they continue to be so.

Land policy discriminates in many ways. Sometimes explicitly, sometimes implicitly and sometimes without necessarily meaning to do so. Explicit discrimination was the mark of the colonial system, which legalized the primacy of the claims of colonists over those of indigenous peoples. It is still common however, for instance in the succession rules that exclude women from inheritance in many countries, or in a number of programs that attempt to redress past inequities or address particular problems by creating special rights for specific groups. Movements toward the recognition or delimitation of indigenous territories and land claims, throughout the Americas, fall in this category. So do ethno-specific colonization programs, such as Israel’s in Palestine [Isaac-2002]. In all these cases, for good or bad, access, security and distribution are ensured or challenged explicitly on the basis of the identity of the claimant.

In other cases, the seeking of a differential impact can also be clearly identified although it is not made explicit. A case in point is agrarian reform in countries where land holdings are highly concentrated, which are specifically designed to benefit the land poor or the landless, taking a class connotation in all cases and in some, as in South Africa and Zimbabwe, an ethnic one as well. One would also put in that category measures such as the 1998 Land Law in Côte d'Ivoire, which discriminates against a significant portion of its rural population by negating the possibility for non-citizens to acquire full land ownership. Another example would be the settlement programs in Eastern Sri Lanka, which involve the establishment of landless peasants, who happen to be primarily Sinhalese, in areas where the latter are a minority, thus changing the demographic balance [Bastian-2002]. In the Americas, the same would hold for all the colonization programs in "empty" frontier areas, which happened to be Indigenous lands. More generally, the same legal norms, when applied to different groups in different contexts, can have drastically distinct consequences according for instance to population densities [Atwood-1990:662] or economic specialization, generating distinct impact in various regions and possibly as a result, for various ethnic groups. Laws that favour the sedentarization of pastoralists, for instance, while they might not explicitly target specific ethnic groups, are likely to have ethnically-differentiated impact given the common economic specialization of the latter [Basset-1993: 132; Barth-1969].

In most cases, however, differential impact results from a diversity of factors and can not even always be traced back to specifically discriminatory purposes. The consequences, though, are clear.

The most significant factors are related to the institutional characteristics of the tenure regime. Many have noted for instance that the weakening of customary systems or the presence of legal pluralism, whereby tribunals can be appealed to against decisions by local authorities, have favoured a concentration of land holdings in the hand of richer sectors of the population [Lavigne-Delville-2000:101]. The evolutionary interpretation of tenure systems also holds that formalization of tenure, by eliminating so-called "secondary" rights, will do away for instance with women's access to land [Bruce and Migot-Adholla-1994].

Many other factors, however, make land policy or changes in land administration discriminatory in their impacts. Literacy and language are a case in point. Formalization of tenure introduces for instance literacy requirements for land registration. Similarly, it puts a premium on familiarity with one or a few specific languages, typically a European one, and on the intricacies of legal discourse. In all cases, poorer rural residents are put at a disadvantage, which translates directly into potential tenure insecurity and limited access, a problem noted in Africa generally, but also in Vietnam, Cambodia and Colombia [McAuslan-2000:93; Popkin-1979; Cooper-2002; Legrand-1998].

The administrative level and the geographical location of the authority empowered to take decisions regarding tenure or to resolve land-related conflicts also has differentiated consequences. The raw costs of formal legal proceeding discriminates against the poor [Cooper-2002; Legrand-1998]. Centralization typically makes for high costs of engagement and appeal as well as for complexity, also puts the illiterate, the poor and the far-away at a disadvantage. At the same time, however, women or local minorities might find themselves with little leverage in a set-up that relies on local traditional authorities. Subsidiarity and decentralization, in other words, are not just or even primarily technical issues, as their political consequences can be massive.

Differential impact and conflict: A massive amount of research has been done to explain the logic of conflict and violence and link it back to the material, political and social-psychological conditions of participants. No single answer has been forthcoming and in fact, as we will see in the next section, the very idea that such a link might exist has been challenged in recent years, particularly by advocates of the economic theory of conflict [Collier and Hoeffler-1998; Collier-2000]. Lots of empirical evidence, especially from case studies, suggest that if a strong link between specific conditions, in this case land-related, and large-scale conflict per se might indeed not be found, discontent and tensions are indeed often generated by declining access to land, growing insecurity of tenure, or extreme inequality of land distribution. These issues, in other words, might create conflict potentials and might be “risk factors” to be considered when assessing the consequences of a given land policy.

The link between differential impacts of land policy and conflict can be traced to two distinct if often overlapping and mutually-reinforcing logical constructs. One involves relative deprivation and traces tensions to willingness to bridge the gaps that exist in access, security and distribution of land ownership. The potential conflicts this logic defines are vertical, i.e. they oppose deprived people to endowed ones and can be understood broadly as class-based.

The second logical construct does not involve a straight comparison of endowments but focuses instead on the symbolic worth of the group one identifies with, and on the legitimate entitlements that are felt to derive from such worth [Horowitz-1985:226-7]. It is the logic of ethnic identity and it is not strictly oriented to bridging gaps in access or distribution of land or any other assets, but instead focuses on the meaning of those differences, which groups might seek to expand or maintain precisely because of their social meaning. Differential access becomes a symbolic issue as such and what imports are not only, or not even primarily, the differences per se but what they mean in terms of group worth. In that context, land is a symbol of group worth and its economic value is not strictly relevant.

The two logical constructs often overlap and inequalities between ethnic groups —defined somewhat confusingly as ‘horizontal inequalities,’ which they often are *not*— have in fact been identified as strong

predictors of conflict [Steward-1998, 2000]. Still, cases such as Colombia, in spite of the current importance of drug money in its financing, suggest that tensions related to raw inequality and the denial of access to land can take place without group identity's intervening in significant ways [Legrand-1998]. Conversely, the history of anti-Semitism as well as most studies of ethnic mobilization in advanced industrial countries show that conflict and violence do not need inequality to prosper. It appears useful, in sum, to keep the two logic separate.

Going back to the three key parameters of differential impact for land policies, gender, class and ethnicity, one further note is in order. There are no record of large-scale gender-based violent mobilization around land issues. This implies that gender discrimination has proven to be more politically sustainable than other forms of discrimination. Without getting into the mechanics of this issue, one must note that this reality is likely to push conflict prevention programs around land issues towards neglecting the differential impact that land policy has on women, simply because they are, conflict-wise, less consequential.

This point to a more general problem of conflict prevention approaches and to the dangers associated with giving them primacy over equity oriented outlooks: as unjust arrangements are often sustainable politically, simply because the poor are almost by definition weak, preventing conflicts at all costs often means having the poor and the weak bear those costs.

To sum up, land-related conflict potential should be anticipated by examining the differential impact on various groups, defined primarily in ethnic and class terms, of land policies affecting access to land, security of tenure and the distribution of holdings.

A note on status quo, the state and land-related violence: Two views pervade and often distort the discussion of land-related conflict: one holds that injustice is not sustainable politically and the other that violence comes primarily from the deprived or the organisations that act—or claim to act—as their agents. Alain de Janvry and Beatrice Sadoulet [1989] have put the first of these views to rest a while ago with a study of Latin America: in much of the continent elites have successfully resisted pressures to change the unequal structure of land ownership in the region, and there is little reason to think that they might fail in the future. Market logic and even the political implication of democracy, in other words, appear powerless before the political power of the continent's landed elite. For our purpose, these findings further emphasize the political logic that dominates land policy and the need, on which we will come back, to factor this logic back in the discussion.

All the talk of peasant wars and of the role of peasants in the great revolutions of modern time notwithstanding, it would be a massive mistake to think of land-related violence as primarily driven from

below. Much of it has in fact been directed at sustaining inequality by those who benefit from it. This violence, still very much a reality, is the fact of those elites themselves, but also that of the states on which they rely to maintain an unequal status quo. It is state-driven rural *change*, however, that has proven most murderous, at least in the last century. The role of governments as agents of rural violence has been overwhelming, mostly in the various and invariably failed attempts to impose a centralized collective structure to agricultural production. Land-related violence has been primarily the fact of the powerful. Conflict-awareness, in other words, should consider elites and governments as much as peasants and landless men and women as potential agents of violence.

The key role of exogenous factors

All this being said, a striking reality remains which was best put by James Scott [1985] who noted that peasants themselves in fact rarely rebel and when they do that their mobilization is rarely sustainable. A number of hypotheses have been proposed in recent years, all pointing to the key role of exogenous factors, i.e. of variables that are not inherent to land issues per se.

The first one is the role of elites and of their ideological disposition. François Furet [1978] and Yvon Grenier [1999] have shown, in the case of the Revolutionary France and insurrectionary El Salvador, how mobilisations are often driven by small groups of ideologically committed individuals, who end up riding waves of discontent whose roots can be extremely varied. This factor has played a massive role in state-driven collectivization programs that have proven both murderous and economically disastrous. While in some cases land-related grievances might have fed the process or be the explicit target of the mobilization, they by no means drove these processes.

Such disconnect has been explored systematically by the so-called “resource-mobilization” school, which emphasizes the ability of organizations to generate the political and material resources it needs to sustain itself and to harness, when needed, the discontent and tensions that always exist in a given society [MacCarthy and Zald-1977; McAdam, McCarthy and Zald-1996]. Once again, grievances can usefully be exploited in the process, but they do not drive it .

A third group of authors has most publicly challenged “grievance” theories, opposing “greed” as the main motivating factor and focusing on the economic agendas of actors and organizations involved in conflict [Collier and Hoefler-1998; Berdal and Malone-2000; Collier-2000].

I do not think it is useful or even possible to take side in the debate between those approaches. At this level of abstraction and given the poor quality of the data sets available, generalizations can be extremely risky. In fact, they might not be useful at all, as civil wars and violent conflicts are historical processes whose specific determinants and mechanics need to be identified in each case. What these work provide,

however, are extremely interesting insights into the factors that, typically *together*, are likely to play a role in violent mobilizations around, for instance, land issues.

Three insights are particularly important here:

- effective mobilization appear to require the strong commitment of a small group of leading actors—be it motivated by ideological commitment or by greed;
- organizational efficiency for resource mobilization—be it linked to control mechanisms, pay scale, ideological socialization processes, “presumed kinship” (ethnicity) or religious commitment;
- access to resources.

The latter point warrants further comment: what might become the lasting contribution of the “greed” school was to call the attention of analysts to the role of resources in the emergence and the perpetuation of conflict. Derived work has emphasized the importance of diamonds, emeralds, drugs and other “high-value added” products in feedings violence, suggesting that plenty might be a better predictor of conflict than paucity [de Soysa-2000]. These works have pointed to the self-sustaining character of many current wars. They thus add, but do not replace, an older insight about the key role played by outsiders in organizing, fuelling and stoking conflicts, a model that was most common during the Cold War but that still appears to have much life left: back then, we had the hand of foreign powers on at least one side in Angola, Nicaragua, Mozambique, Cambodia and El Salvador, but even after the Berlin Wall fell, we still did in the Rwanda and Sierra Leone and we still do in the Democratic Republic of Congo [Jackson-2002]. The point in sum is that resources are key to the “sustainability” of violence, be they local, derived from minerals as in Sierra Leone and the DRC, or from kidnappings and drugs, as in Colombia and Afghanistan, or external, coming typically from states, as today in the Middle East or in Chechnya.

For the purpose of this paper, what needs to be emphasized is that land issues per se are rarely endogenously conflictive. The passage from grievances, be they class-based or ethnic, to conflict or large-scale violence depends on political interventions from outside of the rural world. For land-related grievances to feed and support violence on any significant scale and in a sustainable manner, they must be organized, channelled, financed and stoked from the outside.

Summarizing the approach

The basic framework: An assessment of the conflict impact of land policies implies that answers are provided to three groups of questions:

- How do existing or planned land policy affect access to land, security of tenure and the distribution of land in a given population?
- How are different groups affected by differential access, tenure security of land distribution, particularly along gender, class (broadly defined) and ethnic lines?
- What organizations are likely to mobilize on the basis or around the grievances generated by those issues? How effective are they at organizing support and channelling resources towards

their objectives? How likely are they to resort to violence? What resources, primarily economic, from inside and outside, can these organization rely on?

All types and dimensions of land policy can and should be looked at through this lens, from colonization programs and titling initiatives, to decentralization of land administration, tax regimes, commercialization policies and rural infrastructure development such as irrigation and electricity generation projects. These questions should also be asked to assess the impact of related issues, such as population movements, floods and droughts, access to water and irrigation works, as well as conflict itself, which affect land issues through population displacement, insecurity and destruction, an impact that also affects various groups differently and that as such might be an object of political mobilization.

A note on the level of analysis: Commenting specifically on sub-Saharan Africa, Camilla Toulmin and Julian Quan state a basic truth common to all farming and livelihood systems on this planet: “[countries] present a complex mosaic derived from past history, colonial legacy and current economic pressures and opportunities, as well as from their natural and ecological characteristics. This great diversity at continental level [s] is mirrored at lower scales, within each country, region and district. This makes it difficult to draw comparisons between different parts of the continent[s], and demonstrates the need for considerable tailoring of national provisions concerning land to the range of conditions found at local level” [2000:2].

The questions that make up the framework we propose must thus be asked at each of those levels, and especially at the local one, because it is ultimately there that land conflicts are played out. Fallacies of composition lie in wait for any attempt at generating continental- or national-level knowledge or policy insights. “Risk factors” “lessons learned” and broad “policy options” need to be brought literally down to earth. To take an example, Paul Collier’s interesting demonstration to the effect that ethnic and religious fractionalization reduces rather than increases the risk of rebellion” [Collier-2000:100; Collier-nd] takes on radically different meanings in ethnically diverse countries where the various groups are dispersed, and in others where they are concentrated regionally producing sub-national level ethnic dominance, which Collier convincingly shows to be a major risk factor.

Implications for land policy

This section intends to identify, using the framework outlined above, a number of insights on the linkages between land policy and violence, and on policy implications that can be derived from them. In the next sub-section, we will briefly overview the cases covered by the research team, delving more at length on the key land-related sources of conflict identified. As noted in the introduction, that section is still extremely schematic as, at the time of writing those pages, some of the case studies have not yet been completed. A second sub-section will then discuss specific components of land policy that the cases

studied and the available literature suggest are particularly relevant to conflict and violence. A third part will be devoted to key insights and lessons for policy.

Overview of the cases

Africa and the Middle-East: Burundi, Côte d'Ivoire, Mozambique, Palestine: As the literature on land policy makes clear, the main land issue on the African continent for a few decades already has been security of tenure. The cases considered here are not, from that standpoint, strictly representative.

Burundi

- **Access, security, distribution:** Burundi's situation is dominated by access problems. Rural areas bear extremely high population densities, although it varies quite broadly at the commune level, from 41 per sq km to 526. Fragmentation is also reaching extremes, with landlessness emerging for the first time as a significant issue and with many people in the most densely populated areas inheriting barely enough land to build a house on.
- **Differential impact along gender, class and ethnic lines:** The Twa are excluded from the land economy and so are women who are barred from inheriting land by succession rules. A weak and corrupt state apparatus has made possible the illegal appropriation of state land by rich individuals and state dignitaries.
- **Political dynamics:** The biggest tensions and the strongest insecurity are related to the issue of the refugees who left the country beginning in the 1970s and whose lands have since been occupied. Their return hovers like a threat over a significant part of the country and the state has not taken measures that promise to facilitate their re-integration of some form of compensation for them or for current occupiers who would be displaced. Every wave of conflict generates new movements of refugees and reproduce the problem.

Côte d'Ivoire

Access, security, distribution: Security of tenure has long been considered a major problem but government policies to consolidate it appears likely to generate major problems of access for those excluded from primary property rights. Similar consequences derive from attempts by the government to sedentarize pastoralists who make up a significant portion of rural populations.

Differential impact along gender, class and ethnic lines: Both these policies have ethnically differentiated impact, with non-citizens of the country, who are barred from ownership rights, and pastoralists—who are often the same people—overwhelmingly pertaining to distinct ethnic groups.

Political dynamics: Government policies fuels the growing ethnic tensions that divide the country. It risks reinforcing the ethnic polarization of political competition, crystallizing ethnic solidarities and creating massive potential for the violent mobilization of those solidarities.

Palestine

Access, security, distribution: The West Bank and Gaza are very densely populated. The problem is made worse for the local population by the establishment by the Israeli government of colonies, military camps

and security and communication infrastructure. The legal regime of the occupation has made security of tenure problematic for the Palestinian population. Access to water is also limited for much of the population of the region, which compounds the problem of access to land for agriculturalists.

Differential impact along gender, class and ethnic lines: The impact of problematic access to land and water as well as tenure insecurity are very poorly distributed and they follow ethnic lines.

Political dynamics: Land is one of the major point of reference in the violent mobilization of the Palestinian people against the State of Israel.

Asia: Asia's land policy landscape is dominated by problems of access related to high densities of population in agricultural areas. The countries examined are quite typical of that pattern, although landlessness per se has only recently become a major problem.

Cambodia

Access, security, distribution: Landlessness is a fast growing problem, as is fragmentation. The problem is made worse by a growing concentration of land ownership, which itself feeds off the insecurity of tenure related to the state's administrative failings and corruption. The 2001 land law appears likely to lock in unequal access and skewed distribution.

Differential impact along gender, class and ethnic lines: Broad ethnic homogeneity ensures a strictly classist differentiation of the impact of those problems.

Political dynamics: While some organisations are trying to help the poor secure land rights, their activities do not involve political mobilization or promote the use of violent means to defend the latter.

Sri Lanka

Access, security, distribution: A growing problem of landlessness in some regions of the country is the main driver behind the central government's settlement programs. The government is committed to securing tenure and is moving in that direction through a major program. It has also demonstrated a commitment to ensuring relatively fair access to land, with special attention to small landholders.

Differential impact along gender, class and ethnic lines: The policy of settlements, although it contributes to addressing national-level access and security problems, is generating significant frictions because of its implications for regional ethnic distribution and demographic balance, especially in the East of the country.

Political dynamics: Quasi ethno-specific settlements in a contested region of the country fuels tenure and political insecurity among the minority population and creates political opportunities for the guerrilla that

has long been active in the North and East of the country. They represent a major stumbling block for the resolution of the conflict.

Latin America: Colombia and Guatemala: In Latin America, concentration of land holdings overwhelms other issues and redistributive land reform has been a core part of the policy debate for decades. The two countries examined here are typical.

Colombia

Access, security, distribution: While land-rich, Colombia has long had a problem of landlessness deriving from the concentration of land holdings in the hands of a small minority of the population. This situation has not changed and is in fact becoming worse, with a “land reform in reverse” currently under way. The situation has been made worse in the regions affected by the war, as general insecurity and dropping land prices have led to massive acquisitions by drug traffickers and paramilitary groups. Tenure security is also tenuous in much of the frontier region, where it favours land use for the cultivation of drugs, with little regards for environmental damages.

Differential impact along gender, class and ethnic lines: Current developments favour the consolidation of an extremely skewed structure of land ownership, with traditional elites and mostly drug-trafficking related newcomers grabbing ever more land.

Political dynamics: While both the guerrilla and the paramilitaries appear like paradigmatic greed-driven actors, the social base of the first and the land-grabbing activities of the second show that the conflict is partly rooted in land issues and that it is likely to feed land-related tensions.

Guatemala

Access, security, distribution: As in Colombia and in much of the continent, skewed distribution of land holdings creates problems of access and a skewed distribution of political power, at all levels of the administration, also creates insecurity of land ownership for large swats of the population.

Differential impact along gender, class and ethnic lines: Current land policy consolidates a social structure that is crystallized around ethnic differences, with Maya Indians representing the vast majority of poor peasants.

Political dynamics: While there is a plethora of organizations dealing with both gender, peasant and indigenous rights, none of these groups appear willing or able to take its mobilization down a violent path. Much of rural violence is thus localized and driven at least as much by elite repression as by sudden violent expressions of discontent by poor and landless peasants.

Specific Issues

This section overviews a number of factors that are likely to generate grievances. As was mentioned repeatedly *supra*, the identification of such grievances does not imply the probability of conflict, which only results from the effective mobilization of the latter by an political enterprise with sufficient access to material resources. The list of seven issues identified here is by no means comprehensive. Based on the literature survey and on the cases studied for this research program, those, however, are felt to be the most relevant to the links that can exist between land and conflict.

Formalization of tenure: The political implications of the formalization of tenure is just as ambiguous as its economic impact. Formalization can lessen access to land by depriving some social categories of property rights, as it threatens to do in Ivory Coast. It can weaken security by introducing legal pluralism or challenging the legitimacy of customary arrangements without offering effective alternatives. Finally, it can lock in an unequal distribution of land holdings, as it threatens to do in Cambodia.

Weak states: Informal politics, corruption and administrative inefficiencies are factors of tenure insecurity and, as a result and in themselves, they leave much space for highly unequal access to national land and concentration of land holdings. Land titling programs by weak states contaminate customary systems and result in the informalization of land tenure and deepening tenure security, which impacts on concentration.

Market-based land reforms: Most land markets in developing countries do not work properly. Poor regulation, very unequal access to capital markets, the laundering of illegal activities through the acquisition of land (as in Colombia), as well as cultural factors, typically price land over and above the value of the production it can generate. Unsurprisingly, this leads to the progressive marginalization of poor peasants, to the concentration of land ownership and to ever narrower access.

d) Colonization and settlement programs: Putting new areas under cultivation does not necessarily diminish existing problems of access, security or concentration. Tenure security is often problematic in remote areas, which facilitates land grabbing and concentration. The latter, moreover, is fed by labour shortages induced by the opening of new agricultural areas (as happened in Colombia). Most of the time, moreover, the problem is compounded by the ethno-specific character of colonization policies which are discussed below.

Ethno-specific land policies or programs: While they may be “neutral” or even favourable from the standpoint of access, security and distribution, ethno-specific policies can generate massive tensions and turn land into a symbolic stake between groups in addition to creating deep insecurities by changing the demographic balance in a given area. Whatever their motives or justifications—strategic, military, or

more broadly historical—this is true of clear ethnic capture, as in the case of Jewish colonies in Palestine or of Sinhalese settlements in Eastern Sri Lanka, but also of compensatory measures such as the creation of indigenous territories, as in Chiapas or Canada, or of selective titling, as in the case of indigenous land in Nicaragua. To the extent that ethnic groups have lesser problems of collective action and can thus more easily set up and sustain a mobilization [Collier-2000], this is one of the most directly conflictual characteristic of a land program one can design or implement.

Land in post-conflict situations: There does not appear to be good reasons to distinguish conceptually between conflict and post-conflict situations when assessing the potential impact of land policies. The same basic issues are involved: state weakness, which might be higher, although not necessarily—compare post-war Guatemala to non-post war Kenya, for instance; tenure insecurity, which might also be higher because of the possible destruction of registries or population displacement; and existing capabilities of insurrectionary groups, which might be higher too, thus putting them in a better position to exploit land-related grievances—although the Guatemalan guerrilla suggest that former fighting forces are not necessarily destined to play much of a role, *even when land-related government commitments in the framework of the peace accord are not acted upon.*

Conversely, given the problematic relationship between land-related grievances and violent mobilizations, it is far from clear that land policy can have much impact on the prospects for conflict in any given country. Cases where specific land policies are critical to the conflict, as in Palestine and Sri Lanka, obviously offer critical opportunities of intervention. These are the exceptions, however, and the recent history of Latin America, which has seen all but a few of its guerrillas demobilize while land access, security and distribution has rarely got better, clearly demonstrates the weakness of the link between land policy and peace.

Key insights and lessons

Political nature of land policy: Land policy is a political issue. It is not possible to disentangle its determinants and impacts from the material and political interests of the individuals and groups involved. Politics needs to be factored in from the start.

Context-specificity: Land policy is embedded in specific political, social, cultural and ecological contexts that condition the nature of its outcomes, be they economic, environmental or conflict-related. This embeddedness needs to be factored in the design and implementation of the policy and considered at various levels, from the national to the regional and the local.

This does not imply that land policy and administration is best designed and implemented at the local level or national level, only that the specific outcomes of a given measure at each level must be

considered. To give an example here, it might well be the case that fair gender outcomes are more likely, in a given country, with centralized conflict-resolution mechanisms instead of local ones.

Decentralization and subsidiarity, in land policy as in other areas of public policies, are in other words no mere technical process. They have political consequences and the latter must be factored in if one is to assess the equity and conflict outcome of any given policy.

The political sustainability of inequity: The relative autonomy of conflict *and especially of “peace”* in relation to grievances, which we have repeatedly noted, has a massive implication for conflict- or peace-oriented policies: inequity is politically sustainable. The cases reviewed and much of the literature show that most land-related inequities are unlikely to lead to significant conflict. This is spectacularly the case with gender in general, but also with ethnic groups, such as Guatemala’s Mayas, both cases in which the number of people affected and their proportion of the population is extremely large.

The need to prevent conflict, in other words, is not a sound political basis on which to base reforms aiming for broad access, secure tenure and fair distribution of land holdings. This is true even though the latter traits characterize stable and pacific agrarian structures. Broad access, secure tenure and fair distribution must be valued independently of their possible—albeit unreliable—impacts on the probability of conflict.

An institutional approach: The context of land policy is time sensitive, i.e. it can change abruptly as shocks, natural, economic, or political, happen, such as a massive drought that makes access to land meaningless, the sudden imposition of a tariff in the main market for a critical export crop, that bankrupts small holders, or a sudden war in a neighbouring country that floods one’s own with refugees.

To be responsive to those changes, a policy that claims conflict-awareness needs to constantly monitor the political impact of land policies as mediated by their contexts. This calls for the establishment of mechanisms specially devoted to doing that in the agencies responsible for the design and implementation of land policy and/or in the agencies that finance and support the latter.

Conclusion

Land policy can make things worse or better but it is only exceptionally a critical factor of conflict, even in countries and societies where the vast majority of the population depends on agriculture for its survival, and even in countries coming out of war. Inequity and inefficiency can be sustainable politically, and reforms to tackle them might not.

The framework outlined here was developed for land policy per se but it could easily be used for assessing the impact of natural disasters, environmental degradation, or even conflict situations or peace

initiatives on land issues. With slight modification, it could also usefully be applied to discussions of mineral and fishing rights.

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ENSURING LAND ACCESS IN POST-CONFLICT SITUATIONS

COMMENTS: OUN VISAOUNNALAD

The core issues in relation to conflict potential and land are” Access to Land “ “Security of Tenure” and” Equitable Distribution of Land”. Land policy works differently on different groups in society; in particular, gender, class and ethnicity. The potential for land- related conflict to arise can be found (not exclusively) in the differing impacts of land policy on various groups; land, security of tenure, and the distribution of land holdings. Other factors, however, also contribute to the potential for conflict (of which land issues are a factor) eg the role of elites, political groups for the mobilization of disaffected etc. “ For land – related grievances to feed and support violence on any significant scale and in a sustainable manner, they must be organized, channeled, financed and stoked from the outside.”

Assessing the potential for land policies to lead to conflict requires 3 groups of questions to be answered:

- How does current or future land policy affect access to land, security of tenure, and the distribution of land on population;
- How are different groups affected by the land policies set out in (a); and
- What organizations are likely organize themselves in relation to the problems generated by the above issues? What resources has the organization got to rely on to further its objectives?

A number of factors are likely to cause grievances in a given population. Some of these include:

- Formalization of tenure. Formalization can also lessen access to land. It can weaken security because it can challenge customary arrangements without offering effective alternatives.
- Weak States. Policy unclear and administrative inefficiencies can lead to tenure insecurity, in case of Lao P.D.R we have regulation, decree and law on land.
- Market – based land reforms. Market factors can provide unequal access to land by pricing land outside the limits of the poor.
- Colonization and settlement programmers. Putting new areas under cultivation does not necessarily reduce existing problems.
- Ethno – specific land policies. Can generate tensions between groups.

There is little reason to distinguish between conflict and post – conflict situations when assessing the potential impact of land policies. It is not clear that land policy can impact on the prospects for violence in any given country (although there're some notable exceptions; namely, Palestine and Sri Lanka).

Conclusions

Land policy cannot be disentangled from material and political interests. Political interests are specific to the particular context. The political/cultural and other factors must be factored into designing land policy.

Political inequality in relation to land policy is sustainable (ie, equality does not always win in the end). But this, of itself, is not likely to lead to significant reform efforts(eg gender inequality in relation to land rights).

The need to prevent conflict is not a good basis on which to base land reforms aiming to address the issues of access to land, security tenure, and distribution of land. These should be valued independently for their potential to lead to conflict. Land policy is not a critical factor in conflict except in special cases.

ENSURING LAND ACCESS IN POST-CONFLICT SITUATIONS**COMMENTS: JON LINDSAY**

Jean Daudelin's paper is extremely rich and there are many points one would like to explore further. As the terms of reference invite us, among other things, to reflect on the relationship between legal frameworks and the goal of reducing land conflicts, I would like to expand on various issues that are touched on in the paper from this perspective.

If I were to identify one aspect of the paper that left me wanting more it is the fact that after an intriguing and complex discussion of the causes and contexts of conflict, the paper leaves us somewhat hungry when it comes to a discussion of what we might do with this information in terms of designing and implementing interventions. It is in this vein that I would like to offer some thoughts from a lawyers' perspective about how we can approach the formulation of legal frameworks.

The author quotes Patrick McAuslan who reminds us that "Land laws ... have been first and foremost the products of politics, not of 'objective' considerations of what is best for economic or social or sustainable development." Land laws are, frequently, from a normative or aesthetic point of view, messy, incoherent, schizophrenic messes, because they are usually the result of intense political negotiation and trade-offs and conceal hidden agendas. And given this, one is often led to wonder if there is anything one can say meaningfully from a technical point of view about land law. After all, where a law has "defects" is it not safe to assume that this is not an accident, that there are vested interests behind each one of those defects?

But in a less pessimistic vein, at least in part I think we can often trace weaknesses in legal frameworks to conceptual and methodological shortcomings as opposed to raw politics. If we can address these shortcomings we will not make the law into a perfect tool, but I believe we can make it more effective than it often is in reducing and managing the factors that can lead to conflict.

I would like to propose several "design principles" or if that is too grandiose, rough guidelines for improving the drafting of land laws. The unifying theme is the importance of grounding law in reality, a point that seems so obvious that it should not need to be made, but in practice is often ignored. It is equally obvious that the world is littered, today and throughout history, with the corpses of unimplemented or partially implemented laws. There are of course many reasons laws are not implemented, such as a lack of political will, corruption, etc., but I would say that some of the defects of such laws can be reduced to the fact that somewhere during the process lawdrafters become convinced

that law can accomplish more than it can. There are numerous examples around the world of land laws that have remained largely unimplemented because:

- they are simply too complex and difficult to understand for those who use or implement them, including judges, government officials and land owners and land users;
- they establish complicated and expensive procedures for which neither adequate financial nor human resources may be available;
- they depend for their successful implementation upon abrupt reorientation of institutional or social behaviour that may be extremely difficult to bring about in the short term.

Where new land laws share these attributes, they undermine their own implementability and they risk becoming at best irrelevant, at worst quite dangerous. This in turn contributes further to a growing disrespect for the rule of law.

I will talk about six “principles”, although this is obviously just a sample and does not cover the full range of considerations that need to be taken into account.

Be realistic about laws ability to change deeply engrained behavior: There are many times, of course, when laws need to establish important principles even when the immediate prospects of compliance are low, such as in the case of protecting human rights and preventing discrimination. My focus here is on instances where the policy considerations are less compelling. Let me give an example that arises from time to time in title registration laws. It is not uncommon to find the drafters of such laws trying to tackle at the same time what they see as important social problems – for example, the “problem” of land being held in common by multiple heirs upon the death a land owner. Thus, a registration law might say that multiple ownership cannot be registered under the new system. Leaving aside the question of whether the policy goal is a good one, my concern is, what is the likely effect of this provision? Will it result in the gradual elimination of this particular form of land holding? Almost certainly not – however untidy it may be, this form of land holding is a reality. And the social and economic reasons that people choose to hold land this way are, in the end, more compelling and obvious to them than the alleged benefits of having their land registered. The result is far more likely to be that for large parts of the country the new law simply cannot be implemented, the registry will very soon no longer reflect reality on the ground, and the comprehensive registration of all land, and the improvements in land administration and conflict avoidance that it is supposed to bring with it will remain a distant dream. Again, this is not to say that law should not try to change undesirable behaviour, even if the prospects for success are slight. The question is when and where such intervention is appropriate. In the above example, I would argue that insufficient thought was given to the fact that successful implementation of an essentially administrative law was, in essence, dependent upon changing long-standing social practice.

Make sure that interventions to formalize land rights are tailored to peoples’ needs, priorities and practices: Or put another way, when governments set out to formalise rights, they need to understand

what rights they are formalising, and why. There have been suggestions during this workshop that formalisation processes can lead to the extinguishing of secondary rights or other access rights that have been important to poor people under customary systems or in informal arrangements. This is also highlighted in Jean Daudelin's paper as a risk factor in the generation of grievances that can fuel conflict. This phenomenon certainly does occur, but I would say that it is not caused by "formalisation" per se, it's caused by *bad or poorly conceived*, formalisation. In fact, there are a number of ways to formally recognise local systems of land rights, without the state having to get into the business of titling individual rights. It is important that those designing laws ask themselves why people in a specific setting need or want security, and to then ask themselves what intervention will best meet those peoples' security priorities. If people feel insecurity at the hands of their neighbors or their community elders, and they want formalisation to help reduce that insecurity, this is one thing. If on the other hand, they feel quite secure within their local milieu, but their main preoccupation is with the state or other outsiders taking advantage of the legal vulnerability of "unformally" recognised rights, or of failing to respect local rights over "empty" land, then this may require a quite different kind of legal approach. Of course, I'm not saying that this is easy. Indeed, from a legal drafting point of view, designing workable, realistic laws that give some "legal space" for local rights systems to operate within the larger framework of state law, is an extremely complex subject, and while some experiments in legal reform are underway in a number of countries, the results are uncertain.¹ The point is, however, that it is important not to assume, in using the word "formalisation", that all efforts to improve people's legal rights are basically the same and share the same drawbacks.

Along the same lines, I would urge that the paper needs to adopt a slightly more nuanced approach to the issue of legal pluralism. It is important to note that the existence of plural land law regimes is not *inherently* problematic in a number of contexts. Nor is it something that is introduced by formalisation – it is a fact of life in almost all societies. We all recognise and have to balance in our daily lives multiple sources of rules and authority, only one of which is the state legal system. The difficulties that arise in practice often stem not from pluralism *per se*, but from long-standing failures to harmonize the operation and interaction of the various systems, to define the jurisdictions of each, and to reduce the uncertainty and insecurity surrounding some customary systems by according them a greater degree of formal recognition in the eyes of the state.²

Be realistic about what approvals, permissions, procedures, etc. are critical to the policy objectives, and try to eliminate the rest from the law. There are numerous examples in every legal system of laws

¹ See J. Lindsay, "Creating Legal Space for Community-Based Management: Principles and Dilemmas," in proceedings of the International Seminar on Decentralization and Devolution of Forest Management in Asia and the Pacific, Davao, Philippines (FAO, 1998).

² R. Ramirez, "A Conceptual Map of Land Conflict Management: Organizing the Parts of Two Puzzles (FAO, 2002)"

so encrusted with procedural barnacles that the processes involved simply come to a grinding halt. And quite often the policy reasons for creating those procedural hurdles, if they were ever articulated in the first place, are now lost in the mists of time. Thus, one sees the phenomena of entire professional specialities springing up, in both the public and private sectors, devoted to arranging, obtaining or granting exemptions or permissions, with no one able any longer to remember why they are required in the first place. This phenomenon is not simply a nuisance. It has the capacity (in conjunction with other influences) to make a law a dead letter. I'm reminded of talking with farmers in one Caribbean country about the process for obtaining an allocation of state land. Aside from usual complaints about corruption and rent-seeking by public officials, the farmers, who actually knew the law quite well, pointed out that according to the law, they needed permission from a local board that had not been constituted in many years, they needed to fill out forms that government no longer printed, and that officials used the failure to comply with these impossible requirements as a basis for refusing to act. It was, they explained, easier to acquire land through prescription or adverse possession than to go through the system.

Of course, the point is not that permits, approval processes and the like are inherently bad. Indeed, and perhaps paradoxically, measures designed to create greater transparency and accountability and more diligent rights-protection may well *increase* paperwork to some extent and result in some procedural delays. What *is* detrimental is the accretion of procedural hurdles that serve no apparent policy objectives, or that are likely to serve their ostensible objectives poorly.

In the process of writing legislation, the addition of another permission or approval process may seem the height of prudence and little attention may be directed to its likely costs, consequences and collateral effects. To reduce this tendency, scrupulous consideration should be given to the following questions:

- What precisely are the purposes of regulating the activity in question, and are they sound?
- Are existing or proposed regulations clearly targeted on fulfilling those precise purposes?
- In defining objectives is there a need to differentiate between different types of situations?
- Can regulations be simplified and streamlined without threatening the basic objectives?
- Are regulations realistic in terms of the capacity of the government to implement them and the capacity of private people to abide by them?
- Can policy objectives be better achieved by focusing on establishing broad parameters for private action rather than through a continuing reliance on permits and penalties?

Be realistic about government's financial and institutional capacity to implement a law: It is remarkable how often law and policy makers fail to take into account the costs, both in terms of monetary and human resources, of the laws and procedures they design. Modern land laws frequently call for the establishment of tribunals, boards, commissions, etc., at various levels of government, and each comprised of people with certain levels of professional expertise. These are perhaps excellent ideas, but where will the people come from? How will they be trained? How much will it cost? What are the

prospects of getting the system up and running soon, and how sustainable is it over the long term? I think that law drafters often fail to deal adequately with the transition process from one legal regime to a new one, with the result that when new laws come into place, people find themselves in a sort of legal limbo until the institutional apparatus of the new law is up and running and able to deal with their particular case.

Be realistic about people's ability to use the law: Can people understand fully what rights and responsibilities they have? Can they afford to take advantage of provisions that are intended for their benefit? One West African country in the 1980's legislated a method by which local farmers could obtain greater security over their land, but made it conditional upon the production of a "management plan" for the farm that was so complicated and required a level of expertise and sophistication that was simply beyond the reach of most people who wanted to take advantage of the provision. All of this was, arguably, motivated by good environmental motives and a desire to prevent speculative land acquisition by people not interested in using the land. But the result was a law that became virtually unusable.

Be aware that just laws that seek to empower poor people, if taken seriously, may engender conflict: I will not expand upon this principle, except to note that it is meant to reinforce Jean Daudelin's argument that land policy, if focused on equity goals, cannot and should not expect that the outcome of effective implementation will be the reduction or avoidance of conflict, at least in the short term. Any meaningful empowerment of one group of people is likely to be perceived by some other group to be at their expense. Law, like policy, must accordingly not focus in these instances on conflict avoidance as much as on the effective and fair management of conflict.

Build "reality checks" into the process of law drafting: Or put another way, the drafting of land laws is too important to leave in the hands of lawyers. The drafting of sound and workable law requires genuine involvement of all categories of stakeholders – government and non-governmental institutions, central and local institutions, communities and local forest-dependent people, private sector organisations, etc. This is not a recommendation that flows only from a belief that people should have the *right* to be involved. Instead, there is a practical point here – without this involvement, there is simply little hope of passing laws that reflect reality and are capable of being used and implemented.

It is important to stress that this recommendation goes beyond simply holding a few seminars or workshops at the end of the drafting process. It requires a true commitment to listening to and understanding the needs, objectives, insights and capacities of the intended users of the law, and finding ways to accommodate the multiple interests at stake. It requires a determination to avoid letting the process be driven by the preconceptions of lawyers, donors and other outsiders, however well intentioned. This is time consuming work, that ideally should entail patient consultations in the field with people

directly affected, not simply in a distant capital city. And these consultations should start early, not only when a first draft has already been completed.

Finally, especially in the case of land law, lawmaking needs to be based upon sound economic and sociological principles. Yet the relationship between the legal profession and the social sciences has been, in most countries, a relationship of mutual neglect. There are extremely interesting examples, in recent years, where this has begun to change in a number of countries, and where the drafting of law – traditionally the exclusive reserve of lawyers – has been a joint exercise between legal experts and experts from a number of other disciplines.³ The result, if this is done correctly, is to ensure that the analysis of constraints, weaknesses and strengths in the existing law is based not just on an analysis of the text or on the formal procedures adopted by administrators, but on the law-in-action, the law as actually experienced by the full range of stakeholders in their daily lives.

³ See Tanner, “Law Making in an African Context: the Case of the Mozambican Land Law of 1997”, FAO Legal Paper Online (2002), www.fao.org/legal/, for an extremely interesting example.

LAND IN CONFLICT AND POST-CONFLICT SITUATIONS

COMMENTS: WILLI ZIMMERMANN

Introductory remarks:

There is not much to add to the excellent analytical model and views of the moderator on Land and Violence In post conflict situations. I do agree there might be little reason to distinguish between conflict and post conflict situations when assessing the potential impact on land policy. But there is good reason to distinguish between conflict situations and post conflict situations in countries in transition. In the 1990th and still today in many countries, take for example the new states of former Yugoslavia (Bosnia, Croatia, Macedonia), the Caucasus countries, Cambodia, Angola and a number of other countries. The impact of the combined destructive forces of conflict and the erosion of political, socio-legal values norms and governance structure in political transition periods has been underestimated in research and in development cooperation.

I will therefore only complement the excellent analysis of Jean Daudelin with specific experiences in post conflict situations in countries in transition. Too much time is lost in those situations (often more then 10 years) in understanding the specific nature and complexity of the core issues, the power relations and in identifying the right mix of instruments for guiding the reform process.

Core issues

Governance: Governance is the manner in which power is exercised in the management of a country's economic and social resources for development. Typically countries in conflict are governed by the rule of power and not by the rule of law. Recent experience shows that the difficult transformation process in the early post conflict period from *rule of power* (or rule of men) to *rule of law* takes too much time. (10 to 20 years).

Even more difficult are situations in *post-conflict countries in transition* where countries are confronted first with a break down of a centrally controlled system and second with the challenge for reformulating and reconstructing a new democratically controlled political and socio-legal system and land regime in an environment of heavily destructed physical and social infrastructure. Typical elements during the first phase of the post-conflict period are the dominant role of the military and security services in society and civil service, the large proportion of the military expenditures, the inter-dependencies of the military forces and of the judiciary with the ruling political party (or parties), the legal vacuum in many important

sectors (the drafting and discussion of a new civil code often takes 5 to 15 years), the lack of capacities and interest in law enforcement, the incomplete separation of power, the exclusion of civil society in decision making processes, the neglected private sector, the minimised revenues from state assets, the long term consequences of the break down of the professional educational system and land related faculties (law, surveying and mapping, planning, economy, business administration, IT) and of technical training institutes, the lack of transparency and access to information, the lack of financial resources and qualified human resources for the implementation of such a difficult transformation process.

Large-scale expropriation, which leads to large-scale land disputes: Violent internal and external conflicts are resulting in large-scale direct or indirect expropriation of properties and assets. The extent is underestimated because of the manifold nature of expropriation.

- Millions of People have been driven from their land and houses by force and become refugees (for example about 2 million in Bosnia, 2,5 million in Angola, 2 million in Cambodia), many people fled because of systematic air bombing.
- In the early state of the post-conflict period the military generally still occupy up to 10 % of the country (state land and private land) for security reasons.
- For many people access to their land is becoming impossible because of large-scale contamination with land mines (for example 6 million land mines in Angola), or destruction of dams, bridges and irrigation systems.
- Documents proving former ownership were destroyed or got lost during the turmoil. Land registers were bombed or burned and owners lost their private documents like copies deed records, contracts, inheritance and other family documents)
- Orphans often have no evidence proving their inheritance rights.
- Women headed households (typically 20 to 25% of all households in post conflict situations) lose there land security or access to land because mostly land rights were guaranteed in the name of the man as head of the household.
- The traditional social structure of villages were destroyed and their witness function for “who has which local resource rights and has access to which piece of land” through traditional leaders or ombudsmen was dismantled.
- There is a breakdown of the well-balanced former system of informal secondary land and resource rights.

During the first years of the post conflict period typically half the complaints to the Human Rights commissions involve the violation of property rights and land disputes. The frequency and volume of land dispute increases dramatically and represent more than two third of all civil cases. Many cases involve hundreds of families, mostly poor families. Forced landlessness and extreme poverty have a high degree of correlation. But the dispute resolution process is too costly and time consuming. Often more than two third of the accused are either officials or military people.

State land and state assets: A society’s state property is one of its most powerful assets for economic growth and for social and political development. The state through its various legislative, executive and administrative bodies and organizations is that part of society that has not only the responsibility, but also the capacity to manage, conserve and designate uses

of those immovable property assets that belong to the society as a whole. The test of how well a government performs these responsibilities is the degree to which it is able to ensure that the social, cultural as well the economic benefits accrue to the largest number of people in the society. That is, state property by its nature should benefit everyone in its use. Therefore it is not difficult to see why a sound policy in regard to state land resources is central to any development program. A quick look around the world gives numerous examples of what happens when policy toward state land resources remains ad hoc and/or short term. Indeed, one of the distinguishing characteristics of the OECD club of rich nations is their history of sound policy choices in regard to how they have managed state land and natural resources. The implications are clear. Those nations that have chosen a policy that emphasizes the widest benefit of state land have also been the most successful in achieving social and economic wealth as well as political stability. This suggests that government develop as soon as possible its state land policy. The essential policy goal is to set forth the criteria for deciding who gets to benefit from how much of these resources, for how long and for which purposes.

Countries in transition are generally the weakest in managing state land, although 70 to 80 % of the country's assets in most of these nations still belong to the state. Land is wasted and not managed. In effect, there is massive, unregulated, corrupted privatisation of state land at all levels. Often sales and lease contracts (concessions) of state property are not transparent, are not done through public tender and rule-based selection processes. Huge amount of possible revenues are lost every year and are unavailable for public investment because of the institutional, legal and operational vacuum in managing state land. Law and legislation are an essential foundation for building a national state land policy, but they are not enough. If we look at those nations that are the worst examples of state land management, it is shocking to find that so often they have well intentioned law on the books Policy formulation and implementation is a vital process that translates "law-on-the-books" into "law-in-action". This is another way of saying that policy formation is both a political AND technical process and hence has need of empirical knowledge of the specific situations to which it is to be applied.

Power Relation: In the transition period from "rule of power (or rule of men, or rule of party) to rule of law " powerful people enjoy maximum discretion to grab land and dispossess poor people. It is not surprising that land disputes represent one of the most pressing governance issues and human right issue in this critical period.

Incapacity of centralised institutions, the role of powerful people, lack of legal framework and law enforcement, the effect of the above mentioned expropriation and the break down of social structures lead to a high degree of informality and illegality in land matters. Formal land institutions have often lost the trust of people due to corruption and misuse of power.

In summary: The dimension of land conflicts represents the shortcomings in governance.

Implications for land policy design

The importance of good governance for the land sector cannot be overstated

Progress in Good Governance requires sustained political will, transparent policymaking, proper sequencing of actions, long term systematic capacity building, transparency and dissemination of information and firm commitment of financial support. The gap between the rhetoric of good governance reform and implementation is generally huge in post-conflict situations. It is important that the accountability of institutions like the courts, out of court mediation mechanism (ombudsman and other formal and informal but socially accepted solutions) the audit authority, legislative commissions, the anticorruption agency are in place at an early stage, have financial autonomy, appoint staff in a transparent process, receive intensive training, strengthen law enforcement in all land related matters and fight corruption. Professional associations like the Bar association or the association of land and cadastral surveyors should be supported to develop and adapt a code of conduct for professional ethics and behaviour and complement government actions.

Land policy implementation

Targeting fewer sectors with more comprehensive programs will likely have a higher impact. The land sector is one of those critical sectors needing special attention in the early phase of post-conflict situations in transition. Cambodia for example has only now developed a promising comprehensive program (the land package), which promotes land long-term policy orientation, regulatory framework, local participation in implementation, the development of the right mix of instruments, land conflict resolution procedures and capacity building.

The new legal and institutional framework comprises of a Council for Land Policy for guiding the reform process, a responsive new legal framework, strategic partnerships (internal and external), and a new way in dealing with civil society and intensive participation of the affected people.

The Land Package is building bridges and partnerships with *essential complementary programs* like the *national decentralisation program* (after the first election of commune councils in February 2002) and with other reform programs of the government. In other words: Without complementary actions in state reform (governance) and country focused donor coordination there are not many impacts and high risks for failure remain. A shift from project orientation to sector wide approaches, strengthening of the ownership principle and the shift from individual donor oriented support to a comprehensive country focused multi-donor support seems to be the most challenging new design for reforming the land sector.

A comprehensive Land Management and Administration Project LMAP has been designed in Cambodia for the implementation of the new vision from policy orientation to local participation.

Proposed Project Components of the comprehensive multi donor supported (MLMUPC, WB, Gov. Finland, Gov. Germany) LMAP approach are

- Development of land policy and regulatory framework
- Institutional development including decentralisation and new educational programs.
- Systematic Land titling program and development of a land registration system
- Strengthening mechanisms for dispute resolution
- Land management and land use planning

Managing state assets

Compiling and publishing state assets is not complicated but requires substantial political will. A substantive review of major contracts involving the sale and lease of state property is needed. There should be no contract for economic concessions without public tendering, clearly defined rules and a transparent selection and monitoring process. Institutional responsibilities for setting up state land inventory and for administering and managing state land need to be clarified. Laws and accountable procedures for the privatisation of state land must be in place. Flexible instruments for the leasing of state land, for the exchange of houses and land help very much to find quick solutions for returnees and marginalized groups in the transition period.

The three pillars of good administration of state land are a clear legal foundation in law and regulations, a good knowledge of what is where and where is what and the capacity to do something with it and make it economically, socially or environmentally viable. An up to date State land inventory, guidelines for concessions, accountable contracting and monitoring procedures are the keys for generating badly needed revenues for the national treasury. It is as well most important for the design of a land allocation policy for socially and economically oriented land distribution.

Basic principles for Restitution

Restitution is

- either the return to the former owners of property of which they were deprived by the state or its organs without any, or without fair, compensation
- or fair compensation in lieu of return.

Property subject to restitution includes land, forest, buildings, objects of cultural, artistic, and historic value, and other objects of high value, as well as enterprises. The entities have to agree upon a date after which expropriation shall be subject to restitution. In general it should be "restitution in kind", with following exceptions:

- Third parties which obtained property subject to restitution in good faith shall be protected against restitution in kind.
- The entity laws shall contain special provisions for the protection of business development and investments and
- shall determine the conditions for post-war property acquisition to be
- considered as acquired in good faith.

If there is a justification for not returning property in kind, full and effective compensation shall be awarded, reflecting the current market value of the property in the condition it was in at the moment of seizure. Claimants shall be given a minimum time (for example twelve months) to make their claim for restitution.

The gender issue.

Violence, civil war, conflicts are all mostly men-related issues. If men are a great part of the problem, men cannot be left alone when it comes to finding solutions. Women therefore have to be represented in commissions, councils, decision-making structures and interest groups. It is by far not sufficient to improve security and access to land for women and women headed households. Empowerment of women in defending their rights has to be institutionalised.

Transparency of all land related procedures as well as access to land related information are fundamental democratic principles

Technology

The value and importance of visualised information in the comprehensive regularisation process is generally underestimated. Countries in post-conflict situations require a new set of updated information for identifying new problems, for planning options and solutions. A new spatial data infrastructure based on aerial photography for the total of the country is costly but also cost saving. It is much more costly not to have it and waste time in critical years of transition. Co-financing agreements with various main users and the international community are therefore the most adequate solution. A digital database with rectified aerial photography (digital orthophotos) for the total of the country is a most powerful and efficient democratic tool. It would provide easy, quick and cost effective access for all users (public and private). Regularisation processes, land conflict resolution, resettlement of refugees, quick inventory of the damages of basic infrastructure (roads, bridges, buildings), land allocation, state land inventory, participatory local land use planning are just a view examples where modern technology can increase efficiency and speed up procedures by a factor 10. It would allow local institutions, NGO's and private sector to locate their action and carry out their work effectively and display the results publicly. Cambodia is opting for such a digital data structure based on aerial photography. Such an action already in the first two years of a post-conflict situation and not ten years later is highly recommended.

Public Education

Public education about the new land law, about what land and resource rights exist and how to obtain them is fundamental in a post-conflict situation. Local people are generally badly informed about their rights and the changing legal environment. “Law on paper” does not help the people but only “law in action”. It means public education must vastly increase based on “easy to understand” material and visualisation tools. Educational material has to be translated into local languages so everybody literate or illiterate gets to better understand his rights.

LAND IN CONFLICT AND POST-CONFLICT SITUATIONS**COMMENTS: BENCYRUS ELLORIN**

*The Centre for Alternative Rural Technology's (CART) work with "ecological people" (the farmer, fisherfolk, women and Indigenous people) for over fifteen years has led us to the conclusion that **too much concentration on a few productive natural resources not only results in poverty of the majority but environmental degradation.** (Ecological people because their livelihood is dependent on the capability of Mother Earth to reproduce and create the commodity for their livelihood). I will focus my discussion on how environmental destruction may have created a social and environmental timebomb and how communities in my place in Mindanao in Southern Philippines are acting to avert its explosion. I will also briefly discuss the conflicts created by the unequal distribution of the country's farmlands.*

Environmental degradation creates scarcity

Environmental degradation creates scarcity of productive natural resources. Scarcity results in aggravated poverty and aggravated poverty results in conflict- social conflict. For this Regional Land Workshop in Asia, I will focus my discussion on the effect of deforestation on the farmers, fisherfolk and indigenous people, and how this creates conflict.

The land use policy problem in the Philippines is not just in the urban and agricultural areas. It goes up the tropical forests, in the once abundant and verdant tropical forests of the Philippines. Access to other land resources, like forestlands and grasslands are generally available only to the few elite. Hundreds of thousands of hectares of virgin forests in the country were awarded by government to a few elite. During the Marcos dictatorship, huge logging permits were given to his cronies.

The result is catastrophic. Now the forest cover of the country is less than 15%. And of this, less than 700,000-hectares are virgin forests. Studies say that for the Philippines to have a healthful and balanced ecology, it needs 30-50% forest cover because it is archipelagic and has a mountainous terrain.

The conflicts that this had created are plenty. It has reduced our bio-diversity (one of the most abundant in the world), it has caused severe soil erosion and siltation of our rivers, damaged our corrals and other coastal resources and diminished our bio-diversity. The impact of this on the poor people is severe with the farmers, fisherfolk and indigenous people bearing the brunt.

More than 50% of the country's agricultural lands are eroded due to the loss of forest cover. This has serious implications on the poor farmers as precious fertile top soil are washed out into the rivers and coastal waters. Siltation have also rendered ineffective irrigation systems. Farmers have also reported proliferation of pests in their farmlands once the forests were gone. Siltation of rivers results in the increased risk of killer flashfloods as deposited silt reduces the water carrying capacity of rivers. In the coastal areas, siltation is wrecking havoc on the coastal flora and fauna as silt destroys corral reefs, among others. Studies in the Philippines have indicated that the current rate silt is as destructive as dynamite fishing to the corral reef.

Fisherfolk have to go farther away from the shore and have to invest more fuel and effort just to catch enough fish to sustain their families. In our place, there is an emerging animosity between the rich resource exploiters and the poor victims of environmental degradation. If left unchecked this may result in the escalation of a new wave violence as the poor victims of environmental degradation struggle to survive.

Unequal distribution of agricultural lands

The perennial cause of social conflicts in the Philippines is the unequal distribution of the nation's agricultural lands because of feudalism. Historically, feudalism drove the Filipinos to wage the revolution against the Spanish colonizers in the 18th Century. Until now, anti-feudal armed struggles are still being waged. By the Maoist revolutionaries throughout the country and by the Moro separatist groups in Mindanao in Southern Philippines.

Open and legal mass movement and civil society protests are likewise relentless in their advocacy for genuine agrarian reform. After the enactment of several laws that seek to redistribute the lands in the country, the plight of the Filipino peasant has not changed substantially over the past century.

Less than 20% of the Philippine population control over 80% of the country's lands, mostly agricultural lands. This leaves the Filipino peasants very poor, powerless and generally disenfranchised.

Ensuring access for the poor and integrity of the environment

I agree with the identification of core issues by the paper Land and Violence in Post-conflict Situations of Jean Daudelin which are 1) access; 2) security; and 3) distribution.

For the Filipino Peasants:

Until now, unequal distribution of land remains the main bone of contention in land related conflicts and violence. Thus, there is a need to really push genuine agrarian reform for an equitable land distribution. Distribution ensures access by the peasant to the lands. After distribution, it is imperative that security be ensured.

Access in this case I believe should be strongly related to ownership. In the case of the Philippines through land titles or the land tenure instrument we call the Certificate of Land Ownership Award (CLOA).

Security for the agrarian reform beneficiaries require two things. These are, 1) physical installation of the agrarian reform beneficiaries in the land and protection from the forces of the landlord; 2) provision of support services like a) infrastructure (farm-to-market-road, irrigation systems), b) agriculture extension service (for appropriate technology, and c) agriculture production assistance.

Without security, it will be just boom and bust cycle because if left unproductive, the land would eventually be lost, either to the old landowner or other interested parties.

For the Fisherfolk and Indigenous people:

Access and security of tenure of the small fisherfolk is ensured with the maintenance of the environmental integrity of the sea and the coastal resources. A healthy coastal and marine resource is the fisherfolk's best chance to achieve food security. For a logger or a big multi-national company which usually displaces fisherfolk in the Philippines, a five-kilo fishcatch may be nothing compared to the millions they earn. To a small fisherfolk, it is food and other basic needs for his family. For him, the millions of profit from big multi-national firms which displaces them is nothing.

The Indigenous people on the other hand have a profound relationship with the forest, the natural resources in general. To them the forest is the source of food (economic), it is where their communities are traditionally located/their homes (political) and the forests/mountains their place of worship (cultural). Giving them access to the forest is the best guarantee of the sustainable management of our forest resources.

People taking direct affirmative action

In Northern Mindanao, a people's movement for the environment and sustainable development has emerged in the last 11 years. Farmers, fisherfolk, Indigenous people and even urban-based professionals have bonded together to diffuse the ticking environment timebomb. Formed in 1991, the Task Force Macajalar a coalition of people's organizations and non-government organization have moved to stop logging in the critical watersheds of Northern Mindanao.

Through people's anti-logging barricades they have stopped the transport of logs which eventually led to the stoppage of operation of several logging companies. It's farmer members are also advocating sustainable agriculture and are engaged in reforestation and forest management projects. Trained fisherfolks on the other hand are apprehending and filing cases in court against bigtime illegal fishers and monitors the pollution of industries in Macajalar Bay. The TFM now has about 10,000 members. It serves as a countervailing force against forces that are destructive to the environment.

Last year, the influence of group spread in other parts of Mindanao that a new group has been formed. It is called People's Movement for Sustainable Development. These groups are engaged in non-violent direct actions against the pillagers of the environment. It is also promoting both the principles and practices of sustainable development

Strategies

A strategy for community empowerment has evolved in our years of working with the farmers, fisherfolk and other poor sectors of our society. We call it the Five Building-blocks of **Community Empowerment and Development**.

- **Capability-building** – At the core of the strategy is capability-building. This entails a) training; b) IEC; c) participatory planning; and d) implementation of people's micro-enterprises.

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- **Access and Security of Tenure** – For farmers, access and security of tenure, through land titles or other tenurial instruments must be given improved and secured. For the fisherfolk, as discussed earlier, his access to the productive fishing ground is his best livelihood security. Unless the feet of the farmer or fisherfolk or indigenous people are planted firmly on the ground, no development can take place;
 - **Promotion of sustainable people's enterprise** – Farmers and fisherfolk produce commodities for their livelihood from the bosom of nature. It is important to develop their capacity to ensure the quality of their product, innovate (product development; develop their market niche (market development) and manage their market.
 - **Environmental Protection and Sustainable Development Advocacy** – As “ecological people” preserving the integrity of the environment is paramount to the productivity and development is paramount to their progress. Organized farmers, fisherfolk, women, Indigenous people engage illegal loggers, illegal fishers and even government in human barricades, rallies and other forms of advocacies;
 - **Participation in Governance** – Participation in governance is very important is transforming the interests and aspirations of the marginal sectors into policies and projects. Participation in governance comes in several forms and venues, through Special Government Bodies where people's representation is required or through other venues like in elections and referendums and even in the exercise of their constitutional and statutory rights. The key is getting involved in governance with the end in view of good governance.

Our experience has taught us that through the people's collective action, a conflicts can be resolved. But unless the root causes of these conflicts are addressed, our struggle continues. Thank you!

LAND IN CONFLICT AND POST-CONFLICT SITUATIONS**CHAIR: BRUNO VINDEL****A few insights**

The economies of most South countries, are still heavily reliant on land natural resources for incomes, employment, exports and tax revenue. Competition for access to natural resources is growing in many countries as a result of the combined effect of population growth, migration and greater integration within international trading systems. Land tenure, understood to mean rights of access to and control over land, is a multi-faceted issue much debated today. Tenure issues are thus an integral part of broader economic, social and environmental policy ; they are embedded in the poverty reduction objective.

Addressing the land tenure issue also means safeguarding peaceful social relations, laying the foundations for sustainable agricultural and economic development, conserving natural resources and implementing decentralised policies. In such a context, one cannot ignore the long term implications of policy decisions in areas relating to land tenure including the promotion of more equitable patterns of development.

Rules governing land tenure are a key part of agricultural policy

Growth and intensification of the agricultural sector require increased investment in land and associated capital assets. The legislative framework within which access to land and security of tenure are regulated needs to provide the diverse range of land users with the confidence to invest in land improvements.

What type of farming should be encouraged ? What opportunities exist for support to agriculture within development schemes and peri-urban areas ? How can stakeholder exclusion be limited ? All these questions relate to agricultural policy and cannot be answered without reference to land tenure debates and arbitration. With such debate the objectives of competitiveness, food security, alleviating poverty, safeguarding rural employment and increasing agricultural income can be addressed and resolutions sought.

Conditions governing access to land natural resources influence both the sustainability of land use patterns and environmental protection.

Communities will be more likely to organise use of their assets along sustainable lines if they are involved in management and have a stake in the benefits generated from exploiting those assets. This means that clear and unambiguous legal arrangements, which are accepted by everyone, need to be in place to regulate how resources will be used.

The land tenure issue has often lain at the heart of local conflicts

A faster rate of settlement and substantial migration may place regions or an entire country at constant risk of conflict. There is a need to establish arrangements for negotiation and arbitration over land tenure which are able to keep the peace. The disputes may be exacerbated by the co-existence of various arbitration bodies and the absence of any system to reconcile the different decisions they may take.

Efficiency of land administration demands that the respective prerogatives of the State, local authorities and village level institutions regarding land should be clarified.

Neither centralised land management systems, nor those which rely on customary rules, have proved appropriate to meet today's needs. A division of responsibilities between the different tiers of administration handling the management of land natural resources, whether at national, district/commune, or village level, is certainly necessary, in order to ensure local resolution of conflicts and to pave the way for efficient land markets.

In any case, land administration has a cost, that should be met with appropriate budgetary resources.

Mobilizing Stakeholders to Find Shared Solutions

Regulating access to land natural resources requires :

- organising conflict mediation and arbitration
- clarifying and securing stakeholders' rights, in order to encourage investment in land and meet the concern for equity by safeguarding the rights of vulnerable groups
- facilitating land transactions, in order to foster resource allocation in accordance with production capacity

Experience suggests the need to move towards

Range of options to suit diverse settings

The complexity and diversity of situations within each country are such that no single solution will fit all circumstances. Instead it is vital to construct legal and institutional systems individually tailored to national and local needs.

In areas where strong competition has led to the establishment of de facto ownership (irrigation schemes, peri-urban areas, etc.), the establishment of a cadastral survey, as a tool for allocating plots and determining tax liability, may be envisaged provided that expected revenue justifies the costs involved.

In areas where many types of use are superimposed, or those where there is still some land which has not been formally appropriated, e.g. rangelands, forested areas, etc., the delineation of boundaries can give rise to conflict, by its tendency to simplify a complex reality. Alternative systems need to be negotiated with representatives of the various stakeholders to ensure a solution is found which can take account of their various interests and needs. This exemplifies the role of institutions, understood as forums for conciliation.

Solutions worked out and implemented with the various users

Solutions are more likely to be effective where they been negotiated by the different stakeholders, so that their legitimacy is acknowledged. This type of negotiation should ideally be conducted at local level, as this enables solutions to be tailored to local conditions through:

- acknowledgement of rights co-existing over the same area
- participation of local stakeholders in managing land and renewable resources.

Local structures often constitute the first, and potentially the most appropriate, tier of authority in relation to land management, conciliation and safeguarding rights. The cost of management may be lower than reliance on higher level structures.

Under broader State responsibility

Local decisions, in order to be effective, must be consistent with the wider legal or administrative framework. National governments, and their representative at local level, will need to provide guidance to ensure a proper understanding of rights and duties of local bodies, and the importance of meeting objectives relating to equity, transparency and social justice.

In order to assist local dynamic processes, government must play a role in facilitating and reconciling private interests with broader public objectives, while providing a guarantee of rights in the last resort.

Current dynamics may provide solutions :

Innovative local arrangements: As a reaction to increased competition for access to land and renewable resources, new types of transactions and institutional arrangements are emerging at the instigation of local stakeholders. In areas where competition is fierce, rights are increasingly becoming individualised, while transactions regarding land often now involve money changing hands. These phenomena can occur without genuine alienation of land, i.e. without it being privatised. Where land does become a tradable asset, the process may remain incomplete since people's access to land remains determined by factors other than market laws alone. Informal leasing systems, e.g. sharecropping, tenant farming, pledging, assignment on a permanent but non-transmissible basis, etc., can be effective locally in providing security to stakeholders, as well as facilitating land transactions and even the emergence of agricultural entrepreneurs, when economic conditions are right. These modes of enabling access to land for those without formal rights fit in more easily with the social values of the community and their relationship to land. Under stable conditions, they can provide a degree of security for both lender and borrower. Under rapidly evolving social and economic circumstances, traditional rights holders may try to break such agreements and call back land under use by others, where they see clear economic advantages from so doing. Governments could promote the use of leasing agreements by backing them with greater legal safeguards.

More diverse tools: New tools can provide solutions individually tailored to the needs of different situations. The current state of land tenure research, related to more general progress in social science methodology, can help to guide analysis and identify the characteristics of local situations without the

need for years of basic research. Technological advances (e.g. satellite imagery, computerisation, Global Positioning Systems, etc.) have come up with more precise tools which are both quicker and less costly to use, so that more reliable maps and surveys can be produced quickly. At the same time, social analysis has demonstrated the many ways in which people may gain access to resources, such as through usufruct, annual leases, share-cropping, and other arrangements. In combination, technical and social science advances provide a better means for mapping the complex web linking rights and resources in a given setting. More effective use could be made of research on land tenure by using research findings to inform decision-making.

This may allow policy makers to evaluate alternative approaches in accordance with national objectives, including the analysis of foreseeable consequences of any proposed measures, especially in terms of conflict prevention.

In many countries, a trend towards **decentralisation** is in progress, associated with administrative reorganisation of the national territory. While decentralisation does provide an opportunity to empower the various social stakeholders at field level, it will be crucial to clarify the respective rights and responsibilities of village and local government/commune level structures regarding distribution of land and resolution of conflicts.

Several countries are conducting innovative work with regard to the bottom up development of decentralised management and the identification and recording of existing rights and practices, e.g. agreements or local conventions, actual rights and responsibilities of the various stakeholders. Some are trying out new systems for managing renewable resources.

Recommendations include:

- more widespread establishment of local bodies, with balanced representation from stakeholder groups, responsible for managing land and resource tenure and mediating or arbitrating in disputes
- development of a legislative framework drawn up in a participatory manner, which can be adapted to specific local level features.

Such a framework would need to:

- clarify who acts as arbiter between conflicting interests
- provide formal backing for local decision making
- support the development of local decision-making along principles consistent with national objectives

Stimulating constructive debate is a matter for policy-makers

The current situation presents a particularly opportune moment for reflection, debate and action in this field given the context of PRSPs and the generally shared sustainability objective (long term productive use and management).

- At national level: Improving the management of land tenure issues means that policy objectives must first be clarified. Tenure rules determine how resources are distributed between the various stakeholders, and thus express a set of social values and choices. The land tenure issue raises many different concerns within national policy, involving various ministries and government services. Such roles, interests and responsibilities will need to be

clarified and reconciled in relation to the government's longer term priorities. At national level, organising a framework for inter-ministerial consultation and discussion, bringing together the main structures in government responsible for land-related issues, would be a good way to seek consensus on different sectoral interests.

Rapid changes in access to land are currently occurring at local level. Local institutions are needed to monitor these changes and respond to emerging needs, and facilitate a process of dialogue.

Representatives will need to be selected in a way that ensures the proper and fair representation of differing interests, particularly those of more vulnerable groups. Debate and activities might usefully concentrate on areas where there are particular issues requiring early intervention.

- At inter-regional level. Continuing the debate on an inter-regional basis.

Whilst the aims of national policies are country-specific, circumstances may justify a concerted and shared approach on an inter-regional basis :

- the existence of homogeneous agro-ecological areas, common to several countries ;
- the presence of certain problems common to many countries, such as friction between migrants and local people in recently settled areas, or intensification of peri-urban agriculture.

Ministries responsible for rural development are at the heart of a new dynamic process

As available land becomes scarcer, systems of agricultural production and resource utilisation are also bound to change in ways which will depend in part on rules governing access to land and resources. An in-depth knowledge of local determining factors is a prerequisite to any intervention relating to land tenure and resources access in the framework of agricultural policy. Land tenure and related issues should therefore be duly considered in the formulation of agricultural policy and rural development policy.

Physical planning policies which define agricultural and non-agricultural land, reserves, parks and open spaces, will need to be addressed through inter-ministerial committees.