Post-conflict land governance reform in the African Great Lakes region

Part I – The challenges of post-conflict land reform

Disputes over land are a prominent feature of many situations of protracted violent conflict in Burundi, Uganda and South Sudan. Research conducted as part of the programme 'Grounding Land Governance' underscores that war reshuffles access and ownership, but also critically changes the ways in which land is governed. Land issues often come to resonate with other conflicts in society, thereby affecting overall stability. This makes interventions in land governance politically sensitive. While intended to improve land governance practices, reforms often result in unintended and unpredictable outcomes, and have significant impacts for the legitimacy of the state. We therefore conclude that land governance in post-conflict settings deserves particular attention from academics and policymakers.

The second part of this infosheet discusses decentralization, which is a prominent feature of reform programmes throughout the region. Our studies found that transferring responsibilities for land administration and dispute resolution to local government and non-state institutions may indeed enhance the protection of local properties and reduce land-related conflicts. Likewise, it may fuel existing power struggles, or effectively enhance the power of the state. Policymakers should therefore not have too high expectations about the ability of decentralization to enhance local tenure security.

Local council court judging a land dispute, Yei river County, South Sudan

The pertinence of land disputes in post-conflict settings

Research conducted as part of the programme 'Grounding Land Governance' makes clear that disputes over land are a prominent feature of many situations of protracted violent conflict. Case studies in Burundi, Uganda and South Sudan underscore that violent conflict often has significant impact on land access. During conflict, land is misappropriated, while displacement and (partial) return give rise to competing claims to land. The transition from war to peace ignites old and new claims and may provide a window of opportunity for irregular acquisitions of land, further weakening the entitlements of vulnerable groups in society. After conflict, land disputes are a politically sensitive issue, and may create instability and even result in new outbreaks of violence.

However, violent conflict not only reshuffles access and ownership, but critically alters the ways in which land is governed. Violent conflict tends to erode the capacity of state and local institutions to deal with land disputes, and calls into question the legitimacy of land governing authorities and the rules applied. Through violence, new tenure arrangements may be enforced or promoted, while reform programmes may introduce equally contested ways of governing land.

Critical in this regard is that conflict around land often relates to other contestations in society. Disputes about land access and control may be locally understood as reflecting more general inequalities in the distribution of resources, development, and decision-taking power between different (ethnic) groups; or between elites and those without the necessary connections to the state. Frequently, disputes about land are linked to questions of citizenship and ethnic belonging. Framing the resulting disputes as 'land-dispute' may, in fact, hide the complex and changing nature of issues involved.[1]

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[1] Mathijs van Leeuwen & Gemma van der Haar (2016) 'Theorizing the Land–Violent Conflict Nexus', *World Development*, 78(Feb.2016):94–104.

Due to these complexities, addressing land issues in (post-)conflict situations is not only pertinent, but also politically sensitive. Often, governments and donors feel an urge to transform tenure arrangements so as to enhance local tenure security, reduce conflict, and improve agricultural production. Yet, the ways in which reforms reorganize land tenure, deal with displacement-related disputes, past grievances and irregular appropriations, and go about new demands for land by investors are often highly contested. While land governance reform may enhance tenure security of particular groups, it may also fuel (ethnic) tensions, or grievances about those in power and the institutions that govern natural resources, thus posing a threat to post-conflict stability.

Local council court judging a land dispute, Mbarara District Uganda

In the research programme we encountered a variety of reform strategies, including decentralization, efforts at acknowledging customary tenure, formalization of land ownership, and the promotion of women's rights to land. Yet, rather than contributing to clear and transparent land governance practice, reform programmes tend to result in institutional multiplicity and competition. Reforms often lead to the creation of new, parallel institutions, while land governing responsibilities of different institutions are not spelled out, and newly introduced norms may remain ambiguous or contested. This fuels competition between state and non-state institutions and the rules they apply. This contributes little to enhancing tenure security. Instead, particular groups of people – widows, divorced women, and orphans – tend to fall away as they are unequipped to navigate through this institutional multiplicity. It may also result in many disputes never being solved, as is the case in Burundi, because people may always proceed to another institution, and judgements are never final.

In many of the cases studied, efforts at reforming land governance tend to touch upon the process of local state formation.[2] Land governance is a key issue at the local level where local people meet their authorities. The ways in which those authorities deal with land-related problems strongly impacts their legitimacy and authority within those communities. Reforms tend to reshuffle responsibilities between state and non-state institutions, and may introduce new regulations and conventions to deal with land claims and disputes. At the same time, reforms may alter expectations people have of the state and other forms of public authority. This may contribute to the legitimacy of those authorities, but also result instead in distrust, and perceptions of (ethnic) bias of land governance against certain communities, thus increasing instability.

Deceptive decentralization - the unpredictability of land reform

A popular strategy for reforming and enhancing land governance and improving land tenure security of small-scale farmers is administrative decentralization. Through decentralization, responsibilities for administering land and resolving disputes are transferred to existing or newly established local state or non-state authorities, traditional institutions, and civil society. Decentralization is believed to contribute to more accessible and effective land services delivery and thus more tenure security, while it would also empower local resource users in decision taking on their assets. Decentralization is a key strategy in international efforts at (post-conflict) state building, as it would promote democratization, and re-establish the so-called 'social contract' between a state and its citizens. However, a growing literature points out that, in practice, decentralization often fails to result in the benefits expected.

All case studies conducted as part of 'Grounding Land Governance' in one way or the other addressed the question of how decentralization of land services provision actually works out, and how it impacts the accountability and legitimacy of local land governing institutions. Overall, the case studies emphasized that decentralization can have variegated results, both positive and negative.

Our studies confirm other analyses that point out how decentralization programmes are often

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ineffective, due to implementation failures and capacity problems, such as a lack of qualified people to fulfil different roles in decentralized governance, and limited finances available for decentralized structures. For instance, local government in Uganda lacks capacities for redistributing land or giving adequate compensation, while it is often unclear who precisely is in charge. An increase in the number of civil servants may also imply an increase in bribes and transaction costs. Responsibilities for land governance tend to be fragmented and dispersed over the bureaucracy, adding to the ineffectiveness of reforms.

Posters for elections of local councils, Mbarara Distict Uganda

A critical question is to what extent decentralization enhances local participation in decision taking on land. Our research in Uganda evidenced that decentralization can enhance participation of women and youth in land governance. At the same time, it often fails to effectively assure participation by common citizens, and instead results in the capture of local government by powerful elites. Different case studies in Uganda illustrate how decentralization allows the state and its representatives to infringe upon resource rights of its people. In a large-scale acquisition of land in Amuru District, decentralized authorities were more responsive to the demands of higher level government than to local citizens.[3]

Several of our studies reveal how decentralization adds on to institutional multiplicity and confusion about who determines what land governing roles and what rules apply. This may result in competition among state and non-state authorities about responsibilities and regulations. For instance, in south-west Uganda, rather than strengthening local mechanisms for securing tenure, the reforms introduce new forms of tenure insecurity, fail to transform local conventions of dealing with land disputes, and delegitimize local mechanisms for securing tenure. Local power holders manage to use this institutional multiplicity to their advantage, while the poor, and widowed and divorced women, often lose out from institutional negotiability.[4]

Decentralization is often a political project to garner local support and entice constituents. In the case of Uganda, we observed a process of ongoing 'districtification', with the creation of districts being part of electoral strategies: new districts are specifically created in regions where support to the sitting government is higher, while new districts are also appreciated for the new jobs and opportunities for patronage they represent.[5] In Burundi, accusations circulated that appointed administrators in the new structures belonged to one ethnic group. While paying lip-service to increased participation and doing away with previous practices of authoritarian governance, powers are given without rights, finances and real decision-taking authority.

At the same time, in a post-conflict setting, decentralization may serve as an effective tool to (re)consolidate the hegemony of the state. In Burundi, policies of decentralization in fact come down to recentralization, and rather appear to enhance central state control of what is happening at the local level. Moreover, instead of enhancing local participation in decision taking within the land sector, it appears that donors indirectly contribute to consolidate the role and power of the central state through the funding of programmes to expand a decentralized land registration system within local communities.[6] In Uganda, decentralization policies effectively reinforce state presence at the local level. Through decentralization the state manages to position itself as the central player in defining land tenure and safeguarding tenure security, decreasing the relevance of local, non-state land gov-

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3 Doreen Kobusingye (forthcoming) 'Decentralization and Power Complexities in Large Scale Land Allocations: The Case of Amuru Sugar Project in Uganda'.

4 Mathijs van Leeuwen (2014) 'Renegotiating customary tenure reform – Land governance reform and tenure security in Uganda', *Land Use Policy*, 7(39):292–300.

5 See, for instance, Doreen Kobusingye (forthcoming) 'The Multifaceted Relationship between Land and Violent Conflict: The case of Apaa Evictions in Amuru district, Northern Uganda'

6 Fieldwork Rosine Tchatchoua Djomo

ernance, if not defying their legitimacy.[7] Likewise, in South Sudan, pre-conflict land governing structures have been destroyed, and while chiefs have (re)gained a role in decentralized government, other forms of customary authority are effectively sidelined.[8]

In a post-conflict setting, decentralization also comes down to reordering power relations between communities. In South Sudan, decentralization changes administrative boundaries and responsibilities in land governance, e.g. through the creation of sub-districts. Sometimes, such re-division is seen to promote the interests of one of these communities, and hence the success or failure of decentralization depends on which community gets what and who is put into power. In Yei and Juba, the redrawing of boundaries and responsibilities fuels disputes about boundaries between ethnic communities and about who is in charge of the lands within the newly created administrative units. Such disputes may start as local conflicts, but have the potential to escalate into wider conflicts, as was the case with conflicts between the Bari and Mundari that started around 2009.[9] Likewise, district creation in Uganda happens along ethnic lines, which creates disputes about the precise locality of those boundaries. This takes place within a context of a 'history of bordering' and colonial projects of defining the boundaries of ethnic communities. Territorial boundaries that had been agreed upon in the past are again called into question and infringed upon by the state.

Recommendations

- Given the prominence of disputes around land in Burundi, Uganda and South Sudan, and the political importance and sensitivity of land governance reforms, in situations of protracted violent conflict land governance and its reform deserves particular attention from academics and policymakers.
- Policymakers should not have too high expectations of the ability of decentralization to enhance local tenure security. Donors should be careful about the ambitions of those promoting decentralization: to what extent is decentralization about a fairer division of resources, or part of political strategizing and electoral competition? Whose interests and agendas does it serve?
- Decentralizing land governing authority without rights, finances and real decision-taking authority may have limited impact. Decentralization should go along with harnessing existing protection mechanisms, rather than aiming at reform those.
- More research should be conducted at the local level on how decentralization policies work out, notably in terms of enhancing tenure security of small land users.

Grounding Land Governance
This series of infosheets brings together main findings from the interdisciplinary research programme 'Grounding Land Governance – Land conflicts, local governance and decentralization in post-conflict Uganda, Burundi, and South Sudan'. In the period 2011-2016, this research programme studied how land disputes and land governance evolve in post-conflict Uganda, Burundi and South Sudan, and what this implies for state-citizen relationships, the legitimacy and authority of local land tenure institutions, and the resolution of land conflicts. Seminars in Entebbe, Kampala, and Juba, in May 2015, brought together academics, development practitioners and government officials from the region to discuss findings from the case studies and explore the implications for policy and future research, which are included in these infosheets.

'Grounding Land Governance' is a collaboration of African Studies Centre; Institute of Interdisciplinary Training and Research, Mbarara University of Science & Technology, Uganda; Centre for International Conflict Analysis & Management, Radboud University Nijmegen; Disaster Studies, Wageningen University; and a series of other institutes and NGOs. The programme is funded by NWO-WOTRO Science for Global Development.

Authors:
Mathijs van Leeuwen, ASC/CICAM Radboud University Nijmegen – m.vanleeuwen@fm.ru.nl
Doreen Kobusingye, ASC – kobsdoris@yahoo.com
Peter Hakim Justin, ASC – logoro28@gmail.com
Rosine Tchatchoua Djomo, ASC – tdrosine@yahoo.fr
Han van Dijk, ASC/Wageningen University – dijkh@ascleiden.nl

Contact:
African Studies Centre, Leiden University
PO Box 9555, 2300 RB Leiden, The Netherlands
+31 (0)71 527 3372/76 www.ascleiden.nl

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[7] Mathijs van Leeuwen (2016) 'Localizing Land Governance, Strengthening the State; Decentralization and Land Security of Tenure in Uganda', *Journal of Agrarian Change*.

[8] Marlie van de Kerkhof, Mathijs van Leeuwen & Yves van Leynseele (forthcoming) 'Reopening property relations, reordering the state in South Sudan'

[9] Fieldwork Peter Hakim Justin