

## Improving interventions in land governance in conflict-affected settings

### Public summary & policy note of 'Looking through the Lens of Land' 2014-2016

#### Summary

Land, access to land and land governance are highly politicized issues that are affected by and part of the (post-) conflict dynamics in DR Congo's eastern Kivu Provinces and South Sudan's Greater Equatoria region, as well as wider societal processes. The action research 'Looking through the Lens of Land' (2014-2016) found that the following wider dynamics are particularly important:

- Dynamics of conflict-related displacement compound with migration to urban areas;
- Rapidly increasing value of land after conflict, and conflicts over entitlements and land-limits that ensue;
- Disputes related to the abuse of power by political elites and armed individuals;
- The translation of contested land claims into tensions over public authority;
- The mobilization of identities and contestation about 'who belong where' for political/economic gains.

In this highly politicized context, intervening organisations and their local partners tend to resort to interventions of a technical nature to maintain neutrality, and work with policy models from other (non-conflictive) settings, which are not necessarily applicable. They invest in local level mediation, rather than to insist on proper implementation of existing regulation or on political reform. Intervening organisations rarely reflect on the political implications of their activities and on the consequences of working with one type of authority over the other.

#### Introduction

The need for more effective responses to land-related problems in conflict-affected settings is widely recognised. Nonetheless, access to land and land governance are often highly politicized and a key component of (post-) conflict dynamics. During and after conflict land is forcefully misappropriated, while war-induced displacement results in competing claims between returnees and those who have occupied the land in their absence. Land often plays a central role in the local and national political economy, with conflicts about political influence, ethnic identity and belonging playing out around land and tenure issues. Violence erodes land governing institutions, while ambiguous, ineffective or contested institutional frameworks generate confusion about which state and non-state authorities are in charge of what, and what rules apply. Post-conflict reform programmes

provide local authorities important venues for (re)consolidating authority and gaining local legitimacy, and are thus critical for post-conflict state formation but may turn highly divisive as well.

For organizations intervening in land disputes and tenure-security in conflict-affected settings it is difficult to decide which practices of land governance to support and how. The action-research project 'Looking through the Lens of Land' aimed to enhance our understanding of land-related problems in conflict-affected settings and the effectiveness of land-related interventions and reforms, by studying cases from DR Congo's eastern Kivu Provinces and South Sudan's Greater Equatoria region.<sup>1</sup> Both areas oscillate between

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<sup>1</sup> 'Looking through the Lens of Land - Enhancing justice through land governance reform in DR Congo's eastern

violent conflict and post-conflict recovery, while local people perceive governance of and politics on land as a major source of injustice. In this context, both the evolving state-system and customary arrangements have their weaknesses.

Through local field research, the project explored the diversity of land-related conflicts and tenure insecurity, as well as practices of local land governance. We also studied the assumptions underlying land-related intervention strategies such as decentralization, legal reform, and efforts at dispute resolution. Finally, through various knowledge sharing activities with development organizations, their local partners and local public authorities, the project explored how interventions could be better aligned to local realities of land governance and conflict, and how citizens might be more effectively engaged in debates on reforming land tenure.

This policy brief brings together main findings and what they imply for intervention practices and future research. Due to increasing insecurity in South Sudan, many planned activities could not take place, hence the emphasis in the account on examples from eastern DR Congo.

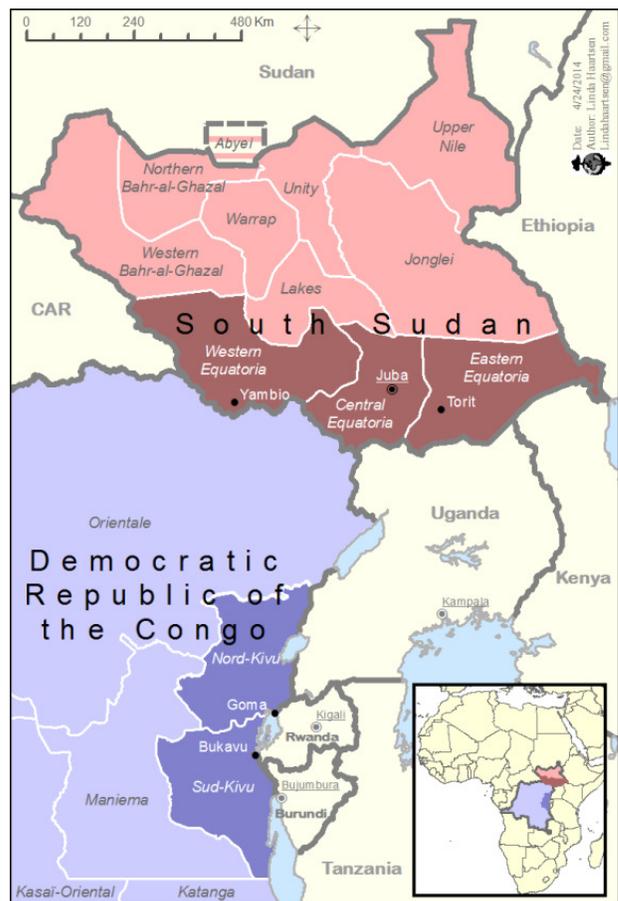
### Land-related justice concerns in the Kivu provinces and Equatoria region

Land disputes are widespread in the Kivu provinces and the Equatoria region. Many of these are disputes between individuals, involving relatives contesting the division of the inheritance, and the claims of women and orphans to land; or pitching neighbours against each other over plot limits and controversial sales from the past. In some conflicts different communities constitute the opposing parties, such as different user groups

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like cultivators and cattle keepers that share an interest in the same plots of land, or get in dispute over passage of cattle (e.g. in the Ruzizi plain of South Kivu). In other cases, communal boundaries are disputed, and the reach of the powers of certain authorities over land –who should be in charge of what and what rules apply–, for instance as a result of decentralization in South Sudan.

The question is often to what extent these disputes are in fact about *land*, or are rather a conflict *between people or interest groups*, where land and its governance are sites where social tensions manifest themselves. Hence, rather than talk in terms of ‘causes’ of land disputes, it may be better to explore different ways in which land gets linked to conflict. In various instances in eastern DRC and Equatoria, land disputes become entangled in contestations over local governance, and political or military power. Likewise, contested land claims translate into tensions over political authority among local customary and state authorities, each with their specific partialities and affinity with certain groups of citizens, again contributing to local tensions.



### Kitchanga

In eastern DRC, fieldwork focused on the region around Kitchanga, a mountainous area straddling the limits of Masisi and Rutshuru Territories. This region has been at the heart of conflict dynamics since the First Congo War (1996-1998), Kitchanga is a densely populated area of which about 40% is occupied by 'concessions': private plantations (often not in use, and many of them used as cattle ranches) in the hands of politicians, wealthy businessmen and armed actors. Though primarily a legacy of the colonial plantation economy, the surface of 'concessions' has expanded also in the post-colonial period, as 'customary' authorities sold 'customary' land to wealthy buyers.

During colonization, the Belgian administration organized the resettlement of massive numbers of people from neighbouring Rwanda as labourers in Masisi and other territories in eastern DRC. Refugee movements in the post-colonial period (in 1959 and 1973) added to this number of Banyarwanda.<sup>2</sup> Today in Masisi, these Congolese Rwandophones outnumber the Hunde, who consider themselves as 'autochthonous'. Tensions between Banyarwanda and those populations who label themselves as 'autochthonous' turned violent for the first time in the early 1960s, in the wake of local elections. Since conflict erupted in the 1990s, Kitchanga has seen the arrival of many IDPs. Whilst Hunde IDPs have often settled in the urbanized centre of Kitchanga, two large IDP camps in the neighbourhood of Kitchanga consist primarily of Congolese Rwandophones.

Through recent episodes of armed rebellion, Kitchanga was a CNDP and M23 stronghold –two movements that are considered to be dominated by Congolese Tutsi (Banyarwanda)–, even if the area has a large concentration of Hunde, and is governed by the Hunde 'customary' chief (the *Mwami*).

Due to the concessions and the large concentration of IDPs close to the centre of Kitchanga, pressure on land is extremely high in and around the town. The region has a high prevalence of land conflicts, including several large-scale ones (e.g. about the concessions). A high number of international and local organizations intervene in land conflicts and land governance, while the provincial Ministry of Land Affairs also played an important role.

<sup>2</sup> Please, notice that Kinyarwanda-speakers were also present in Congo before colonialism, and the largest group of these people in North Kivu can be found in Rutshuru.

Many land disputes in eastern DRC and Equatoria share similarities with land disputes in other, less conflict-affected settings, especially disputes between individuals (cf. above). At the same time, the case material points to some important particularities of land conflicts in conflict-affected settings. If disputes about land resonate with or are understood in terms of other antagonisms in society, they are particularly destabilizing and prone to influence security and political dynamics.

Post-conflict land reforms may redress past injustices for some but may also be understood in privileging certain (ethnic) communities and be contested by certain fighting groups. Further, both cases experienced a massive reshuffle of land claims –due to displacement and military occupation– and a profound change in the ways in which tenure is organized. In South Sudan, for instance, contestation is raging on to whom the land belongs and who should govern it: to the citizens of South Sudan, and thus to be managed by different levels of decentralized government on their behalf; to the communities, and hence managed by customary chiefs; or to private persons, whose user rights are transferred to them by the government. Finally, institutional capacity is severely affected by violent conflict. Yet, in this connection, an important difference exists between the cases. In DRC, state legislation is to some extent available (even if it is ambiguous and contradictory at times), yet often not implemented. In contrast, in South Sudan legislation is in many cases not yet available.



Mungote IDP camp, DRC

In our case-studies, the following wider dynamics stood out as particularly important.

1. Displacement and migration have an ‘urbanizing’ effect that leads to demographic growth in urban agglomerations. Whilst many of the inhabitants of IDP camps around Kitchanga have fled conflict, there are also numerous people who did not flee from armed conflict. They include former plantations workers chased away from one of the large concessions. Most of these are ‘Rwandophones’ who came to Congo during the colonial period, and are effectively landless and homeless and, in contrast to ‘regular’ IDPs, have no land to return to as they have been living on the plantations for generations.
2. Displacement has led to an increasing pressure on land. This is accompanied by a rapid post-conflict increase and change in the value of the land. Often this results in conflicts over entitlements and plot limits.
3. Land disputes often involve abuse of power by political elites and armed individuals. For instance, during and shortly after the 1998-2003 rebellion of the *Rassemblement Congolais pour la Démocratie* (RCD, Congolese Rally for Democracy), large plots of land were redistributed to a new class of political-military leaders, reducing ordinary people’s access to land. Land was transformed into a ‘resource of war’, and became an new asset for speculation and rent-seeking activities. In Yei town, many disputes involve armed individuals (government, army, police), and hence individual conflicts may be ‘militarized’.
4. Contested land claims often translate into tensions over public authority between local customary and state authorities, especially in multi-ethnic environments. In DRC, this is especially the case where particular authorities have a proclivity towards certain groups of citizens, and where displacement and migration has resulted in such environments. Due to war-time displacement and migration, communities in Yei represent an amalgam of different groups, each having their own local leaders and voicing their claims to land and

settlement rights to different authorities. This situation is complicated by the legacies of colonial resettlement programmes, which resulted in that some resettled communities continue to claim a role in governing their former ancestral lands, which are now occupied by others.



Local court judging a land conflict, Yei River County, South Sudan

5. In both cases, land disputes have become part of contestations about autochthony, citizenship and notions about ‘who belongs where’. Whilst legally Rwandophones have the right to citizenship in the DRC, on the ground this is often contested. In Kitchanga, for example, this contestation translates itself into political tensions over local authority, including authority over land. At the local level, the authorities of the *chefferie* are in charge, with the Hunde *mvami* (king) as the local supreme authority. The *mvami* simultaneously serves as the local representative of state power, but retains a considerable amount of autonomy, including the right to levy taxes and control land. Even if at the local level, the Hunde are numerically a minority, the Rwandophone community does not have its own ‘customary’ representation, and thus lacks local political



authority, and authority over land. Armed groups such as the ACPLS (predominantly Hunde) state that the expropriation of land by Rwandophones is one of their main grievances, whilst Nyatura militants (primarily Hutu) also use their power to control land. Likewise, in Yei town, the occupation of returnees' land by soldiers, displaced, and migrants and the resulting disputes is often understood in terms of a political agenda to acquire land in the region by 'outsiders'.

### Current intervention practices

In this highly politicized context, international organizations and their local partners have initiated a variety of reforms and interventions. While some of these include lobbying with national and provincial authorities for facilitating land reform, many focus on mediation, and the facilitation of local level dispute resolution capacities. The latter type of activities builds on the assumption that land disputes are basically local disputes, that take place in a context of larger antagonisms ongoing violent conflict. Such a focus on local peacebuilding conforms to what has been called the 'local turn' in peacebuilding, and increasing awareness in the peacebuilding community of the need for dealing with local conflicts, in parallel with working on larger antagonisms. However, there are several problems with this analysis and the intervention strategies chosen.

First, intervening organisations rarely reflect on the implications of working with one type of authority over the other. The 'local turn' is not accompanied by a clear and shared strategy on what type of local institutions and capacities to support. This sometimes results in that practices of donors and NGOs are contradictory and not cohesive. Whilst some prioritise working with 'customary' and 'traditional' authorities, others instead consider that customary institutions have lost legitimacy and thus choose to support civil-society or state-actors. At the same time other interveners are hesitant to work on strengthening state institutions. In some instances different approaches are employed in the same locality. This risks generating unclearness

about who is actually in charge, and stimulates local 'forum-shopping'.

Moreover, the choice for either supporting 'customary' or state institutions is often implicitly political. Especially in places that have become multi-ethnic as the result of (conflict-related) resettlement, choosing either option bolsters one institution at the detriment of the other. In the locality of Kitchanga, interventions that seek to integrate 'customary' mechanisms into conflict resolutions may be seen as bolstering the 'customary' authority of the Hunde community, whilst efforts to train various local dispute resolution committees, introduced by NGOs, may be seen to undermine the power of 'customary' authorities. In some instances, such practices may actually constitute a choice for one community over another.

Second, whilst this 'local turn' does not need to be a-political by definition, on the ground, such interventions often are merely of a technical nature, and fail to address the higher political and supra-local context in which these land conflicts played out. After all, many land disputes have a clear link to identity, are part of patronage politics, or involve military or otherwise armed actors. A critical example is found in Kitchanga, where the claims of former tenants on one particular concession were redressed by an international organization through mediating a local compromise on how they could access the land on this concession. However, there are indications that according to the law the current owners are not the rightful owners, and that their concessions could be retroceded by the state as they have not followed all legal provisions. Instead of local mediation, insistence on proper implementation of existing regulation or political reform might have been more appropriate. Yet, the intervening organizations chose this particular strategy for political reasons: insisting on the law might have resulted in physical harm for those trying to enforce it, as the new owners are all part of a very powerful politico-military elite. But while interveners believed they had achieved a good compromise, people affected had the feeling that their concerns were not really solved.

In other instances, however, it is clear that existing legislation is benefitting the established order and elites. Land legislation in DRC largely originates in the colonial period and was aimed to enhance export-based commercial agriculture rather than subsistence farming. Intervening organizations pose themselves the question whether alternative legal frameworks are needed if the ambition is to contribute to local feelings of justice being done. While some consider that the major problem is application and enforcement of existing legislation, others argue that the legal framework itself prioritises certain groups and interests. In this connection, intervening organizations struggle with the question of what should have priority: addressing root causes of conflict and fighting the abuse of power, or trying to make daily life a bit better through compromises, in the awareness that they have little influence on the behaviour of the military and the elite.

Finally, struggles over land are often locally understood in relation to discourses on 'autochthony' and on who has the right to claim access to and have authority over land. Interestingly, notions about 'who belongs where' also feature in the discourses of intervening organizations. Interveners tend to consider displacement primarily through the lens of conflict, and frequently display wishful thinking about what IDPs (and refugees) will do when widespread violence comes to an end. Even then, international law assumes that IDPs have three options: return, relocalization or integration. However, the focus of governments, international agencies and NGOs is primarily on return (for both refugees and IDPs), despite the fact that return is not an option for many people that have been displaced. In addition, conflict-related displacement is often difficult to distinguish from rural-urban migration. As a result, interventions are informed by wishful thinking about the return of IDPs and refugees, at the expense of efforts to improve the local integration of migrants or IDPs. This assumption that IDPs should return is in fact highly political, as it resonates with local discourses of people that claim autochthony, and rather wish 'migrants' to leave. Taking over local discourses about powerful 'Dinka' or 'Rwandophones' that take over local

land makes one easily forget about those displaced and migrants in both South Sudan and eastern DRC that are landless, and may never be able to regain their properties.

In this connection, finally, it should be observed how many interveners tend to see identity as a critical divider in land issues. Regarding the case of Yei town, interveners tend to interpret conflict there in terms of a struggle between autochthonous residents and Dinka migrants that take over local lands and land governing authority. Yet, the question is whether this contestation over land governance is indeed an ethnic issue, rather than a struggle over the nature of land governance and against the imposition of the state at the expense of local tenure systems.



Site of displaced people in Masisi, eastern DRC

## Policy recommendations

Findings from eastern DRC and Equatoria region make clear that interveners that aim to reduce land disputes and enhance tenure security should be more aware of the political context: land disputes do not only take place in a context of conflict; they are also part of the conflict, and should thus be dealt with as such. It is evident that technical responses are insufficient to deal with political problems:

- Yet, because it is hard to intervene at higher political levels, a certain pragmatism may be necessary regarding what is *desirable* and what is *possible* at the local level. Nonetheless intervening organizations should remain aware that some solutions may be of a temporary nature only and that they may strengthen the leverage of certain actors over others through their intervention.
- Interveners should be careful raising high expectations about dialogue and mediation processes if they cannot guarantee to provide follow-up. They should equally be wary to lend legitimacy to dialogue processes in which fair participation of all stakeholders cannot be assured. Better coordination between partners will enhance the impact of parallel mediation efforts.
- Intervening organizations also need to consider what should be their starting point for promoting ‘just’ solutions to land disputes: Will they work with existing legal frameworks or rather build on local understandings of how justice may be done in particular cases?

The willingness of the international community to land disputes is commendable, especially in the light of critiques that interventions in eastern DRC tend to overlook the local dynamics of conflict (see Autesserre 2010). At the same time interveners should be wary to over-emphasise the ‘local’ nature of land conflicts. Local land conflicts are at the same time intertwined with political processes and conflict dynamics at the provincial, national and even regional level. In this connection, land-related interventions in conflict-affected need to give particular attention to:

- How local land disputes represent wider contestation over power and authority –over who is in charge of what, and over who has the legitimacy to make certain claims;
- How land disputes relate to ongoing struggles over citizenship and belonging, as well as relations between local citizens and their state;
- The continuities between conflict-induced displacement and migration, and the politics of displacement and resettlement.

Finally, an important question is how policy debate and intervention practice may better integrate the needs and grievances of local populations that too often remain voiceless. In addition to institutional capacity building of local public authorities, interveners should devote attention to strengthening citizenship and control of citizens over their authorities.

