

Understanding, preventing and solving land conflicts

A practical guide and toolbox

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Friedrich-Ebert-Allee 36 + 40

53113 Bonn, Germany

T +49 228 44 60-0

F +49 228 44 60-17 66

E info@giz.de

I www.giz.de

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Division Rural Development and Agriculture

Sector Project Land Policy and Land Management

P.O. Box 5180

65726 Eschborn, Germany

Author:

Babette Wehrmann

Responsible:

Jana Arnold, Sector Project Land Policy and Land Management, GIZ

Design/layout:

Jeanette Geppert pixelundpunkt kommunikation, Frankfurt

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PREFACE

Today's high population growth coupled with climate change, natural disasters and large-scale economic globalization puts increasing pressure on land, which in turn becomes increasingly scarce and thereby subject to conflict – often boosted by fragile institutions, weak governance and gender gaps. The rush for land, global commercial pressures on land, land grabbing, involuntary resettlement due to large infrastructure projects, migration due to desertification, displacements due to violent clashes as well as boundary disputes between neighbours and inheritance conflicts over land between siblings – the scope of land conflicts is enormous.

Land conflicts can be the result of deeper root causes (e.g. climate change, desertification, immigration, lack of legal recognition of land rights, need and greed etc.) and also be a source of broader conflict by itself (e.g. social unrest). Accordingly, land issues play a key role in conflict transformation and peacebuilding.

Land conflicts as well as the maltreatment or neglect of land issues in post-conflict situations often have extensive negative effects on economic, social, spatial and ecological development. Solving and preventing land conflicts as well as addressing land issues responsibly in both conflict and post-conflict situations is key to any inclusive and sustainable development, peace and stability, and the realisation of human rights, making land conflict prevention and solution – coupled with the establishment of a responsible land governance framework – key cornerstones for the achievement of the Sustainable Development Goals (SDGs).

In the past, Germany has actively supported international guidelines and policies, which explicitly demand sustainable land management and secured access to land – especially for disadvantaged groups – such as the SDGs, the New Urban Agenda (Habitat III), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the Convention to Combat Desertification (UNCCD) and the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI). In addition, the Federal Ministry for Economic Cooperation and Development (BMZ) currently supports the improvement of land tenure security for disadvantaged groups in selected countries within the special initiative "One World – Without Hunger".

This guide has been written for all those practitioners who are confronted with land conflicts in the course of their work or are in a position to prevent them and/or include land governance as one pillar in post-conflict policies. It aims to broaden the understanding of the complexity of causes that lead to land conflicts in order to provide for better-targeted ways of addressing such conflicts. It also provides a number of tools with which to analyse land disputes. Successful analysis is seen as a vital step towards their eventual settlement. In addition, this guidebook discusses a wide variety of options and tools for settling ongoing land conflicts and for preventing new ones. The guide also includes a chapter on the role of land in (violent) conflict and peacebuilding and it presents a broad range of good practices from a project level.

The guide provides useful gender-sensitive training material that can be used for specific lectures on land disputes as well as in general courses on land administration and land management. For this purpose, a complementary training manual has been developed that enables trainers to prepare lectures and seminars on the issue.

Bonn/Eschborn, April 2017

Christel Weller-Molongua

Head of Division

Rural Development and Agriculture

Sector and Global Programmes

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List of acronyms and abbreviations

ADR	Alternative Dispute Resolution
AGATA	Analysis of Disputants Mode
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (Federal Ministry for Economic Cooperation and Development)
CFS	Committee on World Food Security
CFS-RAI Principles	Principles for Responsible Investment in Agriculture and Food Systems
FAO	Food and Agriculture Organization of the United Nations
FIG	Fédération Internationale des Géomètres (International Federation of Surveyors)
FPIC	Free Prior Informed Consent
GIS	Geographic Information System
GIZ	Gesellschaft für Internationale Zusammenarbeit
GLTN	Global Land Tool Network
GPS	Global Positioning System
GTZ	Gesellschaft für Technische Zusammenarbeit
IFC	International Finance Corporation
LADM	Land Administration Domain Model
LGAF	Land Governance Assessment Framework
LPI	Land Policy Initiative
NGO	Non-Governmental Organisation
NUA	New Urban Agenda
OHCHR	Office of the High Commissioner of Human Rights
PRA	Participatory Rural Appraisal
RaTA	Rapid Land Tenure Assessment
SDG	Sustainable Development Goals
STDM	Social Tenure Domain Model
TI	Transparency International
UN	United Nations
UNEP	United Nations Environment Programme
UN-HABITAT	United Nations Human Settlements Programme
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

1. INTRODUCTION

“No one shall be arbitrarily deprived of his property” (Declaration of Human Rights, 17 (2)).

Conflicts over access to, use of and control over land are as old as humankind and frequently occur everywhere – at the intra-personal level (e.g. between siblings or neighbours), at the intra-societal level (e.g. between different ethnic groups or between the state and local population) and at the inter-societal level (i.e. between different states). “Land issues played a major role in all but three of the more than thirty intrastate conflicts that occurred between 1990 and 2009” (ELI/UNEP 2013).

Consequences of land conflicts vary tremendously – ranging from disturbed inter-personal relationships to the total destruction of one’s livelihood. Many land conflicts affect people’s human rights as defined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, such as the right to own property alone as well as in association with others, the right to an adequate standard of living, the right to freedom to choose one’s residence, the right to adequate housing, the right to adequate food and the right to freedom from discrimination. More severe land conflicts, such as those related to large-scale infrastructure projects or large-scale agricultural investments resulting in local populations’ loss of their customary land tenure rights and consequently their access to (their) land, often hurt additional human rights, such as the right to peaceful assembly, the right to freedom in association, the right to freedom of opinion and expression, and the right to take part in the conduct of public affairs.

Under the present conditions of high population growth, large-scale economic globalization, climate change, natural disasters and mass migration caused by land degradation, pollution, war, mining etc., land is becoming an even more explosive issue, in particular in countries marked by fragile institutions, weak governance as well as socio-economic and gender gaps. The prevention and resolution of land conflicts, therefore, pose major challenges for a broad spectrum of actors, including governments, private sector and development cooperation.

On the one hand, land conflicts can be the result of deeper lying causes. On the other hand, land can be a source of broader conflict in and of itself. Many conflicts that are perceived to be clashes between different cultures are

actually conflicts over land and related natural resources. Finally, dealing adequately with land issues can play a key role in conflict transformation. Therefore, dealing with land conflicts has three dimensions:

- Understanding, preventing and solving land conflicts
- Understanding, preventing and eliminating land issues that could be (come) a cause of broader conflict
- Understanding the role of land in conflict and peacebuilding and addressing land issues during and after conflict

This guide, therefore, looks at both preventing and solving land conflicts as well as the role of land in (violent) conflicts and peacebuilding, but is restricted to disputes within one nation state. Cross-border conflicts involve different approaches to conflict resolution, and would therefore go beyond the scope of this publication and the mandate of most of its users.

1.1 The scope of the problem

Land conflicts occur in many forms. There are conflicts between single parties, for instance boundary conflicts between neighbours and inheritance conflicts between siblings. These conflicts are comparably easy to solve. Those that include several parties though – such as group invasions or evictions – are more difficult to deal with. By far the most complex land conflicts are those that are marked by asymmetry of power, often involving corrupt land administration and state capture.

Land conflicts are a widespread phenomenon, and can occur at any time or place. Both need and greed can equally give rise to them, and scarcity and increases in land value can make things worse. They especially occur when there is a chance to obtain land for free or at a very low price – regardless of whether the land is state, common or someone’s private property. Some examples are:

- inheritance conflicts;
- boundary disputes;
- influential individuals accumulating land through illicit practices – involving abuse of position, fraud, corruption and bribery, in particular in (post-)conflict situations or during the early phases of economic transition, when regulatory institutions, controls and mechanisms of sanctions are not (yet) in place;

Box 1: Land conflicts in the daily press



BBC

Teenage girl shot dead in Cambodia land protest
16 May 2012

Security forces in Cambodia have shot dead a 15-year-old girl who was taking part in a land protest. She was demonstrating against the development of a rubber plantation on farmland in eastern Kratie province. Authorities say local residents, armed with axes and crossbows, would not vacate the area. This is the latest in a number of clashes over land - last month environmental activist Chut Wutty was killed in a threatened forest region.

REUTERS | World News |
Thu Jun 9, 2016 | 2:45pm BST
Ivory Coast land disputes threaten new violence as war refugees return

REUTERS | World News |
Fri Sep 30, 2016 | 9:18am EDT
Indonesian slum dwellers challenge eviction law in landmark case

Tuesday 14 April 2015
David Smith

the guardian

Ethiopians talk of violent intimidation as their land is earmarked for foreign investors

New report gives damning indictment of the government's mandatory resettlement policy carried out in a political climate of torture, oppression and silencing

telesur, 3 April 2016
Sami Indigenous People Face Unprecedented Land Grab in Finland

Finland's new Forestry Act is poised to rob Sami people of decision-making control over their homelands. Sami Indigenous people in Finland are facing an unprecedented assault on their rights and territory as a new Forestry Act threatens to level swathes of the last boreal forest in Europe, home to the native group and unique biodiversity, Global Research reported Sunday.

Tuesday, 15 July 2014
Annie Kelly

the guardian

Ethiopian farmer takes UK to court over 'brutal' resettlement policy

Legal battle launched after man claims he was evicted from his farm and beaten under villagisation scheme funded by UK aid

- unauthorized (multiple) sales of customary, collective or public land for which the seller did not pay anything; as well as
- investors rushing for cheap land ignoring local/customary rights because they are not formally recognized.

During colonial times, dominant European nations tried to occupy all the land outside Europe that seemed useful (fertile or rich in minerals). Today, the powerful are mostly national elites and international (mining, agricultural and biofuel) companies. The conflicts though are similar: local people with long-standing *de facto* rights – often held for several generations – lose their land to the powerful.

The following types of land conflicts are very common and represent a challenge in many countries. They have been chosen to illustrate the wide spectrum of land conflicts. Still, the overview is by far not exhaustive. (For a full list of land conflict types see 2.1.)

Typical land conflict: Encroachment onto indigenous peoples’ land without their consent

In many countries, indigenous people have been dispossessed, or live at risk of being dispossessed, due to either failure to recognise their rights to land or invalidation of those rights by the state, or through expropriation or privatisation of their lands by the state (UN-HABITAT/OHCHR 2005).

“Many have died, many were killed because they stood up for our land and indigenous way of life and spoke of our plight – my father, my grandfather, and my school teacher, are just a few of them” (Michelle Campos, daughter of slain land activist Dionel Campos).

- **Philippines – 22 killings of indigenous land and environmental defenders in 2015:** “Although the Indigenous Peoples’ Rights Act of 1997 (IPRA) obliges the state to protect the Lumad people it has so far carried little weight – with successive governments supporting the aggressive drive to exploit the region’s rich resources. According to local organisations, more than 500,000 hectares of Mindanao’s lands are now covered by mining applications, and more than 700,000 hectares are being converted into agribusiness plantations” (global witness 2016). A key problem is the institutional hierarchy at the expense of indigenous peoples’ land rights. Although IPRA established all necessary mechanisms for the actual promotion, protection, recognition, and fulfilment of all rights guaranteed therein and the National Commission on the indigenous peoples was created to help establish these mechanisms in practice, the land rights of indigenous people are not recognized by more powerful ministries, e.g. the Ministry of Environment, which is allocating mining concessions and delimitating environmental protection areas partly on their lands. Even official development plans often run counter to indigenous peoples’ interests (see 7.5 for case study from the Philippines).
- **Brazil – Farmers outsmart indigenous communities:** Nearly 13 percent of Brazil’s territory belongs to indigenous people. Unclear land titles and competing territorial claims from farmers, indigenous groups and the state lead to frequent conflicts. In 2004, according to official maps, the remote area of Raposa Serra do Sol in the Amazon region is an Indian reservation. However, white newcomers to the land are using the judicial system to try to evict

Indians who have been living there for generations from part of the reservation. Seizing advantage of bureaucratic indifference, these people, led by powerful rice growers and ranchers, have persuaded judges to order Indians to leave the land (The New York Times, 25.10.2004). Similarly, in 2016, an indigenous community in southwestern Brazil faced imminent eviction from its traditional territories. A small number of families from the Guarani Kaiowa Apika’y indigenous group received a judicial order in June 2016 to leave the contested land in the state of Mato Grosso do Sul, an agricultural region bordering Paraguay. The judge’s eviction order followed complaints from farmers who said they are the rightful owners of the land even though the territory had been promised to the indigenous group. The community was given five days’ notice that it will be evicted sometime between June 13 and June 15 of that year. The country’s National Indian Foundation (FUNAI), a government body, had demarcated nearly 10,000 hectares of territory to the indigenous group, but they never received formal title to that land. Therefore, plantation owners were able to register ownership of the land with a local official (Arsenault 2016).

Typical land conflict: Large-scale land-based investments ignoring land tenure rights of the local population

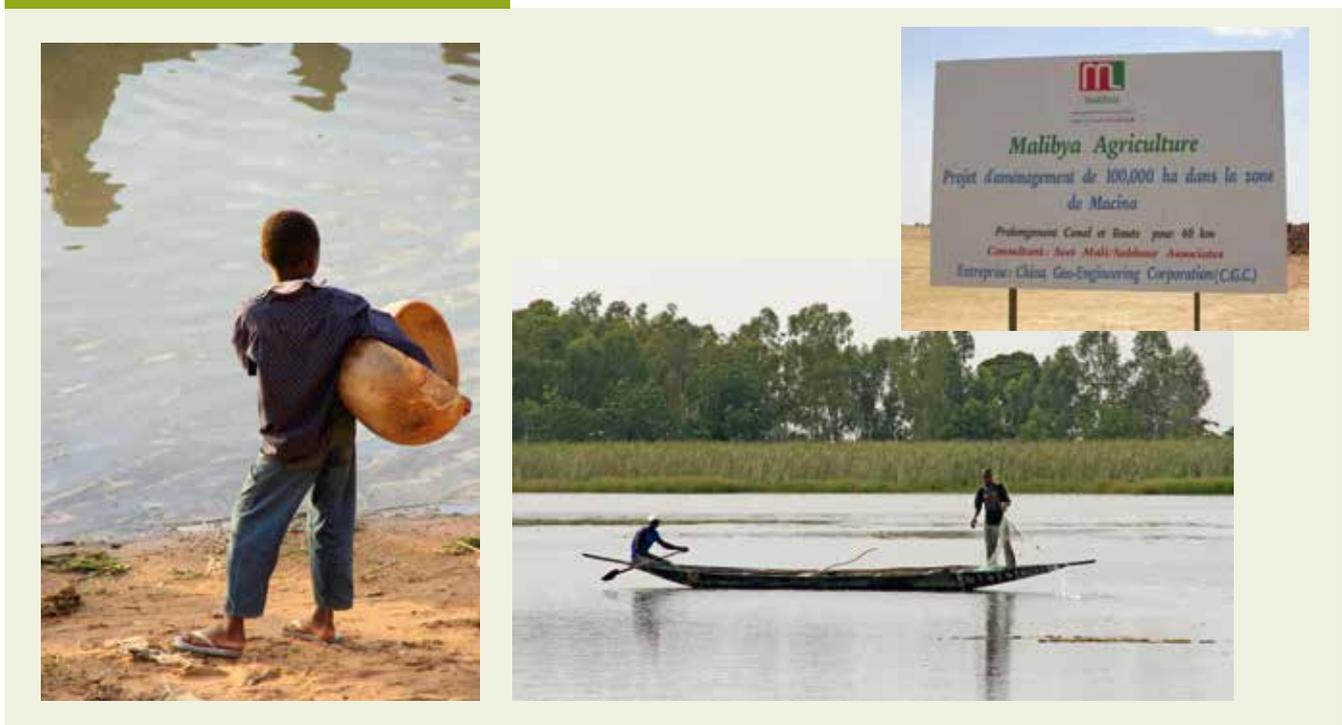
Large-scale land-based investments not respecting the tenure rights of the local population are often referred to as land grabbing. Most of these deals are legal according to statutory law. The problem lies in the fact that statutory law does not respect local tenure rights; in particular, customary ownership of local land occupants is not legally recognised. The legal owners of these lands are the governments who conclude legal contracts with private investors. Private companies, hedge funds, private equity funds, and sovereign wealth funds are all involved looking for lucrative deals in developing countries and countries in transition (see European Parliament 2016). Drivers of this global rush for land are quite diverse ranging from the demand for food, biofuels, timber and other raw materials to rising food prices and speculation, industrial development, carbon markets and tourism (Anseeuw et al. 2012). Quite often large-scale land-based investments ignoring local land tenure rights involve political corruption, but this is not always the case.

“This is not development. Investors are destroying our lands and environments [...] they do not cultivate the land for the people. They grow sorghum, maize, sesame, but all is exported, leaving none for the people” (Witness from Benishangul, Ethiopia).

Mali – Minister of Agriculture gave 100,000 hectares of agricultural land for free to a private investor: “Malibya Agriculture is a Libyan company founded to produce rice and other agricultural products in Mali for export to Libya and for the improvement of food security of the Libyan population. In June 2009, a bilateral investment treaty was signed between Mali and Libya. The contract area is situated in the Niger Basin Authority area around Macina, an agro-pastoral area with the potential for irrigation. It is the most important rice production zone of Mali. At that time, more than 75,000 people were living in the project area. Apart from those living in the town of Macina who have formal land rights over their land as the town has been created by the state, people did not have formally recognised land rights as they moved into the area only after the land was registered as property of the Niger Basin Authority in the mid-20th century. And customary rights – if at all – are only recognised on unregistered lands. People moved here because most parts of the land had not been developed by the Niger Basin Authority. They settled there, built villages, worked the land and lived from the forests. Pastoralists are also using major parts of the land to graze their cattle. In addition, a main transhumance route passes through the area. According to the renewable investment treaty, Malibya

Agriculture is leasing 100,000 hectares of irrigable land “free from any juridical constraints or individual or collective property that hinders the exploitation of the land” for 50 years to develop farming activities, agro-industries and cattle rearing. The contract can be renewed up to a total of 99 years. The contract provides Malibya with unrestricted access to water from the Macina canal as well as ground water against a fixed fee that can be renegotiated annually. Apart from the water fees and the obligation to respect the Malian law and regulations on the environment, the contract does not say anything else about any duties or obligations on part of the Libyan side. No taxes, fees or other payments are mentioned. Article 17 states that the two parties agreed upon the “*gratuité de la terre*” (no payment for the land). There also is no obligation to hire local employees or to produce for the Malian market. The project started without an agreement between the local community and Malibya and without any compensation” (Diallo and Mushinzimana 2009). The question arises: Why has this land been given for free? The answer can be found if one considers that the wife of the Minister of Agriculture who signed the contract for the Malian side owns a huge area of land next to the 100,000 hectares leased to Malibya and that she was to benefit from the extension of the irrigation channel Malibya was planning to develop.

Box 2: Conflicts over land can also entail claims over other natural resources, in particular water



The contract between the Malian Ministry of Agriculture and the private company Malibya provides Malibya with unrestricted access to water from the Macina canal as well as ground water. The Macina canal gets its water from the Niger River, which during dry season regularly runs almost dry. However, many people living along the river depend on its water – a situation that will be aggravated by additional water taken for large-scale irrigation.

- **Laos – Company uses loophole in Lao law to grab land in Savannakhet:** The country’s land law stipulates that land belongs to a ‘national family’ and is managed equally by the state, which has created a big loophole that allows state officials to take over residents’ lands if they cannot present a title. In 2016, a company was benefitting from this loophole in Laos’s land law to appropriate hundreds of hectares from the residents of three villages in the country’s southern Savannakhet province to build cattle farms, and villagers were having a hard time resisting the land grab because they failed to register the titles. About 100 families of Namseuk, Laosouliya, and Phang-heng villages in the province’s Champhone district have been affected by the concession. When officials from district and provincial natural resources and environment, agriculture and forestry offices surveyed the 400 hectares, they found that only 82 hectares had legal land titles. Then, the residents have informed the district that they will reregister the land and pay property taxes, but the district did not view this as being in accordance with the land law and has not allowed them to do so (Radio Free Asia, 14.7.2016). (See 7.3 case study from Laos.)

Typical land conflict: Illegal allocation of public land (political corruption/state capture)

Political corruption in the land sector aims to gain control over a country’s resources – both what is above and beneath the ground. It primarily concerns public land management and includes activities such as the illegal sale and lease of state land by public official as well as transfer of state property to political elites. State capture is a type of systemic political corruption in which private interests significantly influence the state’s decision-making processes to their own advantage through unobvious channels that may or may not be illegal. Political corruption is often difficult to document and effectively prosecute, since the acts which trigger it may fall within the law (TI 2011, Zakout et al. 2006).

- **Kenya – Former presidents accused of illegal land allocations:** The Ndungu Report from 2004 revealed that former Presidents Kenyatta and Moi, as well as cabinet ministers, former high-ranking civil servants and other influential people have been among the major beneficiaries of illegal allocations of public land. Land grabbing in Kenya is such a common phenomenon that it is even reflected in contemporary art. The Kenyan painter Lonaa, who documents the everyday street life of the poor, placed a hoarding with the sign “Land reserved for grabbers” in the centre of one his paintings. Land grabbing is also referred to by one of Kenya’s most famous writers, Ngugi wa Thiong’o, in his novel “Devil on the Cross” (see chap. 8).

- **Cambodia – Senior members of the Cambodian government, its security forces, and government-connected business leaders involved in land grabbing:** “New evidence submitted today to the Prosecutor of the International Criminal Court shows that the practice of land grabbing has adversely affected over 60,000 additional people since the beginning of 2014. This long-standing practice, conducted by senior members of the Cambodian government, its security forces, and government-connected business leaders, has entailed forced evictions and population displacement that amount to crimes against humanity [...]. The land grabbing frenzy saw an increase in 2014 and in the first quarter of 2015. It is now estimated that an astounding 830,000 people have been affected by this disruptive practice since 2000. A massive number of people have been forcibly evicted from their homes without adequate compensation or faced other forms of persecution. Many continue to suffer appalling conditions in resettlement camps, where food insecurity and disease are rife. [...] The Supplementary Communication documents how the crimes stemming from the land grabbing have a disproportionate impact on women, who bear the dual responsibility for childrearing and contributing to household income. The loss of land puts women at additional risk of suffering violence, exploitation, joblessness and associated psychosocial hardships. Women who campaigned against land grabbing have been brutally suppressed and illegally imprisoned. [...] Land rights defenders are increasingly the target of repressive measures” (International Federation for Human Rights 2015).

Typical land conflict: Multiple sales of customary land

Traditional chiefs, too, increasingly enter into illicit practises, selling land they are supposed to hold in trust to non-group members or to the state, causing landlessness among their own people. Many other land conflicts result from the multiple sales and double allocation of land, either due to legal pluralism or undocumented customary tenure, or due to competing state agencies all legitimized to do so.

- **Ghana – Father and son both sold the same land, which they did not own:** In Accra, many plots are sold by different people to different clients. While one buyer starts constructing, another buyer appears or sends land-guards to destroy the already built-up structures, sometimes even attacking the caretakers who are supposed to protect the property for the other person. At some point in the past, the Katamanso chief gave some of his land temporarily to the Anwahia chief and his people for farming. He, however, sold that land to a real estate agent who later found out that part of it had also been sold to someone else. He went

to court. What had happened was that the Anwahia chief had died and his son had sold the land again, either not knowing that it had already been given away or thinking that it would not be developed by the real estate agent.

Both father and son sold the same piece of land, which belongs to the neighbouring clan (Wehrmann 2002).

Box 3: New landowner in Ghana trying to prevent a multiple sale by the previous owner



Typical land conflict: Unclear boundary between two ethnic groups

■ **Uganda – Inter-ethnic conflict on traditionally held lands:** “In the Katakwi district on the border of the Karamoja region, the agro-pastoralist community Iteso (meaning people of Teso) feel that they are a targeted minority and are losing access to their traditional lands. As the result of a border dispute between the Iteso of Katakwi and the Karimojong of Moroto that is more than a century old, the two communities have lived under constant threat of conflict. The Karimojong, who are a pastoralist cattle-keeping community, regularly move into Teso territory in order to find grazing land and water. Because the rain that falls in the mountains near Moroto runs off quickly and drains into the wetlands in Teso, the Karimojong are known to say that they are following ‘their’ water into Teso. Recently, Karimojong have also been settling in what Iteso consider to be their territory based on a colonial-era map; Karimojong see the border differently. The border conflict has led to Karimojong raids into Teso territory, during which there are killings and property destruction. Iteso in turn have burned down Karimojong settlements in Katakwi that they believe to be illegal. This type of traditional territorial conflict creates a

vicious cycle of violence. Multiple efforts have been made to address the border conflict, through local government arbitration, negotiations between elders and regional officials, community-based initiatives, and even appeals to President Museveni himself. Despite these efforts, the border conflict continues to create negative repercussions for both communities” (Young and Sing’Oei 2011).

■ **Palestine – Invalid building permits due to unclear course of the border between Palestinian and Israeli areas:** Before 2012, the Palestinians had only hardcopies of the borders between areas A, B and C (from the Oslo Accords) on maps with very big scales. Depending on the scale the border line could be as wide as 600 meters in reality. These maps made it difficult to identify the exact location of a boundary and therefore hard to decide if a building permit had to be requested from Palestine (Area A/B) or from Israel (Area C). The conflict resulting from this was that many newly constructed houses in Palestine near the Area C border were destroyed by Israel because it was constructed based on a Palestinian building permit, but the house was located in Area C according to Israel data. Since 2012, high quality spatial data is being created for use by Palestinian governmental institutions (see 7.2 for case study from Palestine).

Typical land conflict: Encroachment on public land/ Squatting

Squatting is the action of occupying an abandoned or unoccupied area of land or a building, usually residential land that the squatter does not own, rent or otherwise have lawful permission to use. Globally, squatters most often settle on public land as private and customary owned lands are much better protected. Settling on land that people do not own or rent, often creates a problem and can easily result in evictions. Whereas some decades ago, informal settlers mainly settled free of charge, today most of them pay someone. This can be an influential policeman of that area or a so-called slumlord – someone who owns shacks in an informal settlement and charges tenants (exorbitant) rents. Generally, the slumlord does not own the land either but he controls it.

Slightly different from squatter settlements are semi-legal settlements, which are very widespread. In these cases, semi-legal settlers have purchased the land from former private owners but do not have construction permits. They also risk being evicted.

- **Cambodia – Squatting along the railway, over lakes and on roofs:** In the early 21st century, poor people in Phnom Penh had been resettled from their informal settlements in resettlement areas; such is the case of people from Bassac Community who had been resettled to the Samaki Reception area. But Samaki is too far from the city centre where informal and formal job opportunities are and transport costs of USD 2 per trip by far exceeded their income (average income from formal sector work being USD 30/month). Therefore, people continuously moved back into town, settling anywhere – even on roofs and over water basins. Some of them are so-called semi-legal settlers such as those on Lake Boeng-Kak. They bought the land from former private owners but do not have construction permits. The informal settlement along the railway in Phnom Penh also turned into a semi-legal settlement. People first settled here in 1979 and the early 1980s. Since then, these people as well as officials from the railway company sell land to newcomers (Wehrmann 2005).
- **South Africa – “Land mafia” organized mass squatting:** After the end of the apartheid system during which Black Africans were only allowed to live in designated areas, many of them moved to cities. Newcomers to Johannesburg first stayed in the backyard dwellings of friends or relatives in townships close to the city, waiting to be organised by local, informal community leaders. A team of land mafioso then identified a group of landless, already organised people and charged them R 50 (USD 10) each to sign up on a list. Once they had brought together about 2000 signatures (which corresponded to R 100,000/USD 20,000), they would choose a suitable site to

occupy. This was planned very precisely and often carried out with professional assistance. They conducted searches for deeds on the land to determine who owned it and used skilled planners to structure a settlement on paper. They avoided occupying private land because they knew that the government would treat them better than private owners. Once the squatters were settled, they had to pay a monthly rent of R 50 (USD 10) and an additional R 20 (USD 4) protection fee to the land mafia. They also paid another R 10 (USD 2.50) legal fee every month. The legal fees were collected into a reserve fund in the case a legal representative needed to be retained if action were taken against the squatters. The reason why the land developers were called land mafia is that they not only charged a protection fee but also used their guns in case somebody was unwilling or unable to pay (Saturday Star 21.2.1998).

Typical land conflict: Forced evictions

Forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing; forced evictions). Forced evictions are often linked to the absence of legally secure tenure. They constitute “gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement” (UN General Assembly 2007).

“When the caterpillars [Lagos slang for bulldozers] came, the police just rushed us out,” she says. “I could not take most of my belongings, our money and clothes. But what can I do?” (Stella Omogbemi, evicted mother of four children).

- **Nigeria – Destruction of an informal settlement in Lagos without any support for the residents:** Until 2013, Badia East was home to 30,000 people living in informal housing settlements. In February of that year, 9,000 residents were forcibly evicted. In October, the same thing happened to another 1,000 more. It was one of the largest forced evictions in the state’s history. Their homes were demolished under the authority of the Oba Ojora, a local tribal king who has long claimed hereditary ownership of the land, previously owned by the Nigerian government. The demolition was comprehensive. The bulldozers destroyed all the district homes, a church, a school, its only well, medical centre, and public toilet. In 2015, the land demolished in Badia East in 2013 was given to property developers; developers are often linked to or owned

by the state government. Next door is a building site for a new block of more than 1,000 flats, each to be rented at 1.4 million Naira (about GBP 4,500) a year – beyond the wildest dreams of anyone in Badia (Akinwotu 2015).

Typical land conflict: Inadequate amount of compensation and lack of consultation causing protest

- **Vietnam – Inadequate compensation, lack of consultation and improper procedures led to protest and forced evictions:** The Eco park land dispute relates to a major urban economic development in the city of Vãn Giang-Hung Yen, located 9 kilometres east of Hanoi. The Eco park development project is a USD 8 million commercial urbanization and tourism project tendered to a domestic partner Viet Hung Urban Development and Investment Joint Stock Co. The development covers 173 hectares (ha) of land and affected more than 4,000 households. In April 2012, violent clashes erupted as 166 families who owned 5.8 ha land and who had rejected the offered compensation were evicted forcibly. These families and their supporters reportedly remonstrated with 2,000 police officers. As per land users, protestors and Vietnamese media, the first reason causing anger amongst the affected land users relates to the inadequate amount of compensation offered. The land affected by

the project lies only 9 kilometres from the periphery of Hanoi. The compensation offered to the land users was based on the classifications used for rural land. A second reason was that the local government did not consult with the peasants on the confiscation of their land. The third reason was that the government order to acquire the land compulsorily was hastily approved and did not follow proper procedures (Le 2015).

Typical land conflict: Administrative corruption favouring the rich

Administrative corruption refers to the corruption that occurs in public administration and government services. In the land sector, it generally exists in the form of small bribes that either are requested to be paid to obtain or speed up a service for which formal payment already has been paid or is voluntarily paid to receive an illegal service (including the illegal delivery of a title or a building permit) or to avoid an official service (such as inspection) to be rendered (TI 2011, Zakout et al. 2006).

- **Bangladesh – Corrupt land and court officials favouring the affluent and greedy:** Land officials and staff of those offices take bribes ranging from EUR 20 to 120 for each single step in land administration starting with the surveying of the land. This makes it difficult for poor

Box 4: Squatter settlers in Phnom Penh have regularly been evicted



Along the river, squatters had to give way for a new government building and a casino.

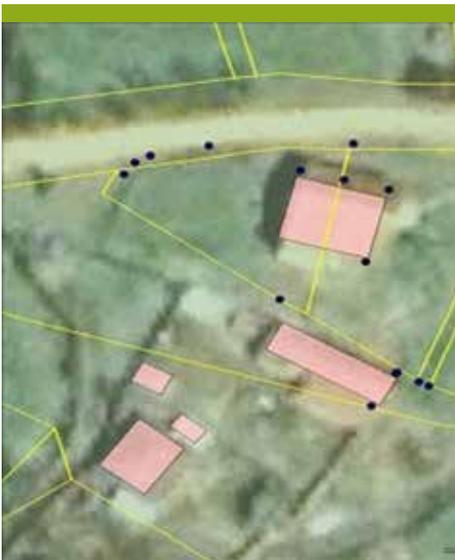
people to afford the registration of their land. Ordinary people have endured enormous losses in terms of money, time and mental agony. In addition, government lands meant for agriculture are allotted not for the needy but the local dominants who influence the allotment system. The officials concerned prepare documents of khas (government) land, vested property, fallow land etc. in favour of these influential people in exchange for bribes. If poor people who – according to the official system/logic of khas land management – should be the beneficiaries of such khas land distribution would want to file an action, they would have to bribe the court officials. In every stage of the land cases, court officials throughout the process take bribes from both the complainants and defendants (Transparency International Bangladesh 2015).

- **USA and elsewhere – Issuance of building permits against bribes:** Not only poor people construct their houses in areas not zoned for construction (usually referred to as squatting), middle class and rich people do the same. The difference is they do it in nicer areas; they are not forced to do so because they lack an alternative and they even do so having acquired building permits. Here, corruption and clientelism play a major role. Bribery also occurs when property owners want to receive permission to build additional floors, although this may not be allowed for security reasons. The US news is full of articles on building inspectors sentenced to prison for taking bribes.

Typical land conflict: Boundary conflicts between neighbours due to ineffective land registration/absence of systematic land registration

- **Georgia – Widespread boundary conflicts between neighbours in rural areas:** The most common land dispute in rural areas of Georgia is about parcel overlapping either between two private parties or between a private and a public party. Some of the land disputes are due to incorrect data in the cadastre since previously there were no standards for surveying, which sometimes led to low quality of data. Other land disputes are due to the fact that the boundaries have never been clearly established since the re-privatization of agricultural land. Still, other very widespread land disputes result from the fact that many farmers farm (slightly) more land than they have been granted during privatisation. The reason is that people only received the right to a clearly defined size of land, but the location of the land has never been defined, let alone its boundaries. Farmers shaped their fields according to the conditions on the ground, simply dividing all agricultural land among them and using existing and natural boundaries. As farmers have not been allowed to register more than the granted standard amount of hectares, plots on the ground are (slightly) bigger than the registered plots in the cadastre. This leads to real boundaries being inconsistent with registered ones and leaving many small unowned and seemingly unused pieces of land in the cadastre, which are actually used on the ground (see 7.4 for case study from Georgia).

Box 5: Cadastral boundaries not always reflecting the situation on the ground, example from Kosovo



A widespread type of land conflict all over Eastern Europe was and partly still is the contradiction between the boundaries depicted in the cadastre and the boundaries as perceived on the ground. In countries where restitution has taken place, often houses had been built crossing several parcels during socialist times when all land was considered public. Hence, there was a need to readjust the shape of the parcel and to adjust the cadastral record when re-introducing private property based on the old cadastral data. In other cases such as in Georgia, land has been attributed during the privatization process without fixing the boundaries on the ground, which also resulted in discrepancies between the situation on the ground and the cadastral entries. Kosovo experienced still another situation after the recent war, when the cadastral maps had been taken to Serbia; only copies of the maps remained in Kosovo and changes to those maps had been done separately without any coordination between the two sets, the originals in Serbia and the copies in Kosovo.

Source: Schmieder/Schindler 2010

Typical land conflict: Women prevented from obtaining land

- **Sub-Saharan Africa – Customary law prohibiting women from owning land:** In spite of most sub-Saharan African countries having adopted gender equity within their provisions, “patriarchal traditions typically prohibit women from owning immovable property in the first place. A married woman may have conditional access to her husband’s land, but she is not likely to hold title to that land. Without title, women are legally devoid of rights to the land. Upon the death of the husband, the property often defaults to his family, and the widow’s in-laws assume ownership over the land and other property that she has been developing and relying on since marriage [...]. Despite the progress made by a number of countries, discriminatory customary law continuous to dominate inheritance disputes in many sub-Saharan African countries, often defying existing statutes or constitutional provisions” (Rugege 2015: 3-4; 29).
- **Kenya – Community leaders denying women access to land rights:** “Two major approaches on how to address women’s land security can be identified: reforming the formal legal sector and embracing informal community practices. However, [...] these systems – formal, informal, or hybrid – are underpinned (and undermined) by the same local power dynamics that control and ultimately prevent women from obtaining land, leaving all of these systems inadequate in ensuring women’s access to land. Community leaders play a key role not only as local power brokers, decision makers, and protectors of local practices, but also as gatekeepers to the formal system. Thus, their decisions to support local power dynamics and limit access to the formal system – essentially supporting traditions in lieu of rights – can effectively deny women access to their land rights” (Harrington and Chopra 2010).

Typical land conflict: Children being deprived of their land

- **Kenya – HIV/AIDS orphans lost their land to their guardians:** In the slums of Nairobi, quite a number of orphaned children turned to a relative after their parents died, only to find the relative more interested apparently in their property than in taking care of them (Human Rights Watch 2001).
- **India (and elsewhere) – Girls do not inherit land and do not know about their constitutional rights:** Many girls in rural India do not know about their right to assets, such as land. According to Sen (2015), this is one reason for girls being married before they reach adulthood. They are considered a financial burden and neither their parents

nor the girls themselves expect them to be able to afford their care. Positioning girls to realize their land rights as women will give them a resource they need to better care for themselves, which could hold the key to eradicating child marriage. Even when they marry at a later age, after completing their education (instead of being pulled out of school and married as teenagers), the ability to enjoy land rights when they are adults will allow them not only to care for themselves, but also for their families/children and to be less dependent of their husbands (Sen 2015).

Typical land conflict: Refugees, Internally Displaced Persons, returning refugees and resettled persons often face disputes over use and/or ownership of land

- **Burundi – When refugees returned, their land was sold:** “The refugees who left in 1972 were largely small landholders who farmed the hillsides. Burundian law gives the state the right to expropriate land that is unused over time, and on this ground – contested in international law – the state sold the refugees’ land to new owners while the refugees were gone. This created two groups of legitimate owners vying for small plots of land. Moreover, the dual owners often were former adversaries, giving rise to fear of renewed armed confrontations. Sometimes the new owners were family members, but the conflicts were no less bitter” (Weiss Fagen 2011).
- **Syria – Ownership documents of Syrian refugees in Lebanon, Jordan and Iraq destroyed, missing or in another person’s name will result in disputes over use and/or ownership of land and housing after their return:** In a survey by the Norwegian Refugee Council (2017), only half of the 580 refugees who said that they lived on land that they or their families owned reported that they possessed any documents, including land deeds, sales contracts, notarized documents and utilities documents. Seventy percent of the document holders stated that their document was in another person’s name. This is due to two widespread phenomena: In Syria, a) properties are often passed down through family lines without officially changing the name in the document with the relevant authority and b) multi-family structures are often build on land held in a single person’s name. Only 17% of all document holders still had this documentation with them. Most documents were either destroyed or their holders left them behind being afraid that they would be confiscated at the border. Most of them did not know whether or not the documents still existed. One percent of the respondents reported that they had to forcibly sell or lease their land since displacement. Such “bad faith” transactions might be formalized under the property administration systems that have emerged during the

conflict. “Humanitarian organisations, governments, donors and other stakeholders should start preparing now for likely problems of a shortage of adequate housing, disputes over use and/or ownership of housing, land and property assets, and the emergence of other conflicts related to a significant reduction in usable land and housing inside Syria if large scale returns start occurring” (NRC 2017).

Typical land conflict: Land conflicts as a result of climate change

Climate change can disrupt long-standing patterns of land use and contribute to displacement and land scarcity for those affected.

- **Burkina Faso – Farmers encroach pastures and cattle corridors, herds fall back on fields causing damage:** For centuries, nomads and farmers coexisted supporting each other as they raised livestock and tilled their fields under resource-constrained conditions. The delicate balance has now been upset by drought, overgrazing and other human activities leading to desertification as well as by population growth. Due to population growth and immigration of farmers from other regions of the country who had to give up farming there due to desertification, farmers in South-Western Burkina Faso extend their farming areas – encroaching into pastures and partly blocking livestock passages/corridors. Pastoralists who traditionally came to this area after harvesting had been done, now come earlier as the dry season in the north starts earlier and the extreme weather has reduced the availability of pastures and water there. Finding less space and arriving before fields have been harvested constantly results in livestock entering fields and causing damage (Wehrmann/Sanou 2016). (See 7.1 for case study from the Burkina Faso.) Similar conflicts occur in Mali, Ethiopia and Uganda (Schilling et al. 2010, USAID 2011a and USAID 2011b).

Typical land conflict: Dispute over land use due to institutional shortcomings, lack of transparency and meaningful participation

Different people have different ideas about how the land around them should be used. This often leads to one group of people pushing to convert the use of a given piece of land while another group insists on keeping the current land use, e.g. land development versus environmental protection. One reason why this type of land conflict arises so frequently all over the world is insufficient transparency of local politics and a lack of meaningful public participation.

- **Germany – Local population initiates referendum against local government’s plan to allow an investor to construct a factory in the middle of a landscape protection area:** Still in the digital age, the small Bavarian community Schliersee possesses only one old paper-based land use plan, which is kept at the construction office in the town hall. Decisions about land use changes are made ad hoc by the municipal council. For years, citizens have asked for the participatory development of a municipal development strategy on which the land use plan – also to be updated with public participation – should be based. The request went ignored. In 2016, the majority of the municipal government decided to request at the district council to take land out of the landscape protection area so it could be used for industrial purposes. The land parcel was located directly at the lake, which constitutes the centre of the landscape protection area. Citizens who did not want to see the banks of their lake entirely be built upon, and afraid of this case becoming a precedent, collected about 800 signatures and requested a referendum. Meanwhile the district council took the decision to take the requested land out of the landscape protection area, but agreed to make its implementation conditional on the outcome of the referendum. Over 50 percent of the population participated in the referendum, which resulted in the majority being against the investment project and in favour of the preservation of the landscape protection area – in spite of massive PR measures over a period of months by the investor.
- **India and Georgia – Land use disputes due to overlapping institutional mandates:** In India and Georgia, two authorities are charged with defining the land use for a given parcel: the land registry/cadastre and the land use planning agency. As there is no clarification on who has the primary mandate to define the land use and who will only register it, both agencies determine the use of land – independent from one another.

Land as source of conflict or peace

- **Sudan – Darfur conflict rooted in a struggle over land:** While usually portrayed in ethnic terms, the fault lines of the conflict in Darfur originate in the struggle over land between African settled farmers and Arab nomadic herders, which have been exacerbated by climate change. Climate change, population growth and an increase in livestock combined with poor land use practises, overgrazing and deforestation has resulted in the degradation of arable and grazing land leading to pastoralists – traditionally living in the dryer northern regions – taking their herds farther south, while farmers – traditionally occupying the

Box 6: Typical African land use conflicts are about agricultural versus pastoral land use



southern arable lands – are moving farther north, occupying grazing land and watering places as well as obstructing the herders' passage (D+C 9/2007, Bruce 2011).

- Ethiopia – Protests against master plan for city extension claim the lives of several students:** In late 2015, “at least 10 students are said to have been killed and hundreds injured during protests against the Ethiopian government’s plans to expand the capital city into surrounding farmland. [...] Protests against the master plan for expansion first began in April 2014 when students from outside the capital argued that if the proposal was implemented, it would result in Addis further encroaching into the surrounding territory, allowing the capital to subsume surrounding towns and leaving informal settlements vulnerable to government redevelopment [...] The government rejected the accusation, claiming that the plan was intended only to facilitate the development of infrastructure such as transportation, utilities and recreation centres. [...] Since the highly contested 2005 national election, forceful evictions and urban land grabbing have become frequent in Addis and its environs, opposition groups say. The city’s rapid growth has resulted in increasing pressure to convert rural land for industrial, housing or other urban use” (The Guardian, 11.12.2015).

- Global – Correlation between gender-based violence (GBV) and land rights:** “GBV is any act of violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women. It is often rooted in unequal power relations between men and women, and is therefore connected to social and economic inequality. A growing body of evidence shows a correlation between GBV and land rights, though whether this correlation is positive or negative depends on context and culture. The majority of current research on the topic comes from India, and suggests a positive correlation. Secure land rights can increase a woman’s economic independence and bargaining power, thereby reducing her vulnerability to GBV. Further, secure land rights can empower women, and may give them more freedom to leave abusive relationships. However, a few studies suggest a negative correlation between stronger land rights and GBV. These studies have found that in areas where traditional norms dominate, gains in women’s property ownership and employment status seemed to increase the risk of domestic violence. In some cases, a woman’s increased economic power might lead to violence from men seeking to reassert their dominance and power in the home” (Focus on Land in Africa 2016).

... and many more!

1.2 Defining land conflicts

A conflict, as defined by sociologists, is a social fact in which at least two parties are involved and whose origins are differences either in interests or in the social position of the parties (Imbusch 1999). Consequently,

“a land conflict can be defined as a social fact in which at least two parties are involved and whose origins are differences in interests regarding a given piece of land – possibly aggravated by differences in the social position of the parties. Land conflicts imply different interests over one

or several property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land” (WEHRMANN 2005 modified).

In the table below, for each property right a land conflict is presented as an example. It is important to have a clear understanding about which property right(s) parties quarrel over if one is to be able to solve the conflict. Many land disputes involve even several property rights.

Tab. 1: Individual property rights and conflicts about them

Property right	Example for a land conflict
Right to use the land	Encroachment on public land, encroachment on the neighbour’s property
Right to manage the land	Discord between two ministries or between central and decentralized level on who is responsible for the management of a certain public land
Right to generate an income from the land	Disagreement between landlord and tenant about the right to sub-rent (parts of) the land
Right to exclude others from the land	Disputes between farmers and pastoralists about the right to fence farms
Right to transfer the land	Multiple sales of customary land
Right to compensation in case of expropriation	Protest resulting from the non-payment of compensation or insufficient amounts of compensation
Affecting all property rights	Land grabbing

Although we generally experience conflicts as something destructive, they nevertheless perform positive functions. Sociological conflict theories underline the importance of social conflict for social change (Bonacker 1996). Land conflicts, too, can become engines of change if they lead to massive protest and consequent changes in policies and their implementation. It is therefore important to deal with land conflicts in a constructive manner, instead of ignoring them or simply trying to stop them. In any event, conflict theorists agree that conflict is unavoidable for any society:

“Conflict is an inevitable aspect of human interaction, an unavoidable concomitant of choices and decisions. [...] Conflict can be prevented on some occasions and managed on others, but resolved only if the term is taken to mean the satisfaction of apparent demands rather than the total eradication of underlying sentiments, memories, and interests. Only time really resolves conflicts, and even the wounds it heals leave their scars for future reference. But short of such ultimate healing, much can be done to reduce conflict and thereby release needed energies for more productive tasks” (Zartman 1991: 299).

A crucial step towards the reduction of conflicts and their solution is to better understand the apparent needs and interests and – although they cannot necessarily be healed if previously injured – the underlying feelings and emotions, fears and desires (see 2.2).

1.3 The challenge of asymmetry in land conflicts – the rich and/or powerful vs. the poor and/or land (and human rights) defenders

The most difficult type of land conflict to resolve involves a powerful person against one or more poor people or simply people defending their land. “Powerful” is shorthand for a group of categories of people that include high-ranking politicians, civil servants, the military, the police, companies and other rich and/or influential groups or individuals. In many countries or situations, the poor hesitate and often do

not dare to resist the powerful, not least in court. If they do, or if the powerful sue them instead, the chances are very low that the poor will win the case. This is particularly obvious when examining the outcomes of court cases. Resolution in these cases tends to favour the powerful. Frequently, cases that involve a powerful actor but which have been brought to court by a poor one are not dealt with at all. In many cases bribery plays a major role. In other cases, the richer party simply can afford the better lawyer.

“Whatever the 1989 Cambodian land law says, the ill-educated poor are usually defeated by the well-connected rich in any legal battle” (The Economist, 10.3.2007).

Box 7: Exclusiveness of the Phnom Penh housing market

Since people began to return to Phnom Penh in 1979, several thousand of them have been evicted. Given that after the fall of the Khmer Rouge everyone simply occupied whichever house they liked, nobody actually can be considered to be a rightful owner. However, status and position – defined by one’s relation to the military and the government – decided access to housing. People without connections – very often female-headed households which had lost their male family head under the Khmer Rouge – were either not at all allowed to enter the city or have been chased out of the houses they occupied. Having no other alternative at hand, they settled wherever possible on public land, over lakes or on rooftops. Since then, many of them have been targets of evictions. Only in 2003 did the Prime Minister finally agree to provide secure tenure and support the upgrading of 100 urban poor communities each year. Evictions did not totally stop at that point but have decreased tremendously – without a doubt as a result of work by NGOs and the international community. What nobody looked at, however, is the story of Heng Mom* and her family – and many others. Since 1979 they have had to move to four different places – one smaller than the other – for economic reasons. During the same time Vong Samreth* and his family moved from one property to the other – each one bigger than the one before, profiting from the market, favoured by the father’s position. Without a father, Keov Phan* and his brother and mother had a much more difficult starting position than the other two families in 1979 and never could catch up with Vong Samreth’s family. His father died under Pol Pot. His mother almost starved. As she was so weak, they returned late to the capital, only to find their grandmother’s house already taken. Chased away from the house they then occupied by the military who had given it to someone working for the government, they finally found a tiny little place which is now worth much less than their former property or the one from which they have been evicted. In Phnom Penh, housing, and thereby people’s livelihood in general, starts with the right connections to the government and is then favoured by the market. Without connections, the market will do the rest to finalize people’s misery.

(*All names have been changed to protect people’s identity)

Source: Wehrmann 2006

Box 8: Peasants vs. latifundista in Venezuela

In August 2002, in a small town in northern Venezuela, a man wearing a ski mask drove up to Pedro Doria, a respected surgeon and leader of the local land committee, called his name and, as Doria turned, shot him five times. The committee Doria led was in the process of claiming title to idle lands south of Lake Maracaibo which, according to government records, belonged to the state and could thus be legally transferred to the fifty peasant families that had applied for ownership. However, a local latifundista (big proprietor) also claimed title to the property and on several occasions had refused to let Doria and government representatives inspect it. It is common knowledge in the region that this landowner is a close friend of former Venezuelan president Carlos Andrés Pérez... Doria was not the first peasant leader to be targeted by professional killers or paramilitaries.

Source: Wilpert 2003

Asymmetry is not exclusively a question of one party being immensely richer or more powerful or having much better connections than the other party. In many (family) situations it happens that the stronger party is only relatively powerful. Examples include grieving widows being disinherited by surviving in-laws or HIV/AIDS orphans who have lost their land to their guardians.

Asymmetric conflict often involves violence. According to global witness (2016), 2015 was the worst year on record for killings of land and environmental defenders. Global witness (ibid) documented 185 killings in total across 16 countries. The majority of cases recorded were in Latin America and South-East Asian countries with the highest tolls in Brazil (50) and the Philippines (33). Indigenous peoples have been hardest hit for defending their ancestral land representing almost 40 percent of victims. Mining and extractive industries were linked to the most killings, with 42 defenders murdered. Agribusiness (20 killings), hydroelectric dams and water rights (15) and logging (15) were also major drivers of killings. Global witness (ibid) found suspected involvement of paramilitary groups in 16 cases, 13 for the armed forces, 11 for the police and 11 for private security guards.

Among the land defenders who have been killed in 2015 and 2016 are (global witness 2016):

- Berta Cáceres from Honduras, a high-profile activist on indigenous land rights and environmental campaigner who was awarded the Goldman Environmental Prize, a prestigious award recognizing grassroots environmental activism from around the world.
- Saw Johnny, an advocate for land rights in Myanmar who was well-known for supporting local victims of land grabbing and reportedly exposed the illegal sale of government plots of land.
- Maria das Dores dos Santos Salvador, a Brazilian rural community leader in Amazonas who had strongly denounced the illegal sale of community land and had faced threats for several years without receiving the necessary state protection.

The number of people who lost their lives due to violent conflicts over land (rights) is even higher if those who died in protests against government projects or land grabbing are included, e.g. in Cambodia or Ethiopia, where even teenagers and students have been killed in protests (BBC, 14.5.2012; The Guardian, 11.12.2015).

1.4 International policies and instruments addressing land conflicts

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), an unprecedented human rights-based international soft-law instrument in the area of land tenure endorsed by the Committee on World Food Security in 2012, provide comprehensive guidance on the prevention and solution of land (tenure) disputes. They also provide an additional chapter on how to treat land tenure issues in conflict situations.

“States should prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings” (VGGT 3.1.5).

“States should provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes [...]” (VGGT 3.1.4).

“All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict, including in situations of occupation where parties should act in accordance with applicable international humanitarian law” (VGGT 25.1).

Other international policies do not specifically address land conflicts, but they provide guidance on their prevention. The most relevant documents in this regard are: the Sustainable Development Goals (2015), the New Urban Agenda (2016), Agenda 21 (1992) and Resolution GC 23/17 of the UN-Habitat Governing Council on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic Services and Infrastructure (2011).

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)

The Guidelines promote responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary and informal. The Guidelines are meant to benefit all people in all countries, although there is an emphasis on vulnerable

and marginalized people. The Guidelines serve as a reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure. They provide a framework that States can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices (FAO 2012).

The VGGT is the only document that directly addresses land conflicts. Whereas the focus of all of the guidelines is

to prevent land tenure disputes through the recognition, respect and safeguarding of all legitimate tenure rights and the provision of access to justice to deal with infringements of legitimate tenure rights, a separate chapter deals with the resolution of disputes over tenure rights (see 4.) and another chapter highlights the role of land tenure issues in conflict (see 6.).

The core of the Guidelines, the guiding principles – general principles and principles of implementation – are all relevant for the prevention and solution of land conflicts.

Box 9: Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)

3A General principles

1.1 States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.
5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where trans-national corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

Source: CFS/FAO 2012

The principles of implementation which are considered to be essential to contribute to responsible governance of tenure of land and which therefore are also relevant for the prevention of land conflicts are:

- Human dignity
- Non-discrimination
- Equity and justice
- Gender equality
- Holistic and sustainable approach
- Active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes
- Rule of law
- Transparency
- Accountability
- Continuous improvement

Each chapter of the Guidelines provides guidance on a specific aspect of land governance clustered in the following four parts: legal recognition and allocation of tenure rights and duties, transfers and others changes to tenure

rights and duties, administration of tenure and responses to climate change and emergencies. A particular strength of the VGGT is their explicit reference to corruption as a cause of land conflict and the demand on governments to “prevent corruption in all forms, at all levels, and in all settings.”

The complete implementation of the VGGT would probably be the most secure way of preventing land conflicts and providing an effective and just framework to solve those land disputes that still occur.

Sustainable Development Goals (SDG)

Among the targets of the SDG are several that contribute to the prevention of land conflicts: secure tenure rights for all women and men, equal rights for women and men to ownership and control over land, other forms of property and natural resources and participatory, integrated and sustainable human settlement planning that promote reduced land consumption.

Tab. 2: Overview on relevant SDG targets and indicators for land conflict prevention

Target	Indicator(s)
1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance	1.4.2 Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure
2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment	
5a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws	5a.1. (a) Proportion of total agriculture population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or right-bearers of agricultural land, by type of tenure 5a.2. Proportion of countries where the legal framework (including customary law) guarantees women's equal rights of land ownership and/or control
11.1. By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums	11.1.1. Proportion of urban population living in slums, informal settlements or inadequate housing

Target	Indicator(s)
11.3 By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries	11.3.1 Ratio of land consumption rate to population growth rate 11.3.2 Proportion of cities with a direct participation structure of civil society in urban planning and management that operate regularly and democratically
11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities	11.7.1 Average share of the built-up area of cities that is open space for public use for all, by sex, age and persons with disabilities.
12.2 By 2030, achieve the sustainable management and efficient use of natural resources	12.2.1 Material footprint, material footprint per
15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world.	15.3.1 Proportion of land that is degraded over total land area.
<p>Additional targets relevant to land conflict prevention and resolution: rule of law (16.3), promoting and enforcing non-discriminatory laws and policies for sustainable development (16b), policy and institutional coherence (17.14), multi-stakeholder partnership (17.17), developing effective, accountable and transparent institutions at all levels (16.16), responsive, inclusive, participatory and representative decision-making at all levels (16.7) and equal access to justice for all (16.3).</p>	

Source: UN General Assembly 2015: A/RES/70/1

New Urban Agenda (Habitat III)

As with the SDG, the New Urban Agenda does not explicitly refer to land conflicts or land disputes, but includes many provisions that will contribute to the prevention of land use and land tenure conflicts, and first and foremost the commitment to promote tenure security for all and the principle of sustainable management and use of land.

Although most issues are addressed by the VGGT, the New Urban Agenda is a valuable complementary document confirming that responsible land governance is as much an urban issue as it is a rural one. Not being as detailed as the VGGT, the New Urban Agenda still adds additional aspects, such as land value capture and its shared value for the benefit of all segments of society.

Other relevant provisions are:

- Combating and preventing displacement, homelessness, and arbitrary forced evictions
- Recognizing the plurality of tenure types
- Providing equal access to adequate and affordable housing and serviced land
- Integrating informal settlements into the social, economic, cultural and political dimension of cities
- Preventing informal settlements
- Preventing land speculation
- Preserving and promoting the ecological and social function of land
- Prioritizing safe, inclusive, accessible, green and quality public spaces
- Preventing and containing urban sprawl
- Preventing unnecessary land use change and the loss of productive land and fragile and important ecosystems
- Promoting accountable institutions that deal with land registration and governance, applying a transparent and sustainable management and use of land, property registration and sound financial system
- Supporting local governments and relevant stakeholders, through a variety of mechanisms, in developing and using basic land inventory information, such as a cadastre, valuation and risk maps as well as land and housing price records
- Supporting the effective use of public resources for affordable and sustainable housing, including land in central and consolidated areas of cities
- Promoting the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land use by-laws and ordinances and planning regulations
- Promoting best practices to capture and share the increase in land and property value generated as a result of urban development processes, infrastructure projects and public investments

Box 10: Key paragraphs from the New Urban Agenda dealing with land and ways to handle it

35. We commit to promote, at the appropriate level of government, including sub-national and local government, **increased security of tenure for all, recognizing the plurality of tenure types**, and to develop fit-for-purpose, and age-, gender-, and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of land tenure for women as key to their empowerment, including through effective administrative systems.

51. We commit ourselves to promoting the development of urban spatial frameworks, including urban planning and design instruments that support sustainable management and use of natural resources and land, appropriate compactness and density, polycentrism and mixed uses, through infill or planned urban extension strategies as applicable, to trigger economies of scale and agglomeration, strengthen food system planning, and enhance resource efficiency, urban resilience and environmental sustainability.

53. We commit ourselves to promoting safe, inclusive, accessible, green and quality public spaces as drivers of social and economic development, in order to sustainably leverage their potential to generate increased social and economic value, including property value, and to facilitate business and public and private investments and livelihood opportunities for all.

69. We commit to **preserve and promote the ecological and social function of land**, including coastal areas which support cities and human settlements, and foster ecosystem-based solutions to ensure sustainable consumption and production patterns; so that the ecosystem's regenerative capacity is not exceeded. We also commit to promote **sustainable land use**, combining urban extensions with adequate densities and compactness preventing and containing urban sprawl, as well as **preventing unnecessary land use change** and the loss of productive land and fragile and important ecosystems.

97. We will promote planned urban extensions and infill, prioritizing renewal, regeneration and retrofitting of urban areas, as appropriate, including upgrading slums and informal settlements; providing high-quality buildings and public spaces; promoting integrated and participatory approaches involving all relevant stakeholders and inhabitants; and avoiding spatial and socioeconomic segregation and gentrification, while preserving cultural heritage and preventing and containing urban sprawl.

104. We will promote **compliance with legal requirements** through strong inclusive management frameworks and **accountable institutions that deal with land registration and governance, applying a transparent and sustainable management and use of land, property registration**, and sound financial system. We will support local governments and relevant stakeholders, through a variety of mechanisms, in developing and using basic land inventory information, such as a cadastre, valuation and risk maps, as well as land and housing price records to generate the high-quality, timely, and reliable disaggregated data by income, sex, age, race, ethnicity, migration status, disability, geographic location, and other characteristics relevant in national context, needed to assess changes in land values, while ensuring that these data will not be used for discriminatory policies on land use.

106. We will promote housing policies based on the principles of social inclusion, economic effectiveness, and environmental protection. We will support **the effective use of public resources for affordable and sustainable housing, including land** in central and consolidated areas of cities with adequate infrastructure, and encourage mixed-income development to promote social inclusion and cohesion.

107. We will encourage the development of policies, tools, mechanisms and financing models promoting access to a wide range of affordable, sustainable housing options, including **rental and other tenure options**, as well as **cooperative solutions such as co-housing, community land trusts and other forms of collective tenure** that would address the evolving needs of persons and communities, in order to improve the supply of housing (especially for low-income groups), **prevent segregation and arbitrary forced evictions and displacements**, and provide dignified and adequate reallocation. This will include support to incremental housing and self-build schemes, with special attention to programmes for upgrading slums and informal settlements.

111. We will promote the development of **adequate and enforceable regulations** in the housing sector, including, as applicable, resilient building codes, standards, development permits, land use by-laws and ordinances, and planning regulations, **combating and preventing speculation, displacement, homelessness, and arbitrary forced evictions**, ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resource efficiency, and resilience.

137. We will promote best practices to **capture and share the increase in land and property value** generated as a result of urban development processes, infrastructure projects, and public investments. Measures could be put in place, as appropriate, to prevent its solely private capture as well as land and real estate speculations, such as gains-related fiscal policies. We will reinforce the link among fiscal systems, urban planning, as well as urban management tools, including land market regulations. We will work to ensure that efforts to generate land-based finance do not result in unsustainable land use and consumption.

Source: UN General Assembly 2016: A/CONF.226/4

In addition to directly addressing land issues, the New Urban Agenda highlights the importance of key principles for sustainable development that are also indispensable for the prevention and solution of land conflicts, such as:

- respect, protection and promotion of human rights and the enjoyment of fundamental freedoms,
- non-discrimination, equal rights and opportunities for all, gender equality and gender responsiveness,
- public participation, dialogue, inclusiveness, social cohesion, solidarity - especially with those who are the poorest and most vulnerable, social and intergenerational interactions, civic engagement, partnerships between government and civil society,
- transparency and accountability, and
- safety and the elimination of all forms of violence.

The resolution encourages governments and Habitat Agenda partners to promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations. Urban land governance mechanisms should be reviewed and improved so as to strengthen tenure rights and expand secure and sustainable access to land, housing, basic services and infrastructure, particularly for the poor, women and vulnerable groups.

Resolution GC 23/17 of the UN-HABITAT Governing Council

Resolution GC 23/17 of the UN-HABITAT Governing Council on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic Services and Infrastructure adopted in 2011 includes an entire section on land issues addressing effective land governance frameworks. Resolution GC 23/17 therefore also includes actions that would help to prevent land conflicts. All issues have been incorporated into the New Urban Agenda. However, the language of Resolution GC 23/17 is sometimes easier to understand.

Box 11: Extract from Resolution GC23-17 on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic services and Infrastructure

"7. Encourages Governments and Habitat Agenda partners, with regard to land issues:

- (a) To implement land policy development and regulatory and procedural reform programmes, if necessary, so as to achieve sustainable urban development and to better manage climate change, ensuring that land interventions are anchored within effective land governance frameworks;
- (b) To promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations;
- (c) To review and improve urban land governance mechanisms, including land/spatial planning administration and management, land information systems and land-based tax systems, so as to strengthen tenure rights and expand secure and sustainable access to land, housing, basic services and infrastructure, particularly for the poor and women;
- (d) To create mechanisms for broadening land-based revenue streams, including by improving the competencies and capacities of local and regional authorities in the field of land and property valuation and taxation, so as to generate additional local revenue for pro-poor policies and to finance infrastructure development."

Source: UN-Habitat Governing Council, 23rd Session, April 2011

In addition to these recent documents that all cover a set of land issues, there is full range of documents that address either specific land issues or general rights and principles that are relevant to the prevention and solution of land conflicts, such as (UN-Habitat forthcoming):

- United Nations General Assembly Resolution 42/146 on realization of the right to adequate housing, 1987
- Commission on Human Rights Resolution 2004/28 on the prohibition of forced evictions
- UN High Commission on Human Rights Resolution 2000/13, 2001/34, 2002/34, 2002/49, 2003/22 and 2005/25 on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
- Committee on Economic Social and Cultural Rights, General Comment 7: The Right to Adequate Housing - Forced Evictions (CESCR General Comment 7), 1997
- Committee on Economic Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (CESCR General Comment 4), 1991
- United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 2005

- UN Declaration on the Rights of Indigenous Peoples, 2007
- United Nations Framework Convention on Climate Change (UNFCCC), COP 21 Paris Agreement, 2015
- Agenda 21, 1992
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1981
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Covenant on Civil and Political Rights (ICCPR), 1966
- Universal Declaration of Human Rights, 1948

At the regional level, there also are the Framework and Guidelines on Land Policy in Africa (2009) by African Union, African Development Bank and UN Economic Commission for Africa.

In addition, there is an increasing number of – mostly voluntary – international guidelines, standards and principles promoting responsible large-scale land-based investments with a focus on the respect of legitimate tenure rights as a reaction to what is commonly labelled as land grabbing (see 5.3).

1.5 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

- Definition of land conflict
- Asymmetric conflict
- Political corruption
- State capture
- Administrative corruption
- Squatting
- Forced evictions
- Semi-legal settlers
- Land rush

Questions for discussion

- Which land conflicts do you think are easy to solve?
- Which land conflicts are more difficult to solve and why?
- Everybody talks about land grabbing. Which actors are involved? Over which property rights do they quarrel? What are the causes of land grabbing?
- What is special about asymmetric land disputes?
- How can international policies on land governance help to prevent or solve land conflicts?

Exercises

E 1: Write down all land conflicts that you have experienced or heard of (in your country) and identify the type of land conflict. Come up with examples of at least five different types of land conflicts. Identify the property rights involved in each of these conflicts.

E 2: Read the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and identify:

- 10 paragraphs that provide guidance on preventing land conflicts
- 10 paragraphs that provide guidance on solving land conflicts
- 10 paragraphs that provide guidance on the role of land governance in (post-)conflict situations

Further reading

- › Anseeuw, W., Wily, L.A., Cotula L. and M. Taylor: Land Rights and the Rush for Land. Findings of the Global Commercial Pressures on Land Research Project. ILC, Rome 2012.
- › Committee on World Food Security (CFS) and United Nations Food and Agriculture Organisation (FAO): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome 2012.
- › European Parliament, Directorate-General for External Policies. Policy Department: Land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union. Belgium 2016.
- › Transparency International/United Nations Food and Agriculture Organisation (FAO): Corruption in the Land Sector. TI Working Paper 04/2011.
- › United Nations General Assembly: A/CONF.226/4 Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III). Quito 2016.

2. UNDERSTANDING LAND CONFLICTS

The examples in chapter one clearly show the wide variety of land conflicts. Understanding the specific nature of a land conflict under consideration is a vital step in its eventual resolution. This chapter, therefore, provides an overview on

the different types of land conflicts as well as on the causes, the consequences and the social dimension of the different land conflict types.

Box 12: About the complexity of land conflicts (sketch by Jan Birck)



What this picture shows us is the complexity of one land conflict. Although the sketch partly builds on an existing land conflict, many aspects have been added or modified. The situation, however, is not less unusual.

Imagine: The ministry of environment considers the given area a national park; the ministry of economy is promoting the establishment of coffee plantations there. The local population uses the forest for bee keeping and to collect firewood, and people who moved here from other places construct their houses there. In addition, illegal logging takes place and some investors want to realize some large-scale land-based investments in the forest area – resulting in a conversion of natural forests into palm oil plantations.

The conflict becomes visible through deforestation, but it entails many actors, several conflict subjects and a whole range of causes. When we look at it from the perspective of the parties involved, we can identify a conflict between the two ministries, between the ministry of environment and the illegal loggers, between the ministry of environment and the local people, between the local people who always lived here and the newcomers, the local population and the investors etc. The conflict subject is not just land; it is also about decision-making authority. Who decides what happens in this forest: The ministry of environment? The ministry of economy? The local people? Finally, it is about the institutional framework to adhere to: Statutory? Customary? Or none (in case of newcomers and illegal loggers)?

2.1 Types of land conflicts

This system of classification builds upon the kind of land involved (state, private or common property), the specific object of the conflict as well as the legitimacy of actions and the level of violence used by the parties. Land conflicts can either occur on all or several types of property or (predominantly) on one of them. Within these categories, conflicts may be separated into 36 different types and over 50 sub-types.

A) Conflicts occurring on all or several types of property

1. Boundary conflicts
2. Inheritance conflicts
3. Ownership conflicts due to legal pluralism
4. Ownership conflicts due to lack of land registration
5. Ownership conflicts between state and private/common/collective owners
6. Multiple sales/allocations of land
7. Limited access to land due to discrimination by law, custom or practise
8. Peaceful, informal land acquisitions without evictions
9. Violent land acquisitions, including clashes and wars over land
10. Evictions by land owners
11. Illegal evictions by state officials acting without mandate
12. Market evictions and distortion of local land market/values
13. Disputes over the payment for using/buying land
14. Disputes over the value of land
15. Conflicts over the use of land
16. Destruction of land and property

B) Special conflicts over private property

- 17. Expropriation by the state without compensation
- 18. Sales of someone else’s private property
- 19. Leasing/renting of someone else’s private property
- 20. Illegitimate expropriations by banks
- 21. Conflicts due to land/agrarian reforms
- 22. Conflicting claims in post-conflict situations
- 23. Illegal/improper uses of private land
- 24. Intra-family conflicts, especially in the case of polygamy

C) Special conflicts over common and collective property

- 25. Lack of recognition of common/collective rights by the national government
- 26. Unauthorised sales of common or collectively owned property

- 27. Competing uses of common and collective land/ competing rights on common and collective land
- 28. Illegal/improper uses of common property
- 29. Disputes over the distribution of revenue from customary land

D) Special conflicts over state property

- 30. Illegal/improper uses of state land
- 31. Competing uses/rights on state property
- 32. Land grabbing by high-ranking public officials
- 33. Illegal sales of state land
- 34. Illegal leases of state land (including concession land, forests, mines etc.)
- 35. Disputes over revenues from state land generated through lease, sale or transformation of its use
- 36. Improper land privatisation (e.g. unfair land distribution or titling)

Tab. 3: Types and sub-types of land conflicts

Land conflicts on all or several types of property	
Boundary conflicts	<ul style="list-style-type: none"> • Between individuals (over private land) • Between clans (over common property) due to oral tradition and physically unfixed boundaries • Between administrative units (villages, communes, municipalities, districts, or areas such as areas A, B and C in Palestine) • Between private individuals and the state (over private or state land)
Ownership conflicts linked to inheritance	<ul style="list-style-type: none"> • Inheritance conflict within a family • Inheritance conflict within a clan
Ownership conflicts due to legal pluralism	<ul style="list-style-type: none"> • Overlapping/contradictory rights due to legal pluralism (customary/indigenous rights vs. statutory law)
Ownership conflicts due to lack of land registration	<ul style="list-style-type: none"> • Several people claim the same property because a) no land registration exists, b) it is in bad condition or c) it has been destroyed • Distribution of intermediate tenure instruments which cannot be registered • Due to unequal knowledge and financial means only the well-off register land – even that of others
Ownership conflicts between state and private, common or collective owners	<ul style="list-style-type: none"> • Unclear and non-transparent demarcation of state land by armchair decision resulting in unintended expropriation of individuals and groups • Special Chinese case of conflicts due to illegitimated conversion of collectively owned agrarian land into state land for construction

Land conflicts on all or several types of property	
Multiple sales/allocations of land	<ul style="list-style-type: none"> • Multiple sale of privately owned land by private individuals • Multiple sale of common property • Allocation of same land parcels by the land registration office due to technical shortcomings or corruption (e.g. acceptance of faked titles) • Overlapping/contradictory rights due to double allocation of land titles by different institutions all legitimised to do so • Multiple sale of state land by public officials
Limited access to land due to discrimination by law, custom or practice	<ul style="list-style-type: none"> • Women often only get access to land through a male relative making them vulnerable in the case of divorce or widowhood • Ethnic minorities are often discriminated against by law or practise • Orphans are often de facto excluded from inheriting their parents' property
Peaceful, informal land acquisitions without evictions	<ul style="list-style-type: none"> • Illegal occupation of state, private or common land (squatter settlements, gecekondu etc.) • Extension of property on neighbouring private, public or common land (see above) • Market-driven displacement within which speculators or developers pay less than the real market value due to information asymmetry
Violent land acquisitions	<ul style="list-style-type: none"> • Violent attack on property owners, including chasing them from their property by criminals – often (former) military, para-military, military police, guerrillas etc. • Illegal occupation of common or collective land by an individual or company for private use (often with support of corrupt public officials)
Evictions by land owners	<ul style="list-style-type: none"> • Eviction of semi-legal settlers (those who violate building regulations) from state, private or common property • Eviction of illegal settlers (those who have no legal rights to the property) from state, private or common property • Unjustified termination of tenancy/lease contract by property owner
Illegal evictions	<ul style="list-style-type: none"> • Illegal evictions by state officials acting without mandate on their own behalf
Market evictions and distortion of local land market/values	<ul style="list-style-type: none"> • Poor people not being able to afford to stay on their property due to increases in its value and correspondingly in tax or rent due to upgrading, formalisation, legalisation or also due to foreign investment, including investment funds
Disputes over the payment for using or buying land	<ul style="list-style-type: none"> • Refusing to pay the state for lease of state land • Refusing to pay rent for renting private property • Disagreement between landlord and tenant over the amount of crops to be paid in case of sharecropping • Refusing to pay (full amount) in case of land purchase, including fraud (e.g. writing invalid checks)

Land conflicts on all or several types of property	
Disputes over the value of land	<ul style="list-style-type: none"> • Between citizen and the state in the case of compensation or tax • Between private persons (e.g. to define indemnity for siblings in the case of inheritance)
Conflicts over the use of land	<ul style="list-style-type: none"> • Conflict between human/cultural and natural use <ul style="list-style-type: none"> – Conflict between natural protection (including the protection of biodiversity, water, wildlife, cultural landscapes etc.) and land development (for farming, mining, industrial use, tourism, housing etc.) – Conflict between natural protection and existing land uses (e.g. by small holder farmers) • Conflict between two different human/cultural uses (e.g. one of public and one of private interest)
Destruction of land and property	<ul style="list-style-type: none"> • Contamination of land due to industrial, mining or nuclear activities nearby • Illegal logging and deforestation • Violent attack on land (e.g. destruction of farmland) • Destruction of buildings owned by the owner of the property • Destruction of buildings illegally put on a property • See above: evictions
Land conflicts on private property	
Expropriations by the state without compensation	<ul style="list-style-type: none"> • Expropriation of landowners without (adequate) compensation to use the land for public purposes • Expropriation of owners from private or common land without (adequate) compensation to allocate the land to private companies – and new informal occupations by the original (customary) owners attempting to get the land back • Displacement of land owners without giving them adequate land and/or sufficient rights to it
Sales of someone else's private property	<ul style="list-style-type: none"> • Private person selling the property of another person
Leasing/renting of someone else's private property	<ul style="list-style-type: none"> • Private person leasing or renting the property of another person
Illegitimated expropriations by banks	<ul style="list-style-type: none"> • Bank systematically accumulating land in a poor but well located neighbourhood by pushing the poor to take out credit with excessive interest rates which they are unable to afford
Conflicts due to land reforms	<ul style="list-style-type: none"> • Big farmer refusing to give up land • Expropriation of farmers asking for compensation or the return of land or illegally taking it back • Peasants only receiving insecure rights such as provisional titles • Unfairness in the selection of beneficiaries of land reforms

Land conflicts on private property	
Conflicting claims in post-conflict situations	<ul style="list-style-type: none"> • Claims by returning refugees and internally displaced people against other people occupying their land without authorisation • Claims by owners that returning refugees and internally displaced people are occupying their land without authorisation • Claims by refugees that internally displaced people are occupying their land without authorisation • Conflicts due to the fact that the former lands of refugees have been allocated by the (former) government to other people during their absence
Illegal/improper uses of private land	<ul style="list-style-type: none"> • Use of other people's property (e.g. as a parking lot, playground, waste dump, pasture, or for agriculture etc.) • Private owners ignoring land use regulations on their property (e.g. commercial use of land zoned for residential purposes only) • Illegal subdivisions of parcels • Exceeding the maximum height permitted by building regulations • Leaving land vacant for speculative purposes (only a conflict if forbidden by law) • Trespassing on other people's property • Refusal to honour an existing right of way
Intra-family conflicts	<ul style="list-style-type: none"> • Disfavoured wives and children not receiving access to fertile land
Land conflicts on common and collectively owned property	
Lack of recognition of common/collective rights by the national government	<ul style="list-style-type: none"> • National government leasing or selling land that it considers to be state land but on which local people have customary rights which the government does not recognize
Unauthorized sales or leases of common or collectively owned property	<ul style="list-style-type: none"> • Unauthorised sale of customary land by chief • Unauthorised sale of collectively owned land by head of village • Illegal sale or lease by leaseholder of collective land
Competing uses of common or collective property/ competing rights to common or collective property	<ul style="list-style-type: none"> • Conflicting interests in common property by farmers and livestock keepers (of the same or different ethnic groups) • Conflicting interests in common property by different groups of pastoralists (often from different ethnic groups) • Conflicting interests between different users of a forest, such as small-scale farmers doing rotational agriculture, coffee producers, collectors of firewood, bee keepers and others • Unequal distribution of common or collective land
Illegal/improper uses of common property	<ul style="list-style-type: none"> • Parcelation and allocation of common land to be used as construction land (e.g. ejidos in Mexico)
Disputes over the distribution of revenue from customary land	<ul style="list-style-type: none"> • Special case of Ghana where the state administration of stool land collects the revenues from customary land

Land conflicts on state property	
Illegal/improper uses of state land	<ul style="list-style-type: none"> • Illegal private use of state land • Illegal subleasing of state land • Illegal public use of state land (e.g. of open space as dump sites)
Competing uses and rights on state property	<ul style="list-style-type: none"> • Unclear responsibility over state land, different state authorities claiming ownership • Conflicting interests over the use of state land by farmers and pastoralists • Conflicting interests over state land by farmers or pastoralists and leaseholders of concessions (e.g. forest, agricultural etc.) • Land allocation in protected areas
Land grabbing	<ul style="list-style-type: none"> • Registration of state land by high ranking public officials in their own names (or in the names of family members and friends)
Illegal sales of state land	<ul style="list-style-type: none"> • Illegal sale of unused state land by private person • Illegal sale of unused state land by public official • Illegal sale of publicly used state land by public official (or rarely by private person) • Illegal sale of legally privately used state land by public official (or rarely by private person) • Illegal sale of illegally privately used state land by public official (or rarely by private person)
Illegal leases of state land (including concession land, forests, mining licences etc.)	<ul style="list-style-type: none"> • Illegal lease of unused state land by private person • Illegal lease of unused state land by public official • Illegal lease of publicly used state land by public official (or rarely by private person) • Illegal lease of legally privately used state land by public official (or rarely by private person) • Illegal lease of illegally privately used state land by public official (or rarely by private person)
Disputes over revenues from state land generated through lease, sale or transformation of its use	<ul style="list-style-type: none"> • Between public institutions at the same level • Between public institutions at different levels • Between the state and state officials • Between the state and private sector • Between state official/customary authority and the public
Improper land privatisation	<ul style="list-style-type: none"> • Overlapping claims during restitution (in the case of former multiple expropriations/nationalisations) • Irregularities during (re)distribution or auction • Illegal applications for land (family/household splitting) • Unfair title distribution during legalisation of informal settlements

Inheritance and boundary conflicts are probably the most common land conflicts. They occur in urban, peri-urban and rural areas alike. Other types of conflicts are more specific and predominantly occur in either urban, peri-urban or rural areas (see table 4).

Tab. 4: Typical land conflicts in urban, peri-urban and rural areas

Urban areas	Peri-urban areas	Rural areas
<ul style="list-style-type: none"> • Informal land acquisition by squatters or pavement dwellers • Evictions • Land use conflicts: not respecting building regulations • Illegal subdivisions resulting in densification and slums • Illegal sale or lease of state land in prime locations • Illegitimate expropriation by banks of the property of the poor • Displacement of settlers by commercially motivated developers or speculators 	<ul style="list-style-type: none"> • Informal land acquisition by squatters, often through organised group squatting • Multiple sales of land • Illegal sale of state land by public officials • Expropriation without compensation by the state of land which is perceived to be customary land by the settlers (i.e. in Africa) • Land use conflicts: not respecting building regulations 	<ul style="list-style-type: none"> • Illegal lease of state land for logging, mining or agro-industry • Land use conflicts among farmers and pastoralists • Land use conflicts between conservation and private or commercial use of natural resources (forests, lakes etc.) • Land grabbing: public officials taking state land (for themselves or friends) • Land robbery: guerrillas and other violent groups taking private land • Land clashes between different ethnic groups
<ul style="list-style-type: none"> • Boundary conflicts • Inheritance conflicts • Land ownership conflicts due to administrative or political corruption • Land use conflicts due to lack of public participation 		

2.2 Causes of land conflicts

Shortcomings in land administration and land management

As stated above, a land conflict can be understood as a **misuse, restriction or dispute over property rights to land**. Hence, it is obvious that shortcomings in land administration and land management give way to land conflicts.

Effective land administration, including relevant policies, laws, procedures, technology and human capacity, should result in security of land tenure and a functioning economically efficient land market. It covers such fundamental elements as land rights recognition (recognizing all legitimate tenure rights), land registration, land information systems, land valuation, legitimate expropriation and fair compensation supported by rule of law.

However, security of land tenure in the context of a functioning economically efficient land market is not sufficient to avoid land conflicts as it does not lead to socially and ecologically sustainable land use. Therefore, in addition to secured property rights, their regulation or restriction is required. This is the task of land management.

Effective land management, including relevant policies, laws, procedures, technology and human capacity, should result in sustainable land use. It covers elements such as land use planning, land readjustment, land consolidation, buffer zone management etc. supported by common ethical principles.

Consequently, if there are shortcomings in land administration and land management, there is a high risk that land conflicts occur.

Fig. 1: Areas of land administration and management needed to secure and regulate property rights to minimize land conflicts

Objective	Area of land administration and management	Critical aspects		
		Political will	Rules and regulations	Implementation
Securing property rights Security of tenure	Land administration • Land rights recognition • Land registration • Land information systems • Land valuation • Expropriation and compensation	<div style="border: 1px solid black; padding: 20px;"> <p>Potential Causes of Land Conflicts</p> </div>		
Required base:	• Rule of law:			
Regulating property rights Sustainable land use	Land management • Land use planning • Land readjustment • Land consolidation • Buffer zone management			
Required base:	• Common ethical principles			

Source: Wehrmann 2005 (modified)

Typical shortcomings in land administration and management leading to land conflicts are:

- Legislative loopholes
- Contradictory legislation
- Legal pluralism, lacking recognition of all legitimate land tenure rights
- Traditional land law without written records or clearly defined plot and village boundaries
- Formal law which is not sufficiently disseminated or known
- Limited/lack of access to law enforcement and jurisdiction by the poor/disadvantaged
- Insufficient establishment of rule-of-law-principles (e.g. lack of independent courts)
- Insufficient implementation of legislation
- Missing or inactive mechanisms for sanctions
- Expropriation for non-public purposes
- Lack of clear definition of roles and functions of different institutions involved, resulting in overlapping mandates as well as absence of mandates
- Centralisation (e.g. centralised land use planning)
- Insufficient control over state land
- Lack of communication, co-operation, and co-ordination within and between different government agencies as well as between public and private sector (if existent at all)

- Lack of responsibility/accountability
- Limited access to land administration, especially for the poor and rural population (distance, illiteracy, costs etc.)
- Insufficient information to the public
- Limited/lack of public participation, especially in land use planning and demarcation of concession land
- Insufficient staff and technical/financial equipment at public agencies
- Very low wages in the public sector
- Low qualifications of public employees
- Missing code of conduct
- Lack of transparency
- Administrative corruption
- Missing or inaccurate surveying
- Missing or incomplete land register (e.g. destroyed) or one that does not meet modern requirements
- Missing, outdated or only sporadic land use planning or planning not adapted to local conditions
- Insufficient provision of construction land
- Changes in surveying technology
- Insufficient public participation
- Badly designed resettlement projects
- Delimitation of protective areas (for nature, water, landscape, wildlife etc.) not respecting existing settlements and human activities in these areas

In many countries, land administration and land management do not function properly, but even when they do, land conflicts still regularly occur. Why?

The deeper causes of land conflicts

A land conflict, as it was previously stated, can be defined as a social fact in which at least two parties are involved and whose origins are *differences in interests* regarding a given piece of land – possibly aggravated by differences in the social position of the parties.

Dysfunctional land administration and land management only act as catalysts for land conflicts – selfish individual interests being the deeper causes

It needs to be stressed that the functional deficits of land administration and land management institutions are not the core reason for land conflicts; they merely facilitate them. Selfish individual interests – ranging from the struggle for survival to profit maximisation – by a multitude of actors is the driving force.

The case of struggle for survival:

People without income, people who are evicted but not adequately compensated, people who migrate from their homelands to other places due to natural hazards or war, need a place to stay and to work, but do not have the financial means to acquire land formally. Hence, in the absence of well-planned reception areas or low cost housing projects, they informally settle somewhere where they hope that they can stay.

The case of profit maximisation:

Profit maximisation in the context of land conflicts is often manifested either by unjustly grabbing land or by excluding disadvantaged sections of the population from legally using land. Theoretically, these actors include all social gatekeepers. These are people who, because of their job, position and function can manipulate the land market and other mechanisms for land allocation to their advantage. Notoriously low wages in the public sector contribute to corrupt behaviour by social gatekeepers in the land sector. However, the decisive factor for these irregularities is the “normality of misbehaviour”. This means that nepotism, corruption and disregard for regulations are considered normal by the population – social and religious values are of little relevance to everyday life, and self-interest is paramount to public interest. This underlines the importance of ethical values and rule-of-law principles in preventing land conflicts (see figure 1).

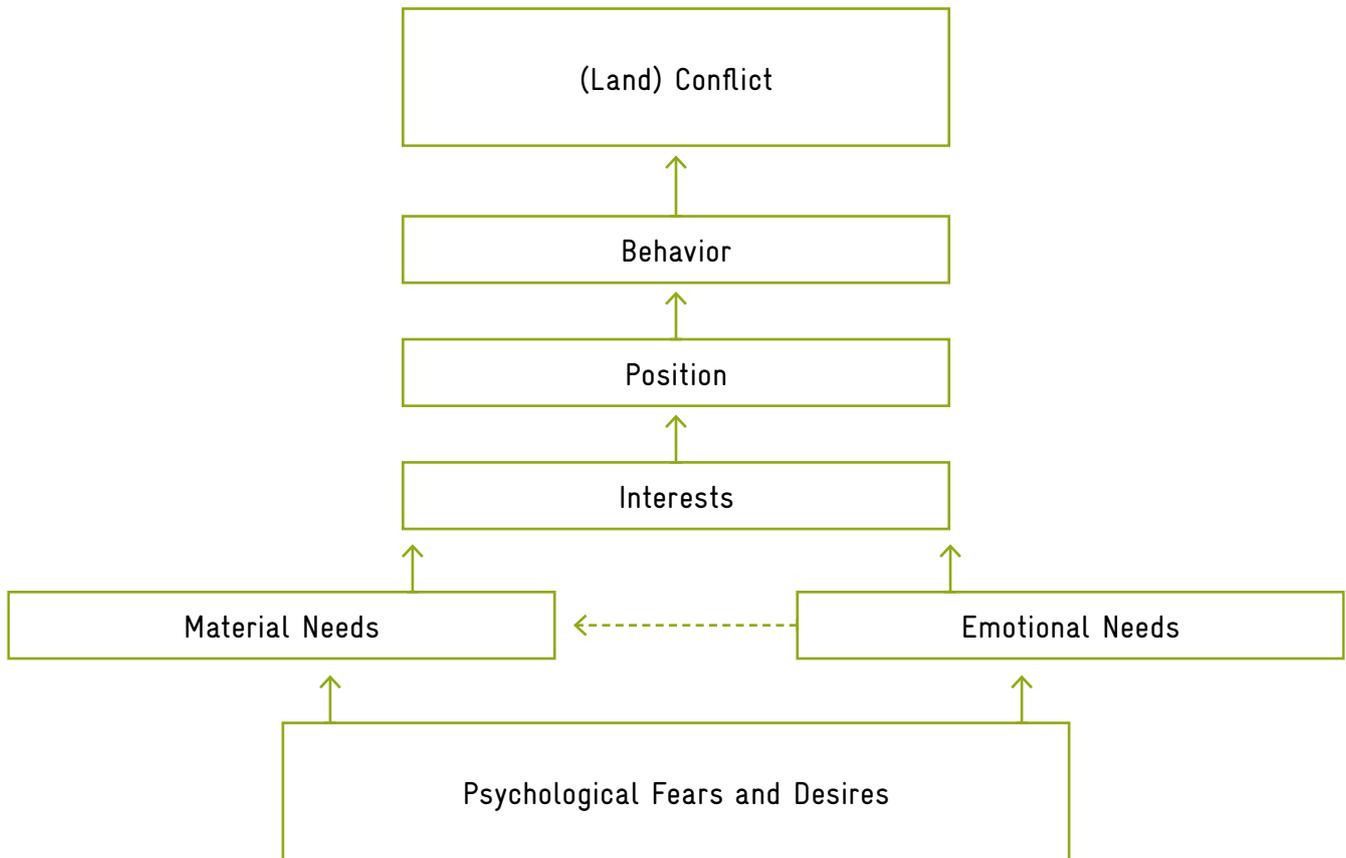
In both situations, dysfunctional land administration and land management institutions are not the causes of the land conflicts. Even if effective land administration and land management institutions are in place, such conflicts may yet occur. However, if they are not properly functioning, the dimension of these conflicts increases strongly.

The position of the two groups of people – those struggling for survival and those seeking profit maximisation – in a land conflict often is the same: each one wants the land. However, their underlying interests may be completely different. Whereas the first group’s interest is to have shelter and eventually land for food production or land to be used for any other productive activity to earn the income necessary to survive, the second group is interested in increasing their wealth. When dealing with conflicts, it is therefore highly relevant to look closer at the positions of the conflict parties (what they want from the other party, e.g. the land) and to identify their interests (what they really want, e.g. building a house on the land (shelter), farming the land (food, income), selling the land once the value has increased (money, wealth), owning more land than anyone else (control, power, status)).

Psychological fears and desires resulting in emotional and material needs shape people’s interests

In some cases, it is sufficient to be aware of the interests behind the parties’ positions. In other cases, it may be helpful to dig even deeper to understand the underlying material and emotional needs, which again are influenced by deeply rooted psychological fears and desires (see figure 2). When being confronted with a profit maximizer in a land conflict, his interest may not be clear. Is it wealth? Or status? Or power and control? An analysis of his or her emotional needs may provide an answer. Is s/he longing for security, self-esteem, independence, control, power? Emotional as well as material needs result from one’s basic (or psychological) fears and desires, such as the fear for one’s existence, fear of insecurity, fear to lose control, fear to be unimportant/irrelevant or the desire to be recognised, cared for and loved. The better one understands the conflict parties’ motivation – i.e. their fears, desires and needs – the easier it becomes to solve land conflicts as many needs can be fulfilled in different ways, often without the land that is in dispute.

Fig. 2: Factors influencing people's position and behaviour in a conflict



Source: Wehrmann 2005

Changing general conditions, including institutional change facilitating land conflicts

All people have psychological desires and fears and constantly aim to satisfy their resulting material and emotional needs. In a peaceful setting with well-established and recognized institutions in place, these institutions ensure that the needs of individuals will be satisfied without causing trouble to other people also aiming to fulfil their needs. But what if general conditions suddenly change? When a war breaks out? When a drought creates mass migration and poverty? When a political system collapses and a new system has to be put in place? Etc.

Changes in framework conditions often provoke strong psychological desires and fears (such as the fear for one's existence or the desire to be respected, loved, integrated

in a group or – on the contrary – be independent). These desires and fears result in extreme emotional and material needs such as the urgent need for shelter, feelings of revenge, the longing for survival and self-esteem, a need for power, a strong need for independence etc. At the same time, changes in general conditions such as institutional change, economic crisis, massive brain drain etc. can directly result in (additional) shortcomings in land administration and management. Given the existing or the newly (increased) shortcomings in land administration and management, the aforementioned (increased) emotional and material needs result in either taking advantage of them, ignoring them or in preventing their (re-) establishment. This is often exacerbated by sudden opportunities to reap economic profit, which are common in situations of change (see figure 3).

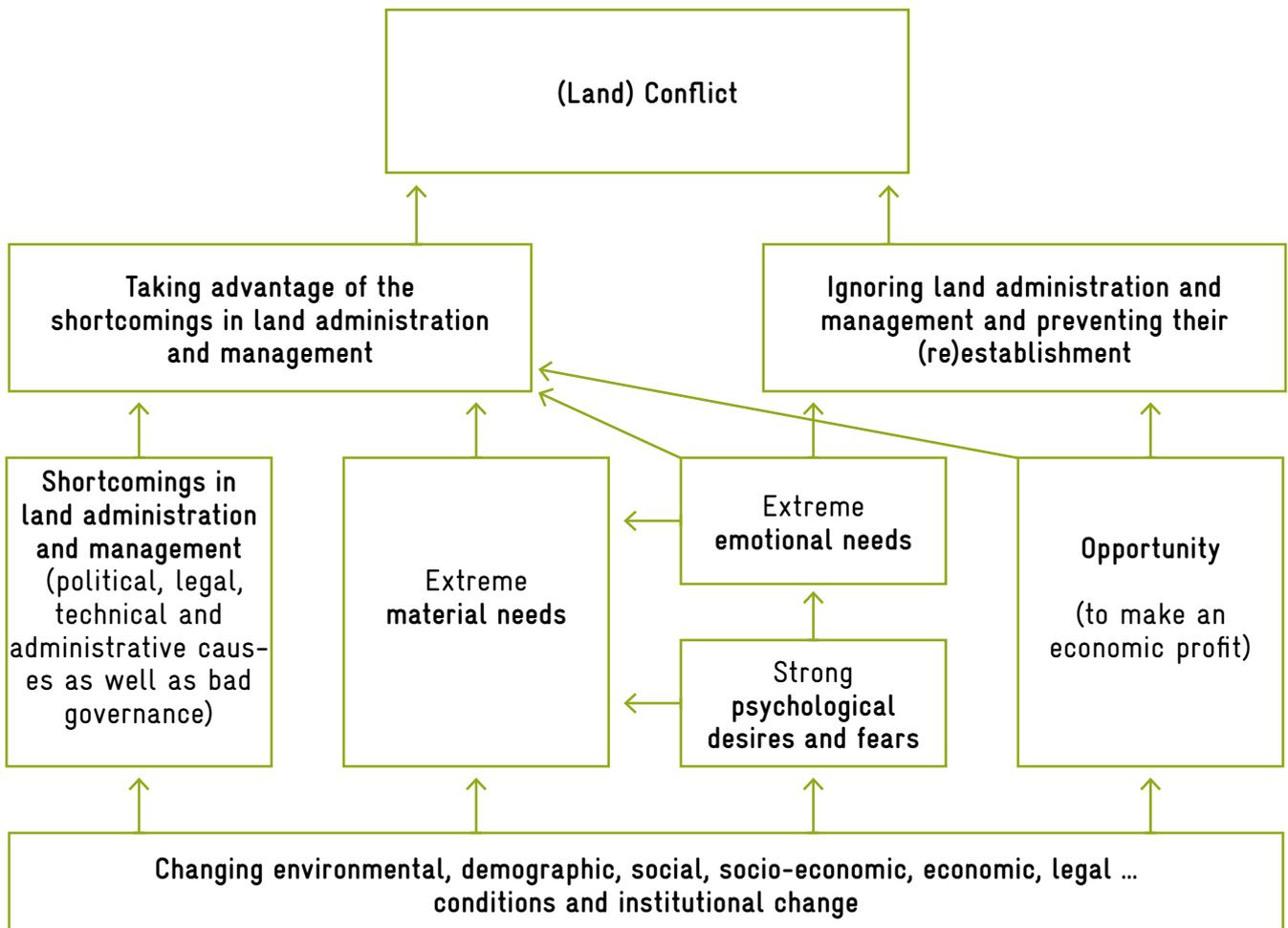
Examples of relevant changing framework conditions are:

- Natural disasters leading to poverty, migration and displacement
- Natural population growth resulting in an increased demand for land and increasing land prices
- Increased poverty making it difficult for poor people to acquire land legally
- Growing affluence generating demand for more land and bigger plots
- Rising food prices causing a rush for land by investors, including food producers and financial investors

- The introduction of a market economy – giving land a monetary value and thereby eradicating traditional ways of land allocation – making it difficult for poor people to acquire land legally
- Changes in the legal framework, for instance the abolishment of taxes on secondary residences creating a high demand on land for second homes
- An institutional change causing a temporary institutional vacuum

Such changing framework conditions may also influence and reinforce each other.

Fig. 3: Interdependency of land conflict causes



Source: Wehrmann 2005

Looking at these causes from a different analytical perspective, they can also be distinguished by political, economic, socio-economic, socio-cultural, demographic, legal/juridical, administrative, technical, ecological and psychological causes (see table 5). All of these causes are

also included in the model presented in figure 3: Political, economic, socio-economic, socio-cultural, demographic and ecological causes are part of the changing framework. Legal, administrative and technical causes are summarised under the institutional shortcomings.

Tab. 5: Causes of land conflicts

Causes	Examples
Political causes	<ul style="list-style-type: none"> • Change in the political and economic system, including nationalisation or privatisation of land • Lack of political stability and continuity, lack of predictability • Introduction of (foreign, external) institutions that are not popularly accepted • War/post-war situation, including a high number of former (now unemployed) military, para-military or guerrilla fighters – all accustomed to the use of violence • Political corruption, state capture and land grabbing • Political (and economic) support for big farmers to the disadvantage of poorer peasants
Economic and financial causes	<ul style="list-style-type: none"> • Evolution of land markets • Increasing land prices • Limited capital markets • Financial crises • Commercialization reshaping agrarian systems • Bilateral investment treaties hindering governments to implement their commitments made at the international level regarding responsible land governance • Inadequate benefit sharing of public projects • Insufficient compensation in the case of expropriation
Socio-economic causes	<ul style="list-style-type: none"> • Poverty and poverty-related marginalisation/exclusion • Extremely unequal distribution of power and resources (including land) • Lack of microfinance options for the poor
Socio-cultural causes	<ul style="list-style-type: none"> • Destroyed or deteriorated traditional values and structures • Rejection of formal institutions – up to a state of general rule breaking being socially acceptable (e.g. not paying tax, building without permit, not respecting boundaries or prescribed uses etc.) • High level of crime, corruption and illegal activities • Lack of awareness about land rights • Gender inequality • Low level of education and lack of information on institutions and mechanisms of land markets • High potential for violence • Abuse of power • Strong mistrust • Helplessness of those disadvantaged • Ignoring cultural values attached to property • Unregistered land transactions • Fraud by governmental administration and/or individuals • Patronage-system or clientelism • Strong hierarchical structure of society • Heterogeneous society, weak sense of community or lack of identification with society as a whole
Demographic causes	<ul style="list-style-type: none"> • Strong population growth and rural exodus • New and returning refugees

Causes	Examples
Legal and juridical causes	<ul style="list-style-type: none"> • Legislative loopholes • Contradictory legislation • Legal pluralism, lacking recognition of all legitimate land tenure rights • Traditional land law without written records or clearly defined plot and village boundaries • Formal law which is not sufficiently disseminated or known • Limited/no access to law enforcement and jurisdiction by the poor/disadvantaged • Insufficient establishment of rule-of-law-principles (e.g. lack of independent courts) • Insufficient implementation of legislation • Missing or inactive mechanisms for sanctions • Expropriation for non-public purposes
Administrative causes	<ul style="list-style-type: none"> • Insufficient implementation of formal regulations • Lack of clear definition of roles and functions of different institutions involved, resulting in overlapping mandates as well as absence of mandates • Centralisation (e.g. centralised land use planning) • Insufficient control over state land • Lack of communication, co-operation and co-ordination within and between different government agencies as well as between public and private sector (if existent at all) • Lack of responsibility/accountability • Limited access to land administration, especially for the poor and rural population (distance, illiteracy, costs etc.) • Insufficient information to the public • Limited/non-existent public participation, especially in land use planning and demarcation of concession land • Insufficient staff and technical/financial equipment at public agencies • Very low wages in the public sector • Low qualifications of public employees • Missing code of conduct • Lack of transparency • Administrative corruption
Technical causes	<ul style="list-style-type: none"> • Missing or inaccurate surveying • Missing or incomplete land register (e.g. destroyed or lost documentation) or one that does not meet modern requirements • Missing, outdated or only sporadic land use planning or planning not adapted to local conditions • Insufficient provision of construction land • Missing housing programs • Changes in surveying technology • Insufficient public participation • Badly designed resettlement projects • Delimitation of protective areas (for nature, water, landscape, wildlife etc.) not respecting existing settlements and human activities in these areas
Ecological causes	<ul style="list-style-type: none"> • Climate change • Natural hazards (droughts, floods, storms etc.)
Psychological causes	<ul style="list-style-type: none"> • Fear for one's existence • Lack of self-esteem • Loss of identity • Collective suffering • Desire for revenge • Thirst for power

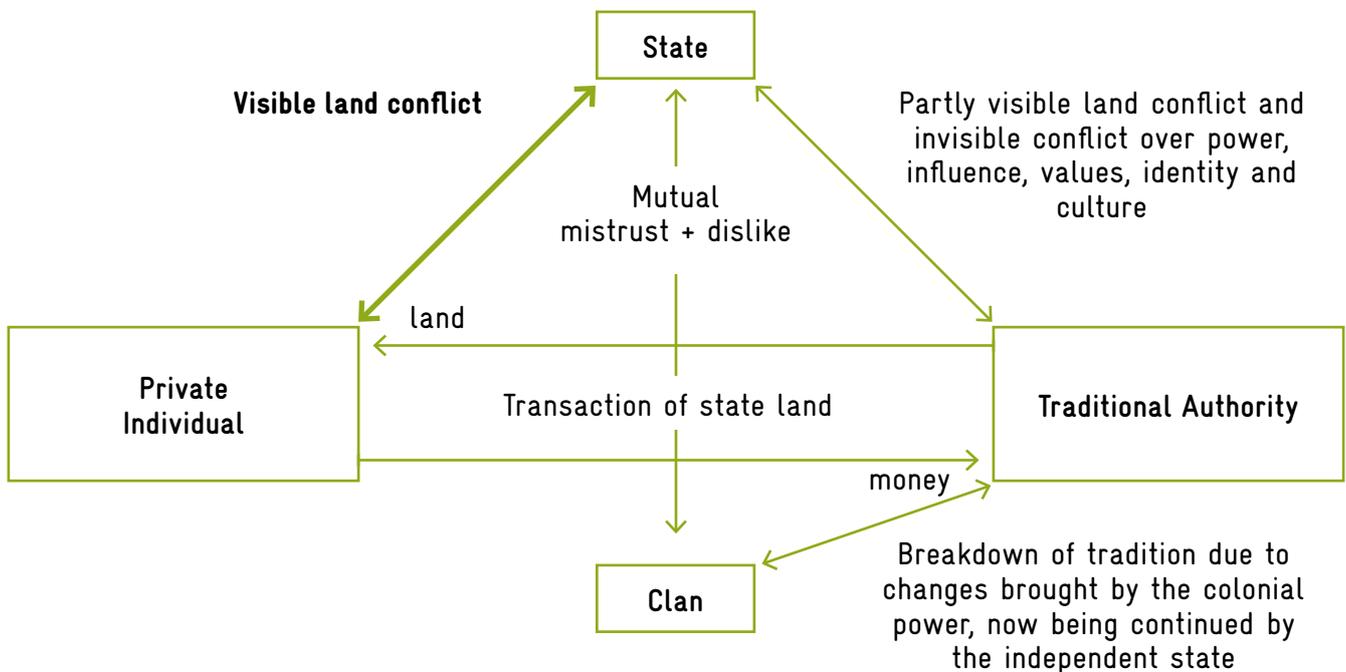
Source: Wehrmann 2005

Underlying conflicts

Although land is always the central and obvious conflict issue, land conflicts often disguise other societal conflicts. They are often just the visible part of a more serious conflict, which is rooted much deeper in the society and its history. Very often land conflicts only reflect the general inequality or unfair distribution of wealth, voice and power in a given society and/or the discrimination against certain groups, such as women or ethnic minorities. In these cases, it is crucial to tackle the main problem and not only to solve the land conflict; new conflicts will arise again and again as long as the bigger conflict continues to exist.

Some very striking examples of this are the land conflicts due to legal pluralism found all over sub-Saharan Africa. A quite common praxis is the sale of state land by customary authorities who claim customary rights over the same land. Although fully aware that they are not entitled to sell the land (though in some cases they are entitled to use it and/or to hold it as a trustee), they do so, thus showing their lack of respect for the state as much as for their clan. The land conflict here is only the visible part of a traditional culture falling apart and a modern state not being accepted by the traditional society, in particular by their leaders (see figure 4).

Fig. 4: The broader conflict



Source: based on Wehrmann 2005

The same applies the other way round when governments sell state land over which the local population claims customary rights which the government refuses to recognize. In this case, the state/government does not accept the traditional society and their institutions.

In both cases, the conflict is as much about competing (land tenure) systems as it is about land.

Factors increasing the level of violence of land conflicts

Evidently, it depends on the parties involved how violent a land disputes becomes. However, there are a number of factors that can contribute to an increase of the level of violence due to land conflicts (Huggins and Clover 2005, cited in Hazen 2013 extended):

- Poor governance
- High rate of discrimination
- Failure of the state to provide basic security
- High rate of unresolved grievances over land access and land use
- Presence of violent actors (e.g. drug mafia, violent entrepreneurs, violent latifundistas etc.)

2.3 Consequences of land conflicts

Land conflicts have negative effects on individual households as well as on the nation's economy. Typical consequences are:

- Loss of property for one or several conflict parties – eventually creating homelessness, poverty or famine
- Loss of homeland
- Change in lifestyle
- Physical injury or death
- High costs for attempts at conflict resolution
- Delayed land development
- Reduced investment
- Reduced tax revenues
- Reduced confidence in the state, reduced respect of state institutions
- Increased mistrust between conflict parties
- Social and political instability
- Destroyed landscapes
- Reduced biodiversity

Land conflicts implying physical or economic displacement have severe impacts on people's lives; in particular, in rural areas they often result in the loss of access to natural

resources and agricultural land which causes hunger and nutrition insecurity. Evictions in urban areas may affect access to informal sector activities as resettlement areas are often too far from where informal economy takes place. In both cases, housing is affected and often, displaced people need to completely change their lifestyle, feel uprooted and experience a deterioration of their livelihoods.

Sometimes land conflicts turn violent. Forced evictions are generally violent and may cause physical injury or even death. Conflicts between two neighbouring communities or between state/investor and local community can also cause physical injury and death. Even boundary conflicts between neighbours and corruption cases can turn violent and sometimes fatal.

In recent years, land conflicts become increasingly violent. Among those being killed, there is an increasing number of land rights activists. In 2015, 185 land rights and environmental activists were killed for their activities (global witness 2016). Between 2004 and 2014, the world lost at least 888 people fighting for recognition of their lands and livelihoods, and countless more have been threatened, abused, and intimidated (Rights and Resources Initiative 2016).

Tab. 6: People killed in communal conflicts over land or land-related resources in Africa, 1999-2011

Country	Year	Groups	Number of people killed in clashes over land
Democratic Republic of the Congo	1999	Hema, Lendu	5,000-7,000
	2002-03	Hema, Lendu	4,269
	2007	Bena Kapuya, Bena Nsimba	25
Ethiopia	2002	Afar, Issa	75
		Anuak, Dinka	35
Dizi, Surma		35	
Ogaden, Sheikhal		435	
	2009	Borana, Gehri	300
Kenya	2010	North-eastern groups	179
	2011	North-eastern groups	370
	2012	Orma, Pokoma	>100
Sudan	2007	Didinga, Toposa	> 50
		Lou Nuer, Murle	67
	2009	Lou Nuer, Murle	> 1,000
	2011	Lou Nuer, Murle	> 600
Uganda	2003	Bokora Karimojong, Pian Karimojong	30
		Bokora Karimojong,	133
	2007	Jie Karimojong	
	2009	Karimojong groups	> 50

Source: Hazen, Jennifer M. (2013)

Land conflicts affect different groups in different ways. Not only do they generally have a stronger impact on the livelihood of the poor than that of the rich, but they also have different impacts on men and women, urban and rural populations, farmers and pastoralists etc.

Box 13: Impact of land conflicts on women – an example from Kenya

In Nakuru District, thousands of families have been internally displaced as a result of land conflicts within the past ten years. The families settling in urban areas did not only contribute to additional land conflicts there, but also had to find new sources of income as the majority of Kenyan families are **de facto** headed by a woman who mainly depend on farming which became impossible to continue in the new (peri-urban) setting due to the lack of own land. Although women discovered other means of earning a livelihood, such as hawking, farming on rented land, doing domestic work or prostitution, and proved to be more innovative and capable in dealing with their changes in circumstance than men, they were not satisfied at all. To them, owning land (even if it is only indirectly through their husband or another male relative) is very important and they would prefer farming on their own land than what they are doing today. Their being displaced from their land has caused them a lot of social problems due to family disintegration. Land is therefore of great importance to family welfare and the women value it, not for wealth accumulation, but as social commodity. Therefore, despite being more innovative and capable than most men in dealing with the post-conflict situation (many men simply turning to alcohol), women feel more vulnerable in case of land conflicts as they are less socially or financially independent than they had been before.

Source: Kariuki 2005

2.4 Classification of land conflicts

Land conflicts can be classified according to their social dimension. This is particularly relevant when it comes to conflict resolution. One possibility of classification that conflict research offers in this regard is the distinction according to the social level at which a conflict takes place: intrapersonal, interpersonal, intra-societal or inter-societal/international levels. While in the case of land conflicts the intrapersonal level can be ignored, the other three levels are very useful for the purpose of classification. Land conflicts within a country will then occur at either the interpersonal or the intra-societal level (see table 7).

Another quite similar form of conflict classification, also based on the social dimension of the conflict, distinguishes between micro-societal, meso-societal and macro-societal dimensions. While the micro-societal dimension is equivalent to the interpersonal level, the other two allow for a more precise classification of intra-societal conflicts (see table 7).

The classification of land conflicts according to their social dimension illustrates the high number and diversity of intra-societal land conflicts compared to interpersonal land conflicts (which, however, does not say anything about their absolute numbers). While in most cases interpersonal land conflicts can be addressed by existing formal or informal

conflict resolution bodies, intra-societal conflicts are much more difficult to tackle – mainly because conflict resolution mechanisms at the higher level are part of the problem.

2.5 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

- Types of land conflicts
- Areas of land administration and management needed to secure and regulate property rights to minimize land conflicts
- Interdependency of land conflict causes
- Underlying (invisible) conflict
- Consequences of land conflicts
- The social dimension of conflict

Questions for discussion

- How do shortcomings in land administration and land management contribute to land conflicts?
- Why are land conflicts at the inter-personal level generally easier to solve than those at the intra-societal level? Brainstorm on adequate institutions and mechanisms to solve land conflict of a) micro-social dimension, b) meso-social dimension and c) macro-social dimension.

Exercises

E 3: Think of one land conflict you are well familiar with and identify the conflict parties, their positions and interests. You may also want to reflect on their fears, desires and material as well as emotional needs.

E 4: List the land conflicts that you know and identify their consequences. Distinguish between the consequences for the parties involved as well as for the state and the general public.

Further reading

› Wehrmann, B: Landkonflikte im urbanen und peri-urban Raum von Großstädten in Entwicklungsländern. Mit Beispielen aus Accra und Phnom Penh. Urban and Peri-urban Land Conflicts in Developing Countries. Research Reports on Urban and Regional Geography. Vol. 2. Berlin 2005.

Tab. 7: Classification of land conflicts according to their social dimension

Level	Dimension	Types of land conflicts (examples)
Interpersonal level	Micro-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between neighbours • Ownership conflicts due to inheritance conflicts • Occasional multiple sales of private property by individuals without administrative assistance and without harming third parties • Individual occupation of private land • Building extensions on the private land of others • Illegal lease/sale of someone else's private land
Intra-societal level	Meso-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between tribes or villages • Illegal sale/lease of communal land/tribal land • Illegal allocation of state land by private individual • Group invasion of private land • Land use conflicts between farmers and pastoralists (e.g. animal corridors due to transhumance) • Occasional building extension on state land • Occasional illegal use of state land • Illegal use of one's own land • Violent attacks on property
	Macro-social dimension	<ul style="list-style-type: none"> • Ownership conflicts due to legal pluralism • Land grabbing • Illegal sale/lease of state land • Evictions (by force) by governmental authorities • Improper land privatisation • Land use conflicts between private and public utilisation due to a general disregard of land use regulations by a majority of people • Expropriation without compensation • Illegal acquisition and sale of someone else's private property by individuals, supported by corrupt public agencies or courts • Multiple allocation of particular plots by officers working at the land registry

Source: Wehrmann 2005

3. ANALYSING LAND CONFLICTS

A first step in land conflict resolution is a thorough analysis of the conflict. It is necessary to have a clear and deep understanding of the special characteristics of the particular conflict, the causes of the conflict and the actors involved (including their positions, interests, needs, fears and desires)

as well as their relations with each other. Depending on the complexity of the conflict, framework conditions and the historical development of the conflict may have to be identified as well.

Box 14: Need for thorough land conflict analysis, the case of the Peruvian Amazon



Indigenous community Alto Konkompera demanding land titling. Lamas, San Martín, Peru, 2016

More than 40 years after the first communal land titles were issued in the Peruvian Amazon, about one third of the region's approximately 2000 indigenous communities have not yet achieved legal security of their territories.

These communities are confronted with many different types of claims to their land or natural resources by a diversity of stakeholders. The land titling processes, which with support from international (also German) development cooperation have finally resumed since 2016, have to deal with these existing claims before starting the titling process to avoid conflict escalation and to make the legal recognition of indigenous community land possible.

The problems start with the fact that in some regions, individual titles have been issued to members of indigenous communities, which nowadays make it difficult to claim communal land rights. Then, there are the "typical" tensions over territorial claims and boundaries by neighbouring communities, which are more difficult to solve if they occur between indigenous and non-indigenous migrant communities who were able to settle in the area due to the delays in indigenous land titling. Finally, the Peruvian state has been giving out oil, gas and forestry concessions in the Amazon, and protected areas have been and are being created by both national and regional authorities without due consideration of indigenous claims over the same territories which are still in the process of legal recognition.

In this situation, in order to identify the most suitable land conflict prevention and resolution strategy, the first step of any titling project needs to be a solid diagnosis, analysis and classification of the different types of (potential) land disputes affecting individual indigenous communities. Such classification needs to include the social dimension (see table 7) and the type of actors involved, with particular respect to their power and influence. Local conflicts, especially those between neighbouring indigenous communities, can often be mediated before the titling starts, involving indigenous leaders from their own regional organizations (see box 23). In contrast, the overlaps with concessions and protected areas need an in-depth analysis of the relevant legislation and interinstitutional strategies since responsibilities go far beyond the local level and involve several sectors/ministries as well as private investors.

Source/Photo Credit: Sondra Wentzel, GIZ Global Programme Responsible Land Policy – Peru

This chapter provides a checklist with which to identify the characteristics or indicators of conflict as well as tools to structure and visualise information on the conflict. In addition, it proposes a way to re-enact the case in order to determine the actors' motivations and better understand the individual parties.

3.1 Type of information/data needed for land conflict analysis

Information on the characteristics of conflicts

In order to be able to better understand a (land) conflict, it is useful to first identify its general characteristics:

- Is the conflict only about land or about other (scarce) resources as well, such as water?
- Is the conflict only about land or does it include a dispute about norms and values?
- Does the land conflict include disputes over human rights, such as the human right to adequate shelter, the right to food or the right to self-determination?
- Is the conflict divisible or indivisible? Only in the case of divisible conflicts can a win-win solution be achieved. With respect to land conflicts, what needs to be determined is whether the quarrel of the conflicting parties is over the same or indivisible property rights (e.g. both parties wanting exclusive use of the land; or one party wanting to exclude the other – while that party wants

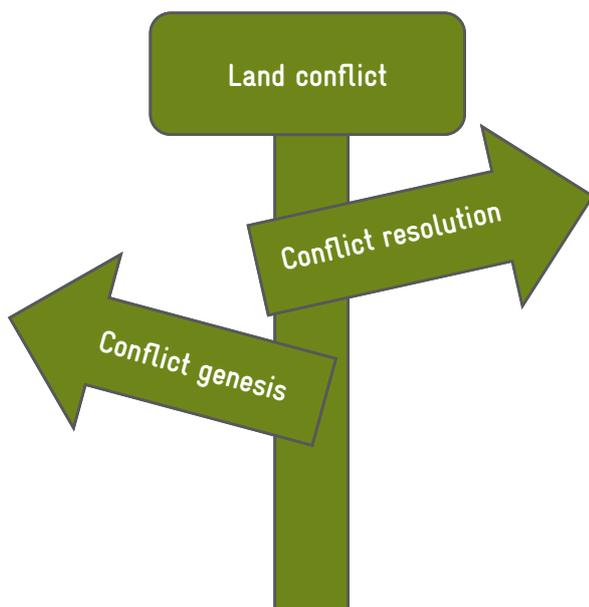
to have a right of way) or is whether the conflict is over different or divisible property rights (e.g. one party wants to use the land while the other one wants to have control over how the land is used or two parties want to use the same land at different times).

- What is the social dimension of the conflict? Is it an interpersonal conflict, an intra-societal one at the meso level or an intra-societal one at the macro level (see 2.4)? An exact appraisal of the conflict's social dimensions helps to inform the path for a suitable form of resolution (see 4.2).
- Is this a latent or a manifest conflict? Latent conflicts most often need to be dealt with more sensitively in order to avoid unnecessary escalation; they also often need to be made visible. This applies mainly to countries where conflict-avoidance or conflict-denial strategies are prevalent (see 4.2.7).
- Is the conflict symmetric or asymmetric? That is, do the parties have the same power and influence in society or is one side (much) more powerful than the other (see 1.3).
- Finally, an honest appraisal of whether the conflict is antagonistic or not must be made. Are the parties irreconcilable and unforgiving or are they willing to find a compromise? Many tools for conflict resolution such as mediation only work if the conflicting parties are open to and co-operative in achieving a trade-off.

Information on the two or more sides of a conflict story and its development over time

At first glance, most land conflicts seem to be simple and straightforward; some really are. Many, however, are not that easy to comprehend. The difficulty generally arises when the second party begins telling its side of the story. Quickly, contradictions between the two descriptions of the same land dispute arise and it becomes difficult to tell who is right and who is wrong. Therefore, analysing a land conflict always requires listening to all parties involved, some of whom are often not easy to identify. To understand who is part of the problem, it can be useful to look at the land conflict from an historical or chronological perspective. This can be done with the help of timelines. These describe the subjective perspectives of the different actors at different times. This is generally done by drawing a table that places the opposing points of view in columns, side by side. Following the idea of learning histories, this can be complemented by another column in which contradictions or turning points can be highlighted. Another category which may be added is the general frame conditions of the conflict, such as changes in the political system, economic crises etc. Box 15 gives an example based on the problem of illegal acquisition of state land in peri-urban areas in Turkey, a phenomenon known as *gecekondus*.

Land conflict - conflict genesis - conflict resolution



Box 15: Two sides of a land conflict – the example of the *gecekondus* (timeline, learning history)

Background information on *gecekondus*

Gecekondus means “put up over night” and refers to the shacks, houses and in present days even apartment buildings that have been built “overnight” on public land in the peri-urban areas of Turkish cities. *Gecekondus* are legitimated, but they are not legal – a common phenomenon of land conflicts. In Turkey, throughout history, sovereignty over land belonged to the Divinity; mortals only used the land temporarily and therefore could rely on local approval and local legitimacy without requiring adjudication from some form of formal legal status or conditions. In 1926, though, a property rights system based on Roman law was introduced, which required a complete change of attitude towards the relationship between different people in regard to land. This change in attitude is rooted in differences between the *Shari’a*, which places emphasis upon local testimony, and Roman law which relies on documented rights (Balimir 2002).

Year	General events	Events as experienced by government	Events as experienced by <i>gecekondus</i> dwellers	Comments
1950s	Turkey experiences industrialisation, mechanisation of agriculture, urbanisation and improved transportation.	1928 Municipalities Law	There are fewer jobs in agriculture but new urban jobs. Rural citizens move to cities and settle on unused available land as their forefathers did when they needed land.	A lack of consideration is made concerning how the economic changes leading to migration will result in a need for additional urban shelter.
1960s	Many migrants to the city cannot find formal housing. The government invests in infrastructure. Financial crisis arises.	Too many inhabitants place unmanageable burdens on cities. 1966: <i>Gecekondus</i> Law	The government failed to provide adequate land or housing – inviting migrants to the cities but not making necessary provisions.	Problem: workers are in demand but no land is provided for them. Too many job seekers arrive at the same time.
1970s	The government is weak in regard to urban control.	Migrants illegally build on state land. They bypass formal purchase or lease of land.	The government does not provide migrant settlements with proper infrastructure.	There are contradictory expectations.
1980s	<i>Gecekondus</i> stretch over entire districts. Some are formalised, while others are dismantled.	Illegal settlements on state land have to be curbed.	Migrant settlers are illegally evicted without compensation.	Both sides consider the other to be acting illegally.
1990s well into the 21st century	The situation of the 80s continues with negative impact on urban structures and living conditions.	Government loses a great deal of money in court litigation.	A number of people are attacked by the police, some fatally.	Violence erupts: the conflict has reached the level of violence.
early 21st century	Some city governments, such as the one of Ankara, strive for peaceful modernisation by issuing titles to the people living in <i>gecekondus</i> . Also, private investors buy the land and build apartment houses on it, giving some apartments to the previous owner.	The problem was too big to be solved by the police.	Titling and <i>yapsat</i> increased the social status of people living in <i>gecekondus</i> .	In some cities, the conflict was (partly) solved through local government titling programs and private sector investment.

Information on conflict issue(s) and the property rights under dispute, the cause(s), and consequences

The description of the conflict done separately by both parties, generally, allows **identifying the conflict issue**.

Two questions need to be answered in this regard:

1. Is the conflict really/primarily about land?
2. If so, are both/all parties interested in the same property right?
3. If they are interested in the same property right, is the conflict divisible? If they fight for different property rights, do they exclude each other or are they compatible with each other?

Further discussion and analysis can lead to the **identification of causes**. This requires a thorough analysis of the context in which the land conflict takes place. It depends a lot on the conflict issue, on what aspects this analysis will focus and how it will be done. In many cases, it will require an analysis of the land administration and management framework, including the policy framework, the legal framework, the institutional set-up, procedures

and their implementation, including aspects of capacity and governance. The table presented in figure 1 under 2.2 can be used as a matrix for the analysis of conflict causes.

In addition, the **consequences of the land conflict** – its risks and potentials – may be identified. This is of particular importance if awareness of the conflict still needs to be created, e.g. among politicians and other decision makers, when conflict resolution depends on their intervention, such as changes in the legal framework or change in business practice.

The collected information can be gathered in a simple matrix or table. Any relevant additional information can be added easily to it. It helps identifying which information is already available and which is still missing. Typical issues to be summarized in such a conflict matrix are: the type of conflict; the conflict issue; the property rights under dispute; its manifestation; stakeholders involved; causes; possible additional risks or dangers; potential; and possible solutions (see table 8). The matrix can be filled in further at a later point of conflict analysis when additional information becomes available.

Tab. 8: Conflict matrix – the case of an illegal sale of state land

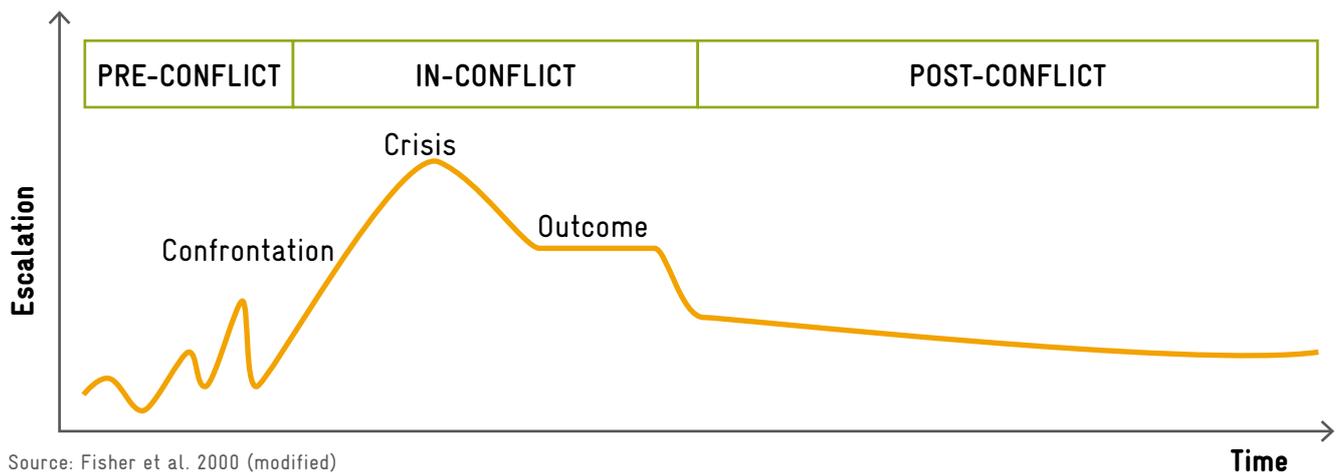
Type of conflict:	Illegal sale of state land by public official
Conflict issue:	Use and management of state land perceived as common property by local population
Property rights under dispute:	Right to use and to generate income (local population, new owner), right to manage (state/local community), right to exclude (new private owner)
Manifestation of conflict:	Conflict escalated into violence when new private owner stopped local population from using the land (forest which was used for hunting, gathering, firewood collection, bee keeping etc.) – villagers pledged revenge
Stakeholders:	Public official, new owner, local population, judge, environmental NGO
Causes:	Misuse of position, corruption, lack of demarcation of state land, a lack of recognition and registration of common property by the state (who considers it state property)
Risks:	Upheaval and violent attacks by the villagers – brutal responses from the investor.
Potential:	To introduce/improve good governance
Possible solutions:	Sanctions for corrupt official and retrieval of state land (difficult to achieve); User contract between local population and private investor (could become a win-win solution providing long-term security for the villagers and reducing risks of sabotage for the investor)

Information on the current stage of the land conflict and the level of conflict escalation

The identification of the current stage of the conflict and the level of conflict escalation provides useful information on

possible methods of dispute resolution (see figure 13). Figure 5 shows the typical stages of a conflict with their levels of escalation.

Fig. 5: Stages of conflict



Source: Fisher et al. 2000 (modified)

The stages of conflict reflect the changes in activity, intensity, tension and violence over time, from the first moments of tension to their resolution; resolution can be anything from a win-win solution to the total destruction of the enemy, which often results in self-destruction as well. Although each conflict has its own dynamic, each one goes through at least three phases: pre-conflict, in-conflict or crisis, and post-conflict. In conflict management, these three phases are looked at in even more detail. Fisher et al. (2000), in fact, identify five phases:

- **Pre-conflict:** A conflict generally starts with an incompatibility between the goals of two or more parties, which has the potential to lead to open conflict. At this stage, the conflict is hidden from general view, although one or more parties is/are probably aware of the potential for confrontation. There may be tension between the parties who often try to avoid each other at this point.
- **Confrontation:** The second phase of a conflict is more open and marked by occasional fighting or other low levels of violence. Each side is looking for resources and supporters. Polarisation between the parties increases.
- **Crisis:** At this level the conflict is at its peak. When the tension and/or violence are most intense a conflict can easily get out of control. There is now rarely any communication between the parties, who are fighting with and publicly accusing each other. In the worst of cases, the different sides are at war.

- **Outcome:** One way or another, the crisis will end. One party may defeat the other or give in, both parties may agree to negotiate, or a third party may impose a settlement. In any case, tension and violence decrease but the conflict is not yet settled.
- **Post-conflict:** At this stage, relations have become more normal again. However, if the roots of the conflict have not been adequately addressed and if the incompatible goals still prevail, chances are that the situation will turn again into a pre-conflict.

It is very important to identify the current stage of the conflict in order to be able to choose the appropriate stage-specific intervention or dispute resolution (see 4.2). However, if a conflict is still in the pre-conflict or in-conflict stage, another analysis can be even more useful to help identify the level of escalation, which in turn provides more detailed information on possible approaches to solve the conflict. Friedrich Glasl's (1999) model of conflict escalation has nine stages grouped into three levels, each of which contains three stages (see figure 6). In the first level, both parties can still win (win-win). In the second level, one of the parties loses and the other wins (win-lose) and in the third, level both parties lose (lose-lose).

1st Level (Win–Win)

Stage 1 Tension: Conflicts start with tensions, e.g. the occasional clash of opinions.

Stage 2 Debate: From now on the conflict parties consider strategies to convince the counterparty of their arguments.

Differences of opinion lead to a dispute. The parties try to pressure each other and think in terms of black and white.

Stage 3 Actions instead of words: The conflict parties increase the pressure on each other in order to assert their own opinion.

Discussions are broken off. No more verbal communication takes place and the conflict is exacerbated. Sympathy for “them” disappears.

2nd Level (Win–Lose)

Stage 4 Coalitions: The conflict is exacerbated by the search for sympathisers for one’s cause. Believing one is right, the focus is on denouncing the opponent. The issue is no longer important; one has to win the conflict so that the other loses.

Stage 5 Loss of face: The opponent is to be denigrated. Trust is (completely) dissolved. Loss of face means in this sense the loss of moral credibility.

Stage 6 Threat strategies: The conflict parties try to gain absolute control by issuing threats to showcase their own power.

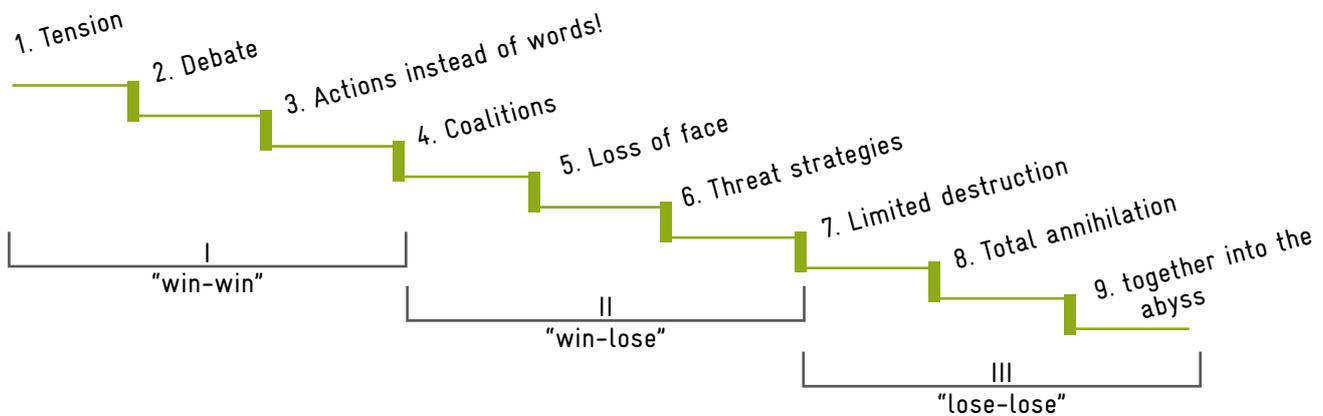
3rd Level (Lose–Lose)

Stage 7 Limited destruction: One tries to severely damage the opponent with all the tricks at one’s disposal. The opponent is dehumanized to justify ethically questionable course of action. From now on, limited personal loss is seen as a gain if the damage to the opponent is greater.

Stage 8 Total annihilation: The opponent is to be annihilated by all means.

Stage 9 Together into the abyss: From this point personal annihilation is accepted in order to defeat the opponent.

Fig. 6: Friedrich Glasl’s model of conflict escalation



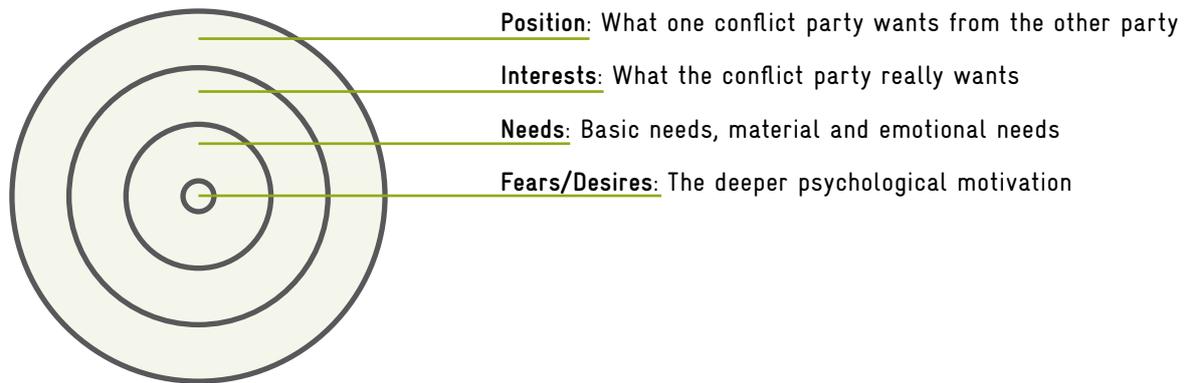
Source: Glasl 1999

Information on the conflict parties’ positions and interests and eventually also their underlying needs, fears and desires

Only focussing on the parties positions will rarely solve a (land) conflict. As elaborated under 2.2 when explaining the causes of land conflicts, the positions are often the same: “I want the land. The land is mine! Give me the land.” The position only shows what one conflict party wants from the

other party. It is the interest of each party that tells us what they really want, e.g. to grow food and eat it, grow food and sell it, build a house to live in it, build a house to rent or sell it, sell the land in future... Identifying the interests behind a position and eventually even the underlying needs, fears and desires is like peeling an onion, therefore, the (visualization) tool is often referred to as a *conflict onion* (see figure 7). The identification of interests and needs is typically done during a mediation exercise (4.2.4).

Fig 7: Conflict Onion



Source: Fisher et al. 2000 (expanded)

Tab. 9: Actors and their positions, interests, needs, desires and fears – The case of multiple sales of land in Accra, Ghana (see 1.1 for a description of the conflict)

Conflict party	Position	Interest	Needs	Desires and fears
Real estate agent (who bought land from a former Anwahia chief)	"It's my land. Leave it to me."	To settle the conflict as soon as possible to be able to develop and resell the land.	Material need: to make money/do business.	Existential fear (if money and land are lost). Desire for wealth.
Home builder (who bought from the current Anwahia chief)	"It's my land. Leave it to me."	To keep the land to start building his house.	Material need: shelter.	Existential fear (if money and land are lost).
Anwahia chief (junior)	"It's no longer my business."	To not be bothered.	Material need: money.	Desire for wealth and status.
Katamanso chief (who lent the land to the former Anwahia chief)	"It's my land. Leave it to me."	To get back his land for his people.	Material need: the land of his people. Emotional need: the land of his ancestors.	Fear of loss of the love and respect of his people.

It can be helpful to summarize the positions, interests, needs, desires and fears in a table to gain an overview on the entire scenario and to identify if there are interests that are compatible with each other.

Once the interests, needs, desires and fears of the parties involved in the conflict have been identified, it becomes easier to find ways out of the conflict. Someone who wants money or status does not necessarily need this particular piece of land, or indeed any land at all. His desires and needs may be met in other ways. However, someone whose existence is in

danger because he has nothing other than this piece of land definitely needs land, although not necessarily this exact piece, so long as the alternative is located in an acceptable location (e.g. at an acceptable distance from formal or informal job opportunities). But if emotional needs are involved and people are especially attached to a given piece of land because it has a special meaning for them, this must be taken into account, which will probably mean that the person has at least a say in defining the kind of use and is ensured future access to it.

Information on the relationships between all actors involved in the conflict

Key in understanding a land conflict and a first step in identifying an adequate dispute resolution mechanism is to identify the relationships between all actors involved in the conflict. A distinction is generally made between alliance, competition, conflict and neutral relation. This can be complemented by strong or weak relation – be it alliance or conflict. One can also add the category of assumed alliance, conflict, competition etc. Any other type of relation can be added to correctly depict the conflict (for an example see figure 8).

Information on the conflict parties’ attitudes towards conflict resolution and their preferred dispute resolution process(es)

Crucial for the resolution of the land conflict is the identification of the conflict parties’ attitude towards conflict resolution and their preferred dispute resolution process(es). Attitudes towards conflict resolution include avoiding, competing, accommodating, compromising or collaborating. People’s attitudes towards conflict resolution can generally be derived from their behaviour and expressions (Sirait 2011). (For a range of dispute resolution options see chapter 4.) It is important to inform conflict parties about the availability of different forms of conflict resolution, their advantages and disadvantages and the costs and time involved. Conflict parties should also think of local modes of conflict resolution. All options should be compared and the conflict parties (separately) should make their preferred choice. If their preferences are not compatible, one could propose a dispute resolution process, which one thinks, corresponds best to both parties’ attitudes towards conflict resolution.

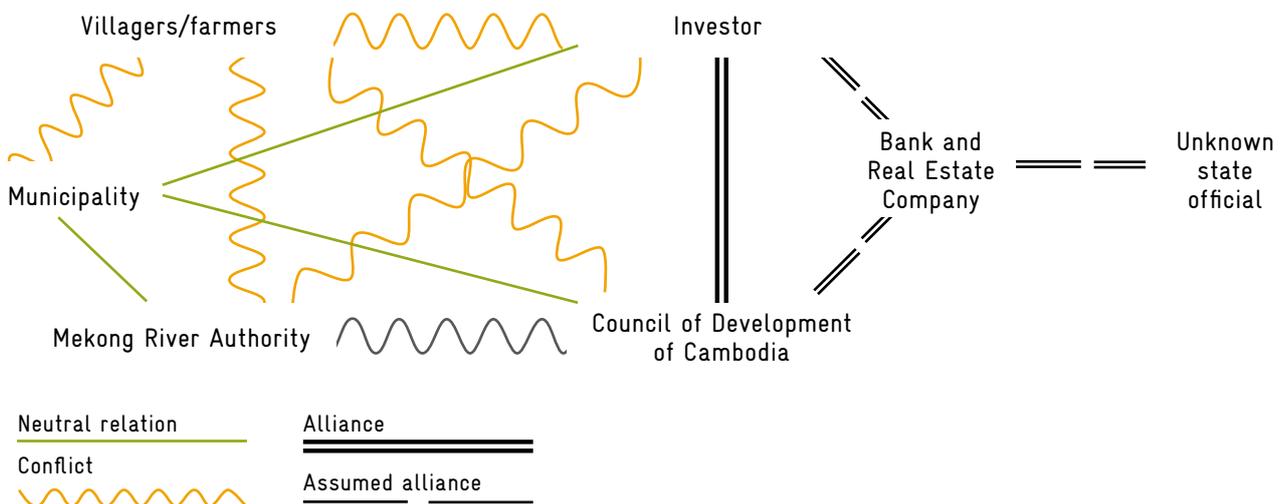
3.2 Tools to visualize (data on) land conflicts

Visualising a land conflict is especially helpful if the conflict is analysed together with one or even several of the conflict parties. Visualisation facilitates the discussion about the conflict, its causes and possible ways of approaching and resolving it. The two most rewarding issues to be visualised in this context are the causes and consequences of conflict – using a conflict tree – and the relations between the actors – by creating a conflict map.

A conflict tree raises awareness of the deeper causes of the conflict as well as its current and possible additional consequences. Therefore, it can be used to support decision-making by identifying the most urgent or most relevant causes to be addressed. The conflict tree does not provide additional information but it does help to reflect what additional causes might be at the root of the conflict.

In addition to a conflict tree, a conflict map can be used to illustrate the actors’ relations to one another. This allows for the identification of alliances as well as of potential blockers of a solution. Figure 8 shows the interrelations of the actors involved in the conflict over Diamond Island. A conflict map can be combined with a Venn diagram to provide additional information on the power/influence of actors and relationships between them. In a Venn diagram, the distances between actors or groups of actors symbolize how close they are. The size of an actor or group of actors (usually depicted by a circle) stands for the power or influence of this actor or group of actors.

Fig 8: Conflict map – the case of Diamond Island

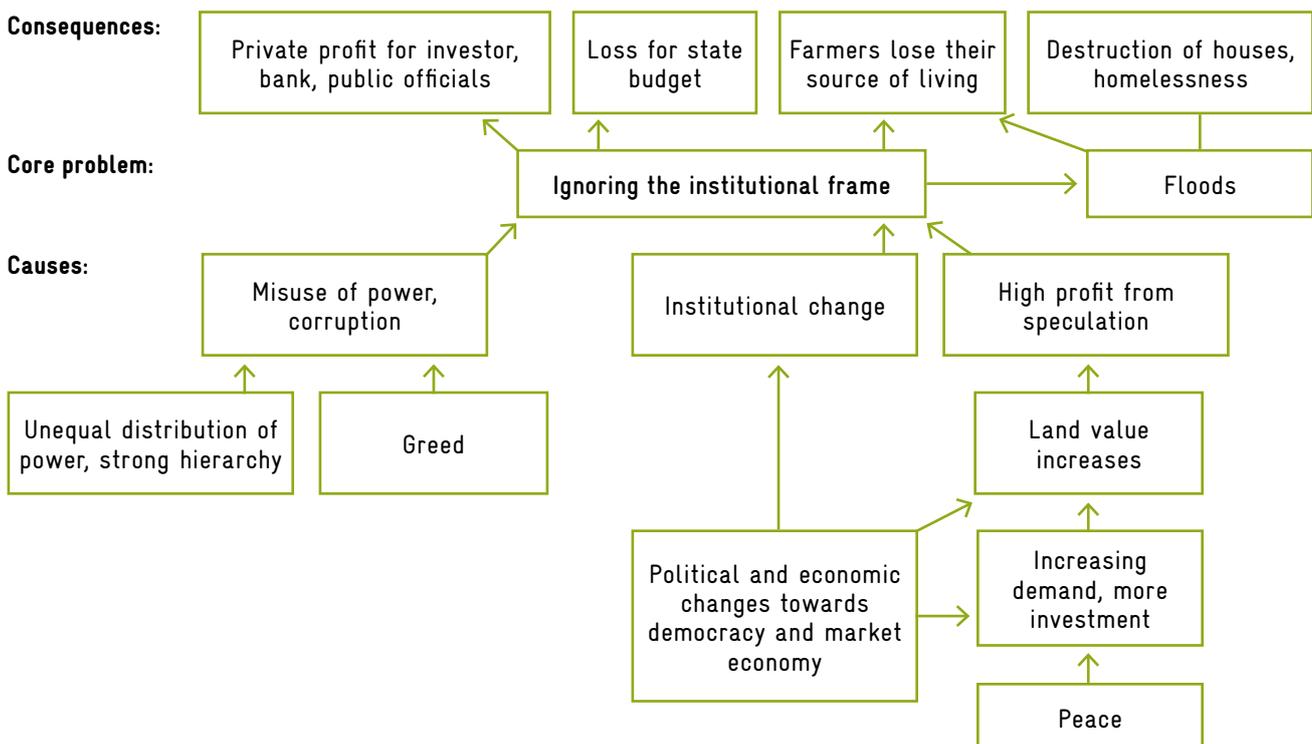


Box 16: Conflict tree showing core problem, causes and consequences – the case of Diamond Island in Phnom Penh, Cambodia

Background information on the land conflict at Diamond Island

At the turn of the millennium, Leprosy Island in Basack River next to Phnom Penh was renamed Diamond Island showing not only its sudden value but also reflecting the many facets of the conflict that surround it. The island is state property. In 1979, the chief of one of the districts facing it from one side of the river gave the land to a group of farmers to cultivate it collectively. The farmers appointed a village chief and have lived and worked there ever since. Suddenly, several additional actors appeared on the scene: An investor wanting to develop the island and sell luxury houses, to make a good profit. One of the local banks that is also known as real estate company wanted to do the same. Rumours suggested that the bank had already “bought” a lease contract for 99 years. The Mekong River Authority, on the other hand, insisted that the island had to be removed as it is creating floods upstream that can become dangerous for many people living along the river. The removal of at least part of the island would comply with the need of the Municipality of Phnom Penh to construct a dam along the river, for which the sand of the island could be used. They therefore favoured the partial removal of the island, leaving the remaining part to the investor. The Council of Development of Cambodia prepared to agree to the investor’s plans as soon as the flooding problem was solved. According to the 2001 Land Law, the land belongs to the farmers as they had been living on the land significantly longer than five years prior to 2001, which is the minimum time someone had to have occupied a piece of land to become the owner of it.

The conflict tree illustrates the key causes of the conflict: peace and the reintroduction of democracy and a market economy have contributed to an increase in land values. A major political or economic transition always creates institutional change and this means that there are – temporarily – loopholes in the institutional frame. In addition, while there is greed in any society, here it finds fertile ground to grow in the unequal distribution of power. The combination of openness for illicit practises, a weak institutional frame and the opportunity to make high profits from speculation results in large-scale disregard for rules and regulations. The core problem therefore is to be found in this wilful disregard for the institutional frame. Possible consequences of the conflict are economic, socio-economic and ecological ones, depending on how it is solved (Wehrmann 2005). [In the end, the local Bank and Real Estate Company developed the island.]



3.3 Toolbox I: Tools for land conflict analysis

Land conflict assessments can be distinguished into those assessments analysing an existing land conflict and those aiming to prevent future land conflicts. This chapter looks at land conflict assessments for land conflict analysis. Land conflict assessments for conflict prevention are dealt with under 5.5.4.

Conversations with the conflict parties as well as interviews with other relevant persons will be the main source in conflict assessments. For this purpose, a set of guiding questions can be prepared – having in mind the following key aspects to be identified:

- Characteristics of the land conflict
- Two or more sides of the conflict story and its development over time
- Conflict issue(s) and the property rights under dispute
- Conflict causes and consequences
- Current stage of the land conflict and the level of conflict escalation
- Conflict parties as well as their positions and interests and eventually also their underlying needs, fears and desires
- Relationships between all actors involved in the conflict
- Conflict parties' attitudes towards conflict resolution and their preferred dispute resolution process(es)

In addition, questionnaires can be prepared if it is important to gain an understanding of conflict perception from a broader group of people, e.g. in case of land grabbing, it is often necessary to identify the consequences for different groups of stakeholders, such as male smallholders, female smallholders, sedentary livestock keepers, nomadic livestock keepers, local populations not working in agriculture etc.

If the conflict is dealt with in the media, articles, TV and radio emissions can be useful as well. However, they should be handled with care as media is often influenced by the more powerful party.

There is not a specific order in which to address the different aspects. It may also not be possible to finalize one analysis completely at a given moment. Additional information from further analyses may add additional issues or change an initial perception.

Existing tools for conflict assessment can be used. Some of them provide very good guidance. They can be used as such or adjusted to local conditions. Examples of such tools are Rapid Land Tenure Assessment (RaTA) and Analysis of Disputants Mode (AGATA) presented below. Others, however, involve an extreme amount of data and the effort for

data collection and processing may bear no relation to the additionally gained information/knowledge/understanding of the conflict. Therefore, it is recommended to always adjust the chosen tool to the specific land conflict situation.

Tool 1: Rapid Land Tenure Assessment (RaTA)

Rapid Land Tenure Assessment (RaTA) helps to identify the following information/data on a given land conflict:

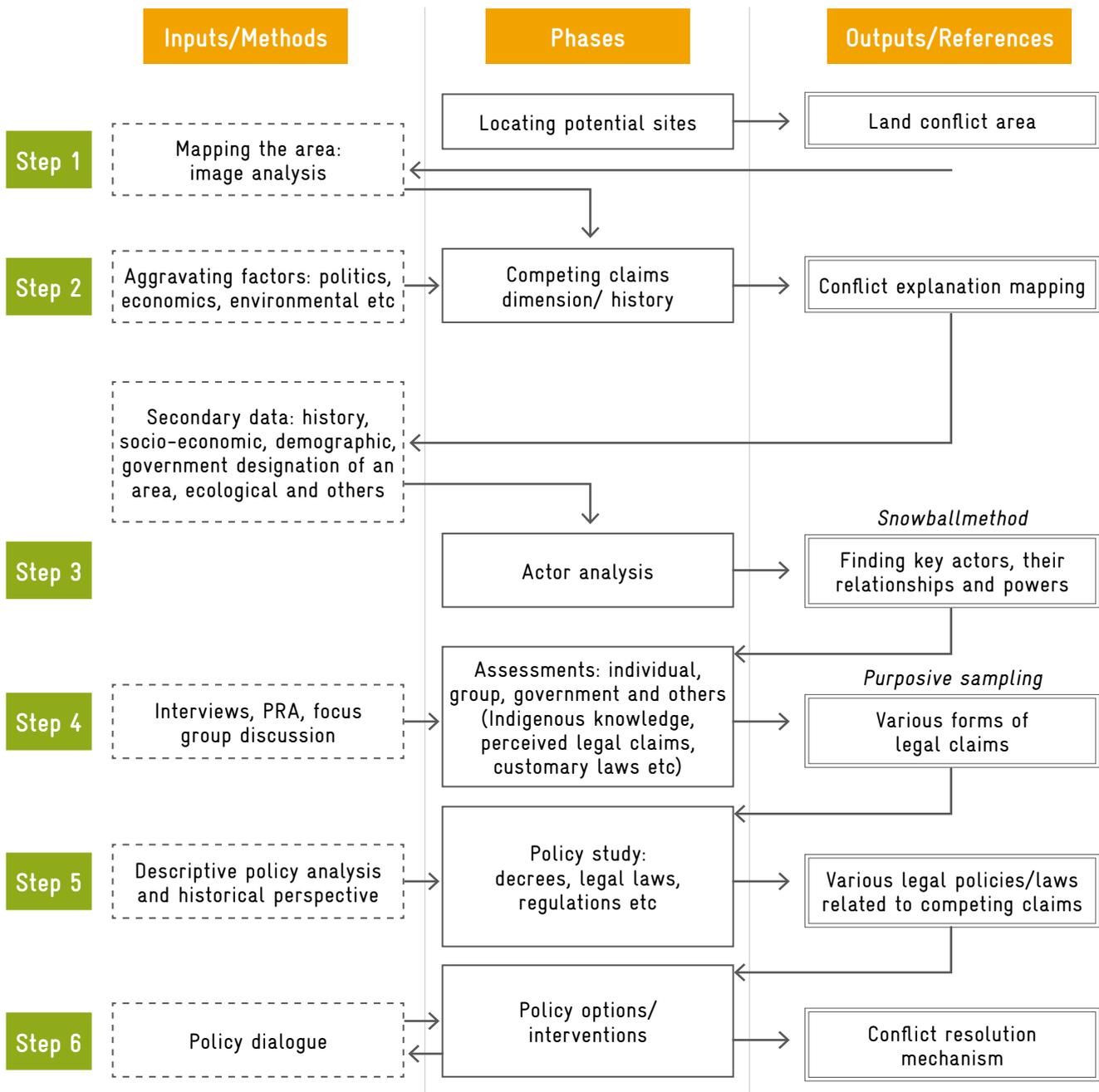
- Characteristics of the land conflict
- Conflict issue(s) and the property rights under dispute
- Conflict causes and consequences
- Current stage of the land conflict and the level of conflict escalation

Concept/Approach/Methodology (Galudra, G. et al. 2010): RaTA aims to seek and reveal the competing perceived historical and legal claims among the stakeholders who hold different rights and interests. Five objectives are used to engage land tenure conflicts:

1. Give a general description on land use and the linkages of the conflict to a particular context: political, economic, environmental etc.
2. Identify and analyse actors relevant for conflict resolution.
3. Identify various forms of perceived historical and legal claims by actors.
4. Identify the institutions and rules governing the management of natural resources and analyse the linkages of various claims to policy and (customary) land laws.
5. Determine policy options/interventions for a conflict resolution mechanism.

As an analytical framework, RaTA offers guidance on the important things in locating and obtaining initial data necessary for policy makers/mediators to develop conflict resolution mechanism based on policies. As a tool, RaTA consists of six steps (see fig. 9). Different techniques such as Participatory Rural Appraisal (PRA), stakeholders' analysis and exploration of legal policies/laws are amongst the methods that have been taken account in different phases of RaTA.

Fig. 9: The steps in RaTA analysis



Source: Galudra, G. et al. 2010

The Working Group on Forest-Land Tenure (2014) provides some more guidance on the six steps (modified by the author):

Step 1: Mapping of conflict area

A key question is: Where does the land conflict takes place? This kind of information can mostly be found at various websites, newspapers, official reports, television etc. Other alternative sources that should be considered are interviews with local NGOs, government officials or undisclosed reports from the government.

Step 2: Factors aggravating the conflict situation

This step describes the process of conflict and the driving factors based on regulatory, social and economic causes. Fundamental questions, which can be used when exploring these factors include:

- When did the land tenure conflict begin?
- How did the conflict begin?
- Can you describe the driving factors that led to the conflict?

Step 3: Actor/Stakeholder analysis (see tool 2 below)

This step determines who is involved in the conflict and the relationship among the parties as well as their interests. RaTA uses snowball sampling in identifying the actors in this conflict. The main questions are:

- Which actors are directly involved or have influence in this conflict?
- How do the interested parties compete, interact and connect to one another?

RaTA uses two categories of actors (stakeholders), namely actors who claim their rights over natural resources and actors who support, either intentionally or unintentionally, other claimant parties.

Step 4: Data collection and analysis (interview, focus group discussions)

This step focuses on the collection and assessment of data on competing claims among the various actors. Here it is important to identify the exact nature of the claims. Is it (only) about land? Is it also about other natural resources and/or human rights? Is there an underlying conflict, e.g. about norms, values etc.? Which property rights are under dispute? Who wants and needs which property rights? Is the conflict divisible? Is the conflict symmetric or asymmetric? For specific questions to be asked, see tool 3; for methodologies of data gathering, see tool 15 and 16.

Step 5: Policy analysis/study and legal assessment

The policy study seeks to analyse the role of policy on conflicts over natural resources, and also to provide answers to how the conflict can be resolved. Analysis of policy documents, which is an important part of the policy analysis, may include:

- Gathering of policy documents, laws and by-laws related to land access, land rights and land tenure
- Cataloguing of the content based on the purpose of the analysis
- Highlighting inconsistencies, loopholes and overlaps between gathered policy documents, laws and by-laws as well as analysing their legitimacy, consistency with human rights and degree of implementation/enforcement
- Comparing of policy and legal documents with the positions of key stakeholder groups for land claims
- Identifying conflicts caused by these policy documents, laws and by-laws
- Identifying mechanisms for dialogues between stakeholders for reconciliation

Remark: Legal assessment includes the identification of all relevant laws and by-laws, their analysis in terms of consistency, loopholes, overlaps, legitimacy and consistency with human rights, and the analysis of their implementation/

enforcement and identification of causes for lack of implementation (e.g. costs, undue complexity, lack of adaptation to fit the needs, lack of legitimacy etc.).

Step 6: Policy dialogue

This step seeks to define policy options/interventions for conflict resolution mechanisms. Some basic questions are:

- Are there any existing policies/laws governing the management or resolution of land disputes?
- What types of conflict need to be addressed?
- What level of intervention is required?

Recommended reading:

- Galudra, G. et al.: RaTA: A Rapid Land Tenure Assessment Manual for Identifying the Nature of Land Conflicts. Published by World Agroforestry Centre. Bogor 2010.

Tool 2: Land conflict stakeholder analysis

“A stakeholder [of a land dispute] is someone with an interest in the conflict. It may be a property or economic interest, or a political, social or even religious interest. Stakeholders are not limited to those vocally involved in competition and conflict over land resources and case should be taken to look at all groups [and individuals] with interest in or dependence on those resources” (Bruce 2011: 57).

A stakeholder analysis is not always necessary. In some cases of inter-personal land disputes, the stakeholders are clear. However, attention should still be paid to the issue, to avoid assuming they are clear. In a boundary or inheritance conflict a third party may exist that is pushing one of the conflict parties into the conflict. In the case of intra-societal land disputes, a stakeholder analysis is always recommended as these conflicts often involve a significant number of stakeholders.

Data gathering for such a stakeholder analysis can be done by different means, including (Bruce 2011 modified):

- Key informant interviews
- Large group meetings
- Focus group meetings
- Community assessments using Participatory Rural Appraisal (PRA) methods, such as participatory mapping of conflicts over different types of land (see figure 10) and community boundary walks
- Household case studies of a variety of households (land-owning, landless, renting land, farmers, livestock-owning, male-headed, female-headed, child-headed etc.)

For stakeholder analysis, the following tools can be used:

- Conflict onion
- Conflict map
- PRA-based land conflict matrix

Fig. 10: PRA-based land conflict matrix

Disputants Type of land over which there is conflict	Between villagers	With neighbouring villagers	With strangers (including private domestic and foreign investors)	With the state (at any level)
Agricultural land				
Pastures				
Forests				
Construction land				
Open space				
Other land				
(Land with) Water				

Explanation: In line with general PRA methodology, villagers can place seeds, stones, sticks, cards or any other available convenient items in the boxes to roughly quantify the number of conflicts or intensity/importance of conflict(s).

Source: Schoonmaker Freudenberger 1994 as quoted in Bruce 2011 modified.

Tool 3: Gender analysis in the context of land conflict assessment

Gender analysis in the context of land conflicts can provide data on all aspects of land conflicts from a gender perspective. Particular focus should be given to:

- Conflict issue(s) and the property rights of women under dispute
- Identifying conflict causes and consequences from the perspective of women
- Women's positions and interests and eventually also their underlying needs, fears and desires
- Relationships between all actors involved in the conflict from the perspective of the women involved
- Women's attitude towards conflict resolution and their preferred dispute resolution process(es)

Concept/Approach/Methodology:

Gender analysis is best done in the form of individual interviews with representatives of different groups of women as well as in the form of focus group discussions. The interviews should be done by a woman and at a time and place convenient for women to attend. Questions to be asked and discussed:

- What is the conflict all about?
(It is important to first let women tell their story. Follow-up questions could focus on the conflict issue (Land? Natural resources? Human rights? Inter-institutional conflict? Conflict between statutory and customary rights etc.)
- How are you (as women) affected by the conflict?
- Has the conflict influence on your access to any land?
If yes:
 - To whom belongs the land? Is this land private or common/collective or state land?
 - Why do you need access to this land? For which purpose do you need the land/access to the land?
 - Which rights do you think you lose? The right to control (manage) the land? The right to use the land? The right to generate income from the land? The right to transfer the land? The right to exclude others from the land? The right to compensation? Which rights have you had in the past? Which rights do you have now? (Some rights might be explained in a way for women to understand. Such questions could be: From whom did you receive the right to use the land? Who decides how you can use the land?)
- Who are the others involved in the conflict?
(Follow-up questions should focus on the relation with these other actors. This could be done by jointly developing a conflict map or Venn diagram (see 3.2).

- What do you think are the causes of the conflict?
- What do you suggest to solve the conflict?
- How do you see this conflict being solved? By court, traditional authorities, mayor or district chief, administration, mediation, court or some other way?

With minor adjustment, the same questions can be discussed with men, female and male youth, minorities or any other special group.

Additional information on gender inequalities concerning land rights in the legal framework that may contribute to or underlie specific land conflicts can be found within FAO’s gender and land rights database (<http://www.fao.org/gender-landrights-database/legislation-assessment-tool/en/>).

Tool 4: Learning history for conflict analysis

A learning history helps to identify the following information/data on a given land conflict:

- The two or more sides of the conflict story and understanding of its development over time
- Current stage of the land conflict and the level of conflict escalation
- Conflict issue(s) and the property rights under dispute
- Conflict causes and consequences
- Characteristics of the land conflict

Concept/Approach/Methodology (Kleiner/Roth 1996 modified):

A learning history is a document describing a certain event from different perspectives. Learning histories have been developed by Kleiner and Roth in the mid-1990s as a new form of organizational assessment. However, they can easily be applied for conflict analysis. For this purpose, the original approach has been modified.

The final outcome – the story/stories about the land conflict presented as a learning history – has the format of a table. The first column includes the year, the second column includes a brief description of general events relevant to the conflict. The next column describes the land conflict as experienced by the different stakeholders and should include quotations. If there are just two conflict parties, there can be one column per conflict party. If there are more, for the sake of better readability they should be all included in one column. In this case, it is necessary to start each quote/paragraph with the conflict party’s name. These columns are at the core of the document. Here, each relevant actor involved in the land conflict tells its part of the story. Each person is quoted directly. A last column can be added for comments. Here, an analysis resulting from the comparison of the different perspectives can be added. For an example see box 15.

Tab. 10: Table for learning history

Year	General event	Event as experienced by one conflict party	Event as experienced by other conflict party	Remarks

The document’s contents come from interviews with the people who participated in the land conflict. The history presents their experiences and understandings in their own words. The history includes the underlying assumptions and reasoning that led to people’s actions. A variety of people’s views and reactions are captured. As participants later read the documented conflict story or stories finding that their own points of view are fairly treated, they become better able to understand the many other perspectives of people involved in the land conflict.

Key issues:

- The learning history presents the experiences and understandings of those directly and indirectly involved in the land conflict.

- The learning history tells the story in participants’ own words.
- The history includes the *perspectives of a variety of people*. When conflict parties discover that their own points of views are treated fairly in the learning history they become better able to understand the many other people’s perspectives that make up the learning effort.
- The history includes descriptions of the *underlying assumptions and reasoning* that led to people’s actions. In this way, the unwritten but powerful tacit knowledge and undiscussable myths are brought to surface, codified and turned into a knowledge base. People can test their understandings against the perspective of others, without having to be in the same room at the same time. For this reason, we sometimes think of learning histories as dialogue, on a different time/space continuum.

Methodological steps:

1. Planning: Defining the scope of the assessment
 - Identification of interview partners (those directly and indirectly involved in the conflict)
 - Preparation of questions for interviews. The questions should be formulated in a way to invite the conflict parties to talk freely about the conflict. What happened? When did this happen? How did you feel? What did you think? How did you react? Why could this happen? How can this be solved?
2. Reflective research: Interviews and data gathering
 - Interviews can be done individually. They can also include group discussions to gather information from an entire group of stakeholders.
 - Interviewees should start by telling the entire story from their perspective. Later, additional questions can be asked if certain aspects have not been tackled, if already available information needs to be cross-checked or if interviewees briefly mentioned something interesting without mentioning all the details.
3. Distillation: Establishing key themes
 - From the mass of data, relevant information needs to be extracted.
4. Writing: The conflict stories are written in one document making one story out of the various perspectives that present the different views of the actors directly (and indirectly) involved in the conflict.
5. Validation: Reflective feedback

Every conflict party receives only the three columns containing the year, the general events and their perspective for adjustments and quote-checking.
6. Making use of the learning history

Finally, the learning history can be used for internal conflict analysis or to analyse the conflict together with those involved in it aiming at creating mutual understanding. Further discussion with the conflict parties can result in the identification of possible solutions.

Recommended reading:

- ▶ Kleiner, A., Roth, G.: *Field Manual for a Learning Historian*. MIT, USA, 1996.

Tool 5: Socio-drama re-enacting the land conflict

A socio-drama helps to identify the following information/data on a given land conflict:

- Conflict parties' positions and interests and eventually also their underlying needs, fears and desires
- Relationships between all actors involved in the conflict
- Conflict parties' attitudes towards conflict resolution and their preferred dispute resolution process(es)

Concept/Approach/Methodology (Moreno 1989, Jüngst/Meder 1991, Aissen-Crewett 1999):

Generally, we do not get all the information required to see the whole picture of the conflict just by talking and listening to the parties or by interviewing technical experts, local leaders and other stakeholders and informants. What we most often do not learn from them are the motivations and feelings of the conflict parties, their material and emotional needs or their fears and desires.

Role-play can contribute a lot toward gaining insight into these deeper roots of a land conflict. These are not typical role-plays, however, where the actors have to study their roles in advance and learn their lines by heart. It is more like improvisation. It is called socio-drama. A socio-drama focuses on a social problem or a social conflict. It therefore aims to work out interpersonal relations and the feelings and needs on which they are based. The roles are more like representative characters of a given society than private persons. The idea is that every society disposes of a particular set of roles out of which each person represents a certain combination. Someone playing "the president" or "the farmer" is playing a person characterised by well-known roles; roles which the actor also incorporates in his/her sub-consciousness and which will be addressed and sorted during the improvisation (Moreno 1989, Jüngst/Meder 1991).

What is needed for a socio-drama?

The basic requirements are a stage (e.g. a room or free space), actors, spectators and a facilitator who directs the play, questions scenes, intervenes in the play, adds new roles and analyses what is happening. The spectators can assist the facilitator and the actors. It is very useful if an additional person can document the different stages or scenes by illustrating them on a board. This "storyboarding" visualisation allows for a joint analysis of the play after the performance, to ensure that everybody realises what was happening and to check whether all participants (actors, spectators, director and documenting person) experienced the situation in the same way. In case of disagreement, individual scenes can be played again with other actors. Experience, however, shows that there is high consistency in how people experience the play.

How does a socio-drama work (Aissen-Crewett 1999)?

- First, the director explains the initial situation and the roles involved in the conflict.
- Then actors are chosen to play the characters who participated in the initial situation. They have to choose a place and position on the stage that corresponds or illustrates the situation at the outset. Their physical positions, their gestures and their viewing direction already characterise – often subconsciously – their inner positions.

- In their roles, the actors talk and react to each other. They can move and act freely. The most important thing is to react spontaneously and by intuition, without reflecting on the consequences, as this shows best the inner position of the characters.
- One extremely useful feature of the socio-drama is that things such as land or forest or culture can also be acted out and express thoughts and feelings reflecting the way they are being treated.
- The director can stop the actors at any time and ask them about their feelings. The more spontaneously the actors answer and speak about their feelings, the more authentic their words normally are.

(For additional details on the methodology see 3.4, exercise E6)

The reactions revealed during the play and the fantasies that develop and are expressed should all be considered part of the collective knowledge of that society and its specific

forms of relations and ways of interacting. Correspondingly, the socio-drama allows the participants to experience and to act out typical needs, fears, desires, frustrations and expectations. It can therefore contribute a lot of additional insight to land conflicts.

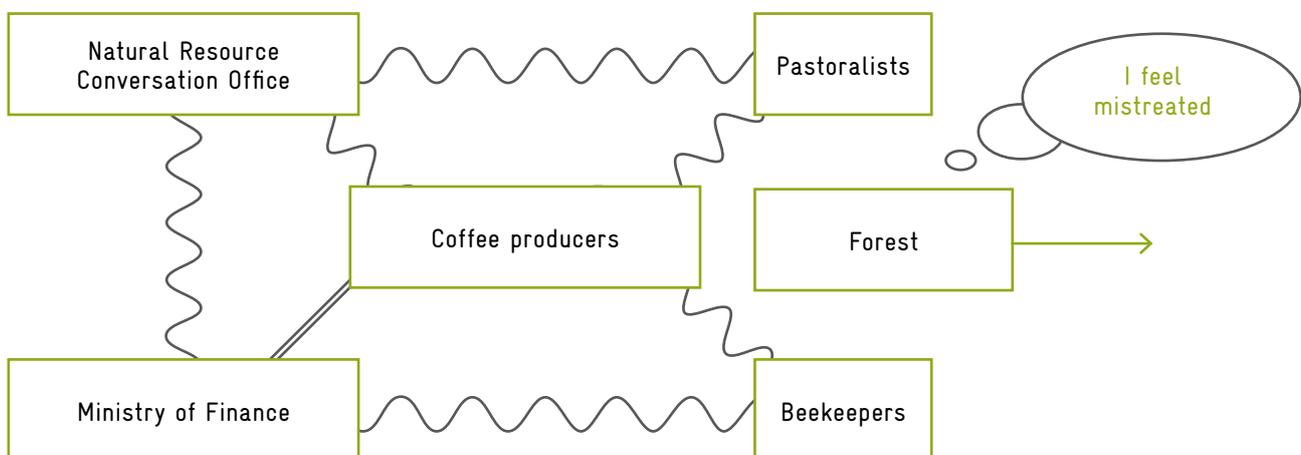
Socio-drama can equally be used to analyse a land conflict or – if practised together with the involved stakeholders (letting them act out the opponent’s part, or letting them watch the play acted out by others who are not involved in the real conflict) – to solve the conflict by increasing the awareness of the other party’s feelings and needs and to rectify their perception of the other party’s positions and interests.

The documentation of the play should be done in the form of sociograms or conflict maps capturing all key situations and turning points. Figure 10 illustrates how the perception of a land conflict changed during a socio-drama.

Box 17: Scene from a socio-drama about a forest use conflict in Ethiopia

Background information on the forest land conflict in Northern Ethiopia

The conflict in Northern Ethiopia is mainly about the use of a state forest. But is it really only about forest or land? The long-established local population wants to continue using the forest for beekeeping and is angry with the new farmers who are cutting down the native plants and flowers under the trees to replace them with coffee plants for their coffee production. The coffee producers, on the other hand, want the pastoralists to stay out of the forest but they have long-established rights to seasonal use, much as the beekeepers rely on their customary rights. The coffee producers, however, pay taxes to the Ministry of Finance (which is not even the institution responsible for collecting this kind of tax) and therefore they too feel they have legitimate usage rights to the land. The Finance Ministry and the coffee producers are under attack by the District Natural Resources Conservation Office, which wants to protect the forest in order to stabilize the watershed in that area and protect biodiversity as well as to maintain its influence on the management of the forest.



A turning point in the socio-drama on the Ethiopian state forest/land use conflict was the scene in which, after the king had left the stage, the forest sadly explained that he no longer had an owner, that now he belonged to everyone (state land resulting in a *de facto* open access situation). He expressed feeling afraid and insecure. He even asked the long-established population to take care of him – without receiving an answer. While the play continued, the forest suddenly claimed that he felt mistreated and left the scene. The interesting point is that the conflict continued. Beekeepers blamed the Ministry of Finance for not respecting their traditional rights and culture. Pastoralists accused the District Natural Resources Conservation Office of offending their dignity by not respecting their tradition(al rights). Beekeepers and coffee producers called each other old-fashioned, respectively ignorant towards their culture. Thus, the conflict over land and forest use quickly became a conflict between traditional and modern culture that also touched upon aspects of respect and dignity. This conflict has much deeper roots than the current superficial one over forest use would suggest. The problem is that the cultural issues are part of the forest conflict and that this conflict will only be resolved if an answer to the socio-cultural conflict is found as well. Socio-dramas are immensely useful for revealing additional conflict issues.

A socio-drama can also be used to act out different solutions of a land conflict. This can be done by outsiders to the conflict or by the conflict parties. Alternatively, outsiders could first play different scenarios and evaluate them identifying the most suitable one. The conflict parties could then act out this one – either together or separately within their groups.

Socio-drama, in particular when realized together with the conflict parties, needs professional guidance.

Tool 6: Analysis of Disputants Mode (AGATA)

Analysis of Disputants Mode (AGATA) helps to identify the following information/data on a given land conflict:

- Current stage of the land conflict and the level of conflict escalation
- Conflict parties' attitudes towards conflict resolution and their preferred dispute resolution process(es)

Concept/Approach/Methodology (Pasya and Sirait 2011, Working Group on Forest-Land Tenure 2014):

AGATA is a tool to analyse the ways in which parties are in conflict with each other. The objectives of this analysis are to gain an understanding of the way parties are in conflict with each other and how they behave as parties in the conflict (stage of conflict, level of conflict escalation) and to identify options/ways to resolve the dispute.

Preparatory steps that can also be done as part of other/previous assessments:

- Identification of conflict parties
- Conflict mapping depicting the power/influence of the parties and their relations (see 3.2)

The actual analysis of disputants' mode can be done through a qualitative or a quantitative method.

The quantitative approach uses the Thomas Kilmann conflict mode instrument (Thomas and Kilmann 2010). It looks at 25 aspects of conflict parties' behaviour/attitudes, involves the allocation of Likert-style scores from 1-5 for each behaviour (1 = never, 2 = rare, 3 = sometimes, 4 = often, 5 = always) and requires the use of Microsoft Excel for data processing (for details see Pasya and Sirait 2001 or Working Group on Forest-Land Tenure 2014). The approach has some bottlenecks: a) it is not realistic to gather all information needed; b) it seems that it has been developed with only two parties (involved in the conflict) in mind.

The qualitative approach, however, seems more promising. It is based on conflict parties' expressions, attitudes and behaviours in the conflict and the interview and therefore, can easily be combined with one of the other assessments. Five modes of conflicting parties can be distinguished: avoiding, competing, accommodating, compromising and collaborating. According to Pasya and Sirait (2011): *'Avoiding mode* occurs when one of the parties:

- refuses to have a dispute,
- changes the subject that caused the dispute to other topics,
- avoids discussion on the dispute,
- shows unclear behaviour (non-committal) or
- does not want to commit.

This mode is very effective in situations where there is a danger of physical violence; when there is no chance to achieve the objective, or when a settlement cannot be achieved due to a complicated situation.

Accommodating mode occurs when:

- One of the parties neglects its own concerns to satisfy the other party's concerns.

This style is effective in situations when one party realizes that they do not have many opportunities to pursue their interests, or when satisfying their own interests would result in damaging the relationship with other groups.

Compromising mode occurs when:

- Parties act jointly to find a mutual agreement, for example by committing for the middle way without knowing who will win and who will lose.

This mode is effective in situations when the parties refuse to cooperate while at the same a fast solution is required and the final objective is not important. Usually, this style does not lead to full satisfaction.

Competing mode is characterized by:

- aggressive actions,
- concern with one's own party,
- suppression of other party, and
- uncooperative behaviour.

This style is effective when quick decision-making is needed, the number of decision options is limited, when one party does not feel disadvantaged even when pressured by other parties, and most importantly, if there is no concern about potential damages of relationships and social order.

Collaborating mode is characterized by:

- active mutual listening of each party's interests,
- focused concern,
- empathic communication, and
- mutual satisfaction.

This style is effective where there is power balance and enough time and energy to create integrated dispute management systems”.

Recommended reading:

- › Working Group on Forest-Land Tenure: Practical Guidance for Using RaTA - Agatha - HuMA-WIN and Gender Analysis Tools for Rapid Assessments of Tenurial Conflicts in Forest Areas. Bogor 2014.

Tool 7: Rapid Assessment of Land Tenure Conflicts – a set of tools to analyse land conflicts

Rapid Assessment of Tenure Conflicts in Forest Areas is a set of analyses, partly using existing tools, particularly developed for land conflict assessment by the Working Group on Forest-Land-Tenure supported by GIZ on behalf of BMZ.

It is presented here as an example of how existing tools can be combined to create an approach for land conflict analysis that is adapted to local/national conditions. Rapid Assessment of Land Tenure Conflict has been developed for the Indonesian context using among others tools for land tenure assessment and analysis of disputants mode developed by other institutions in Indonesia, namely the World Agroforestry Centre and the Samdhana Institute, both located in Bogor. Rapid Assessment of Land Tenure Conflicts focusses on three aspects of land tenure conflicts in forest areas:

- Current dispute
- Manifestations of parties
- Parties' preferred dispute resolution process(es)

The assessment includes the following analyses:

- Analysis of land conflict characteristics, property rights involved and conflict causes using the following tools: Rapid Land Tenure Assessment (RaTA), social analysis, gender analysis etc.
- Analysis of dispute mode using Analysis of Disputants Mode (AGATA)
- Analysis of preferences for dispute resolution process; the preferences can be derived from AGATA or simply be identified in interviews

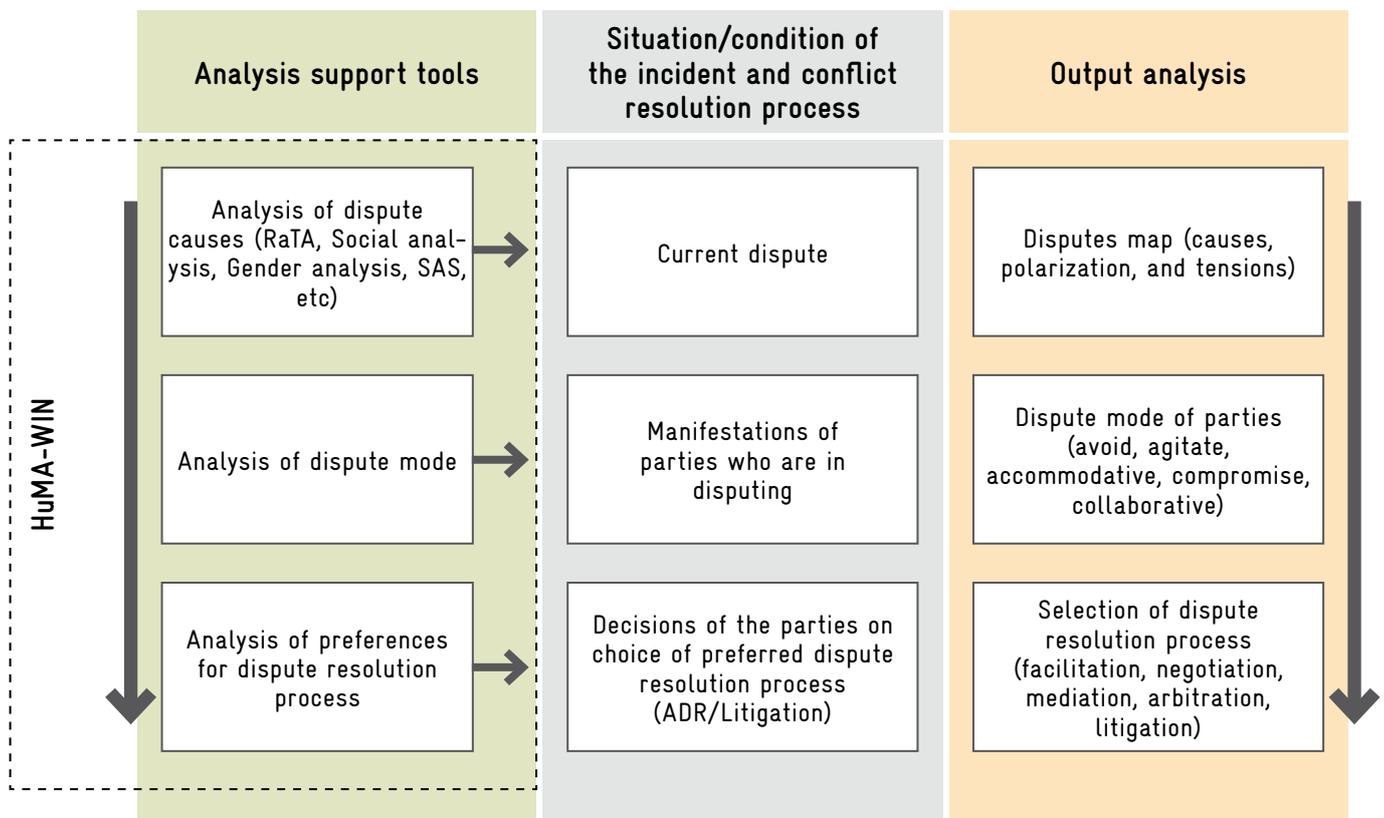
For the documentation of the conflict data, the application of a software (HuMA-WIN) is proposed. It can, however, also be done without, if information/data collection is limited to only the information relevant for conflict resolution.

Figure 11 shows how the different conflict analysis/mapping tools are combined in the Rapid Assessment of Land Tenure Conflicts.

Recommended reading:

- › Working Group on Forest-Land Tenure: Practical Guidance for Using RaTA - Agatha - HuMA-WIN and Gender Analysis Tools for Rapid Assessments of Tenurial Conflicts in Forest Areas. Bogor 2014.

Fig. 11: Rapid Assessment of Land Tenure Conflicts



Source: Working Group on Forest-Land Tenure 2014

3.4 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

- Timeline
- Learning history
- Stages of conflict
- Model of conflict escalation by Glasl
- Conflict onion
- Conflict tree
- Conflict matrix
- Conflict map
- Rapid Land Tenure Assessment (RaTA)
- Gender analysis in regard to land conflicts
- Learning history for conflict analysis
- Socio-drama
- Analysis of Disputants Mode (AGATA)

Questions for discussion

- Which information/data is needed for land conflict analysis and why?
- How can the five tools for conflict assessment presented in this chapter best be combined?
- What other tools could be used for land conflict assessment?

Exercises

E 5: Analyse and visualize a land conflict.

Identify a land conflict you are well familiar with. Follow the steps below:

- Prepare a conflict matrix.
- Prepare a table that summarizes the positions, interests, needs, desires and fears of all actors involved in the land conflict. (You can build on exercise E 3 if you have done that one.)
- Prepare a conflict map.
- Prepare a conflict tree.
- Update your conflict matrix.

E 6 (can only be done as group exercise): Re-enact a land conflict to identify the positions, interests, needs, desires and fears of all actors involved. For that purpose:

- Select a land conflict at least one of you is familiar with. This person should become the director of the socio-drama.
- The director then explains the land conflict focussing in particular on the initial situation.
- The director identifies actors and asks them to choose a position on the stage (empty corner in the room).
- Once all actors are on the stage, the director asks them to start acting.
- The director interrupts and asks questions about feelings whenever (s)he thinks it is useful to gain a deeper understanding of the conflict situation.
- Have one person document the socio-drama by preparing a land conflict map.
- After presenting the socio-drama and before the discussion, the director asks each participant how it felt to play his/her part.
- At the end, all group members reflect on the positions, interests, needs, desires and fears of those involved in the conflict and summarize them in a table.

E 7: Design a conflict assessment for a land conflict you are familiar with. Modify and combine the assessment tools presented in this chapter, adjust them to your needs and add other conflict assessment tools that you may know.

Further reading

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4. DEALING WITH LAND CONFLICTS

Dealing with land conflicts involves four aspects, which are covered in this chapter:

1. Uncovering hidden land conflicts, which mainly applies for disputes over public land
2. Choosing and applying a suitable form of conflict resolution (or establishing it)
3. Choosing and using an adequate land dispute resolution body (or establishing it)
4. Identifying and applying suitable land administration and land management approaches that help to solve the land conflict

This chapter reflects the standards on land dispute resolution provided by the Voluntary Guidelines on the Responsible Governance of Tenure (see box 9). The VGGT (3.1.4, 21.1-21.6) call for a broad range of grievance mechanisms, judicial as well as non-judicial, and underline that they need to be impartial and competent, timely, affordable, effective and accessible to all. The VGGT also highlight the necessity for states to prevent corruption in dispute resolution processes and the need to provide legal assistance.

Box 18: Resolution of disputes over tenure rights (VGGT 21)

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) provide the following guidance on the resolution of disputes over tenure rights in chapter 21:

- 21.1 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal. Such remedies should be promptly enforced. States should make available, to all, mechanisms to avoid or resolve potential disputes at the preliminary stage, either within the implementing agency or externally. Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures.
- 21.2 States may consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the judicial authorities to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation.
- 21.3 States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.
- 21.4 States may consider using implementing agencies to resolve disputes within their technical expertise, such as those responsible for surveying to resolve boundary disputes between individual parcels within national contexts. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the judicial authorities.
- 21.5 States should endeavour to prevent corruption in dispute resolution processes.
- 21.6 In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.

Source: CFS/FAO 2012

4.1 Approaches to uncover hidden land conflicts

Many land conflicts, in particular those that involve public land, exist for years in a state of pre-conflict or early conflict characterized by tense instability and repeated confrontation, which each time raise the average level of tension. Intervention should start here, avoiding the crisis that may come and finding/negotiating an acceptable solution for all parties.

This may require that the latent land conflict first be uncovered and intentionally named. While everybody may talk about it in private, the issue might not be publicly addressed or, if it is, it may be ignored by those responsible for it. In such situation, the following action is needed:

1. Proper documentation of the land conflict – to prove its existence, to show its dimension, to clarify its location and to identify its specifics, and
2. Widespread dissemination of this documentation.

Land administration as well as Civil Society Organisations can play a major role in this process.

Documentation can be done in two ways:

- Documentation in the form of a report (listing the conflict)
- Documentation in the form of an inventory (mapping the conflict)

Documentation of hidden/ignored land conflicts in the form of a report (listing the conflicts)

Documentation can mean the documentation of one specific land dispute (e.g. a squatter settlement or a rural community whose traditional land rights are not formally recognized in constant risk of being evicted) or the documentation of an entire series of land disputes of a similar type (e.g. irregular allocation of public land).

Individual conflicts can be documented by applying the land conflict assessment described in chapter 3. The documentation of an entire series of land disputes will not include all the detailed information on each land conflict, but provide key information such as:

- location and size of the land,
- the public authority responsible for its management,
- the name of the public official who allocated the land,
- the name of the current owner or user,
- the current use of the land, and
- names of other individuals or groups claiming rights over this land.

If available, there could be a short description of the current land dispute.

The compilation of such a report requires the coordinated effort of many individuals and organisations. The core team should consist of lawyers. Information can be provided by Civil Society Organisations, National Human Rights Commissions, media, police etc.

Box 19: The Ndungu Report – an unprecedented example

In 2003, the Kenyan President Kibaki appointed 20 prominent citizens, lawyers and civil servants drawn from ministries particularly concerned with land to be members of the Ndungu Commission, which was assigned to prepare a report on illegal and irregular allocation of public land. In the “Ndungu Report”, the Commission categorised its findings according to three groups of public land: i) urban, state and ministerial land, ii) settlement schemes and trust land, and iii) forestland, national parks, game reserves, wetlands, riparian reserves and protected areas. The report is not shy about stating what everybody already knew:

“Land was no longer allocated for development purposes but as political reward and for speculation purposes... Land grabbing became part and parcel of official grand corruption through which land meant for public purpose has been acquired by individuals and corporations... Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources... The most pronounced land grabbers in these areas were the councillors themselves... The corruption within the central government has been replicated at the local level through the activities and omissions of county and municipal councils” (Republic of Kenya 2004: 8; 147).

Although the report has been criticised because it does not name the public officials who have been involved in the illegal allocation of state land, and its recommendations lack implementation, the report itself can be considered a milestone in the fight against state capture, because:

- the report officially recognises the existence of extensive land grabbing by public officials;
- it describes the vast spectrum of irregular allocations of public land;
- it identifies the beneficiaries as well as the location and size of the land they received;
- it makes a series of sensible recommendations to be considered and implemented, including the introduction of an inventory of public land, the computerisation of land records, the need for a comprehensive land policy and the establishment of a Land Titles Tribunal charged with reviewing every case of suspected illegally or irregularly allocated land.

It would probably be overly optimistic or even naïve to assume that all or major parts of these state lands could be regained by the state. But the Ndungu Report achieved one important thing: Today's public officials are much more reluctant to do what their predecessors did. Moral and ethical conduct seems to have improved significantly.

CHECKLIST: Issues to be included in a national report on the irregular allocation of state land

1. A critical overview on the legal frame of public land management
2. An overview of all different types of irregular allocation of state land (eventually grouped according to the type of state land)
3. Identification of the extent of irregularly allocated state land over the past 10-20 years (in both hectares and as a percentage)
4. Identification/documentation of the location of those lands
5. A list of all beneficiaries and public officials involved, preferably by name and otherwise by institution, to give at least an overview of the offices/authorities involved
6. A list of those individuals and groups that have been negatively affected by the irregular allocation of public land
7. An estimation of the value of the irregularly allocated lands and calculation of the total loss (monetary amount) of state property
8. Recommendations for appropriate measures for the restoration of illegally allocated lands to their proper purpose, as well as for prevention of future illegal allocations and for appropriate criminal prosecutions

The launching of this report should be accompanied by additional supporting measures to establish control of and pressure on the land administration and anti-corruption activities within the land administration and land-related ministries. These might include:

- Media campaigns
- Introduction and/or application of a code of conduct
- Introduction and/or application of intra-institutional sanctions for corruption
- Publicly displaying posters and signs claiming “corruption free zones” and providing reminders of ethics, responsibilities and sanctions
- Distribution of leaflets to the entire staff warning about corruption

Documentation of hidden/ignored land conflicts in the form of an inventory (mapping the conflicts)

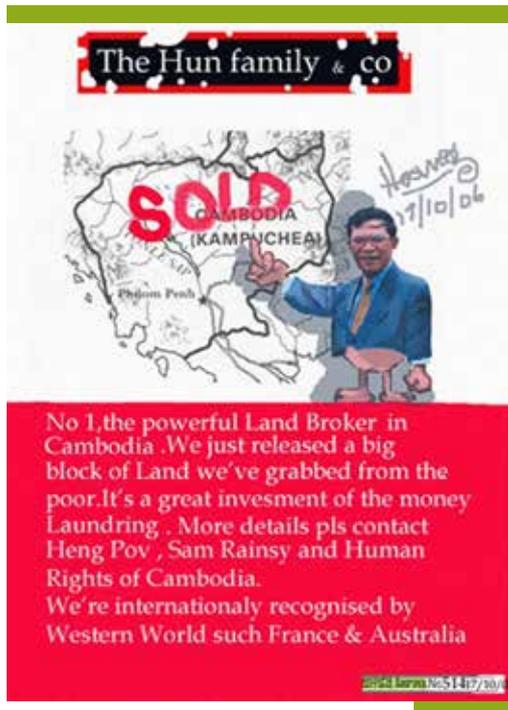
Conflicts about public land are often accompanied by a lack of clarity on its location, its boundaries, current use, current users and their rights as well as on who (which public authority) is responsible for its management. Therefore, the establishment of a public land registry or at least a public land inventory is a crucial first step for solving public land related conflicts. Whereas a public land registry requires that the responsible public institution as well as the boundaries of the property have already been identified and agreed upon, a public land inventory can simply document the current situation with unclear boundaries and several authorities claiming the right to manage/control the land. The objective of the public land inventory is to create transparency on the current situation, to map it and thereby provide a base for discussion and problem solving. The establishment of such a public land inventory, generally, requires the use of GPS and GIS software. The identification of boundaries should be done together with the responsible authorities, local authorities and representatives of the local population. In areas which are not covered by satellites providing GPS coordinates or which are hardly accessible on the ground, satellite images can be used for the participatory identification of boundaries.

Dissemination of documentation and general awareness raising

Reports on land conflicts involving public land as well as public land inventories or registries need to be publicly accessible.

Not all governments are open to addressing the issue of their own illegal allocations of state land. Most governments ignore or even deny such accusations. In this case, there is a need for awareness raising, which sometimes reaches the form of public denunciation (see box 20).

Box 20: Sold! Public campaign against illegal allocation of state land in Cambodia



Once land conflicts are identified and brought to the level of discussion, their settlement can be started. The following chapters provide information on forms and bodies of land conflict resolution as well as on land administration and management approaches that might help solve the dispute.

4.2 Forms of conflict resolution

Depending on the degree of escalation present, eight strategies of conflict resolution are recommended (Glasl 1999, modified):

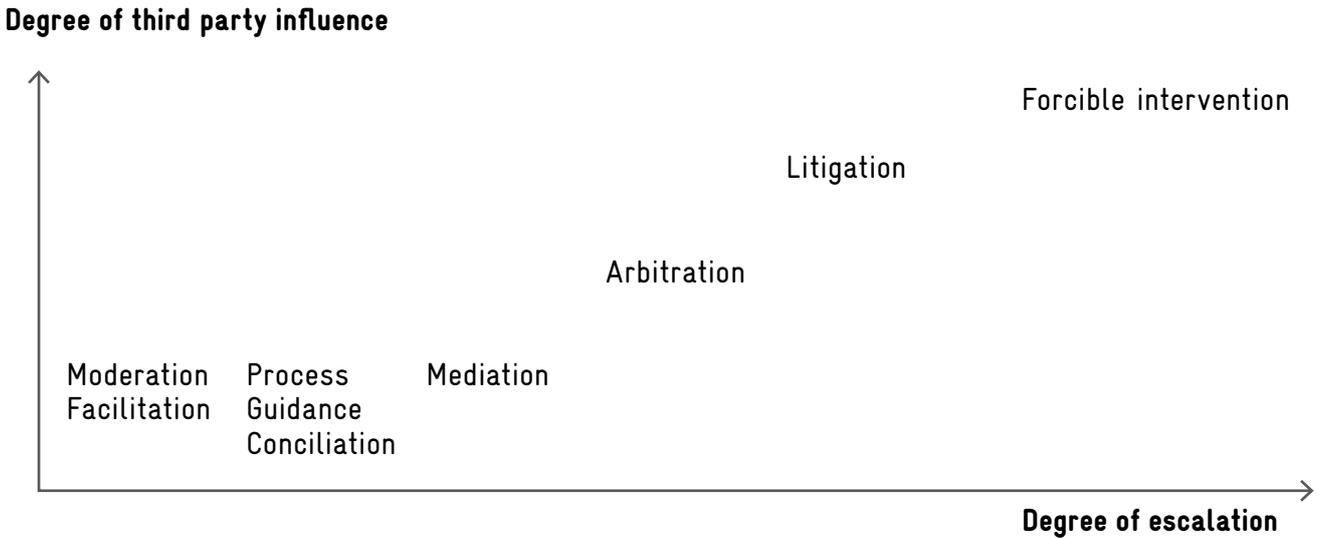
1. **Facilitation/Moderation:** The moderator helps the parties come together to clarify and settle minor differences, the parties still being able to solve the problem by themselves. Moderation can be applied in a pre-conflict situation to defuse the conflict in time and avoid escalation.
2. **Process guidance:** The “tutor” accompanies the process, working on the deeply internalised perceptions, attitudes, intentions and behaviours of the parties in order to calm them. Consultation is yet another approach useful during the stage of pre-conflict to stop the conflict progressing toward becoming a full-blown crisis. It is more appropriate than simple moderation in a case where a latent conflict has manifested itself for a longer time and has already created prejudices and hostility.
3. **Socio-therapeutic process guidance:** This special form of consultation focuses explicitly on destructive, dysfunctional or neurotic behaviour due to psychological

damages caused by former negative experiences in life. Socio-therapeutic consultation is extremely helpful if the parties involved have already lost face during the processes of peace making, peacekeeping and peacebuilding, as it helps in the understanding of one’s own behaviour as well as that of one’s opponent, and therefore creates understanding and a willingness to forgive one another.

4. **Conciliation:** This is a mixture of consultation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Conciliation can be applied in pre-conflict and early conflict situations as long as the parties are able to talk to each other.
5. **Mediation:** Mediation, too, requires that the parties are willing to face each other and to find a compromise. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen and finally moderating a discussion aimed at finding a solution with which both parties can live. Preferably, the moderator should not propose solutions but may lead the way towards them. At the end, a written contract is signed by all parties and the mediator seals the agreement. Mediation can be done in any situation as long as the parties are willing to find a compromise.
6. **Arbitration and litigation:** Different from the previous forms of conflict resolution, the arbitrator has decision-making authority and decides the conflict based on her or his own appraisal. The arbitrator, therefore, is more influential and powerful than moderators, conciliators or mediators. Hence, arbitration should be used (only) at higher stages of conflict escalation when conflict parties no longer talk to each other. What makes it different from litigation is that the arbitrators are appointed by the conflicting parties or are a respected person traditionally responsible for dispute settlement. Litigation is the formal process, generally referred to as court proceedings.
7. **Forcible intervention** is required when escalation is at its peak. The difference between this and any other form of conflict resolution is that forcible intervention can be taken against the will of one or all conflict parties. It requires that the authority that intervened forcibly is able to control the situation in the long term.

In the case of moderation, process guidance, conciliation and mediation, the third party helping to resolve the land conflict only influences the process, not the outcome. These are all consensual approaches where the outcome is exclusively defined by the parties. Only in the non-consensual approaches of arbitration, litigation and forcible intervention is the outcome defined by the third party (figure 12).

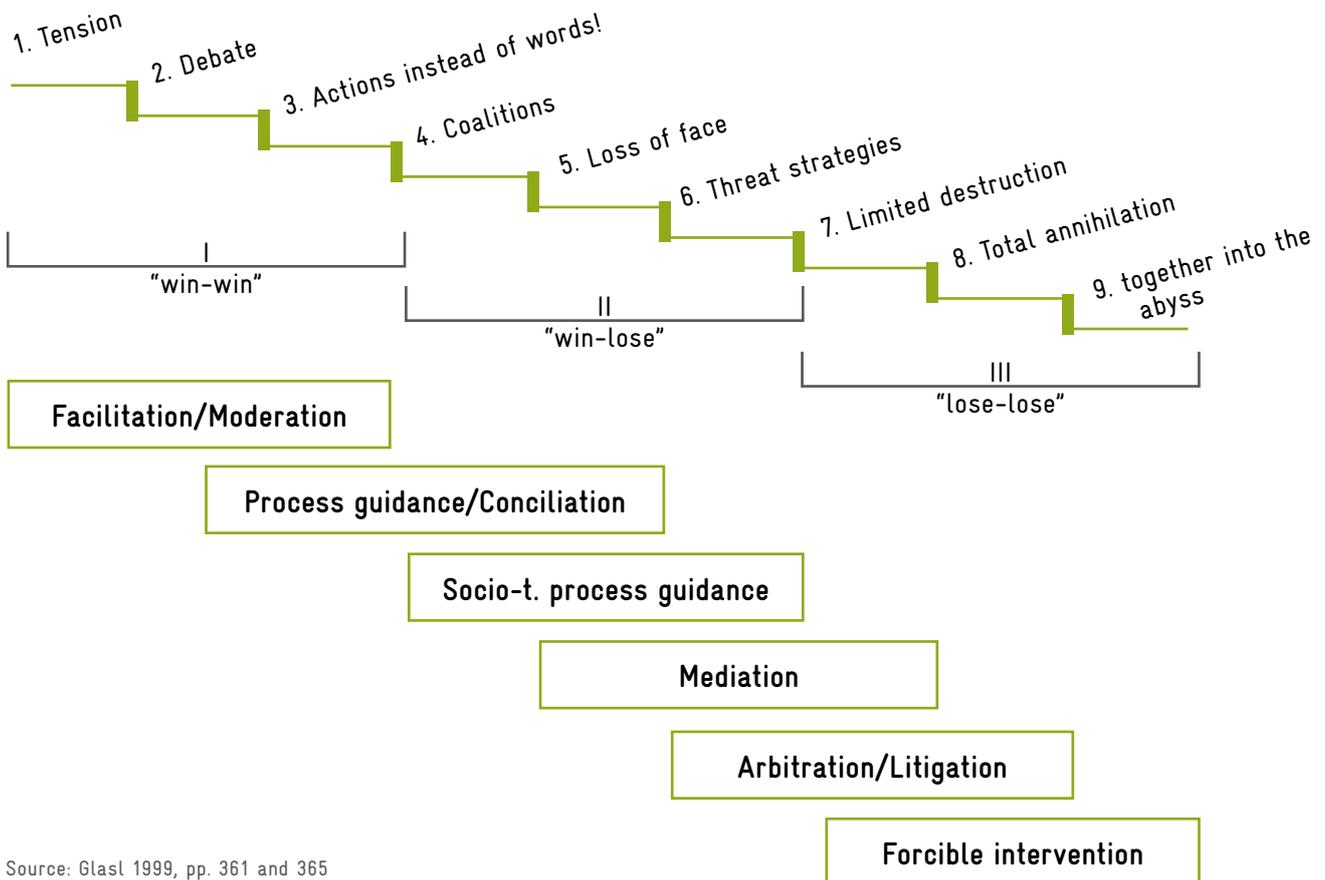
Fig. 12: Strategies of conflict resolution and influence of third party



To achieve de-escalation and solve the conflicts, Glasl (1999) assigns the different forms of conflict resolution to the nine stages of conflict escalation in the following way:

- Stage 1-3: Facilitation, moderation
- Stage 3-5: Process guidance, conciliation
- Stage 4-6: Socio-therapeutic process guidance
- Stage 5-7: Mediation
- Stage 6-8: Arbitration and litigation
- Stage 7-9: Forcible intervention

Fig. 13: Stages of conflict escalation and possible forms of dispute resolution



Source: Glasl 1999, pp. 361 and 365

While land conflicts taking place at the micro and meso-social level normally can be addressed by any of these means of conflict resolution (although this may depend on the stage of conflict, the degree of escalation and the (a)symmetry of the conflict), land conflicts occurring at the macro social level often cannot as they require additional institutional changes before the conflict can be settled.

4.2.1 Non-consensual approaches

Non-consensual approaches are characterized by third party decision-making. There is much less diversity in non-consensual approaches than there is in consensual approaches. One distinguishes between arbitration, adjudication and forcible intervention.

Litigation is the formal process, generally referred to as court proceedings. The decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding decision makes one party win and the other lose the case, which can only be appealed through a higher court. Litigation will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Litigation should therefore always be considered the method of last resort.

Litigation is hindered in many countries by the case overload of the courts. It can easily take several years until a case is finally heard by the court, resulting in a high number of land conflicts being in limbo there. In addition, it is not uncommon that judges are corrupt and allow the richer party to win the case. Even if this is not the case, the more affluent will always be able to hire the better lawyers.

CHECKLIST: Actions be done to improve litigation

1. Promoting the application of the Bangalore principles of judicial conduct – a code of ethics for judges adopted by the Round Table of Chief Justices in 2002 at The Hague (www.ajs.org/ethics/pdfs/Bangalore_principles.pdf)
2. Widespread introduction of legal aid/assistance for the poor and disadvantaged
3. Establishment of a broad range of alternative dispute resolution bodies

An alternative to litigation is **arbitration**, which is more flexible, supposedly quicker and less expensive, especially in smaller cases in which no lawyers are involved. It also allows for better conciliation, as the arbitrator can also act as a mediator, the only difference being that s/he has the last say in the matter. The arbitrator-as-mediator listens to the facts,

perceptions and arguments presented by both parties, who can be represented by lawyers, but do not have to be. Arbitration is therefore a perfect combination of mediation and adjudication, offering a chance of re-establishing trust and respect among the parties while on the other hand providing a third party decision. In some situations or cultures, this may be more appreciated than a solution decided upon by the parties alone. In the case of high asymmetry and the risk that the more influential party imposes its will on the other, arbitration will probably result in a fairer outcome – provided that the arbitrator really is neutral. Unfortunately, there is a lot of corruption in arbitration, as well. However, as there is more flexibility in the selection of an arbitrator than there is in case of a judge, the chances are higher of finding a qualified person who is suitably trained in legal matters, accepted by both parties and who will decide fairly. Whether or not the decision is binding depends on the legal frame, as well as on the agreements between the parties. Generally, an arbitrator's decision should not be open to appeal through the courts. In some countries where the neutrality of the arbitrators cannot be guaranteed, however, the court should be accessible as an option of last resort.

For a long time, arbitration was considered to be faster and cheaper than litigation. Experience, however, shows that arbitration can be fast and cheap but also can take as long and cost as much or even more than litigation. The private sector has already reacted to it and institutions such as the International Chamber of Commerce in Paris introduced rules for fast track arbitration. More recently, the neutrality of arbitrators has been questioned, in particular in the context of investor-state-arbitration, which is partly due to the lacking transparency. Different from litigation, arbitration is normally not conducted in public. This is different in the context of traditional African arbitration, which generally is conducted in public (see 4.2.5). Other arbitration processes could be conducted in public as well, if the parties agree on it. Hence, there are potential shortcomings in arbitration, but those can be avoided by the parties, when they agree on respective rules before entering the process.

All micro-social land conflicts which cannot be solved by consensual approaches, as well as all meso-social land conflicts among individuals or groups that will have to deal with each other in the future and which also cannot be solved by mediation (such as boundary conflicts between tribes or villages, illegal sale or lease of communal land, or land use conflicts between farmers and pastoralists), should be settled by arbitration. Even highly asymmetric land conflicts such as group invasions of private land or evictions from state land can be resolved by arbitration.

Litigation should be reserved for violent and major criminal land conflicts such as violent evictions, destruction of

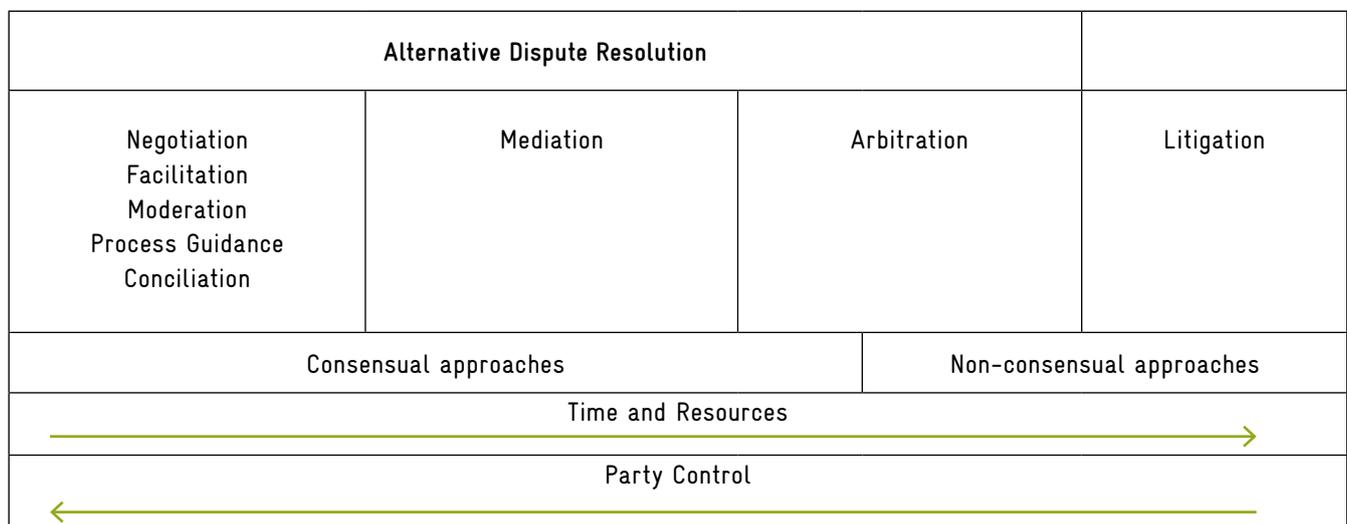
another’s property, land grabbing, or expropriation through unethical behaviour by banks (e.g. forcing loans with extremely high interest rates on people while undervaluing their property etc.) all of which require punishment, if not at least to serve as deterrence.

Alternative Dispute Resolution (ADR) stands for any form of peaceful conflict resolution apart from arbitration (see figure 14). The term appeared when courts had been increasingly overtasked and/or bribed and alternatives to court proceedings were needed. Alternative Dispute Resolution can include formal, informal, customary and religious mechanisms, including public as well as private as the example from Ghana demonstrates (see box 21).

4.2.2 Alternative Dispute Resolution

“In Ghana in 2007, with an estimated 35,000 land-dispute cases backlogging the courts, using the formal legal system to attempt to defend acquired land rights was not a real option for an ordinary citizen” (Boone 2013, p. 225).

Fig. 14: Alternative Dispute Resolution (ADR)



Source: Rozdeiczner and De la Campa 2006, p. 4 (modified)

Box 21: Alternative dispute resolution for solving land conflicts in Ghana

In Ghana, not less than eight options of alternative dispute resolution have been identified for dealing with land conflicts:

- Informal arbitration by “respected persons”
- State-sponsored alternative dispute resolution to encourage out-of-court settlements
- Court-annexed alternative dispute resolution by judges, explicitly for land related cases
- Special committees at the land administration to deal with specific types of land conflicts (Land Title Adjudication Committee and Stool Lands Boundary Settlement Committee*)
- Informal land conflict settlement by land management experts who are usually members of the Ghana Institution of Surveyors
- Informal land conflict settlement by state officials such as elected officials
- Religious (Islamic) courts where land disputes are resolved by religious leaders based on religiously sanctioned codes
- Settlement by professional mediators and arbitrators at private mediation centres based on international standards

*Stool land referring to customary land in Ghana. Stools = ethnic groups.

Source: Odametey 2007

4.2.3 Consensual approaches

Consensual approaches are those conflict resolution strategies which aim to find a compromise that is acceptable to all parties involved and which can best re-establish peace, respect and even friendship among the parties. Consensual approaches therefore try to find a consensus among the conflict parties through intensive discussions and negotiations, during which all sides learn to understand the other party's/ parties' interests, needs, (hurt) feelings and eventually even their fears and desires. Such dialogues also help to identify earlier conflicts, reasons for mistrust or revenge, as well as additional conflict issues which might even be the primary conflict, or in any event a more important one than the conflict over land. In a way, all consensual approaches are negotiations that aim to re-establish a positively functioning relationship and to agree on terms for future interaction. Generally – but not necessarily – approaches for facilitating the building of consensus require a professional third party.

Consensual approaches are: moderation, consultation, socio-therapeutic consultation, conciliation and mediation. They are generally faster and cheaper than non-consensual approaches and parties have more control of the outcome than in arbitration or litigation (see figure 12). They are, therefore, often a preferable alternative to using overloaded courts.

In a very early stage of pre-conflict, when coalitions have not yet formed, it can be helpful to support the disadvantaged parties in organising themselves. This can contribute to the empowerment of that group prior to any negotiations with the other party or parties involved.

In case of a symmetric conflict, an **unaccompanied negotiation** can be attempted. In this case the parties together discuss the issue without the presence of a third

party. Many boundary conflicts can be solved in this way. It is often sufficient in such a conflict if one party addresses the other in a friendly way, inviting it to talk and listen with the objective of finding a mutually acceptable solution.

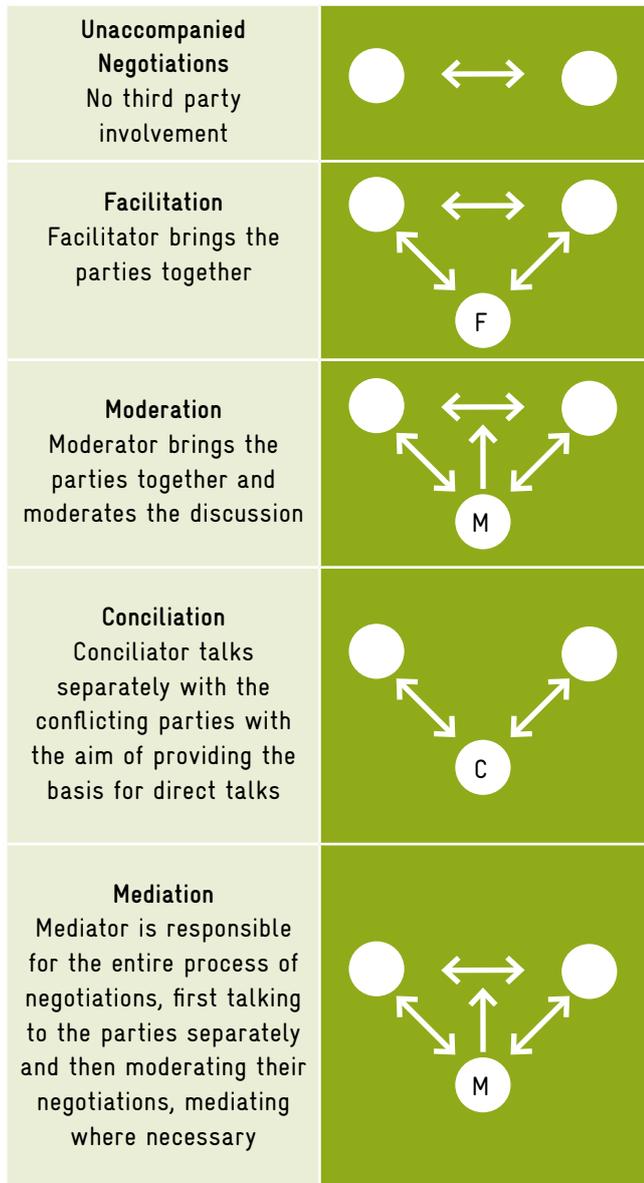
If none of the parties is willing or able to take the first step – quite often because of a lack of courage due to all the insults that have already been exchanged – it can be helpful if a third party simply tries to **facilitate** a meeting without being present at it. In that case, the third party – who can be an elder, a village chief, a religious or neighbourhood leader, a village teacher or any other respected person in the area – individually addresses the conflicting parties and proposes a meeting (time and place). If the parties prefer the third party to be present during their meeting, s/he can **moderate** the discussion or negotiation and thereby assure both parties that they will have the chance to explain their points of view. Moderation can easily become a mediation which, however, demands a little bit more experience by the moderator – or in that case mediator.

Non-violent, rather unemotional micro and meso social conflicts such as boundary conflicts, illegal subdivisions, and the illegal use of land that violates building regulations might be solved this way. If strong emotions (as is generally the case with inheritance conflicts) or violence are involved, an active third party normally becomes necessary, as here the parties have to be conciliated. In such a situation, the first step would be consultation with both parties, trying to identify the wounded feelings and discussing the conflict with each party separately, with the aim of creating some understanding of the other side's position. In the case of **conciliation**, the third party becomes a kind of intermediary between the conflicting parties, who attempts to establish the basis for a joint meeting of the parties.

The most complex consensual approach is **mediation**, a sophisticated procedure of guiding the dialogue and negotiations between the parties, assuring that both sides listen to each other, helping the parties to structure the discussion and assuring through active inquiry that all details – especially the interests, motivations and feelings of both sides – are presented without offending the other party. In a way, mediation is a professional way of jointly peeling the conflict onion. While organising the process and improving the communication, the third party is not supposed to take a decision. The decision-making is entirely the responsibility of the conflicting parties, in order to increase ownership of the outcome. The mediator might be allowed to suggest solutions, but this has to be agreed upon before the mediation starts.



Fig. 15: The role of facilitators, moderators, conciliators and mediators



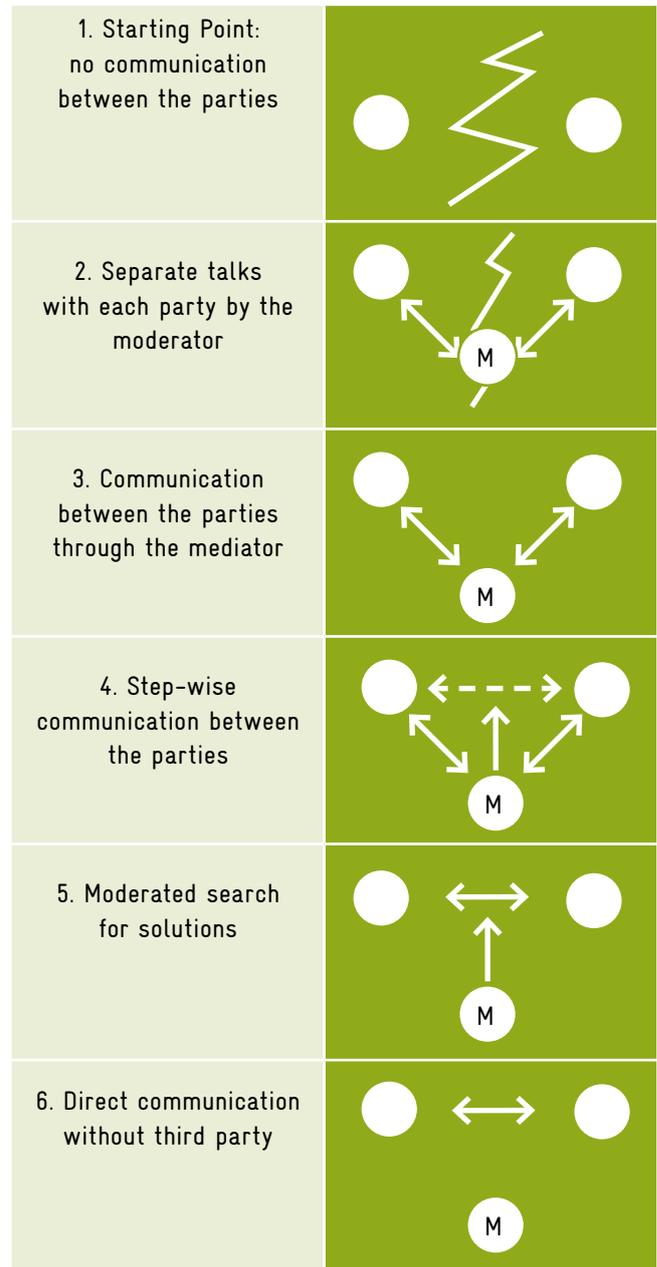
Source: based on FAO 2006

In practise, consensual approaches are often mixed ones and include elements of the different approaches. In a number of countries, state officials at the land administration are involved in the informal settlement of disputes over land employing methods ranging from facilitation to mediation. In some cases, there are even specialized committees to deal with certain kinds of land conflicts. In Ghana for instance, the Land Title Adjudication Committee and the Stool Lands Boundary Settlement Committee offer to deal with land conflicts before they get to court or after a court decision has failed to end a conflict. In Cambodia, Cadastral Commissions at the municipal, provincial and national level are charged with the resolution of land conflicts, although they do not seem to be any fairer than the courts.

4.2.4 Mediation

Mediation is “a process for resolving disputes where an intermediary helps conflicting parties have a conversation to jointly resolve their concerns” (Beer and Packard 2012).

Fig. 16: The role of a mediator



As mediation is at the same time the most complex consensual approach and the most popular one, some basic information on it is provided below.

Mediation is based on the following principles (Whatling 2012, pp. 22-24, UN DPA/UNEP 2015, p. 86-87):

- Voluntary participation: Participation in mediation must always be voluntary.
- Neutrality: Mediators must at all times remain neutral as to the outcome of the mediation.
- Impartiality: Mediators must at all times remain impartial towards the participants.
- Confidentiality: Mediators should not disclose any information about or obtained during a mediation to anyone without the express consent of each participant.
- Inclusivity: An inclusive process need not always imply that all stakeholders participate directly in negotiations, but mechanisms should be created to include all perspectives in the process.
- The negotiated agreement between the parties is not based on who is right and who is wrong but aims to satisfy the interests/needs of all parties involved.
- Information disclosed during mediation is not allowed to be used in subsequent legal procedures.

Mediation is done in several steps or phases (Böhner et al. 2008, Beer and Packard 2012):

A) Exploring the situation

1. Preparation:
Verifying that mediation is a suitable approach to solve the conflict and that all parties are willing to enter it; agreement on where and when it should take place, who should act as mediator etc.
2. Establishing the arena:
Agreeing on general rules (see above) and specific rules (such as maximum time to speak, obligation to listen and not to interrupt the other party), creating trust.
3. Identifying and prioritising the topics to be discussed:
The objective is to obtain an overview on the topics the parties want to talk about and to prioritise them. For that purpose, each party presents its position. The other party listens. The moderator is actively listening and notes all themes on flipchart or board. In a second step, each party identifies the topics which are most relevant for them/which they want to address first and why. Finally, parties agree on the order in which the topics will be discussed.
4. Identifying the underlying interests and needs to be addressed:
The parties explain the interests and needs behind their positions. The moderator helps the parties to identify their interests and needs and helps them to understand each other's positions. This is done for each topic.

B) Reaching resolution

5. Developing options:
For each topic, the parties talk through possible options until they come up with something that meets as many interests and needs of both parties as possible and is workable.
6. Securing agreement and ensuring its implementation:
The parties identify and agree on specific measures and define when, how, by whom etc. they will be implemented. The mediator then usually records the decision in a written agreement.
7. Closing:
The parties approve their agreement. The mediator reviews what has been accomplished and ties up loose ends. In a last step, the parties agree on monitoring or control measures to ensure the successful implementation of the agreement.

Such a mediation can be done within one session or may need several meetings depending on the complexity of the case and the willingness of the parties to find an agreement. The mediation may also require a field visit, in particular when it is about boundaries or spatially overlapping rights, to clarify the conflict issue.

Mediation can be carried out by professional mediators or by land experts who have received special training in mediation, such as land officers in special departments dealing with land conflicts. The exact nature of the conflict determines whether a higher degree of professionalism in moderation or more detailed insight into land issues is needed. No matter who is doing the mediation, the person needs to possess certain competencies (Whatling 2012 modified):

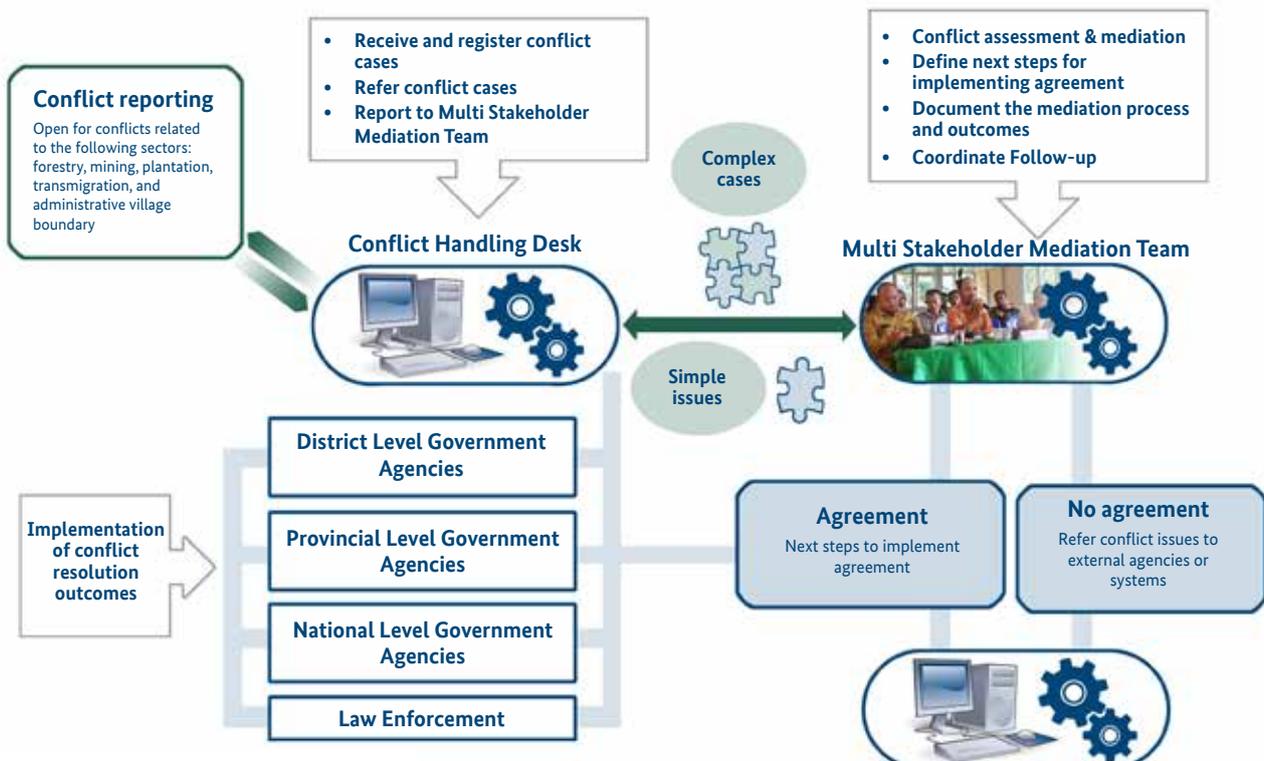
- Listening skills, e.g. active listening (in a verbal way (e.g. by paraphrasing and verbalising emotions) and in non-verbal ways (e.g. through nodding, keeping eye contact and turning towards the other person signaling interest in what (s)he says)
- Questioning skills, e.g. using circular questions
- Summarizing and reflecting skills, e.g. paraphrasing, using reflective questions and
- Interpersonal skills to manage heightened emotions and parties in discord

Some organisations offer checklists and matrices specific for land conflict mediation. There is, however, a risk that the mediation process becomes too static and overcomplicated. Key to any mediation is to have the parties talk and listen to each other and continuously increase their mutual understanding. Once the parties recognize each other's needs, it is only one more step to find common ground and to agree on a solution.

Box 22: Supporting forest land conflict resolution in Indonesia through mediation

The global GIZ Forest Governance Programme and the bilateral German–Indonesian Forest and Climate Change Programme cooperate with the Indonesian multi-stakeholder platform Working Group on Forest Land Tenure and the Ministry of Environment and Forestry on the development of innovative mechanisms for conflict resolution at the local level. A study on the institutional and legal set-up for forest conflict resolution in Indonesia, conducted in 2015, identified “an obvious lack of qualified, experienced mediators and organisations working on multi-party mediation in natural resources management in the field” and proposed the establishment of a mechanism for enhanced forest conflict resolution at district level.

“This mechanism centres on a multi-stakeholder mediation team, attached to a conflict handling desk, with the tasks of (1) providing conflict assessments and mediation services, and (2) effectively coordinating conflict resolution activities across sectors, and with the provincial and the national level. The establishment of such a “conflict resolution desk” as shown in the figure below is built on the principle of ‘subsidiarity’ to allow management of conflicts at the most immediate level consistent with their solution (national, provincial and district). The effective functioning of such a linked system would allow the national and provincial level to request conflict assessments and mediation services from district-based mediators, while the district level could request and receive assistance from the provincial or national level. Thus, strengthening capacities at sub-national level and linking the conflict resolution system provides synergies and opportunities to handle more conflict cases in the future with greater chances of success and lower costs. In addition, documented lessons learned from conflict resolution processes can be used for long-term conflict preventive policy, legal and institutional reforms.”



Source: GIZ and Working Group on Forest Land Tenure 2016

Box 23: Mediation of a land conflict by a regional indigenous organization, San Martin, Peru 2016

A representative of the regional indigenous organization *Coordinadora de Desarrollo y Defensa de los Pueblos Indígenas de la Región San Martín (CODEPISAM)* explains the process of mediation.

Source/photo credit: Ronald Saucedo/GIZ Peru

4.2.5 Customary land dispute resolution

In many parts of the world, indigenous peoples and other autochthonous groups have a very special relation to their land. For them, land is more than an economic or productive asset. It represents home, binds together past, present and future and constitutes their spiritual base. Disputes of land having such a broad range of functions must be settled in a more comprehensive manner. Customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction.

Customary conflict resolution is a form of arbitration with a strong conciliatory character. Hence, the usual distinction between non-consensual and consensual approaches does not apply. In other words, it includes elements of both: There is both a binding third party decision at the end typical for non-consensual approaches and there is a strong focus on the re-establishment of harmony as in consensual approaches of conflict resolution. As opposed to modern arbitration, the arbitrator in these cases cannot be chosen by the parties but is defined by his position.

The arbitrators are the elders (generally a panel of exclusively old men), whose main objective in conflict resolution is to re-establish harmony, cohesiveness and unity within

the community. A conflict is therefore not considered to be simply a matter between the individuals involved but rather an affair of the entire community. The conflict is resolved when the conflicting parties are once again reintegrated into the community. Much attention is therefore given to spiritual and psychological measures such as purification, pacification and reparations, all of which are considered to have healing effects facilitating the mental and spiritual rehabilitation of victims as well as perpetrators.

Apart from acknowledging the wider dimensions of land conflict settlement and focusing primarily on conciliation to avoid any loss of face, customary conflict resolution has a number of particular additional strengths. First of all, it is generally credited with high legitimacy by the community and therefore represents a good or even better alternative to the state justice system – especially in cases of state inefficiencies or collapse. Second, it is process-oriented, which guarantees more sustainable results than pure product-oriented methods of conflict settlement. It is also a very inclusive and participatory approach, which makes it more sustainable, as well. Finally, the costs are very low, making customary conflict resolution easily accessible for everyone (Boege 2006; Owusu-Yeboah 2005).

There are, however, a number of weaknesses to this approach as well. One of these is that, due to its comprehensiveness and process-orientation, customary conflict resolution can take quite some time. Another problem is the limited sphere of applicability, as customary conflict resolution is generally confined to relatively small communities. It is therefore

limited to the resolution of micro-level land conflicts. The main problem these days, however, is its non-compliance with international standards of equity, basic ideas of democracy and universal human rights. In customary systems, all are not equal, with women, young people and strangers being generally disadvantaged (Odametey 2007).

Box 24: Customary land dispute resolution in Ghana

In Ghana, about 80% of the land belongs to traditional areas and is held in trust for the people of each area by their tribal chiefs. Thus, land in a particular traditional area can be allocated by the chiefs in consultation with the Traditional Council or by the family heads with the approval of the chief and the Council.

Madam A was granted a piece of land by a man purporting to be the family head of the Bortey family of Zenu, a village in the Tema Traditional area. She was given a lease of 99 years for residential purposes and was made to pay a premium before the lease document was handed over to her for registration. She was shown the land, which was vacant at the time. She submitted the document for registration but the document got lost at the registration office and all efforts to trace it proved futile.

She later found out that Mr B was also claiming ownership to the same piece of land and had already started development. He had also been given a lease, but by another member of the same family who also claimed to be the family head. He had, however, yet to register the document. He had also paid a premium to his lessor and was not prepared to let go of the land since he had already invested in it. After several attempts to stop Mr. B from developing the land proved futile, Madam A made a complaint to the Tema Traditional Council, asking for an intervention to compel Mr. B to give the land back to her. The Council fixed a date for hearing and summoned both parties to appear before them with their lessors, witnesses and documents to prove their claims.

On the day of the hearing, the Council was represented by six elders and the paramount chief. The conflicting parties came with their lessors as well as some witnesses, including two officers from the registration office to testify that indeed the office had misplaced Madam A's lease document and were still looking for it. The hearing was open to the general public but apart from the above-mentioned persons and a few supporters of both parties no one else was there.

The complainant was asked to provide a drink for the pouring of a libation, which is believed to be a prayer for the success of the process. After this there was an introduction of the members of the Council and the conflicting parties. Both parties were then asked to deposit an amount of money to show their commitment to the process. The complainant was allowed to make her claims and call her witnesses, after which several questions were asked for clarification. The defendant was also given the same opportunity and when all the clarifications had been made, a recess was called to enable the panel to discuss the issues and give their opinion.

On their return, the gathering was informed that upon much deliberation the Council would like to consult with the elders of the Bortey family and that the hearing would continue in three weeks' time.

When the hearing resumed three weeks later, the chief conveyed the decision of the Council to the parties. The parties were informed that upon consultation with the elders of the Bortey family, it has been established that the family had yet to appoint a substantive family head following the demise of the previous one. Thus, neither of the lessors had any right to make grants on behalf of the family. The previous documents prepared for them were therefore null and void, although the family was prepared to replace the land for Madam A since Mr B had already started development on it. This would be done, however, only after the appointment of a substantive family head, who can prepare valid lease documents to be endorsed by the Traditional Council. They were to call at the Council's office in about six weeks to collect the documents. The parties accepted the decision and provided drinks for libation and money to thank the Council.

Source: Cynthia Odametey, Ghana

While customary conflict resolution is (still) quite popular in rural areas, the urban populations most often prefer alternative dispute resolution, one reason being that they do not want to be old-fashioned; another being that differentiated treatment according to status and position is thought to be unacceptable for modern people.

Therefore, it can be assumed that slight modifications of the customary conflict resolution – by simply recognising and integrating the principles of equity and inclusiveness as enshrined in most national constitutions – would greatly improve the acceptance of customary conflict resolution as a method. Harper (2011 modified) suggests the following programming options for reforming or strengthening customary justice systems:

- Expansion of participation in customary decision-making (the newly introduced village commissions to conciliate land tenure conflicts in Burkina Faso (see box 27) are a good example of this approach);

- Codification of customary law (e.g. the local land tenure charters (chartes foncières locales) in Burkina Faso introduced in 2009 by the Law 034-2009);
- Introduction of procedural safeguards into customary processes;
- Skills-building for customary leaders;
- Elimination of harmful customary practices;
- Revision or reinterpretation of customary law;
- Oversight of customary justice processes;
- Awareness raising on human rights and constitutional standards such as gender equity and women’s rights and measures to accompany social change.

Key to any future-oriented customary land dispute resolution is that the constitution recognises customary law but states that any discrimination in customary law is superseded by the principles of equity and non-discrimination in the constitution.

Box 25: Customary land dispute resolution – in a nutshell

<p>Characteristics of customary justice systems</p> <ul style="list-style-type: none"> • A focus on the restoration of social harmony • A hierarchy of problem-solving fora • Dynamic and flexible operating modality • Broad jurisdiction • Participatory dispute resolution • Consensus-based decision-making • Restorative solutions • Compliance and enforcement of decisions • Reconciliation 	<p>Constraints of customary justice systems</p> <ul style="list-style-type: none"> • Lack of predictability and coherency in decision-making • Discrimination and exclusion of marginalized groups • Weak procedural safeguards, accountability and enforcement capacity • Abrogation of human rights and criminal justice standards • Comparing the state and customary justice systems: clearing up ambiguities and misconceptions
<p>Reasons that customary justice systems might be preferred</p> <ul style="list-style-type: none"> • Financial accessibility • Geographic and linguistic accessibility • Familiarity • Expedience • Cultural imperatives • Avoiding the state system 	<p>Programming options for reforming and strengthening customary justice systems</p> <ul style="list-style-type: none"> • Expansion of participation in customary decision-making • Codification of customary law • Introduction of procedural safeguards into customary processes • Skills-building for customary leaders • Elimination of harmful customary practices • Revision or reinterpretation of customary law • Oversight of customary justice processes

Source: based on Harper 2011

4.2.6 Religiously based land conflict resolution

While many societies make reference to their religion or religious understanding when it comes to conflict resolution, this is done sometimes more – and sometimes less – consciously and directly. In many countries, religiously based morals and values have entered directly into customary or formal law. In other countries, religion has had an impact on the philosophy that has influenced formal law making. In still other countries, religion is unconsciously referred to in land conflict resolution. In quite a number of countries, however, religious law is equal to state law. In most Muslim countries, for example, land conflict resolution can as much be based on the *Shari'a* as on the Civil Code or Civil Procedures Code – especially at the local level.

In the *Shari'a*, mediation towards reconciliation is invariably the recommended first-order mechanism to dispute resolution. *Solh* (the doctrine of conciliation) appears in seven verses of the Qur'an. When compromise is impossible, *wasta* (mediation) takes place, in which one or more persons intervene in a dispute, either on their own initiative or at the request of one of the parties (Sait/Lim 2006). As the *Shari'a* also gives high priority to local legitimacy and testimony (as opposed to pure rights-based approaches), it offers a favourable platform for the resolution of micro-level land conflicts and is often referred to in community-based land dispute resolution (World Bank 2005). This is addition-

ally supported by Islamic legal tradition, which a) does not require any lawyers since the litigants themselves generally plead their own case, and b) seeks to address the needs of all parties within an Islamic framework, as opposed to the adversarial style of Anglo-American legal tradition (Sait/Lim 2006).

The advent of colonial influences saw the rise of the legal profession but it did not extinguish informal legal practises and local methods of conflict resolution (Irani and Funk 1998). Given that land disputes are considered a family and community matter and that court legal proceedings are viewed as uncivil and distasteful in many Muslim societies, there is frequent recourse to informal negotiated settlements. These are led or assisted by neighbours and elders, local mosque councils or mosque leaders and the *wakil-e gozar* (the chairperson of the local council or neighbourhood representative, sometimes also referred to as the neighbourhood level “advocate”; Wiley 2005). To ignore these community-based procedures in most Muslim countries is to miss out on the chance for land dispute resolution through locally legitimated mechanisms deeply rooted in society.

Just as with customary conflict resolution, religiously based land conflict resolution – whatever its popularity and efficiency – should be tested for adherence to certain basic (human rights) standards, such as fairness, impartiality, non-discrimination and inclusiveness.

Box 26: Local land conflict resolution by religious institutions in Kabul

Kabul has about 2.4 million informal settlers who often resort to informal community-based dispute resolution based on religious institutions. In informal areas, most disputes arise over matters such as one house invading the privacy of another, footpaths being ruined by waste disposal and snow being cleared from one compound to another. In these instances, community-level mechanisms are the preferred means of dispute resolution because of time, cost, trust and enforceability.

At the community level, the mosque council is responsible for channelling disputes towards the most suitable forum for dispute resolution. Local mechanisms for resolution include i) neighbours and elders; (ii) the mosque councils, comprising representatives of each mosque in the neighbourhood; and (iii) the *wakil-e gozar*.

An important feature of these mechanisms is that actors are not always the same and none of those assisting in resolving the dispute are paid. No permanently standing council for dispute resolution exists, which makes them less vulnerable to bribes. Rulings tend to be satisfactory to the parties involved, making community-based procedures relying primarily on religious institutions an effective tool of dispute resolution.

Source: World Bank 2005

4.2.7 The cultural dimension of conflict resolution

Conflicts are dealt with differently in different cultures (defined here as either ethnic or social ones), and so are land conflicts. While certain societies, groups or individuals almost enjoy arguing – seeing it as a method for arriving at something new (thesis – antithesis – synthesis) – others prefer to ignore conflicts, hoping that one day they will vanish. It is very important to be familiar with the specific culture’s common way of dealing with conflicts, in order to decide which method of dispute resolution best fits the case of an ongoing land conflict, and how this dispute should be addressed – even if this means never talking directly about the conflict issue or actively avoiding one party’s loss of face.

Depending on the cultural context, three main models of dealing with conflicts are popular (Zaninelli 2001):

1. **Conflict exclusion** resulting in conformity and adaptation through deterrence and social control. Conflicts are generally suppressed.
2. **Conflict balancing** aiming at conciliation and harmony. Conflicts are easily belittled.
3. **Conflict settlement** allowing for open and constructive handling of conflict, where differences in interests are accepted in order to find a compromise. A common consequence of this is that people tend to argue about everything.

Conflict exclusion can become very expensive and is rarely a long-term solution (Leung/Tjosvold 1998). However, if this is the rule in a given country, ways have to be found to sensitively solve the problem without mentioning it. If the *de facto* expropriation of smallholder farmers cannot be addressed as such, it might be acceptable to discuss measures to improve food security – which incidentally improve tenure security.

Whether a conflict can be directly addressed and settled, or if people would rather try to find balance instead, is very much linked to their common way of communication. Conflict settlement (or in other words having conflicts out) is only possible in an environment where controversial opinions can be directly discussed and where conflicts can be sorted out verbally and analytically. Such a way of addressing conflicts is much more accepted in a context which is object-focused and individualistic than in societies that are based on collectivism. In the latter case, verbal confrontation

is generally neutralised by ignoring it and contradictions minimized by referring to common interests and objectives and appealing to mutual friendship, all of which often results in negating the conflict. In such an environment, conflicts may only be referred to indirectly, and preferably not face-to-face but through an intermediary (Pedersen/Jandt 1996; Zaninelli 2001).

Customary conflict resolution fits in very well with the requirements of cultures based on balancing conflicts. In a traditional context, dispute resolution requires the intervention of a respected intermediary with decision-making authority. Therefore, consensual approaches will not work, and what is needed is arbitration. This, however, can include aspects of conciliation or mediation – giving priority to the re-establishment of harmony and good relations.

No matter what the cultural context, a conflict is best solved if the dispute resolution ends with a locally practised ritual: shaking hands, having a drink, making a sacrifice, etc. People need rites to put an end to a dispute and to be able to enter into a new era of mutual trust.

4.3 Land dispute resolution bodies

In most countries, a number of formal and informal channels exist through which the litigants can pursue their interests, such as:

- Judiciary
- Land courts
- Administration
- Political institutions
- Party system
- Customary institutions
- Religious institutions
- Civil society based institutions
- Private sector mediators

Many of these channels can be addressed or accessed at different levels; others are restricted to only one or two levels. Some channels are more formal and regulated, while others are rather informal and unregulated. Whether a land conflict resolution body is considered formal or informal – especially at the local level – varies greatly between countries. Table 8 gives an overview of potential land conflict resolution bodies at different levels and through different channels.

Tab. 11: Potential land conflict resolution bodies (examples)

Channel	Village/Community/ Neighbourhood Level	District/Municipal Level	Provincial Level	National Level
Judiciary		• District/Municipal Court	• Provincial Court	• High Court
Special courts		• District Land Tribunal	• Provincial Land Tribunal	• National Land Tribunal • Land Title Adjudication Committee • Stool Lands Boundary Commission
Administration		• District Land Authority • Cadastral Commission	• Provincial Land Authority • Cadastral Commission	• Land Ministry • Cadastral Commission
Political institutions	• Village Chief • Village Council	• Mayor • District Governor • District Council	• Provincial Governor • Provincial Council	• President • Prime Minister • Cabinet of Ministers
Party system	• Village/Area/ Neighbourhood Party Committee	• District Party Committee	• Provincial Party Committee	• Central Party Committee
Customary institutions	• Customary Chief • Land Chief • Council of Elders			
Religious institutions	• Priest • Buddhist monk • Mosque council or leader (Imam) • Rabbi		• Provincial Bishop	
Civil society and private sector	• Local NGO • CBO, grassroots • Professional mediators • Elders • Neighbours • Head of local council • Teacher	• National NGO • CSO • Professional mediators	• National NGO • CSO • Professional mediators	• National and international NGO • CSO • Professional mediators

Although many of these bodies exist in most countries, they do not necessarily have a mandate to resolve land conflicts. It could therefore be worth discussing if such additional mandate and functions should be given to competent bodies. While optimising the existing land conflict resolution

system within a given country, it is important to analyse the existing linkages and hierarchies between and among the different conflict resolution bodies, as well as how and where people can access the system.

Box 27: Wide variety of (local) land dispute resolution bodies in Burkina Faso

In Burkina Faso, the following bodies are involved in land conflict resolution:

- Customary chiefs (*chef de terre, chef de coutumes, chef de village*) – conciliation and arbitration
- Village committees (Comité Villageoise de Développement) – conciliation
- Mayor – conciliation
- Préfet – conciliation and – up to an amount of EUR 150 of the harm involved – arbitration
- Police – conciliation or preparation of documents for the court
- Haut-Commissaire – conciliation
- Gouverneur – conciliation
- Court – litigation

The new law on rural land tenure foresees the introduction of village commissions to conciliate land tenure conflicts (*commission de conciliation foncière villageoise*). The commission is supposed to be presided by a customary authority and includes as additional members representatives of a religious authority, a professionals organisation, the women and the youth. The objective is to create a local land dispute resolution committee that applies the traditional approach of conciliation, but whose members represent better the different groups of the society. The law makes it compulsory to first attempt a conciliation before addressing the court.

Source: Wehrmann/Sanou 2016

While a wide range of options to resolve land conflicts can be considered positive, a strict hierarchy of institutions is nonetheless required. This will eliminate the tendency for “institutional shopping” (whereby those affected by conflict choose whatever institution they think will be most favourable to their case) pursuing parallel channels, or trying again with other institutions after a case is lost – as long as there is a chance to win it. Experience shows that such parallelism leads to wastefully high spending on legal battles and can even undermine the credibility of the entire judicial system (Deininger 2003). For Timor, a property dispute resolution system has been designed that defines clearly, which body is applying which form of land dispute resolution at what moment during the dispute resolution process (see fig. 17).

According to the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT 2-4, 6, 21) any land dispute resolution body needs to “be impartial, competent, reliable, accessible and known to the people, follow affordable, timely, fair, non-discriminatory and inclusive processes in reaching decisions or settlements, and provide effective remedies, including restitution, indemnity, compensation and reparation, from which appeal lies to regular courts of law” (FAO 2016a: 31). Many recent assessments, however, identified some deficiencies (see for instance Brankamp 2013 for the Communal Land Boards in Namibia or FAO 2016a for non-judicial grievance mechanisms in Sierra Leone).

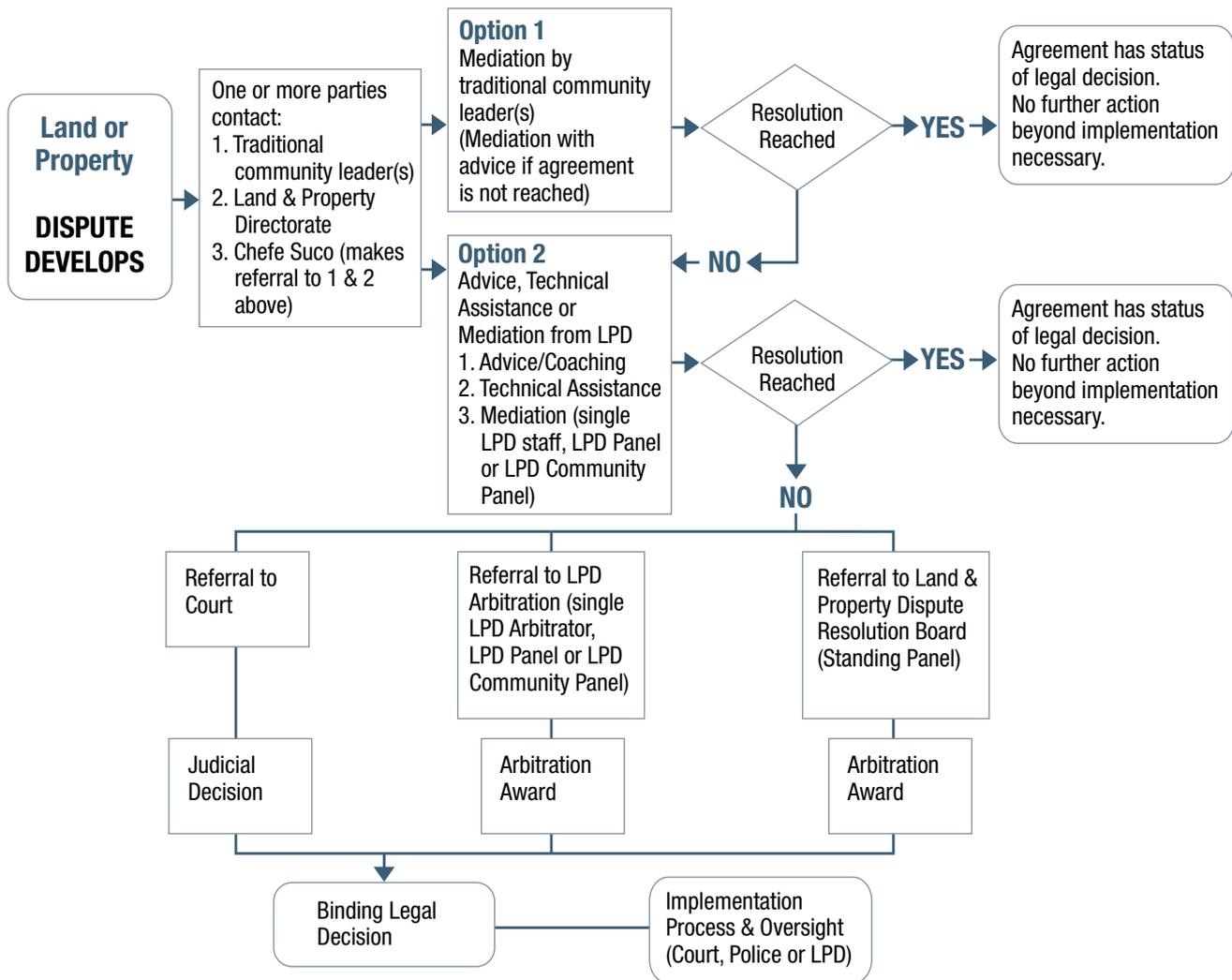
4.3.1 Land courts

Land courts go by different names, such as land dispute court or land tribunal, but their objective is the same: to deal explicitly and exclusively with land-related conflicts. Some of them deal with all kinds of land conflicts, while others concentrate on one major type of land conflict, such as illegally allocated state land. Both models are possible and make sense.

Non-specialised land courts help to free general courts from the burden of land-related cases, decrease the time people need to invest in solving land disputes and improve decision-making by arbitrators who are more familiar with land issues. Special courts or tribunals focusing on a specific type of land conflict are generally put in place, when there is an unusual accumulation of this type of land conflict, e.g. in post-conflict situations, due to legal pluralism or in cases of a previously systematic illegal allocation of state land.

The specific land courts should be temporary ones, existing for as long as there is a need to settle these specific types of land conflicts. The general land courts could be permanent structures. Both must be constituted by the state. Their decisions should be binding and final. Appeal to the High Court should only be a last resort. The High Court should only be allowed to verify the correctness of the procedure of the land court but not to re-open a case. To avoid irregular procedures right from the beginning, civil society should be involved in the monitoring of the land courts, e.g. in a joint commission together with state officials.

Fig. 17: Timor’s Land and Property Dispute Resolution System designed for the Land and Property Directorate



Source: The United Nations Interagency Framework Team for Preventive Action 2012, p. 44

Not all land courts provide success stories. On the contrary, good practices are rare. There is a risk that land courts suffer from the same problems as general courts do, i.e. backlog of cases due to lack of staff, limited accessibility due to insufficient number of courts outside the capital, corruption etc. In regard to the District Land and Housing Tribunals

in Tanzania, for instance, Massay (2013) points out that – a decade after the enactment of the corresponding Land Dispute Courts Act of 2002 – they are overburdened with 19,897 pending cases in 2013 and that there are legal and practical challenges that hinder access to them as well as their independence.

Box 28: Environment and Land Court, Kenya

The Environment and Land Court in Kenya is a Superior Court with the status of a High Court – same as the Industrial Court. The court has been established under the Environment and Land Court Act No. 19 of 2011. It has jurisdiction to hear any other dispute relating to environment and land, e.g. disputes relating to land administration and management or cases relating to public, private and community land and contracts. According to a recent study by the Land Development & Governance Institute (2013), “the public is fairly satisfied with the efficiency of service delivery of the Environment and Land Court, with most citizen confident [21% very confident, 64% confident, 15% not confident] with the judicial process under Environment and Land Court. Land cases are being heard and determined in a shorter period as compared to the past. On the other hand, Kenyans feel that automation of the registry and the court process as a whole would greatly improve the court’s efficiency in resolving land disputes.” According to the assessment, 28% of the cases were family disagreements over land and fraud related cases, 27% succession cases, 22% boundary disputes, 13% double registration, 4% evictions, 3% compulsory acquisition and the remaining ones other land related disputes. 44.8% of the cases have been solved in less than a year and another 50.6% in one to five years. The majority of respondents felt that the cost of seeking justice was affordable with 53% and 6% of the respondents reporting that it was affordable and very affordable respectively. 34% were of the opinion that the cost was unaffordable and 7% felt that the cost was completely unaffordable. On matters of corruption, the courts received a positive rating with 46% and 23% of the respondents ranking it as low and very low respectively. 26% of the sample felt that corruption was high while only 5% felt it was very high. In accordance with this assessment, Otieno (2014) concludes that there are some legal challenges with the exercise of the functions of the court, the jurisdiction of the court vis-à-vis other courts and the composition of the bench – “problems to be resolved overtime through a rich consistent jurisprudence by all the court users practicing fidelity to the constitution and the law.” In line with this conclusion, Otieno (2014) provides recommendations mainly to improve governance.

Source: Republic of Kenya – Judiciary (2016), Land Development & Governance Institute 2013

Box 29: Special Land Disputes Court in Afghanistan – a lesson learnt

The Special Land Disputes Court in Afghanistan exclusively deals with private persons who are returnees or internally displaced and who seek to retrieve private properties of which they have been unwillingly deprived since 1978. Neither the government nor its agents can use the court to seek restitution of non-private property. The Special Court, however, only resolves disputes over formal properties, which most often pertain to wealthier individuals and represent a minority of landholdings – 71% of the cases involving claims of the better-off.

After a restructuring, today the Special Court consists of 18 judges operating in two courts, one for Kabul and one for the rest of the country. A second-level court of appeal within the overall Special Court has been established as well. In spite of the good intention, the Special Court is failing to deal effectively with claims, having resolved only 5% of all registered cases in 2005, three years after the court had been set up. The main obstacles are:

- Lack of capacity to deal with the increasing number of cases.
- Time consuming procedure.
- Lack of qualifications, as most judges are elderly with limited legal education beyond *Shari’a*.
- Difficulties in those cases where property has passed through the hands of several owners, each of which is seeking compensation.
- High costs resulting from the fact that no case will be swiftly heard or resolved without making a payment.
- Lack of co-ordination with other state agencies, particularly the police, which makes enforcement of decisions difficult as the police are typically bribed by wrongful occupants to claim they cannot be found.
- High number of cases that are appealed by the party who lost the case.

Source: World Bank 2005

As with any other court, land tribunals can suffer from shortcomings and misuse (see box 29). The following checklist may help to avoid common weaknesses.

CHECKLIST: Provisions to ensure proper functioning of a land tribunal

1. The land tribunal has to be constituted by the state.
2. The objectives and functions of the land tribunal have to be defined.
3. It has to be defined who will bear the costs involved. In the case of general land tribunals, it should be the parties to the conflict. In the case of special land courts dealing with land conflicts resulting from government failure, costs should be borne by the state.
4. The members of the land tribunal (such as the chairman, deputy chairman and support staff) and their individual functions have to be defined. It has to be made certain that sufficient staff is available to investigate individual cases.
5. Special regulations should be defined for the procedures and duties of the land tribunal, providing for quick and cheap land conflict resolution.
6. It should be agreed that the civil procedure law and rules do not apply to the proceedings of the land tribunal to allow for a more flexible approach.
7. The land tribunal must be established by an amendment of the existing land law (Land Act).
8. Other laws dealing with land issues or jurisdiction may need to be amended or adapted as well.
9. It has to be guaranteed that any person involved in a land conflict (or a land dispute of this special kind) can have access to the land tribunal.
10. A condition of the establishment of the tribunal would be that, while appeals to the High Court against its decisions would be available to any aggrieved party, the High Court would not be a court of first instance in any land-related conflict. The High Court would only be allowed to verify the correctness of the procedures of the land tribunal, but not to re-open a case.
11. The members who are appointed to become part of the land tribunal must have adequate qualifications and receive special training as required. They would need to be both experts on land issues and good arbitrators.
12. The procedures and decisions of the land tribunal have to be transparent, and every staff member accountable and bound to a strict code of conduct.
13. The procedures and decisions of the land tribunal need to be monitored, evaluated and made accessible to the public. These duties should be performed by a joint commission made up of representatives from both NGOs and the state.

4.4 Toolbox II: Measures and tools to solve land disputes

Measures and tools to solve land disputes can be distinguished in the following four categories, each including a wide range of tools and measures:

■ Awareness raising tools creating mutual understanding derived from dramatic arts

- Socio-drama
- Street theatre and puppet theatre
- Radio plays, TV soaps and spots as well as YouTube media

■ Land administration and management tools

- Handling maps
- Inventorying
- Mapping
- Surveying
- Land tenure rights analysis to clarify and secure property rights
- Participatory enumeration and people managed resettlement
- Participatory land use planning
- Land sharing and land readjustment
- Establishing fair compensation
- Institutional analysis and advice to ensure proper land administration, land management and public land management

■ Legal tools and measures

- Legal analysis/assessment and advice
- Recognizing customary tenure rights
- State land recovery
- Local conventions
- Moratorium
- Legal empowerment, in particular legal aid and measures to increase legal literacy

■ Tools and measures to improve land dispute resolution

- Land dispute resolution assessment
- Measures to improve the institutional set-up for land conflict resolution (and thereby accessibility, quality and fairness of land dispute resolution)

Some tools already require an initial agreement on the solution of the conflict (e.g. recognizing customary rights, state land recovery), whereas others contribute to reaching such agreement (e.g. all tools documenting the current situation and/or jointly discussing future use and access to the land).

All tools are briefly described in the following sub-chapters, partially illustrated with examples. For each tool, further reading is provided.

4.4.1 Awareness raising tools creating mutual understanding derived from dramatic arts

Land conflicts, like any other type of conflict, often end up moving in vicious circles. Conflict parties stick to their positions and unconsciously force one another to adopt increasingly extreme positions. People normally tend to project negative characteristics onto one another until the opposite party finally incorporates them. Reality becomes more and more disguised and distorted, and the other conflict party ends up being blamed for all the negative aspects of life (e.g. squatters often make the state responsible for all their problems, while the state considers squatters to be a handicap to any development whatsoever).

In such situations, it becomes necessary that both conflicting parties change their perception of the other to pave the way for an equitable dialogue. This can be achieved by socio-drama done by all conflict parties together or separately by each conflict party. As an alternative, street theatre, puppet theatre, radio plays and TV soap operas can be used to deal with the typical land conflicts in which people are involved. These allow the conflict parties and those affected by the conflict (resolution) to better understand the conflict: what it is all about, why the parties react the way they do and what options or compromises exist to stop the conflict.

Tool 8: Socio-drama

See 3.3.1

Tool 9: Street theatre and puppet theatre

What are street theatre and puppet theatre and how can they be used in land conflict resolution?

Street theatre and puppet theatre using hand puppets, marionettes or shadow puppets can be used when the solution of the conflict requires a shift in mind set and tradition.

How are street/puppet theatre done?

Street and puppet theatre can be done by professional companies as well as amateurs. The play can be completely written down or allow for improvising. The storyboard, however, needs to include a strong message or moral running throughout the performance, e.g. women have a right to own property or the necessity to recognize customary

tenure. All starts by defining a clear objective: what is the play supposed to achieve? What shall be the main message(s) to be transmitted? To save costs and to allow the production to be portable, the design should be simple, the cast small. This means that actors might have to play multiple roles and may have to play an instrument as well. A successful play should be one harmonious unit of idea, acting and music. (Puppet) theatre has been used for education as well as in the context of development projects in many countries already. The type of theatre needs to be adjusted to the local culture, e.g. shadow theatre is more likely to be known/appreciated in Asian countries whereas Europe has a long tradition in puppet theatre and Africans may appreciate a mixture of street theatre and traditional music/dance.

Example (also not related to land conflicts, the example proves the feasibility of theatre to promote behavioural change): Women's rights highlighted in UN-backed street theatre series Part of a 16 Days of Activism, a campaign against Gender-Based Violence, actors from the Kandahar Film and Theatre Film group put on five live street theatre performances in Kandahar city and adjoining districts during several weeks. Each performance, supported by the regional office of the UN Assistance Mission in Afghanistan (UNAMA), was followed by a lively audience discussion. The actors also recorded a radio drama – based on the play – that was broadcast via local radio to an audience estimated at 300,000 (United Nations Assistance Mission in Afghanistan, 8.12.2016 – full story available at <http://unama.unmissions.org/women%E2%80%99s-rights-highlighted-un-backed-street-theatre-series>).

Recommended reading:

- ▶ BBC: Theatre in education. Available at: <http://www.bbc.co.uk/education/guides/zsbn39/revision/1>
- ▶ Holler, J.: Puppets in primary education. UNESCO Service of Articles on Education. Available at: <http://unesdoc.unesco.org/images/0018/001855/185575eb.pdf>
- ▶ Morin, E., Luckhurst, M. (eds.): Theatre and human rights after 1945: things unspeakable.

Tool 10: Radio plays, TV soaps and spots as well as YouTube media

How can radio plays and TV soaps be used in land conflict resolution?

Similar to street and puppet theatre, radio plays, TV soaps and spots can be used when the solution of the conflict requires a shift in mind set and tradition. It should be used mainly to address land disputes that are typical for the whole country or the entire region in which the radio/TV station is broadcasting.

How to do radio plays, TV soaps and spots as well as YouTube promotional media?

The inclusion of land issues in a radio play or TV soap can only be done in cooperation with the radio and TV stations. It generally requires long preparation. TV soaps have been used in the past to transfer basic concepts – often related to the role and rights of women. TV spots can be done quicker. They are normally produced by professional companies.

Examples:

- In Kosovo, TV spots along with placards and advertisements in newspapers have promoted the idea of co-ownership.
- A number of YouTube videos have been produced by FAO to promote the Voluntary Guidelines on the Responsible Governance of Tenure focussing on different aspects and targeting different audiences.

4.4.2. Land administration and management tools

Tool 11: Handling maps

What is meant by handling maps? How to use maps to solve land conflicts?

Handling maps simply refers to the search for and participatory use of existing maps. Maps do not necessarily tell the truth, but they provide a useful base for discussion. They should be discussed by all conflict parties together with the objective to agree on one version which can be one of the existing ones (which may be contradictory) or a new one developed together (see below: mapping).

Example:

In Northern Uganda, there was a boundary dispute between Nwoya and Gulu Districts over a stretch of land in Korober. Later, the District Local Council (LC5) Chairperson of Nwoya District explained: “I contacted the LC5 Chairperson of Gulu and we decided to hold a joint community meeting. We both agreed to be transparent and we involved the technical people in determining the boundary using the existing maps. The District Chairperson of Gulu District came to the meeting with his map and I too carried along my map. Each of us also went along with our District Physical Planners. We then asked community members whether they wanted their boundaries determined immediately to which they answered in the affirmative. The two Physical Planners then interpreted the two maps and it was found that Gulu District boundary had entered Nwoya by 4 kilometres. The district chairperson of Gulu then declared that the area belongs to Nwoya” (Otim and Charles 2014, p. 29).

Tool 12: Inventorying and recording

What is meant by inventorying/recording? What needs to be inventoried/recorded? How is it done?

Different issues can be inventoried/recorded to support land dispute resolution, including all disputed cases, the different claims (claimed rights), all land units in a specific area, the land units together with those individuals and groups holding tenure rights over these units, all public lands etc. An inventory can be a simple list or a comprehensive database. The textual part can come with and without a graphic part (map). Inventorying/Recording represents one of the first steps in land dispute resolution. To solve tenure problems in informal settlements, generally an inventory is made including all settlers with legitimate tenure rights. Where public land is encroached, a public land inventory represents the first step in clarifying claims. In case of contradicting claims over one area, all holders of legitimate tenure rights and their rights/claims should be inventoried/recorded. No matter what type of inventory, there should be clear, legitimate rules of what and/or who will be inventoried/recorded to avoid additional conflicts. Ideally, inventorying/recording is combined with participatory mapping (see 4.1 and tool 13).

Tool 13: Participatory Mapping

What is meant by participatory mapping? What needs to be mapped? How is it done?

“Participatory mapping – also called community-based mapping – is a general term used to define a set of approaches and techniques that combines the tools of modern cartography with participatory methods to represent the spatial knowledge of local communities. It is based on the premise that local inhabitants possess expert knowledge of their local environments which can be expressed in a geographical framework which is easily understandable and universally recognised. Participatory maps often represent a socially or culturally distinct understanding of landscape and include information that is excluded from mainstream or official maps. Maps created by local communities represent the place in which they live, showing those elements that communities themselves perceive as important, such as customary land boundaries, traditional natural resource management practices, sacred areas, and so on” (Rainforest Foundation UK 2017). Participatory mapping can be done in myriad forms. It can be done as a drawing in the sand, based on a satellite picture or be incorporated into a sophisticated computer-based Geographic Information System (GIS). It can be done with the use of GPS or in the form of crowd sourcing. No matter which technology is applied, there has to be a ground check. Although participatory mapping is not defined by the level of compliance with formal

cartographic convention, “to be useful for outside groups, such as state authorities, the closer the maps follow recognised cartographic conventions, the greater the likelihood that they will be seen as effective communication tools” (Rainforest Foundation UK 2017).

Participatory mapping is crucial for most land disputes to be solved. It helps to localize the conflict area with its (perceived) boundaries and to identify the overlapping claims. It can also help to identify land use conflicts by mapping the different land uses – current and planned. What needs to be mapped depends on the type of conflict. The following aspects can be mapped: location, boundaries, land cover and (state of) existing resources, land use, social/cultural importance, buildings/constructions, individual/private, common and public properties etc. Mapping for land conflict resolution may not require involving an entire community, but at least all conflict parties, ideally all stakeholders, either together or separately. Hence, the number of people involved may be smaller as in case of community mapping, but include members from outside the community, such as representatives of neighbouring communities, non-sedentary groups, state authorities, or companies. In case the different groups produce their maps separately from one another, the different outcomes need to be discussed together. Participatory mapping can also be done for land dispute prevention (see example from Bandah Aceh following tool 15).

Recommended reading:

- ▶ Rainforest Foundation UK: Mapping for rights. Putting communities on the map. Available at: http://www.mappingforrights.org/participatory_mapping [site visited 13.1.2017].

Tool 14: Surveying

What is meant by surveying? How can surveying contribute to solve land conflicts?

Surveying refers to the technique of determining the terrestrial or three-dimensional position of points and the distances and angles between them. These points are usually on the surface of the Earth, and they are often used to mark boundaries between properties, building corners or the surface location of subsurface features. In the context of land dispute resolution, surveying plays an important role in documenting agreements, in particular of conflicts over boundaries. Once conflict parties agreed on the boundaries, they should be mapped and registered. This can – but does not have to – involve professional surveying. Many land registries, however, require proper surveying.

Surveying, titling and registration are definitely not a panacea for land conflicts, as they can create costs that are not affordable for the poor. Still, there are a number of land conflicts that definitely need a survey and an entry in the land registry and cadastre. Especially in cases of boundary conflicts between neighbours, clans or administrative units, surveying should accompany the boundary-setting. How accurate, and therefore costly, this should be depends on the value of the land as well as on the characteristics of the conflict and the relation between the conflicting partners. In general, land registration should primarily be instituted where land values are high – that is in expensive urban areas. The rural tenure plan in Benin is an example of an apparently successful rural cadastre in a rather poor country (GTZ 2004). There are other examples which favour simpler and cheaper solutions for poor rural areas, including planting hedges along the agreed boundary line, which in addition to fixing the boundary also serves as a wind break to prevent soil erosion.

Tool 15: Land tenure rights analysis and creation of tenure security

What is meant by land tenure rights analysis and creation of tenure security? How can this be done?

A crucial step in any land dispute resolution is the analysis of who holds what type of tenure rights over the land under dispute. When identifying these rights, it is necessary not only to focus on documented formal (legal) rights but also on all other legitimate tenure rights, including those due to customary tenure or modern informal, locally legitimated arrangements. The different property rights should be identified, made transparent, documented/recorded, neutrally and objectively evaluated, appraised, and if appropriate formally recognized and secured. Only then do the conflicting parties have a fair basis for discussing solutions, including the fair compensation of one of the parties if necessary.

The identification of conflict parties’ tenure rights (land tenure rights analysis) can include the following steps:

1. Separate interviews with the conflict parties on their perceived rights. Questions can focus on the type of tenure rights the conflict party holds, from whom the conflict party received that right(s), how they can prove their tenure rights and who can bear witness to their rights.
2. The information received from the conflict parties needs to be double checked with the named witnesses and local public and/or customary and/or religious authorities.
3. Any document proving the conflict parties’ use of the land should be recognized, e.g. title, deed, occupancy licence, land tax declaration, identity card showing the address or bill from water or electricity provider etc.

If the land conflict includes one or several groups with many members, they can also be asked to conduct the identification process of tenure rights by themselves in the form of participatory enumeration (see tool 16).

The creation of tenure security should be part of the land conflict resolution process. Once all legitimate tenure rights held by the different conflict parties have been identified and a solution over future access to and use of the land been achieved, tenure security should be established to prevent a re-escalation of the conflict. The creation of tenure security can have various forms, individual titling being only one of them (see 5.2). Examples are:

- A moratorium to stop forced evictions.
- The registration of the entire informal settlement as common property or trust land, as successfully implemented in Voi, Kenya (GTZ 1998, documentary on CD-ROM). Common property protects members of the settlement from forced sale as only their huts belong to them while the land is not considered to be private property.
- A step-wise increase in tenure security, starting with any locally adapted form of intermediate tenure and arriving at freehold after five to ten years. This, however, requires accompanying measures to protect those previously informal settlers who cannot afford the increases in tax and fees related to the formalisation of the area, such as a land ceiling and the prohibition of land consolidation or investment in nearby social housing, site-and-service or site-without-service programmes etc.

Recommended reading:

- ▶ UN-HABITAT: Handling Land: Innovative tools for land governance and secure tenure. Nairobi 2012.

Inventorying/recording, participatory mapping, surveying, clarifying and securing property rights (tools 12-15) often go hand in hand. Depending on the type of land conflict, it may be more important to identify the different tenure rights or to focus on the location of the land and/or its boundaries. Most land dispute resolution, however, requires both. Inventorying/recording, participatory mapping, surveying and clarifying and securing property rights can also be used to prevent land disputes.

Example:

Community land inventory and boundary mapping after the tsunami in Bandah Aceh, Indonesia

“One of the main tasks in the reconstruction process after the tsunami that hit Indonesia in 2004 was to reconstruct property rights. In order to ensure transparency, to prevent fraud and corruption and to protect the rights of people, identification of boundaries and property claims was left to the community with the help of many of the active NGOs

in a process called ‘community land inventory’ or ‘community mapping’. During the community mapping, NGOs and the community members mapped the community and identified property boundaries and the legitimate land owners (including surviving heirs). The finalization of the community land map required the signed agreement of the community. Once the community mapping was completed, the signed agreement and inventory were submitted to the national land agency, which assigned surveyors to legally survey each land parcel and prepare official cadastral maps, and land adjudicators and lawyers to confirm ownership and prepare the legal documents for legal registration of land ownership. Prior to land title certificates being issued to owners, the land agency publicly displayed the official cadastral maps and adjudicated inventory of land owners. The community then had one month to review the maps and ownership inventories, and lodge any objections. Only after this had been completed, and there were no outstanding objections to a land parcel, would the title certificate be issued to the owner. To ensure high rate of registration (to avoid future conflict) all land registration was free” (Zakout et al. 2006: 17).

Tool 16: Participatory enumeration and people managed resettlement

What are participatory enumeration and people managed resettlement? How can they be used to solve land disputes?

“Participatory enumeration directly, and to a significant extent, involve the people who are being enumerated. In some cases, the entire process is participatory from inception through design, management and implementation, to analysis and use of data [e.g. people managed resettlement]. In others, participation occurs at specific points in the process, such as an initial consultation or information sharing event, a point of boundary identification, or a process of public data verification [e.g. community land inventory and boundary mapping in Bandah Aceh]” UN-HABITAT 2010: 7).

Participatory enumeration can be applied if the land conflict includes one or several groups with many members. Members could be asked to do the identification of tenure rights or boundaries or any other relevant issues by themselves. Participatory enumeration has the advantage of insider knowledge and control. Brief questionnaires could be prepared together with community members. This would ensure that the local terms for tenure rights are used, all tenure rights categories are included and only locally available documents are asked for (see tool 15). Interviewers from the community can directly judge if any information provided is complete or realistic. Individuals who are interviewed may also be more likely to tell the truth as the interviewers are familiar with the local situation.

People-managed resettlement is based on participatory enumeration, but goes beyond. Informal settlers (squatters) can take the initiative to settle land conflicts by surveying their settlements themselves, documenting the names and claims of the settlers, identifying available lands adequate for resettlement, and being involved in designing, planning and implementing the resettlement programme. They can thereby actively contribute to avoiding forced evictions and find themselves homes with long-term perspectives. At the same time, they can improve their social status by proving that they can take care of themselves if only the state treats them as full and equal citizens and agrees to collaborate (Patel/D'Cruz/Burra 2002).

Recommended reading:

- ▶ Patel, S., D'Cruz, C., Burra, S.: Beyond Evictions in a Global City. People-managed Resettlement in Mumbai. Environment and Urbanization, Vol. 14 (2002), No. 1, pp. 159-172.
- ▶ D'Cruz, C., Satterthwaite, D.: Building Homes, Changing Official Approaches: The Work of Urban Poor Organizations and their Federations and their Contributions to Meeting the MDGs in Urban Areas. IIED Poverty Reduction in Urban Areas Series. Working Paper 16. London 2005.
- ▶ UN-HABITAT: Count me in. Surveying for tenure security and urban land management. Nairobi 2010.

Tool 17: Participatory land use planning for land conflict resolution

What is participatory land use planning? How can it be used to solve land disputes?

Participatory land use planning is a systematic and iterative procedure based on the dialogue amongst all stakeholders carried out in order to define/achieve sustainable land use, which meets people's needs and demands and empowers them to make decisions about how to use the land (GIZ 2011, FAO/UNEP 1999).

Balancing (and reconciling) competing or conflicting interests between individuals and groups, land users, customary and state authorities as well as private investors on the use of land is the true task of any land use planning. While land use planning is generally a preventive tool, it can also be used in the case of existing land conflicts. In that case, however, it needs to be done together with the conflicting parties to be successful. Done this way, participatory land use planning is ideal to mediate between conflicting interests over the use of a specific land unit/area. It should, however, be done for a wider area, such as an administrative unit or a watershed basin. By widening the area, it may be possible to accommodate all interests as one or several interests may be realized on alternative land units in the proximity. The

final land use plan needs to be legally binding to be effective. Therefore, the responsible authorities need to be involved and formal procedures need to be respected.

Example:

- Participatory land use planning can be used to solve land disputes in the buffer zone around protected areas by involving all stakeholders – including hunters, gatherers, beekeepers, coffee producers, firewood collectors, game-keepers, environmentalists, local and national officers etc. – for the purpose of agreeing on a land use plan which is acceptable to all stakeholders.

Recommended reading:

- ▶ GIZ: Land Use Planning – Concept, Tools and Applications. Eschborn 2011.
- ▶ FAO/UNEP: The Future of Our Land. Facing the Challenge. Guidelines for Integrated Planning for Sustainable Management of Land Resources. Rome 1999.

Tool 18: Participatory land readjustment, land sharing and land pooling

What is (participatory) land readjustment? How can it be used to solve land disputes?

“Land readjustment is where a group of contiguous plots are voluntarily brought together or shared. [...] The consolidated plots are treated as a unit for the planning of new buildings and infrastructure [...] The unit is re-divided into plots and re-allocated to the landholders according to the size or value of the land that each has contributed. [...] The landholders get back a smaller amount of land than each contributed, but the value has increased [...]” (UN-HABITAT 2016).

Whenever there are competing or overlapping interests on the same piece of land and all conflicting parties have agreed to give up some of their land, land readjustment can help in the process of redistribution. This generally only works if no party has a chance to get the entire original plot. Two situations are quite common:

- **Land sharing** is a compromise between a private land-owner and the squatters living on his land. Land sharing prevents evictions and still leaves part of the property to the landlord to use that part for commercial purposes. A readjustment frees one part of the land so it can be used by the owner. Sometimes the owner can be convinced or even is forced to finance the reconstruction of the squatters' houses from part of the income he generates from the development of the remaining land. In India, land sharing is very popular and successful.
- **Land pooling** which is sometimes necessary to protect informal settlers from natural disasters or to build

infrastructure. Land pooling therefore is another tool to prevent eviction – generally from state land. In this case, part of the occupied land is vacated by the settlers in order to gain land for flood protection or road construction. Land pooling is therefore also suitable for in-situ upgrading, and can be combined with the legalisation of informal settlements.

Land readjustment can offer a solution to conflicts caused by multiple sales of land. If the parcel is big enough for all buyers to realise their projects (though possibly on a smaller scale), they can all agree to split the property among them.

Recommended reading:

- ▶ UN-HABITAT: Remaking the urban mosaic: Participatory and inclusive land readjustment. Nairobi 2016.
- ▶ Angel, S., Boonyabancha, S.: Land sharing as an alternative to eviction. In: Third World Planning Review, 10 (2) 1988. Available at: <http://sollyangel.com/wp-content/uploads/2013/10/1988-Land-Sharing-as-an-Alternative-to-Eviction.pdf>

Tool 19: Establishing fair compensation

What is fair compensation? How can it help to solve land disputes?
 “Fair compensation should at least restore the livelihoods of affected people. People should not be left in a worse situation. Genuine public purpose [compare VGGT 16.1] and due process [compare VGGT 16.2] have been identified as central pre-requirements to fair compensation. There is a genuine public purpose if the grounds for expropriating

people are justified as the underlying project genuinely serves the public benefit and that this has been established after having followed a due process. With due process the expropriation process is in line with all legal and procedural requirements. This includes meeting the requirement of Free, Prior and Informed Consent (FPIC) when this is applicable. If process and purpose pre-requirements are met, and adequate compensation is provided to affected people and communities for the loss of their tenure rights, it is possible to talk of fair compensation“ (True Price/University of Groningen 2016: 4).

In addition – in line with the VGGT, adequate or fair compensation requires transparent and objective valuation and can be in cash or kind or a combination of both. Compensation needs to ensure that individuals are not being rendered homeless or vulnerable to the violation of human rights (see box 30). According to IFC Performance Standard 5, compensation should be provided for loss of assets at replacement cost to avoid or minimize adverse social and economic impacts from expropriation or restrictions on land use and to improve, or restore, the livelihoods and standards of living of displaced persons. If compensation involves resettlement, security of tenure needs to be ensured at resettlement sites and livelihoods and standards of living at least restored if not improved (see box 31).

Establishing fair compensation in cases of legitimate land tenure changes will help to solve those land conflicts that result from lack of compensation or insufficient compensation and prevent future conflicts due to insecure tenure at resettlement sites or deteriorated living conditions.

Box 30: Key provisions on compensation from the VGGT

Concerning expropriation and compensation, States should:

- “prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties, consistent with the principles of these Guidelines, with a view to avoiding, or at least minimizing, the need to resort to evictions” (VGGT 16.8),
- “expropriate only where rights to land are required for a public purpose” (VGGT 16.1),
- “ensure that the planning and process for expropriation are transparent and participatory” (VGGT 16.2),
- “ensure a fair valuation” (VGGT 16.3) and
- “provide prompt, just compensation” (VGGT). “The compensation may be, for example, in cash, rights to alternative areas, or a combination” (VGGT 16.3).

“All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal” (VGGT 16.6).

“Evictions and relocations should not result in individuals being rendered homeless or vulnerable to the violation of human rights. Where those affected or unable to provide for themselves, States should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land, fisheries or forests, as the case may be” (VGGT 16.9).

Source: FAO/CFS 2012

Box 31: IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement

“Performance Standard 5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.”

“Objectives:

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of living of displaced persons.
- To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.”

Source: IFC 2012

Recommended reading:

- ▶ International Finance Corporation (IFC): IFC Performance Standards. Washington 2012.
- ▶ Tagliarino, N. K.: Encroaching on land and livelihoods: How national expropriation laws measure up against international standards. Working Paper. World Resource Institute. Washington, DC 2016.
- ▶ True Price, University of Groningen: Towards a protocol on fair compensation in cases of legitimate land tenure changes. Input document for a participatory process. Study commissioned by the Organising Committee of the Dutch Land Governance Multi-Stakeholder Dialogue. Amsterdam 2016.

Tool 20: Institutional analysis and advice to ensure proper land administration, land management and public land management

What is meant by institutional analysis and how can land administration, land management and public land management be improved?

In many countries, land administration, land management and public land management are not completely effective. The reasons can be lack of political will, shortcomings in the legal framework, low financial and personal capacity, weak management as well as political and bureaucratic corruption. The objective of an institutional analysis is to identify

the shortcomings and its causes. The Land Governance Assessment (see tool 42) is a useful tool to conduct such an analysis.

Part of the land conflict resolution could be the development of a strategy and road map to amend or change a specific law, to improve certain procedures, to introduce anti-corruption measures, to train staff etc.

4.4.3 Legal tools and measures

Tool 21: Legal analysis/assessment and advice

Legal assessments should include:

- the identification of all relevant laws and by-laws,
- their analysis in terms of consistency, loopholes, overlaps, and legitimacy,
- their analysis in terms of consistency with international instruments and standards, including the Voluntary Guidelines on the Responsible Governance of Tenure (alignment with the general principles, the implementation principles and each of the guidelines specific provisions) and human rights,
- the analysis of their implementation/enforcement and
- the identification of causes for lack of implementation (e.g. costs, undue complexity, not adapted to fit the needs, lack of legitimacy, lack of staff, lack of qualification of staff etc.).

Public participation in (state-led) legal assessments is highly recommended to ensure that all relevant issues are covered by the (revised) laws. Based on the legal assessment, recommendations should be developed on how to improve the legal base.

Recommended reading:

- ▶ FAO: Responsible governance of tenure and the law. A guide for lawyers and other legal service providers. FAO Governance of Tenure Technical Guide 5. Rome 2016.

Tool 22: Recognizing customary tenure rights

What is meant by recognizing customary tenure rights? How can it be done?

Recognized customary tenure rights are those that are recognized by the constitution as equal tenure rights and which are respected and protected by the state. Therefore, recognizing customary tenure requires a change in the legal frame and the necessary political will and majority support in the parliament. The recognition of customary land tenure and administration is mainly a tool for the prevention of land conflicts. Avoiding land grabbing, for instance, calls for key efforts to recognize, respect and protect customary tenure rights. However, recognition of customary land tenure and administration can also serve to solve existing conflicts. Once the state and its public institutions acknowledge the legitimacy of customary and religious claims and consider their representatives as equal partners in negotiations over land and the use of land, mutual respect can slowly be re-established and joint solutions discussed.

Recognizing customary tenure (rights) does not mean formalizing them. In countries or regions where there is social cohesion, respected local leadership and norms as well as effective social sanctions – and all of those are more reliable than state institutions – formalisation of customary land tenure and administration should not be considered. Customary procedures should remain as they are with the only exemption that they should be adjusted to align with the constitution concerning principles, such as (gender) equity and non-discrimination. Accordingly, the state could officially confirm customary chiefs to have the right to allocate the land within their territory, under the condition that they respect the constitution and document all allocations, including the fees they are charging. This would ensure the application of human rights enshrined in the national law and prevent customary chiefs from misusing their authority against the common good of their people, without formalising customary land administration. The risk of formalising local tradition is that this reduces its advantage of being local, grassroots and essentially informal, and thereby quick, cheap and locally legitimised.

Tool 23: Public land recovery

What is state land recovery? How can it be achieved?

The recovery of public assets is a curative measure aiming to regain lost land – public land that has been allocated illegally or irregularly and that has been converted into privately used land. Often this land has then been registered as private land. Reclaiming such formerly public land bears a number of difficulties, in particular if a) the first beneficiary has sold the land to a third party who may have acquired it legally and cannot be blamed for any illegal action and b) the land has been (subdivided) and developed. Recovery of state land is difficult to achieve as it requires political will and support. It may only be possible after political change, e.g. after elections which put new decision-makers in place. Still, it remains difficult to achieve, as often powerful people acting behind the scenes continue to interfere in politics. A useful and feasible first step in public land recovery is the documentation of illegally allocated land. This can be done more easily. It requires the following the steps:

- Formation of an investigating committee, including lawyers and representatives of affected ministries (with the eventual addition of representatives of civil society organisations)
- Definition of the problem and the task clarifying which of the categories of public land need to be considered etc.
- Acquiring, storing and structuring information
- Meetings, progress reports and workshops

The final report should include:

- A documentation of all cases, including:
 - All lands unlawfully or irregularly allocated, specifying particulars of the lands
 - The persons, whether individuals or corporate bodies, to whom they were allocated
 - The date of allocation
 - Particularities of all subsequent dealings in the lands concerned
 - Their current ownership and development status
 - The public officials involved in such allocation
- Recommendations for how to deal with the different types of illegally/irregularly allocated lands

Recovery of state assets is prescribed by the UN convention to combat corruption.

Example:

So far there is little experience in recovering misappropriated state land. Kenya laid the foundations by proposing a land titles tribunal to check, on request, all questionable titles to public land being previously allocated. Despite being proposed in 2004, the land titles tribunal still has not been constituted. What has been achieved, however, is a thorough documentation of all illegal/irregular allocation of public land. This documentation has been done by the Commission

of Inquiry into the Illegal/Irregular Allocation of Public Land, called Ndungu Commission after its chairman Paul Ndiritu Ndungu (see Republic of Kenya 2004).

Recommended reading:

- ▶ Republic of Kenya: Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u Report). Nairobi 2004.

Tool 24: Local land use conventions/agreements

What are local land use conventions/agreements?

Local conventions are initiated by the land users and aim to resolve land use conflicts between different users as well as between humans and nature. The goal is to achieve a sustainable use of fragile ecosystems, protect biodiversity and – at the same time – provide a long-term economic base for the local community. The only condition is that all affected parties agree on settling the dispute together. This includes negotiations and a joint establishment of rules and sanctions regarding the use of the common property and defining who may use the land and for what purpose at what times. Local conventions are performed and monitored by the affected land users. They can remain informal or become legally binding through authorisation by public administration – depending on local need and national law. A major advantage of local conventions is that they re-establish mutual respect and that they document the will to cooperate. By agreeing together on the future rules and sanctions, stakeholders assume responsibility and feel much more obliged to adhere to the rules, even accepting the payment of fines in case of offence against the convention.

Examples:

Common cases are local conventions between farmers and pastoralists who solve their land use conflicts by fixing livestock passages and regulating the use of it. For examples of local conventions, including the original documents in Benin, Burkina Faso, Niger, Senegal and Mauritania, see GTZ 2003 and 2007.

Recommended reading:

- ▶ CENAGREF: Guide pratique d'élaboration des conventions locales d'utilisation des ressources naturelles. Cotonou 2014. Available at: <http://www.cenagref.net/IMG/pdf/guide-elaboration-conventions-locales.pdf>
- ▶ GTZ: Open Access or Common Property Rules. Community Based Natural Resources Management in Mauritania. DVD. Eschborn 2007.
- ▶ GTZ: Les Conventions Locales – un Instrument de la Gestion Décentralisée des Ressources Naturelles. Les

expériences de la Coopération Technique Allemande au Développement (GTZ) en Afrique de l'Ouest. Recueil de textes conceptuels et originaux. CD-ROM. Eschborn 2003.

- ▶ Technical Committee on “Land Tenure and Development”: Are local conventions effective tools for the joint management of natural resources? Pedagogic Factsheet. Paris 2010.

The following website also provides a broad selection of guides and tools in French: <http://www.pact-mali.org/index.php/centre-de-ressources/9-domaine-d-intervention/20-convention-locale>

Tool 25: Moratorium

What is a moratorium? How can it be used to solve a land dispute?

A moratorium is an extraordinary act of a government to delay or temporarily suspend an activity or a law. It may be done to allow a legal challenge to be carried out.

It can be used to solve land conflicts that imply evictions. A moratorium, for instance, could be placed on forced evictions or on allocations of public land exceeding a certain size (as previously done by Laos and Ethiopia).

Tool 26: Legal empowerment, in particular legal aid and measures to increase legal literacy

What is legal empowerment and how can it serve to solve land disputes?

“Legal empowerment of the poor occurs when the poor, their supporters, or governments – employing legal and other means – create rights, capacities, and/or opportunities for the poor that give them new power to use law and legal tools to escape poverty and marginalization. Empowerment is a process, an end in itself, and a means of escaping poverty” (USAID 2007: 29).

Interventions to legally empower the poor can be divided into four categories (USAID 2007):

- those that involve major constitutional or legislative change,
- those that involve major institutional change (which will usually require major legal change),
- those that only require changes in regulations or ministerial instructions or that can be accomplished within the ministry or other agency concerned and
- measures that can be undertaken without any legal change or through contractual means, e.g. legal aid and legal literacy measures.

Whereas changes in the legal framework generally will not have any effect on existing land conflicts but only prevent future ones, legal aid and measures to increase legal literacy can have a major positive effect to solve ongoing land conflicts. Awareness of land use and ownership rights is needed for land rights enablement and enforcement and may even contribute to rights enhancement in the long run, although this will require additional measures. Raising awareness (e.g. through literacy training, radio programmes, TV spots, YouTube videos, street/puppet theatre, Twitter and paralegals) and increasing know-how (e.g. through legal clinics and paralegals) can result in different degrees of legal empowerment (Mathieu 2008: 25):

- “Being informed about the law, understanding what it means, its concrete implications and ‘utility’ for oneself, understanding how it works.
- Being aware of one’s rights, particularly the right to use laws and legal institutions to assert and defend one’s land rights.
- Knowing how to navigate through complex, regulated and sometimes rigid sequences of actions required to use legal procedures.
- Knowing how (and being able in practice) to use the language and meanings of complex words designating specific actions, issues/facts, rights and/or relationships.
- Knowing how to interact with state institutions and the individuals within them, given that they often have specific social bias, habits, conceptions and ways of working (rent-seeking, political patronage, client-patron relationships etc.)
- Daring and being able: feeling and being skilled and strong enough to assert rights in an effective way when facing competing claims or organisations that are neither easy nor cheap to deal with, nor spontaneously willing to deliver equal and affordable public services to all citizens.”

Accordingly, legal empowerment needs to provide information on the law, its procedures and how they can be used, build awareness on rights and procedures and build capacities to follow procedures and successfully interact with state agents in legal land institutions.

Example:

Slum dwellers in Indonesia have launched a landmark legal case to challenge a decades-old law which has been used to forcibly remove thousands of families amid a wave of evictions in the country’s capital. The case comes as authorities ramp up efforts to clear housing along a main river bank in Jakarta, the sprawling capital of 10 million people, to pave the way for an ambitious flood mitigation project. Local residents have asked the court to declare a law enacted in 1960 as unconstitutional as it “gives the government a great authority to take the land from the people” without

due consultation, court documents show. “I see more and more people suffering like me. This is wrong, this is inhumane,” said Mansur Daud who was evicted last year from a slum in west Jakarta to make way for the project. The 54-year-old hawker launched the legal challenge with two others this week, saying they want justice to be upheld. “There was no dialogue, no compensation. I have to live at my parents’ house now, my children were traumatized by the eviction, where is the justice?” he told the Thomson Reuters Foundation on Friday. The 1960 law prohibits the use of land without permission from the rightful owner, but land rights advocates argue it has long been invoked in favour of the authorities. Lawyer Alldo Fellix Januarydy said the law unfairly targets slum dwellers and the poor who cannot provide proof of land ownership, due to a legacy of unclear and overlapping land titles as well as bureaucracy in Indonesia. However, he said this was exacerbated by the fact that the law does not require the government to provide the same proof of title when it is used to evict the residents. “The problem with land evictions in Indonesia is that nobody has a (land ownership) certificate,” said Januarydy, who specializes in land rights cases and represents the slum dwellers. “If nobody has a certificate, then the court should be the one to decide whose land it is but the government never sends cases to court, they just evict people because of this law.” If we win the case, every forced eviction must be decided through the court before it happens,” the lawyer added. The Constitutional Court has yet to fix a date to start hearing the case (Reuters, World News, 30.9.2016).

Recommended reading:

- › Cotula, L., Mathieu, P. (eds.): Legal empowerment in practice. Using legal tools to secure land rights in Africa. FAO and IIED, 2008.
- › USAID: Legal empowerment of the poor: from concept to measurement. Washington 2007.

4.4.4 Tools and measures to improve land dispute resolution

Tool 27: Land dispute resolution assessment

What is meant by land dispute resolution assessment and how can it be done?

Land dispute resolution assessment analyses which land dispute resolution bodies exist and to which extent they are impartial, competent, reliable, accessible and known to the people as well as follow affordable, timely, fair, non-discriminatory and inclusive processes in reaching decisions or settlements and provide effective remedies, including restitution, indemnity, compensation and reparation, from which appeals are made to regular courts of law – as requested by the VGGT. The assessment should first identify all land dispute resolution bodies and then analyse for each body separately:

- Accessibility
- Timeliness of justice delivery
- Quality of justice delivery
- Independence, impartiality and (outcome as well as process) fairness
- Trust in the system
- Corruption

The assessment should be done based on existing literature and interviews, the latter being the main source of information. Interviews need to focus on facts (amount of payments, number of visits etc.) as well as on people's perceptions as some of the criteria can only be judged based on people's perceptions, such as fairness, independence, impartiality and corruption, due to the difficulty of measuring their absolute levels. Interviews should be done with judges, arbitrators, mediators, conciliators etc. working for land dispute settlement bodies (those currently employed/active as well as those retired), lawyers (prosecutors and defenders) and users of the different land dispute resolution bodies.

Based on the assessment, recommendations should be formulated and discussed to determine how to improve the institutional set-up of land dispute resolution (see tool 28).

Tool 28: Measures to improve the institutional set-up for land conflict resolution (and thereby accessibility, quality and fairness of land dispute resolution)

The institutional set-up for land conflict resolution should be characterized by a wide range of mechanisms for resolving land conflicts without parallel avenues for conflict resolution. The responsibilities of the different mechanisms at different levels provided by different institutions/actors, therefore, need to be clearly assigned. Judges and arbitrators of all bodies need to be competent in legal matters. Mediators need to dispose of all relevant skills for competent mediation. All individuals of any conflict resolution body have to be impartial and fair. Clear rules also need to exist on which decisions can be appealed and how.

Improving the institutional set-up for land conflict resolution, therefore, aims to improve accessibility, quality, independence, impartiality and fairness of land dispute resolution bodies and to reduce the level of corruption. This can imply:

- Creating of additional dispute resolution bodies (e.g. specialized land court, local dispute resolution committees)
- Introducing a new form of dispute resolution (e.g. mediation or any other alternative dispute resolution); this requires the drafting and passing of a law, preparation of administrative instructions, preparation of guides and training materials, training of mediators etc.
- Eliminating unnecessary legal and procedural requirements to make court procedures less cumbersome
- Modifying of procedures to increase transparency, impartiality and fairness
- Strengthening judicial oversight and accountability mechanisms (including the introduction of anti-corruption measures)
- Providing trainings of judges, arbitrators, mediators, conciliators etc.
- Introducing (new) criteria for the selection of judges, arbitrators, mediators, conciliators etc.
- Clarifying/defining clear hierarchies of the existing land dispute resolution bodies
- Clarifying/defining appeals mechanisms
- Improving the enforcement of decisions (e.g. court decisions) and agreements (e.g. mediation agreement)

The improvement of the institutional set-up for land conflict resolution may require an assessment (see tool 27).

For an example on capacity building of judges and notaries to solve land disputes more effectively, see case study about Georgia (see. 7.4).

Recommended reading:

- ▶ FAO: Responsible governance of tenure and the law. A guide for lawyers and other legal service providers. FAO Governance of Tenure Technical Guide 5. Rome 2016.

4.5 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

Non-consensual approaches
 Consensual approaches
 Alternative Dispute Resolution
 Mediation
 Handling maps
 Inventorying
 Mapping
 Surveying
 Land tenure rights analysis to clarify and secure property rights
 Participatory enumeration and people managed resettlement
 Participatory land use planning
 Land sharing and land readjustment
 Fair compensation
 Public land recovery
 Moratorium
 Local land use conventions/agreements
 Legal assessment
 Land dispute resolution assessment

Questions for discussion

- Which types of land conflicts require the use of awareness raising tools? Which tools fit best for which circumstances?
- Which land conflicts could be solved by the use of land administration and management tools?
- What are the benefits of the legal tools and measures? What could be a challenge in their implementation? How could this be addressed?
- How can access to justice be improved, in particular for vulnerable groups?
- What are the advantages and disadvantages of consensual and non-consensual land dispute resolution?

Exercises

E 8: Choose a land conflict you are well familiar with and identify tools that can be used to solve it. This exercise can build on E5.

E 9: In groups of two people, conduct active listening. First, one person talks about a recent event and the other person listens actively. After 10 minutes, change roles. To conclude, tell each other how you felt while you were talking and the other person listened actively to you. What impact did having another person listen actively have on your talk? Finally, reflect together why active listening is crucial for any conflict resolution.

Further reading

- ▶ Böhner, C., Oboth, M, Schmidt, J.: Konfliktklärung in Teams und Gruppen. Praktische Anleitung und Methoden zur Mediation in Gruppen. Paderborn 2008.
- ▶ Beer, J. E., Packard, C. C.: The Mediator's Handbook. Canada 2012.
- ▶ Glasl, F.: Konfliktmanagement. Ein Handbuch für Führungskräfte, Beraterinnen und Berater. Bern/Stuttgart 1999.
- ▶ Harper E.: Customary Justice: From Program Design to Impact Evaluation. Published by International Development Law Organisation (IDLO). Rome 2011.
- ▶ Rosenberg, Marshall B.: Nonviolent communication. A language of compassion. Del Mar, CA, USA 1999.
- ▶ United Nations Department of Political Affairs (UNDPA) and United Nations Environment Programme (UNEP): Natural Resources and Conflict. A Guide for Mediation Practitioners. Nairobi 2015.
- ▶ Ury, W.: Getting past no. Negotiating with difficult people. London 1991.
- ▶ Whatling, T.: Mediation Skills and Strategies Guide. London/Philadelphia 2012.

For further reading on the tools introduced in chapter 4.4, see the recommended readings there.

5. PREVENTING LAND CONFLICTS

“Looking at all the procedures of resolving a land conflict, we would conclude that it is easier to prevent a conflict than to cure it. In resolving a conflict, we cannot do much about the harm that has already been done. It is therefore a more worthwhile investment for every government to invest in land conflict prevention measures by putting the right policies in place and ensuring implementation of what the policies require”

(Kariuki 2005: 99).

Land conflicts will never cease to occur, but their number can be reduced and their consequences can be minimized by establishing the required institutional framework. In countries that have such a framework, land conflicts still occur but in fewer numbers and the share of those that are peacefully solved is much higher. Such a framework includes:

- Awareness of land conflict causes and timely development of strategies for their effective prevention
- Responsible land governance and functioning land administration and management
- Assessment and monitoring tools

5.1 Raising awareness on land conflict causes and developing strategies for their prevention

Many land conflicts can be predicted, and if not avoided, at least mitigated if provisions are made against them in time. It is, therefore, crucial to be aware of those changes and occurrences that have the potential to trigger land conflicts. Once a potential cause of conflict has been identified, the extent of possible land conflicts and the scope of their social, economic, ecological and political consequences should be roughly calculated and immediately communicated to decision-makers and responsible land management experts at both the central and local level. Land conflict experts should preferably discuss with these decision-makers which measures should be taken to avoid massive land conflicts. Failing that, proposals should be made to them.

Typical occurrences that may trigger land conflicts and that require preventive action are:

- Privatisation of land
- Returning refugees
- Refugees fleeing from neighbouring countries

- Internal displacements due either to sudden ecological calamities, such as drought, floods, volcanic eruptions, earthquakes etc. or to chronic ones, such as desertification
- Rural-urban migration
- Population growth resulting in additional demand for land
- Economic growth increasing the demand for land to be used for industrial and commercial activities, which can put pressure on land currently used by the poor
- Growing affluence leading to greater demand for large private properties or for land as a financial investment, including speculation
- Sudden and excessive increases in land value
- Extended building projects that include large-scale destruction of existing structures and the displacement of the current inhabitants
- Gentrification, up-grading measures and area rehabilitation
- Allocation of economic concessions in areas where state land is used by the local population to sustain their existence
- Continuous denial of customary land rights by the state
- Lack of housing for the urban poor

For additional conflict causes, see chapter 2.2.

It is important for governments at different levels to develop strategies to prevent foreseeable land conflicts in time. Assessments by governments are often superficial and based on a limited knowledge of the situation or an inaccurate estimate. Returning refugees are generally thought to return to their villages. Internally displaced people are considered to be temporary displaced. This, however, often turns out to be wrong. Returnees often prefer to find a living in a city. IDPs often stay for more than a generation. These phenomena create tension among those who already live in the so-called reception areas. Governments are wise to address such situations in time and to provide long-term solutions, which have to include durable access to land.

5.2 Improving land administration, management and governance

Shortcomings in land administration, management and governance, as demonstrated in chapter 2, act as catalysts for land conflicts. Their improvement, therefore, is key for any land conflict prevention. Three aspects have to be included:

- Securing property rights to achieve tenure security
- Regulating property rights to ensure sustainable land use
- Establishing responsible land governance to provide for an overall framework that is human rights based

Securing property rights to achieve tenure security

Legal security is key to preventing land conflicts. Where property rights are clearly defined and secured and where conflicting interests over land can be negotiated in a fair and predictable environment, conflicts over who owns or may use which piece of land can be reduced to a minimum. Relevant areas of land administration are:

- Ensuring tenure security: All legitimate property rights to land need to be clearly defined and secured. Such widespread tenure security for all groups in society can only be achieved through the recognition, respect and safeguard against threats and infringements of all legitimate tenure rights by the state and the respect of those rights by all other actors, including business enterprise (VGGT, 3A). This may include the recognition of customary and informal rights. It should include a broad range of tenure rights to ensure that they fit the different needs of different groups and individuals. Hence, individual as well as common or collective tenure rights should be available, limited and unlimited tenure rights and options for renting, leasing and buying freehold. [For details on the diversity of rights as well as different tenure policy options, see Payne 2002, UN-HABITAT 2004a, 2004b and 2012.]
- Land registration: To secure property rights, all existing claims have to be documented and overlapping interests addressed and clarified in a fair and transparent way. Land registration can be done in many different ways and does not necessarily have to include a technology-based land information system or highly accurate surveying. It should be as simple and cost effective as possible, “corruption-proof”, adapted to local conditions, established with active public participation and reflecting all legitimated property rights: formal, informal, customary and religious; state, private and common/collective; primary and secondary; permanent and temporary. Two software packages have been developed, STDM and SOLA that

allow for the recording of several rights on the same unit (see tool 32). In areas or situations with great potential for land conflicts, such as peri-urban areas, or in times of land privatisation, systematic land registration is highly recommended. An example is Lao LandReg, a tailor made software for land registration and titling.

- Customary land tenure and administration: To prevent conflicts resulting from either legal pluralism or a misuse of customary power over land allocation, a number of provisions can be made:
 - Legal recognition of customary land rights
 - Identification of the boundaries of customary areas
 - Identification of tasks and responsibilities of customary chiefs
 - Improvements in record-keeping, to avoid multiple allocations of the same parcel
 - Adjustment of customary land law to conform to the national constitution and human rights doctrines regarding equity
 - Establishment of local control mechanisms and the introduction of sanctions for chiefs misusing their authority by irregularly allocating land for their own profit
 - Empowerment of communities living on customary land classified as state land to directly negotiate with investors who receive concessions there from the state in order to prevent people being dispossessed of their customary rights but instead to share in the profit made from and on their lands
- Land valuation: Land valuation can reduce conflicts related to the value of the land, such as disagreements on the amount of compensation, registration fees or land tax. Correct land valuation can also prevent people from losing their land to banks who might undervalue their property and unjustifiably expropriate their customers’ collateral in the case of the inability to pay back their loan. For land valuation to contribute to responsible land governance, it needs to be based on internationally recognized national standards. Only when all institutions and individuals apply the same valuation standards, under- and overvaluation to the benefit of one party can be minimized.

Regulating property rights to ensure sustainable land use

A clear definition of land uses, which considers and reflects all the various needs of every group in society, including those who are still unborn, will prevent many conflicts over the use of a given piece of land. Relevant areas of land management are:

- **Comprehensive land use planning:** A fundamental precondition to avoiding conflict over the use of land is comprehensive land use planning. This planning will anticipate and guide (future) land use and development while respecting existing structures. An important element is the early designation of land that will be needed for certain purposes in the future, including the reservation of those lands for these purposes.
- **Land use and building standards:** They have to be realistic and adapted to local conditions, as otherwise they will be widely violated and result in unnecessary conflicts. [For more information on adequate regulations and standards, see Payne/Majale 2004.]
- **Involvement of customary authorities in land use planning:** In the case of legal pluralism, it has to be assured that customary land administrators are involved in the land use planning for their areas to avoid dual planning and the land use conflicts resulting from that.
- **Early and active citizens' participation in land use planning:** The local population needs to be involved in land use planning as early and actively as possible to ensure that future land uses (also) correspond to their needs and satisfy their interests. This can radically reduce land use conflicts, as the land use plan can then be adapted to the needs of the local population who will feel more bound to it as a consequence.
- **Land value capture and redistribution for the benefit of all groups of society:** To avoid intense land speculation and land grabbing at the urban fringes, mechanisms should be introduced to ensure that a significant share of the added value created by the transformation of green or agricultural land to development land automatically goes to municipal budgets, instead of becoming private profit for the land developer.

Establishing responsible land governance to provide for a human rights based overall framework

Land conflicts are the visible manifestation or outcome of the often invisible power and politics concerning access to and use of land. People generally have limited exact knowledge of who has what influence on the way decisions about land are made and enforced, or how these individuals and groups use that power. Governance of land is rather obscure, and often threatened by corruption. To prevent land conflicts, land governance has to be responsible.

What exactly is land governance? "Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed" (Palmer et al. 2009: 9).

How can land governance become responsible? Land governance can be called "responsible" when this decision-making over access to and use of land as well as its enforcement and the reconciliation of conflicting interests is done in a fair and transparent way, allowing everyone to equitably participate and to receive an adequate share, while at the same time guaranteeing economically, socially and environmentally sustainable land development.

Responsible land governance therefore requires the honest and serious application of certain principles to land policy, land-related legislation, public land management, land administration, land management, land reforms, land conflict resolution etc. These principles include human dignity, non-discrimination, equity and justice, gender equality, inclusiveness (i.e. active, free, effective, meaningful and informed participation of individuals and groups in decision-making and free prior informed consent (FPIC), where applicable), accountability, integrity, transparency, effectiveness, efficiency, rule of law, legal security, civic engagement, subsidiarity, security and sustainability (CFS/FAO 2012, Palmer et al. 2009).

A key governance principle for the prevention of land conflicts is equity. Once there is a sense for equity, the realisation of other principles will follow. Equity in this regard has several dimensions. It includes the equal recognition of formal, customary, religious and informal legitimate property rights over land. It also means equally respecting the land rights of men and women, as well as the legitimate claims of marginalised and vulnerable groups such as indigenous people, orphans, the elderly, minorities, refugees and slum dwellers. Equity also calls for inclusiveness of all stakeholders in decision-making on land issues such as land policy processes, land commissions, land tribunals, land laws etc.

Additional key governance principles are rule of law, transparency, accountability and integrity as many land conflicts are a result of administrative and political corruption, fraud and clientelism. Transparency can be created through comprehensive disclosure policies. Accountability and integrity can be increased through integrity codes or codes of conduct and associated sanctions in case of their disregard or violation.

In the end, it all comes down to shared values and a common commitment to the realization of human rights, social justice and environmental protection. In a way, this means that all decisions on land – including those on competing interests over land – should firmly rest upon respect for fundamental human rights and the natural environment.

What are typical elements of responsible land governance? All institutional arrangements that contribute to the absence of illicit practices in land policy and land law making, land administration and management, public land management etc. are elements of responsible land governance so to speak. These include (the making of) policies, laws and by-laws, administrative procedures, grievance mechanisms and sanctions. Key elements of responsible land governance are, therefore:

- Land policies and laws recognizing all legitimate tenure rights
- Participatory land policy making
- Laws and by-laws dealing with land tenure, land administration and land management without loopholes or contradictions clearly defining all relevant issues, including roles, functions and responsibilities of all participating actors
- Standards for surveying, registration, valuation, land use planning, construction etc. based on internationally recognized standards or good practices
- Effective registration of all legitimate tenure rights
- Responsible public land management, including a public land inventory and transparency in the allocation and management of public land
- Participatory land use planning with functioning inter-agency cooperation and coordination
- Public participation in adjudication and demarcation during titling and boundary determination or after disasters that have wiped out pre-existing boundaries
- Fair, independent and accessible appeals system and dispute resolution mechanisms
- Code of conducts for public as well as private actors
- Independent auditing of public administration
- Transparency of fees for any services related to land administration and management as well as taxes involved
- Mechanisms for land value capture and its utilization for the public benefit
- Assessments and monitoring

5.3 From land grabbing to responsible large-scale land-based investments

“Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts

on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved” (VGGT 3A).

The negative impacts of large-scale land-based investments on the tenure rights of the local population received much attention in the recent past. A broad range of mostly voluntary international guidelines, standards and principles have been developed to promote responsible investment with a focus on the respect of legitimate tenure rights. The most relevant ones are:

- United Nations (2011): Guiding Principles on Business and Human Rights
- Organisation for Economic Cooperation and Development (2011): OECD Guidelines for Multinational Enterprises
- International Finance Cooperation (2012): IFC Performance Standard 5 on land acquisition and involuntary resettlement
- Committee on World Food Security/FAO (2012): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (3A general principle and chapter 12 on investments)
- AU/ADB/UNECA (2014): Guiding Principles on Large Scale Land Based Investments in Africa
- UN Human Rights Council (2009): Large-scale land acquisition and leases: A set of minimum principles and measures to address the human rights challenge
- UN Human Rights Council (2011): Guiding principles on human rights impact assessments of trade and investment agreements
- FAO (2012): Guiding principles for responsible contract farming operations
- Committee on World Food Security (2014): Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles)
- Commodity standards such as the Round Table on Sustainable Biomaterials (principle 12 on land rights).

The documents vary in the extent to which they respect legitimate tenure rights, the extent of voice of the people affected and the degree of transparency/disclosure. However, they all promote transparency and participation. Core provisions are:

- The corporate responsibility to respect human rights (Guiding Principles on Business and Human Rights).
- Business enterprises have a responsibility to respect human rights and legitimate tenure rights (VGGT, 3A).
- Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights.

Such investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights. They should strive to further contribute to policy objectives, such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable; and comply with national laws and international core labour standards as well as, when applicable, obligations related to standards of the International Labour Organization (VGGT, 12.4).

- All forms of transactions of tenure rights as a result of investments in land, fisheries and forests should be done transparently in line with relevant national sectorial policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders (VGGT, 12.3).
- The objective to avoid / minimize displacement, to avoid forced evictions, to anticipate, avoid, minimize adverse social and economic impacts, to improve / restore the livelihoods of displaced persons, to improve living conditions of the displaced persons through the provision of adequate housing with security of tenure at resettlement sites (IFC Performance Standard 5 on land acquisition and involuntary resettlement)
- Large-scale land-based investments respect human rights of communities, are guided by national strategies for sustainable agricultural development, are based on good governance, and respect land rights of women. Decisions on their desirability and feasibility are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits (Guiding Principles on Large Scale Land Based Investments in Africa)
- Existing land rights and land use rights, both formal and informal, shall be assessed, documented, and established. The right to use land for biofuel operations shall be established only when these rights are determined (RSB, criterion 12a).
- Free, Prior and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition or voluntary relinquishment of rights by land users or owners for biofuel operations (RSB, criterion 12b).
- Responsible agricultural investments respect tenure of land, fisheries and forests and access to water (CFS-RAI Principles).

5.4 Assessment and monitoring

Assessments and monitoring can be distinguished in two categories: those that assess and monitor the entire sector and those that focus on one specific project. Both types can help prevent land disputes.

Precondition to the improvement of land administration, management and governance is the identification of shortcomings and risks. For this purpose assessments of the current system can be done, e.g. a land governance assessment or an assessment of a specific field such as public land management, land registration or land use planning. In this context, the Land Governance Assessment Framework, developed and applied in a broad range of countries by the World Bank, deserves to get a mention. It provides a thorough base for the identification of strength and weaknesses in the land sector. It may be useful to adjust some of the questions to the national or local context or to add some specific questions. For further details, see 5.5.4.

For a particular project, such as a public infrastructure project or a private investment project, the land tenure and land use situation at that specific site should be analysed to prevent conflicts. If a public project requires the resettlement of people, assessments also have to be made in the host communities. Typical assessments here are land tenure assessments, gender land tenure (impact) assessment, environmental impact assessments that include a component on land use as well as specific assessments for large-scale land-based investments such as those recently developed for private and public investors by the French Technical Committee on Land Tenure and Development, USAID and New Alliance for Food Security and Nutrition. Additional guides prepared by FAO and African Union exist for government authorities. For further details, see the respective tools under 5.5.4.

5.5 Toolbox III: Measures and tools to prevent land disputes

Measures and tools to solve land disputes can be distinguished in the following four categories, each including a wide range of tools and measures:

- **Awareness raising measures and the promotion of preventive strategies**
 - Research and widespread communication of the results
 - Education and training
 - Advocacy

- **Land administration and land management tools**
 - From systematic recording and registration of all legitimate land tenure rights to fit-for-purpose land administration
 - From public land inventories to responsible public land management
 - Comprehensive participatory land use planning for land conflict prevention
 - Creation of standards for surveying, registration, valuation, land use planning, construction etc.
 - Leveraging land value (increases)
 - Participatory land policy making
- **Legal tools and measures promoting ethic values and improving legislation**
 - Land tenure regularization
 - Codes of conduct
 - Improving legislation
 - Awareness raising on land laws, rights and duties
- **Assessments and monitoring for land conflict prevention**
 - Land governance assessment
 - Land tenure impact assessment
 - Gender land tenure (impact) assessment
 - Impact assessment and monitoring of large-scale land-based investments
- **Additional measures beyond the land sector**
 - Public and private investment in the housing market
 - Improving transparency over large-scale land-based investments prior to decision-making (disclosure)
 - Respecting Free, Prior and Informed Consent (FPIC) in relation to land acquisition

5.5.1 Awareness raising measures and the promotion of preventive strategies

The “tools” presented in this section are rather fields of actions. The term “tool” is only used for the sake of consistency in language throughout this guide.

Tool 29: Research and widespread communication of the results

How can research support awareness raising and the promotion of preventive strategies?

Research – aiming to increase the stock of knowledge and the use of knowledge to devise new applications and used to establish or confirm facts, reaffirm the results of previous work, solve new or existing problems, support theorems or develop new theories and to test the validity of instruments

and procedures – can play a significant role in awareness raising on existing and potential land conflicts. In addition, research can test and develop tools to prevent and solve them. Research generally consists of the definition of the research objective and scope of research, identification of the most adequate methodology (e.g. action research, participatory research, case study based research, qualitative or quantitative research etc.), data collection, data analysis and interpretation, formulation of recommendations, documentation of the research, widespread distribution of results and recommendations. For awareness raising, the distribution of (newly established) knowledge is key. The internet provides many opportunities to realize it, e.g. through self-managed websites, through the use of existing portals (e.g. land portal), through blocs, Facebook, Twitter etc.

Example:

The Land Matrix, a global and independent land monitoring initiative that promotes transparency and accountability in decisions over land and investment, aims to contribute in an innovative and relevant way to the growing movement towards open development – allowing for greater public involvement in critical decisions that affect the lives of land-users around the world. The Land Matrix is using its own website (www.landmatrix.org/en/) to disseminate constantly updated information on large-scale land-based investments. In addition, the Land Matrix is developing and publishing analytical reports such as the “Land Matrix Analytical Report II: International Land Deals for Agriculture” (Land Matrix 2016). The report provides detailed information on who is buying up farmland, in which regions of the world and how this land is being used. It also highlights the economic, social and political impacts of land investments.

Tool 30: Education and training

How can education and training support awareness raising and the promotion of preventive strategies?

Education and (vocational) training focussing on imparting knowledge, skills, values and attitudes is perfectly suited to raise awareness on land conflicts and to provide the necessary knowledge and skill to prevent them. How deeply and in which form the issue is addressed depends on the type of education or formation and the participants. Whereas general education should transfer key values such as equity, non-discrimination, fairness etc., more targeted (higher) education and formation should provide (future) experts and decision-makers with the relevant knowledge and skills.

Examples range from the inclusion of land conflicts into school education (e.g. a session on land grabbing or on the concept of co-ownership) to bachelor and master programs for future land administrators and land managers and for-

mations for current land officers and decision-makers. What still needs to be further developed are classes and seminars for current and future business administrators and managers. Such sessions could be included in Corporate Social Responsibility seminars, which also still need to be established more wholeheartedly.

Example:

The GIZ project “Strengthening Advisory Capacities for Land Governance in Africa” supports education and research on land governance in Africa, thereby increasing knowledge and skills in this area, which will hopefully contribute to better land policy/governance frameworks in African countries, reducing the number of land conflicts. The project aims to strengthen human and institutional capacities for realizing sustainable land policies that pay particular attention to the rights of marginalized groups like small-scale farmers, pastoralists and women. The project is active in the following areas:

- Developing educational capacities within the land management and land policy sector in Africa,
- Providing institutional and specialized support for the Land Policy Initiative (LPI) by establishing an African Centre of Excellence on Land Governance and
- Providing a network for practice-oriented accompanying research in Africa with support from the World Bank for monitoring, evaluation and knowledge exchange regarding land policies.

Tool 31: Advocacy

What is advocacy and how can it support awareness raising and the promotion of preventive strategies?

Advocacy in the context of land conflict prevention seeks to ensure that people, particularly those who are most vulnerable, are able to have their voice heard on issues concerning access to land and use of land (e.g. tenure security, protection from eviction etc.), defend and safeguard their tenure and human rights, and have their views and desires genuinely considered when decisions are being made that concern their land tenure rights.

Advocacy can include many activities by individuals as well as groups, including media campaigns (including the use of social media), public speaking, commissioning and publishing research and lobbying, which is a direct approach to legislators aiming to influence their decisions. Advocacy can be done at the national as well as the international level. Many civil society organisations dispose of tremendous experience in land rights advocacy.

5.5.2 Land administration and land management tools

Tool 32: From systematic recording and registration of all legitimate land tenure rights to fit-for-purpose land administration

What is fit-for-purpose land administration and how does it contribute to the prevention of land conflicts?

To avoid land disputes, it is crucial to have all legitimate land tenure rights recorded and registered. This requires a land register/cadastre with complete countrywide coverage. An ideal mean to establish such land registry with full coverage is a systematic registration where all parcels (in private, public and common/collective ownership) are recorded and registered. Systematic registration is not only cheaper than sporadic one, it also is the only way to ensure that all properties are registered. Modern registration concepts/methods, such as the Social Tenure Domain Model (STDM), provide for the registration of all legitimate tenure rights, including temporary and secondary rights, which is important to avoid new conflicts emerging from the introduction of land registration. In the past, land registration was often considered to be too complex and expensive to be used large-scale as a means to increase tenure security, in particular for the poor. The “fit-for-purpose” approach aims to make land registration affordable for all. “This new approach is focused mainly on the “what” in terms of the outcome of security of tenure for all and, secondly, it looks at the design on “how” this can be achieved. The “how” should be designed to be the best “fit” for achieving the purpose (“the what”). In this regard, “as little as possible – as much as necessary” perfectly reflects the fit-for-purpose approach” UN-HABITAT 2016: viii).

Finally, land administration needs to be designed and implemented in a way that responsible gender-equitable governance of land tenure will be achieved to avoid the eruption of any gender-based land conflicts. Measures range from the constitutional provision that women can own property over the accessibility of land registration for women to women’s inclusion in affected decision-making (for details, see FAO 2013).

Recommended reading:

- ▶ FAO: Governing land for women and men. A technical guide to support the achievement of responsible gender-equitable governance of land tenure. Rome 2013.
- ▶ Lemmen, C.: The Social Tenure Domain Model. A Pro-Poor Land Tool. FIG Publication No 52. Copenhagen 2013.
- ▶ UN-HABITAT: Fit-for-purpose land administration. Guiding principles for country implementation. Nairobi 2016.

Tab. 12: The key principles of the fit-for-purpose approach

Spatial framework	Legal framework	Institutional framework
<ul style="list-style-type: none"> • Visible (physical) boundaries rather than fixed boundaries. • Aerial/satellite imagery rather than field surveys. • Accuracy relates to the purpose rather than technical standards. • Demands for updating and opportunities for upgrading and ongoing improvement. 	<ul style="list-style-type: none"> • A flexible framework designed along administrative rather than judicial lines. • A continuum of tenure rather than just individual ownership. • Flexible recordation rather than only one register. • Ensuring gender equity for land and property rights. 	<ul style="list-style-type: none"> • Good land governance rather than bureaucratic barriers. • Integrated institutional framework rather than sectorial silos. • Flexible information communication technology approach rather than high-end technology solutions. • Transparent land information with easy and affordable access for all.

Source: UN-HABITAT 2016: viii

Tool 33: From public land inventories to responsible public land management

What is responsible public land management and how does it contribute to the prevention of land conflicts?

Public land inventories documenting the location and boundaries, land cover and current land use(s) as well information on the current land user(s) and their tenure rights are extremely useful to solve land conflicts (see tool 12). The prevention of land conflicts requires more, namely a responsible public land management, which consists of at least the following elements:

- Clearly defined roles and responsibilities of different public authorities at different levels concerning the management of public land,
- Clearly defined location and boundaries of each public land property,
- Clearly defined rules on the registration of public land, on the leasing of public land, on the disposal and exchange of public land as well as on the acquisition of new public land (valuation, compensation, resettlement etc.),
- Clearly defined rules and procedures on public land recovery (see tool 23) and
- Audit and fiscal control.

The most critical element to achieve responsible (good governance based) public land management “is the formulation of an explicit public land management policy in line with land policy and fiscal policy that sets out clear objectives related to economic growth, equity and social development, environmental sustainability and transparent fiscal policy” (Zimmermann 2007: 31).

Responsible public land management also requires ensuring that the state, municipalities or public institutions legitimately own what is defined as public land. Land under customary ownership should not be defined as public land. If this is the case, customary tenure rights need to be identified, delimited, recognized, respected and protected (see tool 22). Countries still being equipped with a high percentage of public land (in particular state land) may consider regularisation of state land in favour of local communities, cooperatives and local small holders to minimize corruption and to avoid land grabbing. Even if concession agreements are already in place, “it might be possible, if the political will exists, to substitute the community for the state as the entity to whom the land will revert at the end of the agreement, or even substitute the community for the state as the landowning party to the agreement. Rentals imposed on a per hectare basis can discourage the appetite of investors for large, speculative land acquisitions and their desire to hold onto land which they cannot use. Land not developed can be divested and returned to local communities when renegotiations take place” (Bruce 2015: 2).

Recommended reading:

- › Bruce, J.: Land tenure, the land grab and responses of international development agencies. Discussion note no. 1 presented at the international academic conference on land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia, Chiang Mai University, 5-6 June 2015.
- › Zimmermann, W.: Good governance in public land management. In: land reform 2007/2.

Tool 34: Participatory land use planning for land conflict prevention

What is participatory land use planning and how does it contribute to the prevention of land conflicts?

Land use planning generally balances competing interests on the use of land to achieve socially, environmentally and economically sustainable use of land. It, therefore, presents the most adequate tool to prevent land use conflicts. To achieve this objective, land use planning needs to be participatory, comprehensive, inclusive, transparent and iterative, consider and valorise local knowledge, apply a locally adjusted methodology and result in a legally binding land use plan which is linked to financial planning (GIZ 2011). Often, however, land use planning is rather a source of conflict than a contributor to its prevention. This happens when land use planning is done top-down, lacking transparency and being susceptible to bribery. In such situations, the entire approach of land use planning needs to be reviewed and revised before it can serve to prevent land use conflicts.

For more details on (the role of) land use planning and suggested reading, see tool 17.

Tool 35: Creation of standards for surveying, registration, valuation, land use planning, construction etc.

What can be done to improve standards?

Many land conflicts could be avoided by the existence of clear standards and their application. Standards for surveying, registration, valuation, land use planning, issuance of construction permits etc. may either not exist at all or be incomplete or not up to international standard. In such cases, the standards have to be agreed upon and formally (legally) introduced. More often, however, standards do exist but they are not respected/applied for different reasons. They may not fit to the local context (being too complicated and/or resulting in costs too high for many to pay), they may not be known or there simply is no control if they are regularly applied. Hence, there is a risk that people who benefit from the non-application of these standards will misuse the situation. In such situations, the standards may need to be revised, they need to be published in a way easily accessible for customers, and a monitoring system to ensure their application as well as sanctions in case of non-application of standards need to be introduced.

Examples:

- ISO 19152:2012 – is an international standard for Geographic Information - Land Administration Domain Model (LADM). Such international standards ensure high quality in the respective area, which can prevent land conflicts. ISO 19152:2012 defines a reference LADM, provides an abstract, conceptual model, a simple terminology for land administration and a basis for national and regional profiles, and enables the combining of land administration information from different sources in a coherent manner.
- The German Real Estate Valuation Act (ImmoWertV) is an example for national standards. National standards on land valuation are crucial to ensure fair compensation and taxation and therefore contribute to the reduction of land conflicts. The ImmoWertV consists of three sections dealing with a) definitions and general principles, b) standard land values and other required data and c) land valuation methods.

Tool 36: Leveraging land value (increases)

What is meant by leveraging land value (increases) and how can it prevent land conflicts?

The term leveraging land value is used here to combine two concepts: land taxation and land value capture – both used to generate public revenue to be spent on planned settlement development benefitting all citizens. Land taxation includes three types: land acquisition tax, annual land (holding) tax and land sales tax. The concept of value capture, embedded in the New Urban Agenda, includes the quantification, capturing and distribution of land value increments that result from government actions, such as zoning changes (e.g. from agricultural land to construction land or an increase in the number of floors allowed to be constructed) or the provision of infrastructure. The rationale behind the concept is that whenever government action prompts (huge) increases in property value, the private sector has to give part of the profit back to the state/municipality to finance infrastructure development. Given the rapid growth of settlements, land value capture has become a central concept for the financing of planned settlement extension. Without value capture, the public pays for infrastructure while private sector keeps the benefit it creates – a situation which is increasingly considered unfair and due to the high costs for municipalities, unsustainable and no longer feasible. Approaches to capture and redistribute land value are: betterment charges, developer exactions, land value increment taxes, sale of development rights, purchase of undeveloped land and resale of land as construction land by the municipality and land readjustment (see tool 18).

Land taxation and land value capture can prevent land conflicts that result from unplanned city extension as this mainly results from a lack of finance. Land taxation and land value capture will also reduce the gap between rich and poor citizens and neighbourhoods, which will further reduce the potential for social conflict. Land holding and land sales tax have the additional advantage that they can be used to limit land speculation. Whereas land holding tax will only function to control land speculation where land value increase is extremely low, land sales tax can have an impact where there is moderate land value increase. In situations of high land value increase, taxation, however, is not an adequate tool to limit land speculation and subsequent conflicts linked to it.

Recommended reading:

- ▶ Peterson, E. G.: *Unlocking Land Values to Finance Urban Infrastructure. Trends and Policy Options No. 7.* The International Bank for Reconstruction and Development/ The World Bank. Washington D.C. 2009.
- ▶ UN-HABITAT: *Leveraging Land: Land-based Finance for Local Government. A reader.* Nairobi 2015.
- ▶ UN-HABITAT: *Innovative Land and Property Taxation.* Nairobi 2011.

Tool 37: Participatory land policy development and implementation

What is meant by land policy development and implementation? How can it prevent land conflicts? How is it done?

Many land conflicts could be avoided with the right policies, laws and procedures in place reflecting people's needs and desires. The national land policy should provide the base for all this. Accordingly, the process of land policy making needs to be participatory, inclusive, transparent, non-discriminatory and facts-based to allow for the final land policy to respond to the needs of all citizens and to reflect the national and local conditions. Once the land policy is in place, its implementation needs to be carefully planned, realized and monitored. Recommended steps in land policy development and implementation are (AUC-ECA-AFDB Consortium 2010):

- Stakeholder consultation and identification of salient problems in the land sector (which in addition to workshops may require a number of objective studies)
- Preparation of working drafts for further discussion with stakeholders (e.g. during regional workshops)
- Appraisal of institutional and financial/budgetary options
- Refinement, processing and approval of the national land policy
- Design of implementation strategies and programmes, rationalization of institutional responsibilities for implementation and preparation of action plans
- Mobilisation of political commitment by government elites
- Enactment of new and revision or repeal of existing land and land-related legislation (including domesticating relevant regional and international commitments)
- Adjustment of existing institutional structures and design and establishment of new ones
- Further dissemination of information to the public, training and capacity building to support implementation
- Continuous public engagement through decentralized structures
- Responding to new policy challenges

The content of a land policy evidently varies from one country to another, **but it should provide for tenure security** for all, regulations on the sustainable use of land, effective land administration and management free from corruption, land dispute resolution and adequate capacities as well as finance.

In post-conflict situations (see 6.3), land policy development plays a key role to ensure peace and re-development. In such situations, land policy must deal with the immediate chaos of property destruction and population displacement caused by the conflict. It must work to create institutions and laws to meet claims for property restitution coming from returning refugees as well as others who lost lands under the previous regime – while taking into account that meanwhile the land may have been legally allocated to other people. Finally, the land policy has to pave the way for future development: Should land be owned individually, collectively or by the state? Or should all three property regimes be allowed? Is land reform necessary/feasible to achieve social justice or will it create new conflicts? Which institutions, and at which level, should administer and manage land to what degree under what kind of rules? What restrictions should be placed on private property? Etc.

Recommended reading:

- ▶ African Union, Economic Commission for Africa, African Development Bank (AUC-ECA-AFDB Consortium): *Framework and Guidelines on Land Policy in Africa. Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods.* Addis Ababa 2010.
- ▶ Van Der Zwan, J.: *The need for conflict-sensitive land policy and land governance in Africa.* International Alert. 2010.

5.5.3 Legal tools and measures promoting ethic values and improving legislation

Tool 38: Land tenure regularization

What is land tenure regularization and how does it prevent land conflicts?

“Land tenure regularization is defined as the process of bringing land tenure within a given territory into compliance with the rule of law and the land law. This is of high significance in country situations where informality and illegality in the land sector and a high number of land disputes are hindering rule-based land administration services. However, if not carefully planned and monitored, land regularization can also have negative effects, such as legitimizing spurious property claims (possibly leading to a loss of property rights by vulnerable individuals) or encouraging land grabs” (Zimmermann 2015) and thereby aggravating land conflicts instead of preventing them. Therefore, land tenure regularization needs to be well prepared, conducted in a participatory manner and based on a systematic or sweep approach (community by community), applying the following the steps:

- Methodological tenure studies carried out prior to regularisation, including land tenure, social and environmental impact assessments of different approaches to identify the most suitable one
- Baseline study to allow for monitoring and development of a monitoring system
- Outreach campaigns to inform local populations of the regularisation efforts and to explain their advantages and procedures
- Property adjudication based on consultations with the owners of neighbouring properties
- Publishing cadastral maps in accessible locations to provide the opportunity for voicing disagreements or disputes prior to issuance and registration of titles
- Providing dispute resolution mechanisms to deal with contradicting claims
- Quality control of geometric and legal information
- Issuing of titles in the name of both/all spouses

Examples (Inter-American Development Bank 2014):

In Belize, Panama, and Peru, property adjudication was carried out based on consultations with the owners of neighbouring properties first, and subsequently publishing cadastral maps in accessible locations, to provide the opportunity for voicing disagreements or disputes prior to the issuance and registration of titles. In addition, outreach campaigns were carried out to inform local populations of the regularisation efforts and to explain their advantages and procedures. Many of the projects analysed also included dispute resolution mechanisms. Lastly, in those cases where

the property was in the possession of a household consisting of a couple, then unless there was sufficient evidence that only one of them was the legitimate property owner, the title was issued in the name of both spouses. This approach was supportive of gender equality and mainly benefited women.

Weaknesses in the four experiences have been:

- Lack of methodical tenure studies carried out prior to regularisation. In Peru, the first operation based its estimates on preliminary information, which resulted in an underestimate of the number of properties to be regularized.
- In terms of quality control of geometric and legal information, most projects analysed failed to include robust mechanism in their design.
- The lack of a monitoring system. As designed, none of the projects in the four case studies contemplated a system for monitoring regularisation efforts before they began. A baseline study across all potential beneficiary levels is the appropriate tool.

Recommended reading:

- › Inter-American Development Bank: Comparative evaluation: Land Regularization and Administration Projects. Washington, DC 2014

Tool 39: Codes of conduct

What are code of conducts and how do they contribute to the prevention of land conflicts?

A code of conduct is a set of “principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations” (IFAC 2007). “A code of conduct is written for employees of a company or institution [such as a Ministry of Land or a land registration agency], which protects the business and informs the employees of the company’s expectations. It is ideal for even the smallest of private companies or public institutions to form a document containing important information on expectations for employees. The document does not need to be complex or have elaborate policies, but needs to provide a basis of what the company expects from each employee. A code of conduct can be an important step in establishing an inclusive culture, but it is not a comprehensive solution on its own. An ethical culture is created by the organization’s leaders who manifest their ethics in their attitudes and behaviour. Studies of codes of conduct in the private sector show that their effective implementation must be part of a learning process that requires training, consistent enforcement and continuous measurement/improvement. Simply requiring members to read the code is not enough to ensure

that they understand it and will remember its contents. The proof of a code of conduct's effectiveness is when employees/members feel comfortable enough to voice concerns and believe that the organization will respond with appropriate action" (https://en.wikipedia.org/wiki/Code_of_conduct).

The main role of codes of conduct in land conflict prevention is to prevent corruption, as corruption (and the underlying greed) is one of the root causes of land conflicts. Corruption prevents poor people from land registration as the informal fees are not affordable for them leaving them with insecure tenure. Corruption results in unsustainable zoning and the allocation of building permits to wealthy people in areas that had not been zoned as high-income residential area but as protection area, open space, agricultural land, low income residential area etc. Corruption is also behind illegal/irregular allocation of state land. Code of conducts and the supporting measures listed above are, therefore, a key instrument to prevent a multitude of land conflicts.

Example: the FIG Land Professionals' Code of Conduct

As early as in 1998, the International Federation of Surveyors (FIG) published ethical principles for their members and a model code of professional conduct that aimed to serve as orientation for national codes, identifying key issues that should be included in it. The ethical principles comprise integrity, independence, care, competence and duty putting special emphasis on the duty to the public: "The first duty of surveyors is normally to their clients or employers but as professionals they also have a duty to the public. Surveyors are fact finders and providers of opinions and advice. It is important that they are diligent, competent, impartial and of unquestionable integrity in ensuring that the information they provide is true and complete and that the opinions and advice that they give are of the highest quality" (FIG 1998).

Recommended reading:

- ▶ FIG: Statement of Ethical Principles and Model Code of Professional Conduct. FIG Publication No 17. London 1998.
- ▶ International Federation of Accountants (IFAC): Defining and Developing an Effective Code of Conduct for Organizations. International Good Practice Guidance. 2007.

Tool 40: Improving legislation

What is meant by improving legislation and how does it contribute to the prevention of land conflicts?

Improving legislation includes the establishment of new laws and by-laws as well as the challenging, changing and amending of existing laws and by-laws. In some situations, the introduction of a complete new law may be necessary, e.g. a

law on land registration after the (re)introduction of private ownership on land. In other cases, amendments to existing laws can be sufficient, e.g. to introduce early participation or strategic environmental assessments in land use planning/urban planning. Changes in the legal framework are not limited to laws directly related to land administration and management. In some cases, a law needs to be introduced which goes beyond land issues, such as a law on the recognition and protection of human rights defenders or a law on whistle blower protection. The improvement of laws and by-laws needs to focus on the elimination of loopholes and contradictions and ensure that all relevant aspects are clearly defined, including roles, functions and responsibilities of all participating actors. Typical issues that are insufficiently dealt with in current legislation to prevent land conflicts are prohibition of forced eviction, public land acquisition only for public purpose and based on fair valuation and compensation, women's equal tenure rights, recognition of customary rights, compensation, (early) public participation, technical standards and sanctions for violation of such standards (see tool 35), land use categories, calculation of fees for services, protection of human rights defenders and whistle blower protection etc.

An assessment of the legal framework – considering the legal system as a whole – based on the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) can be a first step to ensure that legislation will prevent land conflict to the widest extent possible. Such assessment as well as the subsequent law making/changing processes should be participatory, involving representatives of all affected stakeholder groups.

Recommended reading:

- ▶ FAO: Responsible governance of tenure and the law. A guide for lawyers and other legal service providers. FAO Governance of Tenure Technical Guide 5. Rome 2016.
- ▶ International Service for Human Rights: Model Law for the Recognition and Protection of Human Rights Defenders. New York 2016.

Tool 41: Disseminating information on land laws, rights and duties

All laws (and the rights and duties therein defined) dealing with access to and use of land need to be known to the public as well as to public officials to ensure that they will be implemented, and thereby land conflicts be kept to a minimum. Raising awareness on laws is, therefore, essential to prevent land conflicts. Information can be made available to the public by different means: publishing legislation (e.g. in official gazettes), translating the law in local languages, creating low-literacy explanations of the law in local languages,

or running large-scale awareness raising campaigns that use radio, TV programs, posters, billboards, comic strips, t-shirts, community theatre, the internet and other communication materials accessible to non-literate audience. For public officials to be aware of the contents of relevant laws and regulations rigorous and ongoing training needs to be provided (FAO 2016b).

Example:

At the beginning of this century, access to information was seen as a precondition for sharing of knowledge and experiences by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) in Cambodia. Concerning the dissemination of information on land laws, rights and duties, the following two initiatives had been realized:

- The MLMUPC website (www.mlmupc.gov.kh) was developed in 2002 to improve access to information, including an overview on laws and regulations. In addition, details about each department of the Ministry, including organisational structure, key contacts and a summary of duties and mandates for each bureau are provided.
- In spring 2004, the CD ROM on Cambodian Land Law Materials was published. It is written in English and Khmer and contains a compilation of laws and other legal texts related to land law issues. The CD ROM is updated regularly.

5.5.4 Assessments and monitoring for land conflict prevention

Tool 42: Land governance assessment

What is land governance assessment and how can it help preventing land conflicts?

A land governance assessment, in particular if done in an inclusive way, will identify all relevant shortcomings in the land sector that may trigger land conflicts. A land governance assessment focusses on the entire “land sector”, including the policy, legal, institutional, administrative framework necessary for the recognition of all existing legitimate tenure rights, their administration and management. It also looks at the relevant procedures, technologies, capacities and other aspects related to their implementation – with a particular focus on governance aspects such as transparency, accountability, participation, inclusiveness, equity and justice, (gender) equality, non-discrimination and rule of law. In other words, land governance assessments analyse all aspects of land policy and land policy-making, land law and land law-making, public land management, land administration, and land management as well as land dispute resolution. Land governance assessments can be done in the form of (quick) surveys as well as in the form of comprehensive multi-stakeholder platforms.

During the past years, the World Bank has developed and constantly improved a land governance assessment framework (LGAF) which can be used for both approaches. It provides a list of issues to be analysed and clustered under five thematic areas:

- Legal and institutional framework
- Land use planning, management and taxation
- Management of public land
- Provision of land information
- Dispute resolution and conflict management

LGAF provides a methodology based on scoring to measure to which extent each indicator is fulfilled.

LGAF provides a useful base for a country assessment. However, it can be worthwhile to modify some of the topics or to add additional ones (e.g. anti-corruption measures and alternative dispute resolution) to ensure that the assessment will capture all relevant issues. It could be worthwhile to investigate more directly if there is evidence of corruption in land administration, land management, public land management or land conflict resolution and, if so, what the government is doing about it. Accordingly, LGAF could be complemented with additional assessments or elements from additional assessments to get the full picture. Examples are legal assessment (tool 21) and land dispute resolution assessment (tool 27).

Recommended reading:

- ▶ Deininger, K. et al.: The Land Governance Assessment Framework. Identifying and monitoring good practice in the land sector. The World Bank. Washington D.C. 2012.
- ▶ Zakout, W., Wehrmann, B., Törhönen, M.-P: Good Governance in Land Administration. Principles and Good Practices. Washington 2006. [The booklet includes key questions to evaluate governance in land administration.]

Tool 43: Land tenure impact assessment

What are land tenure impact assessments and how can they be done?

Land tenure impact assessments are assessments of any activities affecting tenure rights focussing on potential impacts of these activities on the land tenure rights of any individual or group affected by these activities. These include such different activities as soil rehabilitation measures, delimitation of environmental protection areas, infrastructure projects and large-scale land-based investments, such as agricultural investments, industrial as well as artisanal mining.

The purpose of land tenure impact assessments is to identify all types of existing legitimate tenure rights and their holders in the area potentially affected from the planned investment

or project and to analyse potential positive and negative impacts caused by the investment or project on these rights and their holders.

The objective of land tenure impact assessments is to avoid any major negative impacts and to identify tenure solutions or tenure arrangements for the new investment or project that do not cause harm to the existing rights holders. Hence, a land tenure impact assessment is a do-no-harm analysis to avoid land conflicts. Accordingly, the land tenure assessment should take place prior to the final decision for or against the investment or project. Its result should inform the decision. The assessment should be followed by measures to avoid harm that can be derived from the assessment.

A land tenure impact assessments consists of the following steps:

First step: analysis of status quo (common approach for all situations)

- Identification of all men and women living and working on the land where the investment/project may take place (this may include the entire watershed)
- Identification of all legitimate formal, customary and informal tenure rights these people hold, including use rights, tenancy, leasehold etc.
- Discussion with rights holders on what their needs, interests and plans are in regard to the use of the land

Second step: avoiding/minimizing harm

In case of investments or infrastructure projects:

- Development of different scenarios involving different tenure arrangements containing analyses of impacts on existing tenure rights and their holders (e.g. land readjustment/consolidation/pooling and sharing, contract farming, cooperatives etc.)
- Information on the different scenarios to all affected tenure rights holders as well as other relevant stakeholders
- Deliberative public engagement to identify the best tenure option
- Negotiation and agreement on contract

In case of soil rehabilitation or buffer zone management projects:

- Realization of a local agreement between land owners, land users and local authorities about future access to the land (see 7.1 case study from Burkina Faso)

Third step: monitoring (common approach for all situations)

- Identification of indicators for impact monitoring during and after project implementation

Assessments can identify risks and avoid harm. However, monitoring is needed to assess compliance of all parties involved in the project or investment to the agreement made based on the assessment.

Potential monitoring indicators are (Bending 2010 modified):

- Perception of security and threats (full security – high security – medium security – low security – no security)
- Prevalence of land disputes in the project area (number of land disputes per year). Types and causes of land disputes need to be analysed as well to be able to establish a link between project activities and land disputes. Certain land conflicts may not be attributed to the project at first glance as they are only caused indirectly by it. Hence, careful analysis of conflict causes is necessary.
- Percentage of people who lost access to the land they previously used
- Prevalence of evictions in the project area (number of evictions per year)
- Degree of landlessness (percentage of landless people in the project area)
- Access to water (due to project implementation: improved – unchanged – worse)
- Access to other natural resources (due to project implementation: improved – unchanged – worse)

Recommended reading:

- Bending, T.: Land monitoring handbook. Monitoring secure access to land: progress and prospects. International Land Coalition. Rome 2010.

Tool 44: Gender land tenure (impact) assessment

Why and how to do a land tenure assessment particularly focussing on women's tenure rights?

When doing the land tenure impact assessment, it is crucial to understand the differences in land tenure rights due to gender. Often women only have indirect tenure rights through a male relative (see 1.1). Accordingly, their legal situation is weaker and they may be the first ones who lose access to their lands if land becomes scarce or in case of increased quality or value. The following questions can help to gain an understanding of the situation (Working Group on Forest-Land Tenure 2014):

- Who 'owns' specific land and/or resources (land, trees, and non-timber forest products)? (access)
- Who controls these resources? (control)
- Who utilizes these resources (land, trees etc.)?
- Who benefits from these resources? And in what ways?
- Who makes decisions on access and control to these resources?
- Who makes decisions on profit sharing from these resources?
- Since when do the access and control patterns over resources exist? (history)
- What are the impacts of these access and control patterns on men and women from various social groups?

Tool 45: Impact assessment and monitoring of large-scale land-based investments

Which guide should be used when doing an impact assessment and monitoring of large-scale land-based investments?

Impact assessments of large-scale land-based investments go beyond the land tenure aspect. They do not only assess the potential impact of such investments on the land tenure rights of those affected by the investment, but also assess other key aspects of responsible investment.

“When investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment. States should ensure that existing legitimate tenure rights and claims, including those of customary and informal tenure, are systematically and impartially identified, as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers. This process should be conducted through consultation with all affected parties consistent with the principles of consultation and participation of these Guidelines. States should ensure that that existing legitimate tenure rights are not compromised by such investments” (VGGT 12.10).

The following three assessment frameworks are available for private sector and public institutions:

- Analytical Framework for Land-Based Investments in African Agriculture (New Alliance for Food Security and Nutrition 2015): This due diligence and risk management framework has been designed to help investors ensure that their land-based investments are inclusive, sustainable, transparent and respect human rights. For each issue, the framework provides questions an investor should ask, necessary actions to correct deficiencies and references to useful guides. The framework includes several “red lines”, signalling under which conditions the investment project should not proceed.
- Responsible Land-Based Investment – A practical guide for the private sector (USAID 2015): The guide discusses USAID’s recommendations for best practices related to the due diligence and structuring of land-based investments, with the goal of reducing risks and facilitating responsible projects that benefit both the private sector and local communities. The recommendations are organized to follow the lifecycle of an investment, from the initial stages of considering a project and doing diligence and assessments,

to pre-project community engagement, to negotiating contract. At different stages, “break away” points, situations that should they arise, may be a signal to terminate negotiations or close project.

- Guide to due diligence of agribusiness projects that affect land and property rights (Technical Committee on “Land Tenure and Development” 2014): This guide has been developed to help all actors and operators who work with private, State and local government investments that affect land and property rights to monitor compliance with the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT). It provides key questions for two ex-ante analyses – analysis of the national framework for land governance and analysis of the project and associated land contracts.

The following two guides are available for governments:

- Safeguarding land tenure rights in the context of agricultural investment – a technical guide in line with the VGGT for government authorities involved in the promotion, approval and monitoring of agricultural investments (FAO Governance of Tenure Technical Guide 4, 2015): The guide provides background on the creation of an enabling environment, the need for safeguards, the investment approval process and investment monitoring. It also includes useful checklists for stakeholders.
- Guiding principles on large-scale land-based investments in Africa (African Union, African Development Bank, United Nations Economic Commission for Africa 2014): The objective of these 19 principles around six fundamental principles are to: a) guide decision-making on large-scale land-based investments in recognition of the fact that large-scale land-based investments may not always be the most appropriate form of investment; b) provide AU Member States and other stakeholders with direction on how to realize investments in land which are sustainable and beneficial to African economies and people; c) create a basis for effective coordination, cooperation and collective responsibility amongst AU Member States and other stakeholders to ensure improved land governance in the context of large-scale land-based investments; d) provide investors with a tool to inform their engagement with African governments, bodies responsible for decentralized decision-making on land governance (such as municipalities), traditional authorities and other actors to ensure responsible land investments; e) to provide a basis for developing a monitoring and evaluation framework to track large-scale land-based investments in Africa with a view to facilitating learning and review of large-scale land-based investments; and f) provide a basis for review of existing large-scale land-based investment contracts.

Assessments can identify risks and avoid harm. However, **monitoring** and reviewing the project implementation during the whole of its lifecycle, but particularly in the early ‘development’ phase, is essential in ensuring the compliance of the investor to the agreed terms and conditions of the project. This will involve physically checking investor activity against quantitative and qualitative benchmarks contained in:

- Contract documents
- Outcomes of negotiations (consultations) with affected people
- The law
- National and international standards

“States and affected parties should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale transactions in tenure rights, including acquisitions and partnership agreements.

States should take corrective action where necessary to enforce agreements and protect tenure and other rights and provide mechanisms whereby aggrieved parties can request such action” (VGGT 12.14).

5.5.5 Additional measures beyond the land sector

Tool 46: Public and private investment in the housing market

Why would investment in the housing market prevent land conflicts? What type of investments are needed?

Informal land acquisitions are often the result of insufficient housing supply. Accordingly, public and private investment in the housing market can reduce the demand for informal land acquisition (and avoid forced evictions as a consequence of it). Even investments in housing for the middle class can reduce informal land acquisition by the poor as middle class often occupy apartments that would be affordable for the low-income population if only they were available, while middle class would prefer to move to bigger places if only they were available. A broad range of housing opportunities offered by public as well as private investors can therefore reduce pressure on the system and reduce informal land acquisition and forced evictions. Examples are:

- Housing for the middle class
- Social housing
- Site-and-service programmes (especially for those people who are faced with forced evictions)
- Site-without-service programmes (especially for those people who are faced with forced evictions)
- Provision of social concessions for the poor

- Social land readjustment in peri-urban areas to provide shelter for the poor. Through conversions of agricultural land into construction land its value increases. Private landowners profiting from the creation of additional value share this profit by giving part of the land to the state for public purposes such as social housing.

Tool 47: Improving transparency over large-scale land-based investments prior to decision-making (disclosure)

How can transparency prevent land conflicts? Which information needs to be disclosed?

Many conflicts occur because of non-transparency. Sometimes, private business is not honest about its intentions or simply leaves key issues unclear. How can the state and/or local community judge about an investment project if it is not clear how much land, where exactly, for which period and what purpose will be used? The state or local community may agree to an investment deal whose impact they cannot estimate. Once the investment takes place, the local population realizes the negative impacts and starts opposing the project. Disclosure of all relevant information can therefore prevent land conflicts. The minimum pieces of information an investor – regardless of whether private or public – needs to provide, prior to any decision-making, are details pertaining to: the size of land, the exact location of land (including all boundaries), the planned use of land, the investment’s impact on current land users on and around the investment site, the anticipated duration of the project, the costs and benefits for the local community.

Recommended reading:

- Global Witness, Oakland Institute and International Land Coalition: Dealing with disclosure: Improving transparency in decision-making over large-scale land acquisition, allocations and investments. Holborn/Oakland/Rome 2012.

Tool 48: Respecting Free, Prior and Informed Consent (FPIC) in relation to land acquisition

What is FPIC and how can it be achieved?

Free, Prior and Informed Consent is compulsory for investments affecting tenure rights of indigenous communities. Civil society is promoting FPIC for any investment affecting tenure rights of the local community. Some private companies apply it consequently for all their investments on a voluntary basis to avoid conflicts. FPIC requires the identification of all tenure rights-holders affected by the

investment, mapping of the claims to and uses of the land, identification of decision-making institutions and representatives, sharing of information, carrying out iterative consultations, provision of access to independent sources of information and advice, reaching agreement and making it effective, monitoring and verifying agreements, establishing a grievance process and providing access to remedy and conflict resolution mechanisms (FAO 2014).

Recommended reading:

- ▶ FAO: Respecting free, prior and informed consent. Practical guidance for governments, companies, NGOs, indigenous people and local communities in relation to land acquisition. Rome 2014.

5.6 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

- Responsible land governance
- Responsible land-based investment
- Code of conduct
- Land governance assessment
- Land tenure assessment
- Gender land tenure assessment
- Assessments for large-scale land-based investment

Questions for discussion

- What are elements of responsible public land management and how can it be achieved?
- How can temporary and secondary tenure rights be included in a land register?
- At which moment and in which way should the public be involved in land registration, land use planning, public land management, land readjustment, land consolidation and other land administration and management procedures?

Exercises

E 10: Study the Land Governance Assessment Framework and adjust it to the situation in your country by modifying or specifying some questions and/or adding additional questions.

E 11: Choose one field of land administration and management in your country (e.g. land registration, land use planning, land valuation, land readjustment, public land management etc.) that you are well familiar with, identify strengths and weaknesses and propose measure for its improvement.

E 12: Draft a code of conduct for your institution or one you are well familiar with.

Further reading

- ▶ Committee on World Food Security (CFS) and United Nations Food and Agriculture Organisation (FAO): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome 2012.
- ▶ Deininger, K., Selod, H., Burns, T.: The Land Governance Assessment Framework. Identifying and monitoring good practices in the land sector. The World Bank. Washington 2012.

For further reading on the tools introduced in chapter 5.5, see the recommended readings there.

6. THE ROLE OF LAND IN (VIOLENT) CONFLICT AND PEACEBUILDING

“All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict, including in situations of occupation where parties should act in accordance with applicable international humanitarian law”

(VGGT, 25.1).

So far, the guide has looked at disputes over land tenure rights. However, land and the way it is handled is often a root cause and/or structural driver of bigger (violent) conflict and a bottleneck to recovery and peacebuilding (UN/GLTN 2016). Handling land responsibly and tackling issues of tenure in time, therefore, does not only prevent land conflicts but may also prevent bigger conflicts and wars, and can contribute to peacebuilding. This chapter provides a quick overview on these issues.

6.1 Land as a cause of broader conflict

Competition over land and its resources is often the true reason of a (violent) conflict or (civil) war that may be disguised as ethnic, religious, class, gender, generation or other social, socio-economic or socio-cultural conflict. Land easily becomes a source of conflict, when (Bruce 2011: 47-48, USAID 2013: 3-4):

- The land is or becomes scarce. Such land scarcity may be due to an absolute shortage or unequal distribution and may be aggravated by in-migration or land degradation, e.g. due to climate change (**land scarcity**).
- The land and the resources attached to it are or become valuable. Land values may raise due to newly discovered resources or due to an increase in demand such as the current increasing demand on farm land (**the lure of valuable resources**).
- The land has been taken from others in the past (**historical land grievances** that are rooted in earlier displacements and land takings, including those that happened during colonial times).

In addition, the way land is handled can trigger conflicts, in particular where (Bruce 2011: 47-48, USAID 2013: 3-4):

- Land tenure is insecure and people fear evictions (**insecurity of tenure, lack of compensation**).

- Coexisting bodies of law of different origins are poorly harmonized and are used as tools by parties in contention over land (**normative dissonance**).

The following approaches exist to prevent unproductive competition over land to turn into (violent) conflict (USAID 2013: 5-6):

- Addressing land scarcity, e.g. through opening up state land while respecting customary tenure rights, removing regulatory and administrative barriers to liberalize land and rental markets or land reforms
- Improving land governance, fighting corruption in the land sector and promoting responsible investments
- Addressing land grievances, e.g. through willing-buyer, willing-seller programs or land sharing measures
- Creating security of tenure
- Empowering communities, particularly the poor and marginalized, to pursue their land rights
- Improving land dispute resolution

See chapter 5 and toolbox III for additional measures to prevent land conflicts.

6.2 The role of land during conflict

How land and in particular land tenure rights are dealt with during conflict has a significant impact on the severity of conflict and the extent to which it affects people. The VGGT (25.4), therefore, provide guidance on how to address land tenure rights during conflict:

- “States and other parties should strive to respect and protect existing legitimate tenure rights and guarantee that these are not extinguished by other parties.
- States should not recognize tenure rights to land, fisheries and forests acquired, within their territories, through forceful and/or violent means.

- Refugees and displaced persons and others affected by conflict should be settled in safe conditions in ways that protect the tenure rights of host communities.
- Violations of tenure rights should be documented and, where appropriate, subsequently remedied.
- Official records of tenure rights should be protected against destruction and theft in order to provide evidence for subsequent processes to address such violations and facilitate possible corrective action, and in areas where such records do not exist, the existing tenure rights should be documented as best as possible in a gender-sensitive manner, including through oral histories and testimonies.
- Legitimate tenure rights of refugees and displaced persons should be recognized, respected and protected.
- Information on tenure rights and unauthorized use should be disseminated to all affected persons.”

Whereas the above principles already seem hard to achieve, more far-reaching measures could be critical. These may include (USAID 2013: 7):

- Export embargoes of land-based resources over which rebels gained control and which they use to finance their weapons
- Accession to a certification scheme, which tracks a resource (such as diamonds) from their point of extraction to point of sale to reduce their illicit flow
- Engagement with leaders of groups contending over land issues to shape their perceptions of fair and effective land solutions

6.3 The role of land in post-conflict settings and peacebuilding

Post-conflict situations – as any situation of institutional change – facilitate land disputes as the institutional setting is weak and can easily be exploited (see chap. 2.2). In addition, the previous conflict/war and its end may have triggered specific conflict-related land disputes due to displacements during the conflict and the return of refugees, IDPs and ex-combatants after the conflict. Carefully clarifying and securing land tenure rights of all legitimate rights holders, therefore, is a key element in post-conflict settings to build peace and provide a base for reconstruction and sustainable development. Land disputes created by the conflict/war need to be tackled to re-establish trust and restore peace among different groups. Sustaining peace also requires a solid understanding of land-related root causes of the previous conflict to avoid relapse into conflict. Finally, land tenure needs to be re-established and future land conflicts as much as possible avoided to enable people to have access to loans and to attract investors needed to support reconstruction and long-term (re)development.

Therefore, the most important objectives in post-conflict situations with regard to land conflicts are:

1. Identifying, understanding and tackling those land disputes or land tenure related issues that contributed to the conflict (such as insecurity of tenure for specific segments of the population, lack of recognition of customary land tenure, extremely unequal distribution of land, discriminatory laws regulating access to land etc.).
2. Solving land disputes caused by the war, in particular through expropriation and other violation of land tenure rights, displacements during the war and the return of refugees, IDPs and ex-combatants. Such measures will primarily focus on restitution and fair compensation (in cash or kind, i.e. land allocation) and should provide secure tenure for those affected.
3. Preventing illicit takings of land (land grabbing) by elites, investors and other greedy individuals benefiting from the loss of land titles and documentations during the conflict/war and the weak post-conflict land governance situation.

The VGGT (25.5-25.7) provide some general guidance on how to achieve these objectives:

- “States and other parties should ensure that tenure problems are addressed in ways that contribute to gender equality and support durable solutions for those affected.
- Where restitution is possible and, as appropriate, with the assistance of UNHCR and other relevant agencies, refugees and displaced persons should be assisted in voluntarily, safely and with dignity returning to their place of origin, in line with applicable international standards. Procedures for restitution, rehabilitation and reparation should be non-discriminatory, gender sensitive and widely publicized, and claims for restitution should be processed promptly. Procedures for restitution of tenure rights of indigenous peoples and other communities with customary tenure systems should provide for the use of traditional sources of information.
- Where restitution is not possible, the provision of secure access to alternative land, fisheries and forests and livelihoods for refugees and displaced persons should be negotiated with host communities and other relevant parties to ensure that the resettlement does not jeopardize the livelihoods of others. Special procedures should, where possible, provide the vulnerable, including widows and orphans, with secure access to land, fisheries and forests.
- Where appropriate, policies and laws should be revised to address pre-existing discrimination as well as discrimination introduced during the conflicts. Where appropriate or required, relevant agencies should be re-established to deliver services necessary for responsible tenure governance.”

Box 32: The right of displaced persons to voluntary return and the protection of their property rights

International law provides for the right of displaced persons to voluntary return and the duty of states to protect their property.

The right to return for refugees has a solid foundation in international law. Article 13(2) of the Universal Declaration of Human Rights (1948) states, "Everyone has the right to leave any country, including his own, and to return to his country" and Article 12 (4) of the International Covenant on Civil and Political Rights (1966) states, "No one shall be arbitrarily deprived of the right to enter his own country." There is no equivalent international binding law for IDPs but their rights to return are addressed by the UN Commission on Human Rights (1998) in its "Guiding Principles on Internal Displacements" which provide a non-binding framework for return and re-integration based on international human rights law. These principles state that "competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country – ensuring the full participation of IDPs in the planning and management of their return or resettlement."

The Universal Declaration of Human Rights further states that "No one shall be arbitrarily deprived of his property" (Article 17 (2)). As no one is excluded from this provision, it should apply to refugees and IDP. In regard to the latter, the "Guiding Principles on Internal Displacements" confirm this principle by stating that "property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."

Customary International Humanitarian Law supports these provisions with rules 132 – displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist – and rule 133 – the property of displaced persons must be protected.

At the regional level, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention 2009) provides for the sustainable return, local integration and relocation of IDPs and the protection of IDPs individual and collective property left behind as well as in areas where they are located.

Finally, the Principles on Housing and Property Restitution for Refugees and Displaced Persons by Special Rapporteur Paulo Sergio Pinheiro (Pinheiro Principles) endorsed by the UN Economic and Social Council (2005) provide useful guidance, as does the corresponding guide prepared by FAO et al. in 2007.

Sources: AU 2009, FAO et al 2007, ICRC 2009, ICRC 2010, United Nations Commission on Human Rights 1998, UN Economic and Social Council 2005, UN General Assembly 1948, UN General Assembly 1966

Areas for intervention include (ELI/UNEP 2013 modified):

- Participatory land policy making
- Reforming the legal framework on land issues
- Rebuilding (and reforming) the land administration and management system
- Improving land governance
- Land restitution and fair compensation (in kind or cash)
- Land reform (in particular, if unequal land distribution was a major cause of the conflict and prevents peacebuilding)
- (Re)establish just and effective land dispute mechanisms, including clearly defined appeal proceedings

The specific measures to be taken in each field depend on the time. Three phases can be distinguished:

- Peace negotiations
- Peacebuilding and the immediate aftermath
- Peace consolidation, reconstruction and redevelopment

Focus on land during peace negotiations

Peace negotiations provide an opportunity to address land issues right from the beginning, highlighting its central importance for peacebuilding. Peace negotiations should address the three objectives mentioned above: identifying, understanding and tackling those land disputes or land tenure related issues that contributed to the conflict, solving land disputes caused by the war and preventing land grabbing in the post-conflict situation characterized by weak governance. As an outcome of peace negotiations, these issues should be included in the peace agreement in the form of broad normative rules. Box 33 provides further guidance on how to address land issues in peace agreements.

Box 33: Guidance on how to address land issues in peace agreements

“Although not all recent peace agreements include explicit reference to land or treat land-related issues in a comprehensive manner, the clear trend is towards their inclusion in varying degrees of specificity. In many cases, their treatment is ad hoc, but some agreements place these issues at the centre of broader peace constructions. Common issues appearing with relative frequency in peace agreements relate to:

- Refugee and IDP rights to return;
- Rights to the restitution of property and mechanisms required to process claims;
- Reform of pertinent legislation;
- Land reform (including redistributive) measures;
- Land tenure issues;
- The rights of women to equality of treatment with respect to land rights;
- Customary law arrangements; and
- Compensation questions.

Challenges and dilemmas: Peace agreements can pose difficult questions in terms of promoting compliance and implementation of provisions – relating both to conformity of content with international standards and the degree of specificity with regard to land:

- **International standards:** Land provisions in peace agreements can ensure that international standards are observed, but they may also deviate from those standards, which poses a dilemma for the international community. International standards and the terms of peace accords each have their own legitimacy and it is not possible to dismiss the claims of either; sometimes compromises must be struck and maintained in the interests of peace. Restitution, in particular, will not always be possible or even wise – especially, e.g., where more than one returnee may have the right to restitution to the same parcel of land, based on competing awards from different regimes.
- **Specificity:** While detailed provisions in peace agreements may prove difficult to comply with in the aftermath of conflict, in part because they are based on assumptions that may not have developed as expected, more general provisions may lack the necessary specificity to ‘call’ a party on failure to observe them. Overly vague provisions can also be difficult to implement and may lead to different expectations that are hard to manage in the post-agreement phase.

Guidance points:

- Although potentially difficult and time-consuming, good practice calls for dealing with restitution and other land issues, at least in terms of general commitments. Failure to address outstanding issues – whether created by recent violent conflict (e.g. refugee and IDP return) or long-standing pre-conflict grievances (e.g. confiscation of land and resources) – risks a re-eruption of tensions into violence in future.
- Resistance may need to be broken down before these issues can be addressed; securing genuine political ‘buy-in’ from all parties is essential for subsequent implementation. Solutions should be in accordance with international standards, including the Pinheiro Principles. The principle of non-discrimination in terms of the treatment of different groups is fundamental in this regard. For example, according the right to return home to one refugee group, but denying it to another – or endorsing allocation of land to ‘war heroes’, while millions of rural and urban poor live without land or housing rights – will likely generate future grievances.
- Provision should be made for establishment of effective institutions and mechanisms, including monitoring mechanisms, to ensure implementation.
- There is a risk that too thorough and detailed treatment of land and property issues can jeopardise a peace agreement. On the other hand, disguising contentious issues and disagreements with general formulations will cause problems later unless provision is made for effective mechanisms to address them post-agreement.

The ultimate goal: Peace negotiators should strive for a reasonable balance between the advantages of a comprehensive approach with specificity in the elaboration of provisions and the political reality of the need to stop the fighting and secure a peace agreement in the first instance. Ideally, agreements will provide space for pragmatic implementation by all relevant institutions and agencies on the ground, while being sufficiently precise so as to avoid confusion and potential conflicts over interpretation.”

Source: Bruce 2011: 62-65

Box 34: Property regularization at the heart of peacebuilding in Colombia

On 24 November 2016, Colombia's Congress approved a revised peace accord with the country's largest rebel group FARC (Revolutionary Armed Forces of Colombia) to end more than 50 years of conflict. Access to land plays a central role in the agreement and is tackled in point 1 "Towards a new Colombian countryside: Comprehensive Rural Reform" (Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera, 24.11.2016):

"Introduction

[...] Point 1 contains the "Comprehensive Rural Reform" agreement, which contributes to the structural transformation of the countryside, closing the gaps between the countryside and the city and creating conditions of wellbeing and good quality of life for the rural population. The "Comprehensive Rural Reform" shall integrate the regions, contribute to poverty eradication, promote equality, and ensure that the population can enjoy their rights. [...]

1. Towards a new Colombian countryside: Comprehensive Rural Reform

[...] Property regularization: that is, fight against illegality regarding possession (use) and ownership of land and guaranteeing the rights of the men and women who are the legitimate users and owners, so that it is not necessary again to make use of violence to solve land-related conflicts. The aspects established by the Agreement will not affect the constitutional right to private property. [...]"

Focus on land during peacebuilding and the immediate aftermath of conflict/war

"No matter how difficult concerted action might seem in the chaos and confusion following conflict, land questions have to be dealt with as early as possible"
(Du Plessis 2003: 8).

In the immediate aftermath, it is important to focus on the most important and most urgent issues. Some decisions have to be taken immediately. Others will benefit from a more thorough and participatory analysis. In these cases, the participatory processes should be initiated as soon as possible to demonstrate that the issue will be addressed and that there is the intention to identify all stakeholders' needs and interests, to benefit from their diverse knowledge and experience and to find common ground. Concerning aforementioned areas of intervention, the following activities should take place (partly based on ELI/UNEP 2013, UN-HABITAT 2007 and Unruh/Williams 2013):

At the policy level:

- Start a participatory conflict-sensitive land policy making process, ensuring the inclusion of all segments of society, to achieve a broad consensus on how land will be accessed, used and controlled in the future (see tool 37).

Concerning legislation:

- Focus on tightly targeted laws on topics of some urgency, which might include the right of displaced and dispossessed persons to return and be protected from

forced resettlement, restitution, fair compensation, the use of eminent domain, the definition of abandonment, land occupation by those displaced in war and strong penalties for land fraud.

Concerning land administration and management system:

- Gain an overview on the state of land administration, including data, personnel, equipment and facilities. What data has been destroyed? What is left? How much staff is available? What is their capacity? What is the state of the equipment and facilities? Develop an action plan and identify priorities.
- Do not rush to re-establish a land registry. Make sure that legal issues (e.g. how to deal with competing claims) and technical issues (e.g. how to merge different data sets) are clarified beforehand and personnel is sufficiently trained.
- Establish a land claims inventory as a base for land dispute resolution and/or the reestablishment of property rights. Ensure that mapping/demarcation of claims is done in a participatory manner (see tool 13).
- Establish a moratorium on concessions and leases of public land until clear rules for responsible land-based investments are in place. Establish such rules taking into account customary rights. Engage with investors who already hold contracts and negotiate their revision to ensure their conformity with the new rules and discuss compensation issues where applicable.
- Promote land sharing, land readjustment and land consolidation to solve certain land disputes (see tool 18).

Concerning land governance:

- Conduct a land governance assessment to identify the need for action and prioritize them (see tool 42).

Land restitution and fair compensation:

- Design the restitution and compensation programme. Ensure that the affected population is involved and that the restitution and compensation programme is based on a thorough understanding and takes into account international and regional human rights norms.

Land reform, redistributive reform (if applicable):

- Design the land reform programme. Take all possible precautions not to create new land conflicts while striving to solve existing ones.

Just and effective land dispute mechanisms:

- Establish temporary tribunals to focus exclusively on those land disputes that emerged during conflict/war.

Humanitarian aid plays an important role in this phase. To do no harm, humanitarian aid needs to be aware of land issues, avoid creating land conflicts due to their intervention and support the (re)establishment of land administration where relevant. To do some good, humanitarian aid should support the recovery and restoration of productive land, including mine clearance and measures to restore polluted and degraded land. The more land becomes available, the less the pressure on land and the lower the risk for land conflicts to (re-)emerge. To protect rights to the land that have been demined or restored, an effective legal framework has to be established. Affected communities, including women and vulnerable individuals, should be involved in the design and work and either obtain property rights, food or cash for work.

Focus on land during peace consolidation, reconstruction and redevelopment

The way land is accessed, used and controlled is a key element of sustainable social and economic development, peace and stability, and realisation of human rights, making it a key cornerstone for the achievement of the SDGs. It is, therefore, important to establish responsible land governance as early as possible during reconstruction and redevelopment. Concerning the aforementioned areas of intervention, the following activities should take place (partly based on ELI/UNEP 2013, UN-HABITAT 2007 and Unruh/Williams 2013):

At the policy level:

- Finalize the new land policy and derive an action plan (see tool 37).

Concerning legislation:

- Clarify legal ambiguities and revise those laws that include discriminatory passages regarding access, use and control of land and provide for full and equal rights to land ownership, access and use for women as well as all ethnic, religious and social groups (see tools 21 and 39).
- Create standards for surveying, recording, registration, valuation, land use planning, expropriation and compensation etc. (see tool 35).
- Create awareness on the revised legal framework.

Concerning land administration and management system:

- Rebuild a land registry, cadastre, land recording system etc. with the objective to establish fit-for-purpose land administration providing secure tenure for all based on a broad range of tenure options (continuum of rights approach). Provide for the registration of women's land rights, including co-ownership with their husbands, and allow for gender-disaggregated data management.
- Ensure that public land management is transparent and accountable. It should include a public land inventory. Data-generation should be done in a participatory manner, involving equally the local population and relevant authorities. Based on the land inventory, a public land register can be established, which will then constitute the base for responsibly allocating public land in the form of lease or concession. Rules and principles for allocating public land should comply with international good practice (see tool 33).
- Revise spatial planning regulations and introduce new procedures where necessary to ensure the inclusion of international standards such as early public participation, transparency, inclusiveness, (strategic) environmental impact assessments etc.

Concerning land governance:

- Based on the land governance assessment, establish an action plan and start implementation.

Land restitution and fair compensation:

- Implement the land restitution and compensation programme.

Land reform, redistributive reform (if applicable):

- Implement the land reform.

Just and effective land dispute mechanisms:

- Improve the institutional set-up for land conflict resolution, including the provision of a clear and accessible appeal process for disputes not resolved by the first authority (see tool 28).

6.4 Concepts for review, questions for discussion, exercises, further reading

Concepts for review

- Land scarcity
- The lure of valuable resources
- Historical land grievances
- Embargoes of land-based resources
- Certification schemes
- Peace agreements
- Land reform
- Restitution

Questions for discussion

- How does land and the way it is handled contribute to broader (violent) conflict?
- Which approaches can help to prevent unproductive competition over land to turn into (violent) conflict?
- How should land and particular land tenure rights ideally be dealt with during conflict?
- What can those seeking to effectively minimize future land conflict do in the post-conflict context?
- Which issues related to land should/could be included in a peace agreement?

Exercises

E 13: Identify at least three ongoing major conflicts, including at least one civil war and one war involving different states, and analyse the role of land.

E 14: Take a peace agreement available online and analyse if and how land issues are addressed. Be aware that peace agreements often include a number of protocols. Try to find out to which extent the respective provisions have been implemented (up to now).

Further reading

- › Bruce, J. W.: Land and conflict prevention. Initiative for Quiet Diplomacy. Colchester 2011.
- › Committee on World Food Security (CFS) and United Nations Food and Agriculture Organisation (FAO): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome 2012.
- › Environmental Law Institute (ELI)/United Nations Environmental Programme (UNEP): Land and Post-Conflict Peacebuilding. Policy Brief 3. 2013.
- › FAO: Access to Rural Land and Land Administration after Violent Conflicts. Land Tenure Studies 8. Rome 2005.
- › FAO et al.: Housing and Property Restitution for Refugees and Displaced Persons. Implementing the 'Pinheiro Principles'. Rome 2007.
- › UN-HABITAT: A post-conflict land administration and peacebuilding handbook. Volume 1: Countries with Land Records. Nairobi 2007.
- › United Nations/GLTN: Land and Conflict: Towards UN system-wide engagement at scale. Scoping and status study. Working Paper. 2016.
- › Unruh, J., Williams, R.C. (eds.): Land and Post-Conflict Peacebuilding. London 2013.
- › USAID: Land and Conflict – Land Disputes and Land Conflicts. USAID Issue Brief. Washington 2013.

7. Case studies – Good practices from project level

An increasing number of GIZ supported projects contributes to the prevention or solution of land disputes. This chapter presents some of the experiences of these projects. The conflicts they deal with are diverse. They include boundary conflicts between individual neighbours as well as between states, potential land conflicts created by soil rehabilitation

as well as by investors, and conflicts over indigenous rights. The approaches range from conducting assessments and monitoring activities to prevent land disputes over the use of technical tools to prevent and solve disputes to providing legal advice and promoting constructive dialogue to solve land disputes (see table 13). In a nutshell:

Tab. 13: Overview on good practices from the project level: countries and approaches

Country	Approach
Burkina Faso	Local agreements to prevent land disputes that may arise from soil rehabilitation measures (Do-no-harm approach)
Palestine	Providing accessibility to high quality spatial data to prevent land conflicts
Laos	Monitoring of land-based investments to prevent and solve encroachments of protected areas and villagers' land
Georgia	Legal advice and capacity development for legal practitioners to solve land disputes
Philippines	Capacitating indigenous communities to deal with contested land claims within ancestral domains
Colombia	Encouraging constructive dialogue to solve a long-standing land conflict between the indigenous Barí people, the Colombian state and territorial actors



Tenure security in rural areas of Laos and Burkina Faso is low, competition for land high.

7.1 Burkina Faso: Local agreements to prevent land disputes that may arise from soil rehabilitation measures (Do-no-harm approach)

In a nutshell:

The GIZ project “Soil Protection and Rehabilitation and Strengthening of Local Land Tenure Authorities in Rural Areas of Burkina Faso” supports local communities to rehabilitate degraded soils in micro-watersheds. To prevent soil rehabilitation from leading to the displacement of current peasants who are farming the land but do not own it, the project initiates the establishment of local agreements between all customary owners, all land users with direct and indirect use rights and local authorities. These agreements will form part of a bigger local land tenure code recognized and promoted by a new law on rural land tenure.

The challenge:

Degraded soils are often given to the most vulnerable segments of a community, such as migrants and women, who in rural areas of Burkina Faso largely do not own land but only receive use rights; in the case of women even indirect use rights that come through their husbands. These use rights can be allocated for a long duration, but they remain temporary by nature. Once the soil quality and its fertility have been improved, there is a risk that the customary owner of the land may reclaim it and allocate it to someone else, such as a family member or an investor who pays him more. Even within families, there is a risk that husbands will use the rehabilitated land for cash-crop production instead of giving it to their wives to produce food crops. It may also happen that pastoralists will be denied access to their pastures or animal corridors if these lands become rehabilitated. As pressure on land in the project area is high – due to natural population growth, immigration from already degraded areas in northern Burkina, and the introduction of artisanal and industrial mining activities in the area – those current land users who may be denied access to the newly rehabilitated land will not easily find other land that they can farm. Hence, soil rehabilitation measures intended to improve food security in the end may reduce food security of the vulnerable people.

Objective(s):

Preventing the displacement of vulnerable individuals and groups from the fields they are currently farming as a consequence of soil rehabilitation measures to ensure that the overall objective of improving food security, in particular of the vulnerable, will be achieved.



Cattle at a waterhole within a soil rehabilitation area

Methodological approach:

Concept, methodology, tools etc.

- For each land rehabilitation area, a local agreement is established between all customary owners, all land users with direct and indirect use rights in the rehabilitation area and local authorities. These agreements will form part of a bigger local land tenure code recognized and promoted by a new law on rural land tenure. This approach increases the sustainability of soil rehabilitation measures (component 1) and provides a practical example and entry point to establish local land tenure authorities and procedures foreseen by the new rural land tenure law (component 2).

Actors and institutions involved

- Customary land owners
- Peasants farming the land based on direct and indirect land use rights
- Sedentary and nomadic livestock owners (if affected)
- Local authorities
- Local land tenure authorities (to be established)

Main steps

- Identification of rehabilitation sites
- Identification of customary land owners of each rehabilitation site
- Inventory of peasants/land users and their type of land tenure rights in each rehabilitation areas
- Identification of pastures and animal corridors
- Negotiation of a local land use agreement for each rehabilitation site
- Development and negotiation of a local land tenure code (charte foncière) for each village that includes a rehabilitation site. The local agreement becomes part of this code. Such a code can also be established at a higher level.
- Establishment of local land dispute conciliation bodies (commissions de conciliation foncière villageoise) foreseen by the new rural land tenure law in each village that includes a rehabilitation site.

Inventory of land users

N°	Village	Name, first name	Sex	Age	Contact	Surface (m2)	S/M/B	Tenure status	Mode of access to land	Users (M and F)
							Small, medium or big farmer	Owner or not	Purchase Inheritance Gift Loan Tenancy	All names of all male and female users of any part of this land

Relevant complementing measures and tools:

- Awareness raising, information and training on the new rural land law (law 034-2009)
- Support to establish local authorities at the village and municipal level to formalize customary land tenure rights and deal with land disputes (in line with law 034-2009)

Impact(s) achieved (up to now):

- Representatives of all stakeholder groups are well informed about the options to formalize customary rights
- Peasants of some rehabilitation areas started reflecting and discussing ways to secure their future access to their lands

The project only started a few months before editorial deadline of this publication. Hence, the focus was on the development of a methodological approach. So far, rehabilitation sites have been selected and a land conflict assessment (see 5.4.4) was done to identify potential land conflicts that could be triggered by soil rehabilitation measures. Based on the assessment, the methodological approach has been developed. The preparation of inventories of landowners and land users is ongoing.



Efforts:

Time	10-15 days over a period of six to twelve months for each rehabilitation area to identify the owners and users, to develop a local land tenure code and to support the establishment of a local land dispute conciliation body
Costs	Fees for the two experts listed below
Human Resources	One national land tenure expert familiar with local conventions and local land tenure codes skilled in moderation, facilitation, mediation etc. One international short term land tenure expert for the development of the approach in cooperation with the national expert

Reflections/Lessons learnt/Critical Assessment:

Where soil rehabilitation takes place, it is very important to a) conduct a land conflict assessment identifying land conflicts that could be triggered by soil rehabilitation and b) discuss tenure issues and to seek for agreements (local conventions) between customary landowners, peasants with direct and indirect land use rights and local authorities to prevent displacement of the vulnerable, especially women. It would even be more effective if such an agreement would be made an indispensable condition to support the approval of projects to be done at each rehabilitation site.

Contact:

cordula.schmuedderich@giz.de

Rehabilitation et protection des sols dégradés et le renforcement des instances foncières (ProSol)



Soil rehabilitation measure

7.2 Palestine: Providing accessibility to high quality spatial data to prevent land conflicts

In a nutshell:

The Palestinian Ministry of Local Government (MoLG) decided to establish a web-based geographic information system (GIS) called GeoMOLG. The website provides high quality spatial data for governmental institutions. An important data set contains the borders between Area A/B/C, which define the responsibilities between Palestine and Israel in the occupied West Bank. The project provided technical advice to the development and implementation of the GIS, capacity development for the staff members of the Ministry, as well as high quality data through cooperation with Israeli NGOs. The new instrument, created with the support of the project, allows up to 300 Palestinian institutions to access high quality spatial data, which will enable them to take decisions based on accurate information.



House Demolition Palestine 2016

The challenge:

The Palestinians had only hardcopies of the Area A/B/C borders (from the Oslo Accords) on maps with very big scales. Depending on the scale, the border line could be as wide as 600 metres in reality. These maps made it difficult to decide if a building permit could be given by Palestine (Area A/B) or by Israel (Area C). This difficulty resulted in many new constructed houses near the Area C border being destroyed by Israel (see stars in figure 1) because they were constructed based on a Palestinian building permit, but the houses were in Area C.

The conflict was/is a problem for:

- *The individual who invested, or is planning to invest, in constructing a new home in areas that are close to the border. If the individual received a building permit from the Palestinian institutions and it turns out that the land is actually located in Area C, then the house will be destroyed and the person will need to pay also for the demolition.*
- *The Palestinian Government because the public lost trust in the capabilities of their institutions.*

The available border data set is still not the same as the one Israel uses, but the Palestinians are now aware of the differences and can handle as needed.



Figure 1: Demolition orders (pink stars) near the Area C borders (red line) of the West Bank

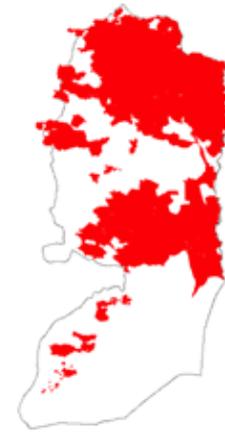


Figure 2: Registered parcels (red) in the West Bank (grey line)

Objective(s):

The main objectives of the projects are to:

- Provide accurate and high quality data to foster fact based decision-making. This includes, among others, the decision as to where to obtain a permit from.
- Enhance the quality and number of available spatial data sets.
- Improve and harmonize development and physical planning.

Methodological approach:

The particular steps taken to minimize land conflict in Area C were:

1. Obtain accurate and high quality data. This data set provided the ability to determine if a certain parcel is located in Area C or not.
2. The data gets hosted on the GeoMOLG.
3. The system was enhanced with some tools that allow users to easily navigate these data sets.
4. Relevant institutions were granted access to the system. Consequently, they had access to these data sets.
5. Relevant personnel from relevant institutions were trained to use the system and to be able to navigate through the data sets and extract relevant information.

Impact(s) achieved (up to now):

- Reduction of errors for building permits
- Time saving because of direct access to digital spatial data
- Reduced field visits because of up-to-date and historic orthophoto

Efforts:

Time	2014-2016
Costs	1 Million Euro
Human Resources	Two National Staff, One Development Advisor, short term local and regional consultants

Reflections/Lessons learnt/Critical Assessment:

More efforts are necessary to boost land registration for Palestinian land (see figure 2).

Contact:

alexander.strunck@giz.de

Local Governance Reform Programme (LGRP)

7.3 Laos: Monitoring of land-based investments to prevent and solve encroachments of protected areas and villagers' land

In a nutshell:

There is a risk that investors encroach on protected areas or villagers' land. The project aims to prevent such encroachments and to solve those that have already occurred. With this end in mind, the project capacitates government counterparts to develop an investment strategy, to monitor investment projects through the conduit of interviews with investors, workers, communities, signing MoU with investors for business improvement, following up on their improvement every three months and organizing exchange days between investors and communities (where there is a conflict) and come up with an agreement. This approach is done for each land-based investment in the project area. The government staff is capacitated to monitor and take action on a regular basis.



Using GPS and maps to monitor if businesses stick to the location and size of land agreed upon in the investment contract



Exchange day: negotiation between community and investor to solve land disputes and other problems?

The challenge (a specific case):

A Chinese banana company ignored the rules and agreements with the government and local authorities on planting areas. It was agreed that banana trees must be planted 50-150 metres from the river. The company started planting banana in May 2016 under the agreed area of 490 hectares, which is 45 kilometres from the district capital and 1 kilometre from the village. Up to now, the company planted 252 hectares. The company rents land from villagers and got approval from the District Agriculture and Forestry Office - DAFO. After signing, the company cleared the land and planted banana. However, 55 hectares of planting encroaches the protected area (river). During the village cluster meeting in July 2016, villagers reported the performance of investment business and the negative impact of chemical substance in water. Children and villagers were affected by skin diseases and eyes infection from the use of water from the river. The district urged for the report to be elevated to the provincial authorities. In August, a special team from the province came to negotiate a MoU with the company for their improvement and asked them to cut the banana trees in the protected area. However, during that time the Chinese director was not present, only a representative signed the MoU. In September 2016, the annual monitoring team went again to discuss the matter with the company and have agreement to cut the banana trees of 55 hectares. Besides this, the company also did not implement according to the agreement, e.g. they made no tax payment, no basin for water treatment and no contribution to village development as included in the contract.

Objective(s):

- Preventing encroachment by investors by supporting the government to develop a five-year investment plan/strategy
- Solving land conflicts by conducting investment monitoring, dialogues between investors, government and communities (as previously described under challenge)

Land conflicts are addressed in the broader context of responsible investment. The overall objective is to achieve responsible land-based investments, ensuring:

- that investors design and implement their investment projects according to national laws and regulations and international guidelines focussing on greater protection of resources, poverty reduction and land tenure security, and
- that local people benefit from investments via the improvement of tools for monitoring and planning for quality investment.

The overall project focus, therefore, is on capacity development for government staff, investors and communities in quality investment management. One element this entails is the prevention and solution of land conflicts arising from investments.

Methodological approach:

Specific measures to prevent land conflicts triggered by investors:

- Development of a five-year investment plan by the government reflecting relevant national laws and international regulations.
- Negotiation and signing of a contract between government and investor for each investment, including provisions on the size and location of land, boundaries, land use restrictions (e.g. minimum distance from water/river), benefit for community, contract duration etc.

Specific measures to solve land conflicts triggered by investors:

- Investment monitoring (done through site visits, including comparison between the actually used land with the area defined in the contract and interviews with investor, workers and local community members)
- Exchange days between investors and communities to discuss critical issues and solve conflicts
- MoU between investor and government on investment improvement
- MoU between investor and local community on investment improvement
- Follow-up on investment improvement

The GIZ project contributed by developing methodologies for investment monitoring and capacity development of government staff, investors and communities.

Relevant complementing measures and tools:

- Supporting the implementation of participatory land use planning.
- Supporting the implementation of systematic land registration.

Impact(s) achieved (up to now):

- Villagers raised voice and actively report to the local authorities on the business’ performance.
- Government follows up on this case seriously. Follow-up actions and measurements with investor are ongoing.

Efforts:

Time	Six to ten months to solve the specific case mentioned above (challenge).
Costs	USD 500 for the specific case mentioned above. In one district, the project monitors around 10-15 projects. The cost altogether per year for all processes is around USD 3,000-5,000/year/district.
Human Resources	Technical staff from the project, provincial and district staff (4 persons).

Reflections/Lessons learnt/Critical Assessment:

- Government should give information to villagers on the pros and cons of banana plantation, processes and related costs.
- Government should closely follow up on the performance of investors from the beginning and have immediate actions with investors.

Contact:

Khankeo.oupravanh@giz.de

Land Management and Decentralized Planning (LMDP) in Lao PDR



Six steps of investment monitoring: from team formation to the moderation of a dialogue between investor and community



Application of GPS for monitoring large-scale land-based investments

7.4 Georgia: Legal advice and capacity development for legal practitioners to solve land disputes

In a nutshell:

In Georgia, since the reintroduction of private property and the privatisation of agricultural land, land disputes occur due to the absence of a systematic first registration and shortcomings in the privatization and registration approach.

The project contributes to the solution of such land disputes from a legal perspective, focussing on legal advice and capacity building to create the necessary legal base and enable legal practitioners to implement it.

The challenge:

The majority of rural land plots in Georgia are not registered in the national land registry and cadastre. Registered data is partly unreliable.

When agricultural land in Georgia had been privatized, no adjudication of the boundaries took place. Rural citizens received agricultural land in a clearly defined size, but there was no indication of the location. A systematic initial registration never took place. Only sporadic registration happened. Some people registered their land, others did not.

Due to an absence of surveying standards and certification of surveyors in the past, surveyors used different surveying methods, sometimes even measured the land without the presence of the owner and rarely asked the neighbours to confirm the boundaries. As a result, much data in the national cadastre is incorrect.

Now, the Georgian government prioritized the completion of the initial registration – still applying a sporadic approach. This completion of the initial registration is, however, hampered due to the numerous land disputes that occur. Some of the land disputes are due to incorrect data in the cadastre as previously no standards for surveying existed, which sometimes leads to low quality of data. Other land disputes are due to the fact that the boundaries have never been clearly established since the re-privatization of agricultural land. Still, another very widespread land disputes results from the fact that many farmers farm (slightly) more land than they have been granted during the privatisation. The reason is that existing fields have not been allocated but abstract standard sizes of land. Farmers, however, shaped their fields according to the conditions on the ground, simply dividing all agricultural land among them and using existing and natural boundaries. As farmers have not been allowed to register more than the granted standard amount of hectares, plots on the ground are (slightly) bigger than the registered plots in the cadastre. This leads to real boundaries being inconsistent with registered ones and many small, unowned and seemingly unused pieces of land in the cadastre, which are actually used on the ground.

The most common land dispute is about parcel/boundary overlapping either between two private parties or between a private and a public party.



Training of notaries in mediation.

Objective(s):

The objective is to strengthen the state institutions and legal framework aiming to achieve better compliance with EU directives and the principles of rule of law to create a legal framework that allows for the solution of the existing land disputes and the best possible prevention of future ones.

Methodological approach:**Legal and technical advice**

- Technical advice during the preparation of a national land administration and land management strategy, including a vision, an objective, principles and action plans for eight key areas, such as political support, legal framework, surveying and registration, spatial planning, capacity development, awareness raising etc.
- Gap analysis and recommendations on the law on “Systematic and Sporadic Registration of Rights on Land Parcels and Completion of Cadastral Data within the Framework of the State Project”
- Gap analysis and recommendations on legislation focussing on property rights and registration aiming at improvement as well as with a focus on issues related to harmonization of the legal acts with International and EU standards
- Development of a Practical Guide on property registration for legal practitioners involved in the registration of land or in the solution of land disputes (registrars, notaries, judges, self-government staff etc.)

Capacity development

- Training of judges, attorneys, notaries and public clerks on property rights and related legal issues of land administration.
- Training of notaries in mediation as the law on “Systematic and Sporadic Registration of Rights on Land Parcels and Completion of Cadastral Data within the Framework of the State Project” foresees compulsory mediation by notaries in the case of land disputes hindering registration.

Relevant complementing measures and tools:

- Legal advice on the Law on National Data Infrastructure
- Support to public awareness campaigns on the land registration project
- Development of discussion forums on land issues with participation of all stakeholders (National Agency of Public Registry, Notaries, Attorneys, Judges, National Bureau of Enforcement, self-government authorities, land commissions etc.)

Impact(s) achieved (up to now):

- The new law on “Systematic and Sporadic Registration of Rights on Land Parcels and Completion of Cadastral Data within the Framework of the State Project” provides for sporadic and systematic registration and includes provisions for the registration of up to 15 percent additional land area than granted during the privatization process.

Efforts:

Time	Two years
Costs	Approximately 300,000 EUR
Human Resources	Five international experts, twelve national experts, NGOs, Working Groups from Partners, other partners etc.

Reflections/Lessons learnt/Critical Assessment:

The inter-ministerial/departmental working groups and the good donor cooperation in the area of land administration helped to provide coordinated and aligned advice on and input in political discussions and draft laws.

Contact:

ekaterina.meskhidze@giz.de

Legal Approximation to European Standards in the South Caucasus

7.5 Philippines: Capacitating indigenous communities to deal with contested land claims within ancestral domains

In a nutshell:

Since 1997, Indigenous Peoples (IPs) in the Philippines have the right to claim titles for their ancestral domains. However, prior to that date, other titles were already granted within the same areas of land, issued by different state agencies to various stakeholders for purposes such as conservation, agriculture, logging or extractive industries. As a result, there are overlapping claims by different parties today – rendering the implementation of the 1997 legislation and the fulfilment of the IP's rights to land difficult.

The project provides technical advice and capacity development to the National Commission on Indigenous Peoples (NCIP), including its regional offices, which was created and mandated by law specifically to promote and protect the rights of the Indigenous Peoples.

The project supports NCIP in gathering adequate ethnographic data of IP communities as proof of time-immemorial possession and ownership of the claimed ancestral domain. The capacity development focusses on teaching skills to better understand Indigenous Peoples' concepts of land, land and resource use as well as land ownership in order to lay the groundwork for a more informed and well-established process of ancestral domain delineation and recognition of ancestral domain claims.

The challenge:

The claims of the Indigenous Peoples over their ancestral domains are contested by other claimants, holding tenure rights issued by the State. This right to claim an ancestral domain is guaranteed by social legislation passed in 1997. However, a system of land titling under the Torrens system has already been in effect since the turn of the 20th century, effectively granting multiple rights over lands within the claimed ancestral domains.

Claims by different stakeholders are therefore overlapping. While the law recognizes Indigenous Peoples and guarantees rights, its fulfilment remains a challenge.

When Indigenous Peoples seek formal recognition of their ancestral domain, they have to file an application before an office of the National Commission for Indigenous Peoples (NCIP) which will process the claims. The right to ancestral domain must, therefore, be fulfilled by officers of the mandated office. Since 2004, when the guidelines for delineation were passed, challenges came to the fore: existence of already issued tenure rights in areas claimed; lacking capacities of the officers on processing proofs of indigeneity (ethnicity); contesting claims within the indigenous communities; and diverging policy priorities of national and local governments.

Objective(s):

- Due recognition by local governments of Indigenous Peoples' claims on ancestral domains and integration of indigenous land uses (sacred places, burial grounds, places of significant importance, hunting grounds, etc.) into the government-mandated local land use and development plans.
- Increased culture and conflict sensitivities in ancestral domain titling processes.
- Recognition of customary and traditional understanding of land ownership and resource use and its promotion in development planning.
- Strengthening the recognition of indigenous perspectives on development through enhanced formulation of Ancestral Domain Sustainable Development Protection Plans (ADSDPP) as well as approaches, methods and tools, which tailor towards Indigenous Peoples' interests in development, protection and biodiversity conservation practices.

Methodological approach:

The project supports NCIP in the use of ethnography in the processes of Ancestral Domain delineation and recognition of ancestral domain claims. The objective of ancestral domain ethnography is to provide adequate ethnographic data as proof of time-immemorial possession and ownership of the claimed ancestral domain. Ancestral domain ethnography focuses on the Indigenous Cultural Community (ICC)/Indigenous Peoples (IPs) claimants and their ancestral domain.

The methodological approach is derived from critical ethnography, which explores wider social structures and cultural contexts as well as subject's meanings to elaborate an understanding that goes beyond surface appearance and incorporates typical ethnological methods, such as field research/studies and participant observation.

The focus is on the dynamic relationships between Indigenous Cultural Community/Indigenous Peoples and their ancestral domain as well as the changes that have taken place over the time. The objective of such "ancestral domain ethnography" is to collect adequate ethnographic data as proof of time-immemorial possession and ownership of the claimed ancestral domain.

In a first step, this approach has been developed and a field manual has been prepared. In a second step, the approach is intended to be used by personnel of the National Commission on Indigenous Peoples (NCIP) involved in ancestral domain delineation and recognition of ancestral domain claims with no formal training in ethnographic research. It is similarly used in preparation for land use and development planning.

In the case of NCIP, most of the respective staff who conduct the research are themselves members of indigenous cultural communities and so may not require long-term and protracted stay in the field. NCIP's Regional Directors select five individuals from the respective regional staff as members of the delineation team for each claim. The field work is done with the full participation of the claimants for Certificates of Ancestral Domain Titles (CADT) and Certificates of Ancestral Land Titles (CALT).

The process has two main phases:

- Pre-field Preparations: Formation of the research team and familiarization with available documents, such as submissions by the ancestral domain claimants as well as related studies on the ancestral domain claimant
- Actual Field Work



Datu Sam Behing points to an area in the map of their Ancestral Domain in Sibagat where a community planting of endemic species is proposed

Relevant complementing measures and tools:

- Ethnographic Field Manual as the guide for delineation, including methods such as:
 - Community mapping; focus group discussions; interviews; review of colonial ethnographies; participant-observation

Impact(s) achieved (up to now):

- The approach has been piloted with six Indigenous Cultural Communities
- An Ethnographic Field Manual (EFM) is available
- The EFM is expected to be the cornerstone of the Four-Year Philippine Indigenous Peoples Ethnography (PIPE) project

Efforts:

Time	2011-2014: Development of the EFM from the support to titling in the six areas/communities 2015: Presentation of EFM to field personnel of NCIP for critiquing 2016: Promotion of approach for country-level ethnography
Costs	Ca. 35,000 EUR for the development process of the EFM
Human Resources	Responsibility for process steering and input by one GIZ Senior Advisor

Reflections/Lessons learnt/Critical Assessment:

- Innovative methodological approaches, such as ethnographic research during processes of ancestral domain delineation and recognition of ancestral domain claims, are helpful to generate data but they need policy backing in order to make a real impact.

Contact:

peter.hauschnik@giz.de

Conflict-Sensitive Resource and Asset Management (COSERAM)

7.6 Colombia: Encouraging constructive dialogue to solve a long-standing land conflict between the indigenous Barí people, the Colombian state and territorial actors

In a nutshell:

The project encourages the constructive dialogue between the indigenous Barí people, the Colombian state and territorial actors to promote the resolution of long-standing conflicts over occupancy and land use that is acceptable to all actors.



Meeting between indigenous authorities of the Barí community and representatives of the national government facilitated by GIZ ProPaz., 22-24 August 2016, Tibú (Norte de Santander)

The challenge:

State institutions have long failed to guarantee the fundamental territorial rights of the indigenous Barí community. The Barí live in the Catatumbo region in the department of Norte de Santander, close to the border with Venezuela. Their territory has been under pressure since the time of Spanish colonization. Since the late 19th century, the state has backed oil companies to operate in the ancestral land of the community. National and local administrations at first tolerated and acquiesced to violence against the Barí during the first decades of the 20th century. A series of administrative acts since the 1960s to constitute indigenous reserves have been insufficient to protect the ancestral land and have fallen short to the needs of the community.

Since the 1970s, actors linked to Colombia's internal armed conflict have begun operating in the Catatumbo region, including within the indigenous territory, triggering yet more violence, stigmatization and confinement. The situation further deteriorated with the arrival of right-wing paramilitary forces in Catatumbo in the 1990s. The Barí became victims of child recruitment, forced displacement and confinement. At the same time, coca cultivation started to increase, both within indigenous reserves and in zones, which the Barí consider as belonging to their ancestral land. The state has failed to respond adequately to the deep social and humanitarian crisis. Three illegal armed actors remain present in the region; however, the largest of them, the Revolutionary Armed Forces of Colombia (FARC), has clinched a final peace deal with the government in late 2016 (see box 34).

Alongside these circumstances, there are legal interests linked to the territory, including a long-standing ambition of peasant organizations in the region to constitute a Peasant Reserve Zona (ZRC); under Colombian law, such zones aim at guaranteeing the viability and sustainability of the small peasant economy in far-off rural and often conflict-affected regions. Moreover, part of the Catatumbo region has been declared a natural park, leading to restrictions on the use of land for both indigenous and peasant communities. Over the last decades, large-scale projects to cultivate African palm have been developed in the wider Catatumbo region. These endeavours have often been backed by the State, but have been fiercely criticized by the indigenous and small peasant communities for their negative impact on the environment and food security.

The enactment of an encompassing law to provide reparations to conflict victims in 2011 has revived efforts to resolve the multiple conflicts over the indigenous territory, with the Barí demanding the formalization of land titles, the amplification and delimitation of the ancestral territory as well as individual and collective reparations for the harm suffered. Implementation of the law has been gradual, subject to an assessment of security conditions in the region. The process has gathered steam since early 2016. With the support of GIZ, state institutions have attempted to strengthen and improve relations with the Barí based on mutual confidence and principles of horizontal dialogue.

In this complex constellation, several types of land conflicts on multiple levels overlap. At the micro-social level, there are boundary conflicts between indigenous and some peasants that have settled in what the indigenous consider their ancestral territory. At the meso-social level, state institutions such as National Agrarian Reform Institute (INCORA) or the National Institute for Rural Development (INCODER, today National Land Agency, ANT) have awarded state land (baldíos) to peasants in areas that the Bari consider part of their land; this has been part of a larger conflict at the macro-social level over the improper privatization of land. The presence of illegal coca cultivations in state land, parts of the national park and within the Bari reserve (both the current reserve and in areas to which the Bari lay claim) has given rise to another meso-level conflict over the use of land. Finally, there are conflicts that are rooted at the macro-social level. Contradictions in a variety of legal norms, such as laws, decrees and administrative regulations over the use, the formalization and the award of land, have triggered ownership conflicts. With state backing, extractive industries have occupied territories that have historically been claimed by the indigenous communities.

Objective(s):

- Facilitate spaces for constructive dialogue between the relevant actors from state institutions, civil society, business and the international community.
- Strengthen the capacities of the Bari people to engage in multi-actor dialogue.
- Strengthen the technical capacities of all actors involved in land restitution or processes of restoring territorial rights.

Methodological approach:

- The project has been carefully prepared, using tools such actor mapping and paying close attention to the principles of the Do No Harm approach.
- The project focuses on developing and strengthening capacities for dialogue in the most important actors, including the traditional authorities of the Bari, the ANT, the UARIV and the government department of Norte de Santander.
- The ANT is in charge of restoring, amplifying and delimiting the Bari's territory, but, as a relatively new institution, it still lacks operative capacities. In coordination with the UARIV, the URT is responsible for restoring the territorial rights of the Bari, repairing the damage done by forced displacement. The National Institute of National Parks must protect and conserve parts of the territory and it must restrict land uses, including uses in original ancestral land. The departmental government is responsible for protecting the rights of all citizens, including those of the Bari and of peasant communities living in indigenous territory. Given this complex actor constellation, the project has facilitated spaces for dialogue between the different institutions and the Bari people.

Relevant complementing measures and tools:

The project provides technical assistance to state institutes in line with their responsibilities in land restitution. This includes assistance to the assessments carried out by state institutions tasked with implementing the 2011 Victim's Law, the Victim's Unit (UARIV) and the Land Restitution Unit (URT). These assessments are an important input for a future collective reparation plan and for judicial demands to specialized judges to restore the territorial rights of the Bari. The project also focuses on strengthening the capacities of these institutions to cooperate with other actors.

Impact(s) achieved (up to now):

- Mutual confidence between indigenous people, state institutions and peasant organisations was boosted after a successful "re-encounter" between all actors.
- Capacities of indigenous to engage in constructive dialogues with the state have been strengthened.
- Technical assistance has helped the delayed process of restoring territorial rights of the Bari people get off the ground.

Reflections/Lessons learnt/Critical Assessment:

- The slow moving process means results will only become visible over the medium- to long-term.
- Indigenous territories are difficult to access, which raises the costs of the project, both in terms of monetary and time resources.
- Policies regarding indigenous territories are often not coordinated between national and local levels.
- Sustainable success will depend on whether conflicts over land use between the different actors in the territory can be solved peacefully.
- The current peace process with the FARC, Colombia's largest guerrilla group, opens a window for the peaceful resolution of land conflicts.

Contact:

helber.noguera@giz.de

Programa de apoyo a la construcción de la paz en Colombia (ProPAZ)

8. CONCLUSIONS

“As for me, I’ll never abandon theft and robbery that is based on housing. There’s nothing on this Earth that generates as much profit as people’s hunger and thirst for shelter. So I never want to see this appetite diminish, even by the slightest amount. In fact, I’ve often stayed awake figuring out ways and means of increasing the whole country’s hunger and thirst, because the degree to which there’s a property famine determines exactly the level to which the price of houses will rise and hence the level to which profits will climb like flames of fire reaching out for fatty meat. When such a famine becomes intense – of course, we don’t call it famine; we give it gentler names – we, the eaters of the fat of the land, can sit down to devise ways of sharing the fat among ourselves”

(from the novel “Devil on the Cross” by Ngugi wa Thiong’o, 1982: 117).

One man’s meat is another man’s poison. At the bottom of land conflicts are the need for land or shelter or food on the one hand, and the desire for profit on the other. Dealing with land conflicts means reconciling conflicting interests over land.

Land conflicts seldom result directly from any absence of rules or an overlap of regulations. They rather result from the egoistic exploitation and intentional continuation of institutional gaps and the disregard of formal institutions. The reasons not to respect formal institutions or to take advantage of their weaknesses are numerous and diverse: Many people are in need of land or shelter but cannot afford to follow formal rules for obtaining it. Others simply don’t want to. This could be because of a desire to resist formal institutions because of previous experience of disrespectful treatment by them (e.g. through failure to grant recognition of legitimated customary or informal claims, or through a misuse of power) and the lack of trust or hurt feelings resulting from this. Another reason a person might choose not to follow the formal rules and regulations for obtaining land is because of a material desire for wealth or an emotional desire for status. In civil war and post-conflict countries, the exploitation and continuation of institutional weaknesses is particularly common. First of all, these situations of change and chaos provide the opportunity for economic gain. Second, (civil) war evokes and intensifies extreme psychological fears (fear of loss and fear for existence) and desires (revenge, power). These create particularly pronounced material needs to ensure one’s livelihood and wealth, as well as emotional needs for respect and sometimes for (moments of) power. Thus, the primary reasons for land conflicts are to be found in psychological desires and fears as well as in emotional and material needs. A weak institutional and governance framework however, considerably facilitates the resulting pursuit of individual interests. However, even a perfectly function-

ing institutional frame will not prevent all land conflicts – as shown by all the inheritance and boundary conflicts that also occur in peaceful and prosperous countries that dispose of well-functioning institutions and high levels of governance. The advantage of such frameworks, on the other hand, is that land conflicts can be solved more easily and justice re-established.

One central element of land conflict resolution and prevention, therefore, is the establishment of responsible governance of tenure in line with the VGGT. Land conflict resolution further requires a broad range of just and accountable dispute resolution bodies respecting human rights, acting in line with the constitution and integrated in a hierarchical conflict resolution system that does not allow for forum shopping. The many tools presented in this guide can help in establishing responsible land governance and functioning dispute resolution mechanisms. Handling land responsibly and tackling issues of tenure in time does not only prevent land conflicts but may also prevent bigger conflicts and wars and can contribute to peacebuilding, reconstruction and redevelopment.

Evidently, each land conflict needs its own individual solution which is adapted to its particular local, regional, national and supranational political, social, socio-economic, economic, cultural, power-related etc. conditions. The facts of each specific case will determine which of the tools presented in this guide should be applied, and how, for the effective resolution and prevention of land conflicts. However, a crucial element of any land conflict resolution and prevention is the (re)establishment of core values of a society commonly agreed upon and reflected by law. Without a common understanding of the necessity to respect human rights as well as the environment, land conflicts will persist at high level forever more.

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Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn

Friedrich-Ebert-Allee 36 + 40
53113 Bonn, Germany
T +49 228 44 60-0
F +49 228 44 60-17 66

Dag-Hammarskjöld-Weg 1 - 5
65760 Eschborn, Germany
T +49 61 96 79-0
F +49 61 96 79-11 15

E info@giz.de
I www.giz.de

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