

Access to Rural Land and Land Administrations after Violent Conflicts

An African Experience

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Violent conflicts and their causes

- **Competition** over access to land and natural resources is often a key issue of conflict: it may be a root cause (Sudan), it may be merged with other issues (Angola), or it may be a result of conflict itself;
- The **multi-dimensional character** of access to land makes it difficult to address: livelihoods, economic, social, cultural, ethnic, governance, political dimensions;
- Land-rooted conflicts can be fuelled by different **catalysts**:
 - Population growth, drought, environmental degradation and pressure on a shrinking resource base
 - Undermined local leadership, legal vacuum, administrative weakness making land management less efficient and unaccountable
 - Arbitrary interference of the government in local land management using policies and legislation that favour only macro-level state interests;
 - Lack of infrastructure and access to technology so that local development is getting increasingly difficult
 - Social organization (strong horizontal segmentation), local customs (dowry payment)
 - Presence of arms
 - Unbridled interference of outsiders; geo-politics

Post conflict environment

- **Massive displacement**, spontaneous land occupation and settlement, violated Housing, Land and Property (HLP) rights, forced evictions, slums;
- **Open access conditions** in rural areas: deceptive visible land use leading to an assumption of “free” land and land grabbing;
- **Liberation movement dynamics** and its consequences: army – movement – government transition: transfer from military power to economic power;
- **Chaotic policy-legal-institutional environment**: emergency policies; opportunistic legal shopping (statutory and customary law); strong dynamics of weak institutions;
- **Speculation for access** to land and natural resources in a chaotic environment: military, national elite, foreign private sector;
- **Unresolved tensions**; outstanding historic grievances; remnants of identity issues and ethnic mobilization;
- **Uprooted society**: weak community structures, politicized customary authority, power shifts;

IDP and Refugee land issues

- Displaced people need access to land to survive; access scenarios in rural areas are different from urban/peri-urban areas: customary and statutory law;
- Displaced people often miss objective information on their HLP rights and on land problems ahead to make objective decisions on return or not;
- Displaced people have often lost land and property documentation;
- Governments may make wrong assumptions on the nature and dimension of the return process: voluntary process, phased return, return to areas of origin;
- Whereas tenure security for displaced people is often weak, rural host communities or neighbors may have even weaker rights: a need to address both simultaneously;
- A significant part of returnees are vulnerable people who may have only secondary rights to land: women, abductees, children;
- Women may face more problems than men in addressing HLP issues, especially under customary law;

Land Administrations in African post conflict settings

- A different impact of conflict on **formal** land administration in **urban areas** and on **customary** land administration in **rural areas**;
- **Capacity of the land administration**: weak human capacity, little equipment, destroyed infrastructure, no transport, partisanship, political staffing;
- **Status of survey departments**: insufficient geodetic network; lack of base maps; destroyed, lost, tampered records; privatization of public information;
- **The absence of cadastres; the existence of multiple cadastres** (military, agriculture, forests, mineral resources); the secrecy of documentation and procedures; overlapping responsibilities; poor communication;
- **Uneven handed service delivery**: urban versus rural; rich versus poor; informed versus non-informed; men versus women;
- **Land administration as part of the problem**: emergency planning and land/property allocation in the absence of rights-holders; overlapping informal transactions; corruption; pressure of military;
- **No legal framework and no transparent procedures**: gazetting towns, procedures for acquisition of land, plot allocation, compensation, settling claims, revenue generation;
- **Weak public awareness** on existing rights; the “fake” value of papers and sketches;

A framework for addressing land issues in post conflict situations

Dealing with past injustices to establish a sound basis for the future while providing temporary solutions for the present

Present: emergency, recovery and rehabilitation



Past: justice and peace consolidation



Future: Development and governance



Dealing with the present: emergency, recovery and rehabilitation issues

- **Putting land issues on the agenda** is essential: peace negotiations, peace agreement, national constitutions, specific protocols: the importance of early assessments and research; the role of the UN;
- **Information compilation, dissemination and awareness creation** on the return process and HLP rights: compilation and analysis of legislation, information and awareness campaigns, legal counseling;
- Provision of **access to land** for returning IDP and refugees;
- **Temporary access** to land for returnees when required;
- **Dispute management** on land and natural resources use; hotspot identification;
- Rebuilding and **strengthening rural community structures**;
- **Participatory recovery planning** and support to emerging livelihoods;
- Support to **crises land administrations**;
- Special emphasis on the **return of women headed households** and HLP rights under customary systems;

Some lessons learned

- **Get things right from the beginning:** the challenge of working in an embryonic policy and legal framework;
- Priority to consider **access to rural land in the context of tested livelihood strategies**; the failure of peace villages, communal villages, settlement camps;
- Access to land to support livelihoods requires access to territories, and a **strong emphasis on communal rights in Africa**;
- **Proactively securing community land rights** may be required to establish a tenure safety net;
- Need for **suspension of new large allocations** of land and assessment of existing allocations ;
- **Temporary access issues:**
 - Acknowledge the difference between land use and land ownership; short term leases may offer some relief
 - Use of public land may provide quick solutions
 - Negotiated access to community land as part of the local recovery planning
- **Quick out-of-court dispute resolution mechanisms**;
- **Gradual land administration development:** from a "living" cadastre over hardcopy systems to digital systems;
- Major efforts are required to **change the perception of the role of women in society** as part of strengthening direct access to land for women;

Addressing the past: restitution of rights

Issues

- Addressing historic grievances and injustices, responding to claims and restitution of historic, mainly group rights;
- Addressing land and property restitution to individual IDP and refugee as part of human rights: the Pinheiro principles;

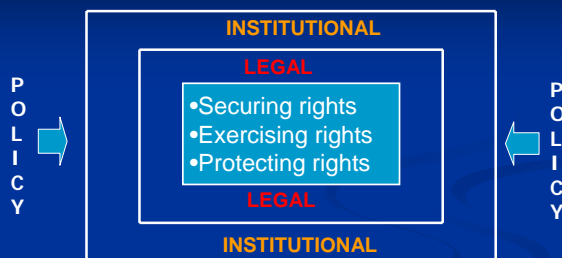
Mechanisms

- Special Commissions: Land Commission, Claims Commission;
- Compensation mechanisms;
- Land and property valuation capacity;

Some lessons learned

- **Special situations require special measures:** specific legal framework, specific institutions (Land Commission, Land Tribunal), specific processes (expedited dispute resolution), a historic cut-off point, a specific timeframe;
- Take advantage of **good practices and existing institutions to build on**; strengthening supporting institutions (land administrations) is essential;
- Recognize the **strong nationally driven nature of these processes** and provide external technical and managerial assistance when required;
- **Link restitution with recovery** and rehabilitation efforts: new housing stocks as an element of compensation;
- **Multi-tiered dispute resolution** process: local consensus seeking and mediation, regular courts, special commissions and courts;
- A solid technical basis required for decision making (research on customary law,)
- Need to **balance reinstatement of the past with new values:** human rights, modern governance (participation in decision making, local accountability, transparency), gender issues;

Preparing the future: the development framework



Some highlights on the development framework

- **Securing rights**
Securing land rights for rural communities while at the same time creating an enabling environment for the private sector to invest in rural areas: community land registration, mechanisms to alienate community land for private use through local consultation and negotiation, transferability of rights, natural resources as a collateral - **Land Tenure Reform Process**
- **Exercising rights**
Build on communities to promote an inclusive land development model based on asset sharing mechanisms: asset mapping, recovery/development portfolio, negotiation platforms, partnerships – **Participatory Land Use Development Process**
- **Protecting rights**
Provide accessible, affordable, fair and effective avenues for seeking protection of rights and for solving disputes – **Access to Justice, Rule of Law Programme**

FAO Involvement in Post Conflict Land Issues

- **Assistance to field programs**
Angola, Sudan, Mozambique, others
- **Normative work**
 - FAO Land Tenure Studies 8
 - Participation in Pinheiro Principles on HLP rights
 - Community Land Delimitation
 - Participatory Land Use Development

