CHAPTER 4

Land in return, reintegration and recovery processes: Some lessons from the Great Lakes region of Africa

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The chapter describes some of the political challenges involved in managing the transition from emergency activities to longer-term 'developmental' policies in Rwanda and Burundi. In post-genocide Rwanda, uncompensated expropriation and a nationwide settlement policy may have reduced short-term problems over secondary occupation of property, but have created lingering grievances. International agencies have underplayed the role of state agency in their analysis of these problems. In post-conflict Burundi, many actors view the challenges through a return-focused lens, which fails to recognize the structural dimensions of land disputes. Despite widespread awareness of the importance of land issues, the government and UN agencies have been slow to address them. The implications for programmes dealing with post-conflict land issues in other countries are discussed. The chapter concludes that humanitarian agencies cannot afford to work according to narrow, technical viewpoints and mandates. Awareness of historical and political dimensions, and support for monitoring, are vital.

Introduction

Issues relating to post-conflict land and property rights are arguably receiving more attention than ever before (UN-Habitat/UNHCR, 2004; Leckie, 2006). The breadth and the depth of resources being devoted to post-conflict land issues continue to grow steadily, especially in relation to the return, reintegration and/or resettlement of refugees and displaced persons. However, post-conflict land issues, like all development questions, remain highly contentious. Post-conflict institutions are divided and overwhelmed by the scale of need, and post-conflict situations can represent particularly fertile ground for those wishing to pursue a preconceived agenda. Some donors have been accused, for example, of insisting upon land interventions that privilege elite interests or the global market, at the expense of community needs (Palmer, 2005). Due to the sensitivity and importance of the issues, relations between donors, national governments and local civil society organizations are in many

cases uncomfortable. Local or national NGOs are often forced to perform a delicate high-wire act, attempting to maintain political independence from governments whilst also resisting donors' attempts to mould them into mere instruments of policy implementation. The 'militarization' and polarization of society that often occur during protracted conflict makes it more difficult for civil society to remain impartial and to resist pressure from political elements accustomed to the use of intimidation.

Other important questions relate to the capacity of different stakeholders to sustain engagement in land and restitution issues over the long term. Preliminary interventions can lead to increased expectations – for land (re)distribution, for example. This can create tensions within government, between government and the population and between government and donors. Immediately following a conflict, the political environment is fragile and different elements within the state jostle for influence, whilst donors also pursue their own agendas. Intentions and policies can change radically within a few years. The tensions caused by this uncertainty are often exacerbated by the return of refugees and IDPs as security starts to improve. Returnees may have to compete with other impoverished households and criminal gangs seeking to take advantage of abandoned property, while illegal occupations and violent evictions risk contributing to a dangerous rise in antagonism.

Rather than attempt to provide a comprehensive examination of the multitude of technical issues involved, this chapter dwells mostly on return and reintegration. The spatial limitations of the chapter do not permit much discussion of the role of land policy development and land administration in post-conflict recovery. However, some mention is made of the transition from emergency activities to longer-term 'developmental' policies, and particularly some of the political challenges involved in managing this transition. The chapter first offers a very brief overview of post-conflict challenges, then provides two case studies from the Great Lakes region of Africa, and finally highlights some key lessons, with an emphasis on the policy 'gaps' that remain.

A troubled homecoming: Challenges of refugee and IDP return in Rwanda

Due to the turbulent history of the country since the 'revolution' of 1959, which toppled the Tutsi-dominated administration, millions of Rwandans have at one time or another experienced forced displacement, either within the country or to a second or even third country. Land has long been an issue of contention between rulers and ruled, and agents of the state have historically tended to be the authors of land tenure insecurity (Vansina, 2004). Hundreds of thousands of Tutsi fled the country after the 1959 'revolution' that toppled the Tutsi-dominated administration and following several episodes of orchestrated anti-Tutsi violence their land was often allocated to Hutu, through a 1966 presidential decree.

Large-scale population displacement occurred in the north of the country following the 1990 invasion by the Rwandan Patriotic Front (RPF), composed of Tutsi refugees. The 1994 genocide saw some 800,000 Tutsi, as well as thousands of Hutu, murdered. There is insufficient space here to discuss the horrors of the genocide, the possible role of competition for land as a background cause of conflict, or the wider Great Lakes crisis in any detail (see Prunier (1996); Human Rights Watch and des Forges (1999). For a discussion of the role of land issues in the genocide, see Bigagaza et al (2002), and for land scarcity, distribution and conflict in Rwanda, see Lind and Sturman (2002)). The RPF came to power militarily in July 1994, ending the genocide, in the face of international inaction. Fearing revenge attacks, hearing reports of massacres by the RPF and ordered to move by the retreating remnants of the interim government which had overseen the genocide, some two million Hutu left Rwanda, mainly heading for the DRC and Tanzania.

After the RPF victory, hundreds of thousands of Tutsi refugees returned to the devastated country. Some of the returning Tutsi refugees settled in the thinly populated eastern province of Umutara, while others identified lands that had belonged to their families; most simply chose conveniently located properties vacated by fleeing Hutu. Probably about 600,000 Tutsi refugees had returned by the late 1990s. According to the statistical data for housing reconstruction established by UNHCR in April 1996, there were 32,958 occupied houses in a single prefecture (Kibungo) and 45,872 hectares of occupied fields (UN-OHCHR, 1997). Meanwhile, Hutu refugees, fearing arrest or execution, were unwilling to return, and displaced Hutu civilians remained in Rwanda in IDP camps along with remnants of the genocidal militia. In April 1995, RPF forces attacked an IDP camp at Kibeho. The government claimed that 338 people had been killed, but independent sources put the figure at between 2,000 and 8,000 (Pottier, 2002; Off, 2000). The EU briefly suspended aid in response to the violence, but most donors continued to tread the easier of path of uncritical cooperation with the government.

The following year Rwandan troops entered the DRC in order to dismantle the refugee camps, which had become heavily militarized. These attacks and other massacres resulted in the deaths of large numbers of civilians, and caused Rwandan Hutu refugees to return en masse in late 1996 and early 1997, at the same time as hundreds of thousands more were forcibly expelled from Tanzania. A total of 1.3 million people returned in a matter of weeks. In the face of this incredible challenge, the government optimistically argued that there was enough land to go around, and that local solutions would be found (Pottier, 2002). The danger with such optimism is that it underestimates the risks and leaves little room for local administrators to admit 'failure'.

Government policy on land was guided to some extent by the Arusha Peace Accords of 1993 that 'recommended' that refugees who had been out of the country for more than 10 years and whose land had been occupied by others, should not claim their property. However, this article, which is a breach of fundamental human rights laws, was not always respected in

practice. Government approaches to restitution of refugees and IDPs was inspired as much by pragmatism and opportunism as by principles. The return of refugees was handled differently across the country. For example, settlement permits would be offered in some areas, but not others; some areas set up informal 'land commissions', while elsewhere traditional *gacaca* (popular courts) oversaw land disputes.[1] In the north-east, RPF military and political leaders took control of large swathes of ranch land, without any legal basis. As Johan Pottier puts it: 'policy *implementation* is more likely than not to be a matter of policy *interpretation*… repossession would be tackled with the protocol, wit and intrigue so typical of local-level debate' (Pottier, 2002: 189, original emphasis). Local-level power dynamics are complex, highly context-specific and change over time. In general, one might expect that Hutu were at a great disadvantage in negotiations over land and property. Human rights activists observed that 'for a house, for a field or a tool, people are denounced [as *genocidaires*] without evidence' (Sibomana, 1999: 107), a fact that even the Rwandan government acknowledged (Sibomana, 1999; Off, 2000). In 1997, the Special Rapporteur of the UN Commission on Human Rights, Mr. René Degni-Ségui, stated that 'violations of property rights take the form of illegal occupation of property and lead to arbitrary arrests and detentions as a result of malicious accusations and to land disputes ending in murder'. However, power relations in Rwanda are complex and ethnicity is only one of a number of factors at play. Vulnerable Tutsi (especially widows and orphans) often found themselves dispossessed by local leaders, who in some cases were Hutu.

Government policy: Land sharing and villagization

Faced with land scarcity, the government opened up parts of the Akagera National Park for resettlement, and communal areas managed by district authorities were allocated to 'old case' refugees across the country. Truly 'vacant' land was in very short supply. The government therefore decided upon two main mechanisms for addressing the situation. Each is characterized by a lack of monitoring, checks and balances and legal recourse.

The main mechanism for managing land problems was 'land sharing', essentially a form of uncompensated expropriation. According to some, the practice originated as a spontaneous sharing between genocide survivors and returning Tutsi refugees, which was then made obligatory by provincial authorities; others have identified the authorities as the authors of the idea. 'Land sharing' was originally intended to avoid evicting secondary occupants of land belonging to another household by simply dividing the land in two. In some areas it seems later to have been extended into a limited form of land redistribution. Although in general plots were to be divided equally between the various claimants, the means by which the sharing was to be done were not fully elucidated and the policy was not supported by law.[2] The 2005 Land Law attempts to retroactively legalize this process, though the validity of this

step is questionable (Article 87 of the law states simply, 'land sharing which was conducted from the year nineteen ninety four (1994) is recognized by this organic law').

Aspects of land sharing not completely clarified include the ownership of buildings, as well as ways of factoring in differences in soil fertility. There remains widespread dissatisfaction over the policy and the way it was implemented. In Kibuye, an independent study found that over half of all land conflicts were due to 'post-sharing grudges' (Gasarasi and Musahara, 2004). Problems associated with land sharing included land grabbing by local officials, favouritism and corruption, arbitrary distribution of land without regard to former occupancy and the unnecessary displacement of households to distant locations. The policy was still being implemented in early 2008 in areas such as Musanze District, Northern Province, based on the claims of Tutsi returnees to land owned by their fathers or grandfathers (personal observation, Musanze District, February 2008). Fourteen years after the genocide, there is a definite need to 'draw a line' under the land sharing policy and ensure that all land transactions are governed by legislation or written regulations, in accordance with the rule of law (Bruce, 2007).

The second major mechanism utilized by the government was an 'emergency' shelter policy, whereby returnees and genocide survivors, were to live in specially constructed planned settlements, known in Kinyarwanda as *imidugudu* (the singular noun is *umudugudu*). However, without consultation with the donors and NGOs financing construction, this was soon turned into a more widespread 'National Habitat Policy'. The government attempted to oblige as many citizens as possible to live in planned *imidugudu* villages, abandoning their existing homes if necessary. The implementation of the policy nationwide from 1996 was characterized by a number of major problems (see Republic of Rwanda, 2001, for more details on all these problems). First, many people were unwilling to move, and the local authorities forced people to destroy their own houses before moving into new ones (often of inferior quality). In the north-west, the villagization policy became a key part of the government's heavy-handed counter-insurgency strategy to deal with incursions from the DRC. Houses were destroyed even when no state support was available for constructing new dwellings in *imidugudu* (Republic of Rwanda, 2001). Second, *imidugudu* were often built on existing farms. The government decided that residents of the *imidugudu*, and not the state, should compensate owners whose land was used for site construction, but many have never received such compensation.[3] Third, the relocation meant that many people were further from their fields, making cultivation more difficult, especially for women, who have particular security concerns. Production seems to have declined as a result. Fourth, guidelines for the location of *imidugudu* were not always followed, and flat fertile land was often used for construction, leaving only steep slopes for cultivation. Fifth, building standards were often poor and there were numerous allegations of corruption by contractors. Sixth, many villages lack access to basic services. Seventh, many *imidugudu* were

constructed for a single sociological group (for example genocide widows), thereby creating localized ethnic and/or demographic segregation. Some researchers have argued that some *imidugudu* were intended to compensate Tutsi returnees for lack of access to land under the Arusha Accords, although information on socio-economic and ethnic composition and the levels of investment in *imidugudu* is lacking (Pottier, 2002, citing other studies).

International NGOs and the UN found themselves contributing to an abusive policy. By 2001, international pressure and a related lack of donor funds had essentially put a stop to the villagization programme, though the government remains committed to the policy, and there were signs in 2007 that it was being resumed, using unpaid community labour. Neighbouring Burundi has also made plans to implement villagization policies. Meanwhile, independent monitoring of return and restitution has been problematic. A UN Human Rights Field Operation for Rwanda (HRFOR), agreed between the government and UNHCR in 1994, was unable to concentrate on the rights of refugees and IDPs due to its staffing issues and overly broad mandate. HRFOR, which had a difficult relationship with the government, closed in 1998. Coordination between the UN, multilateral and bilateral donors and the government has also been difficult. Human rights groups looking into the practice of 'land sharing' have faced government hostility. In 2004, a parliamentary commission recommended the dissolution of a number of organizations that had conducted advocacy on land issues, including questioning the legal basis for the land sharing exercise (Republic of Rwanda, 2004).

IDPs in Rwanda: A disappearing act

According to the government and the UN, there are no IDPs in Rwanda, however, some international NGOs dispute this, arguing that many of the 650,000 people displaced in the north-west during 1998 and 1999 remain vulnerable, with inadequate access to land and shelter (interviews with UNHCR staff, Kigali, June 2006). Indeed, a review of UN and NGO engagement with IDPs in Rwanda demonstrates important gaps in international definitions of displacement, durable solutions and voluntary resettlement (see Zeender, 2003, for an excellent summary of the issues). Between 1999 and 2000, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) changed its definition of displacement in Rwanda, instantly reducing the numbers from half a million to 150,000. In 1999, UNHCR categorized some 625,000 IDPs as 'persons of concern', but by the following year, IDPs ceased to be of concern to the agency. Although the government has provided funding for the construction of some homes in the north-west, no transparent or comprehensive study of assistance to IDPs has been carried out by the UN (Human Rights Watch, 2001). The way in which IDPs were swiftly made to 'disappear' from official statistics, without sufficient evidence to show that

they had returned or reintegrated into local communities and economies, is a cause for concern.

Implications for Rwanda today

The return of Rwandan refugees and asylum-seekers continues today, on both a voluntary and involuntary basis. Some live in poor conditions and have been granted access to state-owned marshlands cultivated by cooperatives, rather than their own fields, which have been occupied by others (interviews with local NGO staff, Kigali, February 2006, and field interviews in north-east Rwanda, May 2007). International and central government monitoring of resettlement and reintegration has been insufficient. Tens of thousands of people of Rwandan origin have been forced from Western Tanzania into Rwanda since mid-2006 (Human Rights Watch, 2007). Some have 'reintegrated' with relatives or have settled in specially planned villages. According to UNHCR, returnees routinely wait two years or more for the administration to provide a response to housing and land claims. Although many Rwandans are reluctant to voice opinions critical of the government, it seems clear that land-related governance remains problematic, with a marked lack of public accountability and a worrying gap between the formal 'ideal' of transparency and popular consultation as articulated in Rwandan policy documents and the reality of informal land-related abuses. The mere fact that such abuses have characterized state intervention in land tenure and agricultural development for decades, and are recognized as part of the state's institutional culture, does not serve to make them legitimate in the eyes of local people.[4]

International agencies seem to have underplayed the role of state agency in their analysis of the problems and abuses related to state intervention in the land sector in the post-conflict period. Where state actions led to a loss of citizens' land rights, these were typically characterized as unfortunate and unintended results of a lack of state capacity in the face of massive logistical challenges. These challenges and limitations were indeed immense. However, they are only one part of the overall equation. Preferring to ignore the state's 'institutional culture' and related factors, most international humanitarian agencies therefore overlooked much of the complexity of the resettlement of Rwandan returnees, favouring an oversimplified version of events. This is partially because of the political repercussions of the world's failure to intervene during the 1994 genocide, and the failure of international humanitarian and development agencies to invest in and advocate for viable land and settlement policies.[5] Some agencies, particularly within the UN system, are unwilling to speak out lest they too are criticized. The Rwandan government has proved itself adept at undermining or neutralizing those who question its version of events. In addition, few international agencies have strong roots in the countryside, as the number of rural development projects seems to have decreased since the pre-war era. International development is Kigali-centric, and there are relatively few opportunities for sensitive information to reach the

majority of the international community. Agencies that should be engaging more robustly with the government over land-related abuses tend to plead ignorance.

Human rights organizations have taken a lead role in critically assessing policy and legal proposals, albeit generally by default as most other civil society organizations, including those with a mandate to address land tenure and agricultural issues, have been unable to rise to the challenge of criticizing a government that has proved expert at co-opting and cowing civil society. Humanitarian organizations, which are everywhere involved in a delicate balancing act between cooperation with the government (in order to guarantee access to vulnerable populations) and constructive criticism, may be most effective working as part of national or international advocacy networks, where there is strength in numbers, while simultaneously ensuring that specific analysis and information is provided to UN agencies, embassies and other major international institutions on an anonymous and off-the-record basis, if necessary.

Especially when seen from the vantage-point of Kigali (less so when seen from impoverished rural areas), Rwanda has achieved a surprising degree of economic progress since the genocide, and the country has been seemingly 'stable' for the past eight years. However, a discourse that emphasizes the success of post-conflict governance in Rwanda obscures numerous uncertainties and injustices. This critique of the government's management of return and restitution challenges is not intended to argue that nothing positive has been achieved; rather, it is an attempt to ensure that the losses endured by Rwandans during the return process are not simply written out of history.

Burundi

The Burundi conflict, though less intense than Rwanda's civil war and genocide, lasted for much longer and has had a terrible effect on livelihoods and social networks (indeed, despite the use of the past tense, it should be noted that political instability and continued sporadic violence warns against an assumption that all is now 'peaceful' in Burundi). A sixth or more of the population has been displaced inside or outside of the country. IDP numbers peaked at 800,000 in 1999, but have since fallen. However, many live dispersed across the country and are largely invisible to agencies (Internal Displacement Monitoring Centre, 2006). The majority of the IDPs did not move far from their place of origin. These IDPs have generally managed to reclaim their lands; the problem is more complicated for those who prefer to stay in IDP camps. Some may stay because they are concerned for their security. Others choose to stay because the standards of living in the camps are better than elsewhere. Many IDP camps were constructed on private land belonging to individuals who were not compensated or were forced to accept a nominal sum, and the legal status of those remaining in these camps is unclear. Some members of the Burundian civil service have argued that the state is not liable

for any compensation claims, arguing that the camps arose spontaneously and that the state had no choice but to support them (comments of participants in 'Forum Sur Le Problematique Fonciere au Burundi', organized by Global Rights/Ministry of Natural Resources and funded by USAID, March 2006).

Before the peace process began, there were more than a million Burundian refugees, according to UNHCR estimates. Most were living in Tanzania. Between 2002 and March 2008, 389,000 returned from Tanzania, 300,000 of them with UNHCR's help (Pagonis, 2008). In many instances, the land they once owned had already been allocated to others by the government; in other cases, relatives had already sold the land to third parties or distributed the land amongst themselves according to customary inheritance regulations (Ligue Iteka, 2007). The technical and financial capacity of local authorities to resolve such problems is limited, and dispute resolution is time consuming. Data from 2006 show that of a total of 44,915 people who returned, about a quarter (some 11,000) had problems gaining access to land. The problems vary geographically – in some areas where land is particularly valuable, the figure rises to 60 per cent (Umwari, 2007).

The ability of the Burundian government to plan for refugee return has been affected by the Tanzanian government's approach to Burundian asylum-seekers and others living outside refugee camps, who were labelled 'illegal immigrants'. Forced repatriation started in May 2006. No legal framework has been agreed between the two countries to manage this return process, which greatly affected Burundi's ability to manage refugee returns.

The wider context in Burundi

Land-related problems in Burundi go far beyond the rights of IDPs, refugees and other vulnerable groups. The broader institutional and geographical context is very difficult. Burundi is approaching demographic bursting point, its land registration system has historically been highly corrupt and dysfunctional, land law is outdated and the government is new and inexperienced, and faces multiple challenges. Women, particularly widows, and the Batwa minority find it very difficult to claim their land rights due to obstacles in the customary and statutory legal regimes, and the country is rife with land disputes, mostly between extended family members. Indeed, evidence suggests that land ownership issues, including barriers to land access, are surprisingly similar for returning refugees and for host communities (UNHCR/WFP, 2007 citing a study by the Burundian Institute of Statistics, ISTEEBU). Many issues will best be addressed through a new land law, which has been under development for years. It seems that some of the international actors in Burundi are focusing on the local-level institutions dealing with the land claims of IDPs and refugees, without adequately addressing the problems at the political, policy and legal levels. Many actors view the challenges through a return-focused lens that fails to recognize the structural dimensions of land disputes (Van Leeuven, 2007).

In the past, land disputes were mediated by a customary institution of male elders, termed '*Bashingantahe*'. Recent studies suggest that *Bashingantahe* are typically called to mediate in over a third of land disputes (local courts were involved in 41 per cent of disputes, according to Umwari, 2007). Over time, the institution was undermined, first by the Catholic Church and later by political parties, especially the Tutsi-dominated UPRONA party. Since coming to power, the ruling National Council for the Defence of Democracy-Front for the Defence of Democracy (CNDD-FDD) has reduced the legal powers of the *Bashingantahe*, establishing instead an elected 'hill council' (*conseil de colline*) to manage local problems. The local administrative law establishing the *conseils* states that they should collaborate with the *Bashingantahe* in the mediation of disputes (Republic of Burundi, 2005, Article 37). In some areas, the *conseil de colline* and the *Bashingantahe* are in conflict over roles and responsibilities. In parts of Ngozi Province, for example, the *Bashingantahe* have been prevented from operating at all (interview with international land expert, Maryland, 18 April 2008). In other areas there is greater cooperation, suggesting that this issue, like so many aspects of governance, is very context specific.

Post-conflict institutions addressing restitution in Burundi

The Arusha Agreement on Peace and Reconciliation in Burundi recognizes the importance of land issues. While many felt that civil society was excluded from the process, organizations such as the Burundi Women Refugee Network were granted observer status. This resulted in the inclusion in the Agreement of a clause on women's rights to land and inheritance (Stensrud and Husby, 2005, cited in Kamungi et al, 2005).

The Commission Nationale pour la Réhabilitation des Sinistrés (CNRS) – roughly translated as the National Commission for the Reintegration of the War-Affected – was the primary institution in the field of land and property rights for returning refugees and IDPs from early 2003 until early 2006. The Arusha Accords specified that it was to be an independent commission, however, in practice, its structure was the result of a compromise between dominant political parties. The Commission was placed under the institutional control of the Ministry of Resettlement and Reinstallation of IDPs and Repatriates (MRRDR). This political compromise was a breach of the spirit of the Accords (interviews, Bujumbure, May 2004 and March 2006; International Crisis Group, 2003). Both the CNRS and MRRDR claimed that they were responsible for policy-making (Hocklander et al, 2004). This added to the tensions caused by the different political allegiances of their respective directors, and the fact that the MRRDR had not been included in the relevant negotiations during the Arusha process. Under the terms of the peace agreement, staff at the CNRS were political appointees belonging to the signatory parties. This limited the management and technical expertise of the Commission.[6] All of these issues hindered donor funding: donors pledged over US$6 million for the CNRS, but much less than that was eventually forthcoming, and UNHCR was the

only donor to provide major funding (interview with former member of the CNRS, Bujumbura, March 2006). In March 2004, the CNRS started to develop guidelines for a systematic approach to land disputes. Local solutions are emphasized, including amicable settlement between two or more parties with claims over the same land parcel (a voluntary land-sharing agreement). However, these had only limited impact because of the limited capacity of the CNRS, and refugees were largely unaware of the procedures involved (Ntampaka, 2006). The issue was not only one of dissemination of procedures: some civil society groups have criticized the government's failure to adequately involve representatives of refugees and IDPs themselves in the preparation of guidelines and procedures.

Despite its broad mandate, the CNRS was essentially limited to providing short-term assistance to IDPs and trying to resolve particular cases on demand. With funding from UNHCR, the CNRS provided transport for returning refugees from reception centres to their places of origin, and also directed them to legal clinics. However, reception centres, staffed by local volunteers, barely functioned (UNHCR/WFP, 2007). In theory, the Commission attempted to play a mediation role, but lacked presence on the ground and was generally ineffective (Global Rights, 2005).

Local administrators attempt to find their own means to adjudicate land disputes, especially intra-family disputes, resulting in a variety of outcomes (Centre d'Alerte et de Prévention des Conflits, 2006). However, administrators are generally wary of getting involved in more complex or political disputes. The CNRS ran out of funding and ceased to function in the middle of 2005. A new institution – the National Commission for Land and other Property (known by its French acronym CNTB) – took over the responsibilities of the CNRS in late May 2006, with a broad three-year mandate to address land conflicts arising from repatriation, as well as illegal land transfers.[7] Like the CNRS, the CNTB seems to conceptualize its mission mainly in terms of solving local disputes, which can easily lead to duplication of dispute resolving mechanisms established by NGOs. The Commission is also at risk of being spread too thin and may be better advised to concentrate on a small number of particularly challenging cases that are clearly beyond local capacity for mediation. As discussed further below, ad hoc or informal dispute resolution results in a variety of outcomes, some of which are less equitable and less legitimate than others. Humanitarian agencies may play a role through 'quick and dirty' surveys conducted alongside regular humanitarian activities and support for more focused studies.

International interventions in Burundi

The UN Operation in Burundi (ONUB) peacekeeping mission was active from June 2004 until 31 December 2006. While it had a sufficient mandate to build Burundian capacity to resolve land disputes, its rule of law section was understaffed and there were many missed opportunities (Huggins, 2008).

It was followed in January 2007, by the United Nations Integrated Office (BINUB), which was officially established as 'an interim arrangement to allow for a smooth transition from peacekeeping towards a development-focused engagement by the UN' (BINUB, 2008: 5). BINUB is mandated to address land issues as one of the root causes of the conflict, and some $35 million has been allocated to the government's peace-building plan. Although land issues are one of four priority areas in the plan, they have been badly underfinanced. As of early April 2008, some 15 projects had been approved, representing a total budget of almost $28 million. Of this, only $700,000 was dedicated to land issues (specifically institutional support to the CNTB), with BINUB and UNHCR acting as implementing agencies (UN Peacebuilding website, www.unpbf.org/burundi-projects.shtml accessed 7 April 2008). In an attempt to remedy the situation, a multi-agency Ad Hoc Integrated Commission for Repatriation and Return was established in July 2007. Also in 2007, the EU committed part of its $15 million Global Plan to return and reintegration. The CNTB has also received technical and (limited) financial support from the Dutch government and the UNDP (for example, UNDP donated $100,000 to the CNTB in January 2006) (UNDP-Burundi website, www.bi.undp.org/fr/don_commission_terre.htm accessed 7 April 2008). Several other organizations have provided support to existing dispute-resolution mechanisms at the local level, or have created new structures.[8] Support for the *Bashingantahe* has been provided by a number of organizations, and the current UN mission in Burundi (BINUB) recently hosted a conference that called for clarification of their legal status. Time will tell if investment in the training programmes will be undermined by the tensions between the *Bashingantahe* and the *Conseil de Colline* or branches of local government. The most effective approach, taken by organizations such as Global Rights, is to simultaneously engage in research and capacity-building at the local-level, whilst using these data for advocacy at the policy level, particularly in the development of the new land law.

Implications for land-related interventions in return, reintegration and recovery processes

The issues involved in post-conflict land work are many and complex, and there is not the space to discuss them all fully here. Institutions such as UN-Habitat have already attempted to create a framework for sequencing post-conflict interventions, and others are being developed. The discussion of land-related interventions that follows is therefore highly selective and intended to draw lessons from the Rwanda and Burundi case studies provided above. While attempts have been made to identify successes, the outcomes of land-related interventions are highly context-specific, making it difficult to describe one-size-fits-all 'best practice'.

Documentation

Although many actors may be wary of investing in contexts where peace has yet to be achieved, it makes sense, at a minimum, for agencies to monitor the situation as a country seems to be exiting from conflict. It is vital that changes in access to land are well-documented, and that warring parties are aware that they are under international scrutiny. In Burundi, local civil society organizations demonstrated the capacity to document and analyse land-related challenges *during the conflict*, prior to the return of refugee and IDP populations. Despite this local capacity, and the emphasis on land issues in the Arusha accords for Burundi, ONUB did not provide support for legal or other kinds of approaches to the land and shelter problems plaguing the country.[9] Despite the emphasis given to land and natural resource in Sudan's Comprehensive Peace Agreement, land issues were not included in United Nations Mission in Sudan's (UNMIS) mandate or in the UN joint strategy for Sudan, and were almost entirely ignored by the UN–World Bank Joint Assessment Mission (Ashley, 2006). Assessment missions for the UN Department of Peacekeeping Operations (DPKO) sometimes have as little as two weeks to compile a report for the Security Council, which includes recommendations concerning anticipated staffing needs. If more is done to develop networks or rosters of local and international country-specific expertise in land-related issues, DPKO assessments could benefit from such networks.

Some best practices can be identified. UN-Habitat, for instance, has led the way in its assessments of the legal framework in Somalia. Monitoring and documentation of abuses can often be linked to awareness-raising or legal aid programmes, as proven by NRC in places such as Eastern DRC. Monitoring programmes can also help to build local and international capacity to analyse and address land issues, and if momentum can be sustained over time, this could result in the creation of networks of experienced local, national and international specialists ready to assist in more comprehensive interventions. Due to their experience in operating in conflict zones, humanitarian organizations have a major role to play in this regard.

Land and property rights issues in peace agreements

The rights and concerns of IDPs and refugees, and wider concerns related to land and reconstruction, were addressed to some extent in the Burundi peace negotiations. During the Burundi process, refugees were included, and women's groups were able to have an influence largely due to the support of the United Nations Development Fund for Women (UNIFEM) and the personal support of Nelson Mandela. However, the slow or partial implementation of many aspects of the accords raises questions as to the extent of 'ownership' by the signatories, and the mediators essentially forced the parties to agree to problematic clauses (Van Eck, 2007). Many aspects of the agreement are

vague, suggesting that, in the face of stalemate, the mediators chose to disguise disagreement with general statements.

Sudan provides an example of a peace agreement that emphasizes the importance of land issues and provides a framework for future development of land-related institutions, but it too lacks specific provisions. With all parties under pressure to secure an agreement, it was felt that these sensitive questions could best be negotiated after peace had been achieved.[10] However, faced with the rejection of progressive provisions in the Interim National Constitution and State Constitutions, the Southern Sudan government settled for minimalist provisions that do little to clarify the peace agreement. The lack of effective monitoring mechanisms for implementation of the CPA is leading to considerable frustration, especially within the government of Southern Sudan and administrations in the transition states.

Guatemala provides a rare example of direct IDP and refugee participation in 'track one' negotiations, as a result of pressure from guerrilla groups participating in the talks (Brookings Institution/University of Berne, 2007b). UNHCR also facilitated women's groups in advocating for gendered approaches to land titling. In the Guatemala case, the promise represented by the peace agreement has not borne fruit because of the political intransigence of the government, forcing donors to threaten to withdraw some aid. Again, this raises the question of political 'buy-in' during negotiations and implementation.

Comparison of the Sudan agreement with the Mozambican peace accord demonstrates the importance of recognizing multiple tenure systems, or multiple legal regimes, in peace processes. Unruh provides an example, arguing that, 'in the Mozambican peace accord and subsequent legislation regarding land, broad state recognition of multiple approaches to tenure has contributed much to the success of the processes' (Unruh, 2004). In Sudan, too, multiple and overlapping institutions and legal regimes create a complex and dynamic mosaic of land claims. If peace agreements refer to land issues in ways that are overly vague, differing expectations can prove dangerous to post-conflict stability. The challenge is to find a balance; agreements should provide space to allow inclusive and pragmatic approaches involving all of the institutions operating on the ground, but must not be so open as to create confusion and post-conflict deadlocks over interpretation.

Coordination among stakeholders

The Rwandan experience shows the difficulties of aid coordination, and that the 'technical' questions of coordination cannot easily be disentangled from the politics of aid. Following the genocide, many of Rwanda's major donors reduced their funding (Hayman, 2007). Simultaneously, new donors have become involved. Currently, the UK and the US are the most significant donors due to the large amounts of money disbursed directly to the national budget and their political support to the government. Donors with the greatest depth of knowledge about Rwanda have been eclipsed by others with less experience

in the country. The shift towards direct budgetary support has also had an impact. Donors providing direct budgetary support can claim a greater degree of involvement in policy-making, but engagement is now exclusively at the headquarters level in Kigali. Reduction in donor support to projects has led to reduced interaction with middle-management or field-level staff who have a better grasp of rural realities. An external evaluation of the UK's Department for International Development (DFID) in Rwanda between 2000 and 2005 found that, on average, staff spent little time 'in the field' and were hence 'distanced' from the results of programme implementation (Kanyarukiga et al., 2006).

In Burundi, some donors have channelled funding through local 'democratic' administrative structures, whilst others have bypassed the administration. Some commentators have argued that excessive donor reliance on civil society structures, along with overly ambitious objectives imposed from outside, has resulted in undemocratic NGOs which lack local accountability. Their recommendation is that donors work through the local administration instead (Uvin, 2006). Each country is different. In Rwanda, state structures have a reputation of being less corrupt than elsewhere in Africa, but lack of effective and independent civil society monitoring means that local implementation of policies can be coercive and abusive. In Burundi, freedom of expression is less of an issue, but corruption and abuse of office are not unknown. Experience suggests that a combination of approaches is necessary, though modalities of support must be consistent and transparent. Support to local administrative structures would have the benefit of improving monitoring of the administration's activities, assuming that 'gate-keepers' at the national and provincial levels can be bypassed.

Support to civil society platforms and common advocacy approaches

Civil society organizations (CSOs) can play a variety of important roles in the design and successful implementation of any major land-related interventions, particularly in terms of monitoring and evaluation. The form and the political positioning of CSOs are often linked to the evolution of the conflict and will change as a country exits from the emergency phase and moves towards greater stability. Often, CSOs will find themselves in an increasingly weak position relative to government as the state builds capacity. As they shift from an implementation orientation towards greater emphasis on advocacy, they are likely to require political support from donors, in addition to financial support.[11]

CSOs are generally gaining better access to policy formulation processes, and in countries such as Mozambique, Kenya and Rwanda, alliances of CSOs have influenced government policies through agreeing on a common position on strategic issues. However, CSO influence has typically diminished once policies and laws are finalized and implementation begins. In some cases, direct budgetary support to governments has reduced support to NGOs; in

others, the greater technical capacity of international consulting firms has garnered them the lion's share of donor funding, with local CSOs as 'partners' playing a limited role.

The funding cycles and internal policy realignments of donors are ill-suited to the long-term nature of land tenure activities, and CSOs can often find themselves losing support at crucial moments. For this reason, 'road maps' for land interventions represent best practice. Such road maps should be negotiated by all stakeholders as the first stage of land reform activities, and should map out roles and responsibilities of all stakeholders over different phases of activity, including implementation of policies and laws (Lumumba et al, 2007). Humanitarian actors can play important roles in the early stages of network development, and can ensure that networks can directly or indirectly access areas affected by conflict or state repression.

The rights of women and specific vulnerable groups

The example of Burundi demonstrates what we know already – women face far more obstacles to claiming their land rights than men. Female-households tend to come under pressure to give land to relatives or neighbours. Women who began to cohabit with men in the refugee camps often find a first wife awaiting them upon return to Burundi, and may then be denied access to land.

Awareness of gender inequalities and issues specific to other vulnerable groups should be evident in every activity, post-conflict or otherwise, and ample handbooks and analysis tools exist to guide policy-makers and practitioners. However, in reality, post-conflict interventions often exhibit only a minimal degree of gender awareness. Humanitarian agencies are often left to assist those who have fallen through the gaps and thus have the responsibility to collate data on those they work with, and use this in an advocacy context.

In Rwanda, a directive on provisional land management was issued acknowledging that wives and children are entitled to manage family land in the absence of the male head of household until the return of the titular owner. While orphaned children are minors, their parents' property can be managed by their guardians (Lastarria-Cornhiel, 2005). However, even in a country that has demonstrated its political will for reforming gender relations, the technical issues involved have proved formidable. The 2005 land law has at best vague gender objectives, and provisions outlawing the subdivision of parcels of one hectare or smaller are likely to result in women being denied equal inheritance rights.

Efforts to register women's land rights in the pilot land registration exercise include registering polygamous family land under the names of wives, with the husband registered as having an interest in the land. Time will tell whether this will result in increased control over land by women, or whether customary norms will prove more important in the long run. Whilst in many countries political will remains the main barrier to gender-sensitive policies,

the Rwandan experience suggests that, due to the complexity of gender issues, technical issues are also a barrier, particularly in polygamous contexts.

Development of land registration systems

The range of options for the registration of land rights is wide, and any discussion in a chapter such as this is bound to be superficial. In lieu of an attempt to summarize so many diverse models and experiences, a single question will be offered in order to stimulate debate: to what extent are pilot programmes being designed to truly *test* methodologies? If the main purpose is to evaluate and improve technical approaches, monitoring and evaluation mechanisms will be mainstreamed throughout the project cycle, which may last several years. After all, the real impacts of a registration will only be seen months or years after the completion of the exercise, particularly through land transactions. This issue must also be linked to the legal basis – or lack of it – to the land claims registered during the pilot phase. In parts of Asia, preliminary pilot projects have prompted changes to laws or regulations, which then support the later stages of the ongoing pilot programme (Burns, 2006). However, in some cases, pilot programmes seem designed more to prove or to demonstrate a preconceived methodology (with some leeway for adaptation to local contexts) than to comprehensively assess, test and change the systems. A desire to exert influence at the national level, and to gain increased credibility at the global level, may outweigh the desire to fully understand the pros and cons of new approaches. Evidence of this can include a lack of formal mechanisms to provide for external monitoring and, just as importantly, to address external criticism in a transparent and accountable way. The Rwanda pilot programme has an open-door policy in terms of field visits, but lacks these formal mechanisms, and there appears to be considerable political pressure to finalize the pilot and implement national roll-out as soon as possible.

Support to customary and/or local dispute resolution mechanisms

Customary or local-level systems exist almost everywhere across the globe, and often represent the only option available for local people during times of war, when the state is absent or hostile.

Many institutions have supported local dispute resolution institutions in Burundi, and efforts are underway to strengthen local systems in Rwanda as well. However, support must go beyond training workshops and local-level dissemination of laws. As seen in Cambodia and elsewhere, local dispute resolution systems are rarely provided with the financial, technical or political support necessary even though they represent one of the most challenging elements of any land-related or rule of law programme (GTZ, 2005). There is a risk that a situation of 'double standards' will emerge, with the state being content as long as the formal courts are relieved of some of their burden of

cases. Local systems may then be ignored, with the poor left to make do with poorly functioning or corrupt systems staffed by overstretched and under-trained volunteers. The role of local administrators is also critical – their support is necessary if the decisions of local dispute resolution systems are to be respected, but if they become directly implicated as mediators, the independence of the system from the state or from party politics may be compromised. Systematic monitoring and evaluation of local systems is challenging and rarely conducted, but should be a core part of this work.

However, such support can be politically sensitive, as the case of the *Bashingantahe* in Burundi has shown. This is not the only example. In transitional zones of Sudan controlled by the (Northern-based) National Congress Party (NCP), land administration powers usually wielded by local community leaders are being given by the NCP to local political appointees, creating parallel structures (interview with head of Burundi's National Commission for Land and Property, December 2007; and interview with local land expert based in S. Kordofan, December 2008; interviews conducted in Kigali). Decisions over international engagement with controversial local bodies need not be all or nothing: in Sri Lanka, the NRC does not officially recognize quasi-judicial bodies due to their links to the warring parties, but plans to monitor them (Ingunn and Foley, 2005). Such monitoring, which should be adopted by other humanitarian actors, could provide the basis for international 'best practice'.

Assistance to restitution or compensation programmes

Most post-conflict states suffer from a lack of up-to-date information about land use at the local level. In such cases, donors and international agencies may provide assistance to governments in identifying land for resettlement. Ideally, these will be linked to land distribution systems and regularly updated. The case of Burundi provides a warning: a UNHCR-sponsored inventory of land in the state's private domain, intended to inform the distribution of land to returnees and IDPs, has been used by powerful individuals to identify and acquire parcels through dubious means. Such an inventory should ideally be used not as a stand-alone intervention, but combined with a mechanism to systematically monitor and coordinate allocation of state-owned land, resulting in a live, regularly updated, database. In addition, any land survey should acknowledge and document land tenure disputes involving the state. Throughout Burundi, as elsewhere in Africa, land that the state claims as its own is also claimed by local communities, by reference to customary tenure systems. Studies of 'vacant land' should involve the direct participation of local communities to ascertain local land claims and the past and present usage of land parcels claimed by the state.

In many parts of the world, questions arise where displaced persons originating from rural areas governed under custom, choose not to return. In Burundi, some IDPs who fled to the capital city for security reasons have been

refused the right to remain there after the ceasefire, as city-centre property is so valuable. In general, if restitution is provided, there is no guarantee that IDPs will be able to sell or rent their property, particularly where their properties are remote and land is relatively abundant. Where IDPs reside in camps, host communities are often keen to see the camps dismantled, making the status quo untenable. Government support is important, as market-based strategies cannot be expected to provide solutions in such environments.

The Pinheiro Principles (see chapter 10, this volume) are clear in privileging restitution above compensation (UN Economic and Social Council, 2004). This is one of the positions that has caused some debate over the extent to which the principles are realizable in practice. In some circumstances, particularly when displaced people do not want to return to their original homes, things may become complicated. Whereas some displaced people may be able to sell their properties and buy others, this may not be possible in some cases due to insecurity and different conceptions of 'land rights'. In many parts of Africa, for example, customary inhabitants of land under indigenous land tenure regimes may not view the state's land tenure system as legitimate, and may for example object to those displaced from such land being given payment for such a sale. Where the state's power is weak and custom remains strong, the state may thus be unable to enforce the right to restitution of property.

The handbook on implementation of the Pinheiro Principles advises that cash compensation is to be *avoided* in countries without a functioning land or housing market or secure saving banks, and recommends that the state provide alternative land and housing instead. This is certainly feasible. However, particularly where land access is intimately linked to livelihoods strategies such as grazing or fishing rights, characterized by seasonal and annual fluctuations and complex reciprocal arrangements with multiple communities, identifying alternative areas and negotiating with local communities may be challenging. Whilst maintaining a rights-based approach, it may be necessary to avoid a legalistic stance in such situations and proceed from a livelihoods focus. Solutions are likely to rely heavily on local-level reconciliation efforts. While principles must be universal, the ways in which they are implemented must be based on local realities and much remains to be learnt about implementation of the Pinheiro Principles in the more natural resource-dependent parts of the world.

Addressing situations of protracted displacement

Communities that have endured long-term displacement can be found in both Rwanda and Burundi, but their treatment by the government and international NGOs differs. In Rwanda, IDPs have been written out of existence, whereas in Burundi, a very broad definition of vulnerable people was adopted in the Arusha Accords, which includes not just IDPs in camps but also people 'dispersed' across the country, living with relatives or in towns.

The question of protracted IDP situations has been historically overlooked, but more attention is now being paid to the issue. The much-discussed disconnect or gap between relief and development interventions remains an issue. In Rwanda, due more to political and financial pressures than principles or norms, there was little transition within the UN from an emergency stance to a development agenda in which IDPs simply do not exist. In Burundi, the question of local integration is of utmost importance. Many IDPs have established homes and livelihoods in camps and are loath to leave.

It is estimated that between half and three-quarters of all conflict-induced IDPs worldwide are living in situations of protracted displacement (Brookings Institution/University of Berne, 2007a). However, it is difficult to gain an accurate picture of the situation, as precise data on the number and the living conditions of IDPs are generally lacking and can be controversial. Even countries that have historically been free from large-scale armed conflict, such as Kenya, have failed to address the needs of IDPs.

UNHCR assists IDPs in some countries but not others. Categorizing households as IDPs does not confer a legal status upon them; primary responsibility for their welfare remains with their government, and the responsibilities of UNHCR towards IDPs remain vague. Humanitarian agencies, which may continue to target IDPs even if they are not recognized as such by governments or multilateral bodies, have a responsibility to provide data on living conditions and property issues for advocacy purposes.

Addressing the protection needs of asylum-seekers

The definition of 'displaced persons' in the Guiding Principles on internal displacement includes, in addition to IDPs, those who flee across national boundaries but who are not accorded refugee status – a category of people who often fall through the net of UN agency support and are particularly vulnerable to being forcibly repatriated. The Pinheiro Principles have clearly inspired elements of the Great Lakes Stability Pact, which includes provisions for the creation of a regional mechanism for monitoring the protection of IDPs and refugees (IRRI/IDMC/NRC, 2007). However, even as the statements were being developed, tens of thousands of people of Rwandan and Burundian origin were being robbed of their possessions and violently evicted from western Tanzania (Human Rights Watch, 2007). Time will tell whether the political will to put the protocols into practice exists at the national level or within the UN system. At present, those who are refused refugee status by host governments are extremely vulnerable to human rights abuses and are barely 'on the radar' for international agencies.

Conclusions

The case studies demonstrate the continuing difficulties involved in multilateral post-conflict restitution issues. While awareness of the importance of post-

conflict land issues has greatly increased in the decade between the Rwanda case study and the Burundian example, this has not necessarily translated into changes on the ground. For example, despite a progressive peace agreement in Burundi, and the establishment in February 2003 of a commission dedicated to resolving restitutions issues, those trying to address return and restitution on the ground in Burundi have only recently started to receive substantial systematic, coordinated support. There was a gap of almost a year between the collapse of the CNRS and the establishment of the CNTB as a functioning organization. In addition, a UN Ad-Hoc Commission on Repatriation and Return was established much too late. Having invested in support for the development of new land laws and policies, donors rarely devote adequate resources to ensure systematic monitoring of the successes and failures of local-level implementation. This is one of the reasons for the caution in identifying 'best practices' in this chapter.

Often, international observers pay inadequate attention to processes by which guidelines and regulations are put into practice. As noted by Manji (2006: 123):

> problems of implementation are attended to only in so far as observers express fears about the workability of proposed bills… it is widely assumed that where difficulties exist or can be foreseen, additional funding and enhanced training of those responsible for implementation will resolve them… the process of implementation itself has remained neglected and little theorised.

Local outcomes are largely a result of local power relations and are contingent, not just on the technical capacities of government, but the wider governance environment and the intentions of local administrators and powerbrokers. In Rwanda, the United States Agency for International Development (USAID) and DFID are allocating resources to developing subsidiary land-related legislation but 'land-sharing' (uncompensated expropriation) continues, undermining the role of legislation, such as the expropriation law. There is a risk that field-level monitoring of implementation is still lacking and IDPs have been written out of history. In Burundi, local administrators have tried to develop their own systems for reducing or adjudicating disputes, but many are wary of intervening. Time will tell whether ad hoc mediation at local level, including so-called 'land-sharing', provides a sustainable response. Observers have already noted that weaker parties in disputes – particularly widows – are liable to lose access to land when disputes arise (personal communication with international observer, January 2008). Once more information is available, comparison with Rwanda will be useful. It is possible that 'land sharing' masks injustices, or provides only a temporary solution, with claims reappearing in future. The portrayal by authorities of so-called 'land-sharing' as a 'local', 'voluntary' or 'participatory' phenomenon may have blinded some to the inequalities it can involve. As noted by academics such as Pauline Peters (2004: 269):

> a currently influential approach to 'the land question' in Africa, which privileges flexibility, negotiability and indeterminacy in analyses of social relationships over land, tends to ignore the micro- and macro-level situations and processes that make up power relations between parties in competition for land.

According to Peters (2004: 269): 'More emphasis needs to be placed by researchers on who benefits and who loses from instances of "negotiability" in access to land'.

In recent years most analysts have come to agree that post-conflict land activities must build upon local norms and customary systems. However, given the wide variations at the local level, there is a risk that, in the face of great complexity, the under-funded institutions working on land issues will for all intents and purposes abandon all efforts to achieve universal standards. This would be ironic, given the great investments in the development of principles and norms in recent years. There is clearly an inherent tension between the very real need to insist on rights-based approaches, on the one hand, and on the other reaching locally acceptable, realistic results on the ground.

The Pinheiro Principles, along with a growing body of field experience, provide practitioners with an increasingly solid foundation for land-related work in post-conflict contexts. The principles, and the international laws from which they are derived, are intended to be universal. However, each situation will present different challenges and solutions have to be tailored accordingly.[12] In many parts of the world, for a variety of geographic, economic, socio-cultural and political reasons (not least the ill-fitting governance apparatus inherited from colonial powers), implementation of laws and rules involves significant local-level (re)interpretation and compromise. In some cases, the nature of land-markets differs from the neo-liberal model, and restitution and compensation efforts may take on unexpected forms. In particular, societies in which customary law predominates, and local-level customary authorities enjoy significant autonomy, may have to negotiate different kinds of solutions. Principles of inclusivity should ensure that all voices are heard and that local solutions are not incompatible with international human rights standards. Lessons can and should be learnt from past experience. In particular, mandates and budgets for UN agencies and other international organizations involved in post-conflict activities must reflect the increasingly obvious fact that comprehensively addressing land issues in return and restitution processes can contribute to long-term peace.

However, programmes dealing with post-conflict restitution and other land issues cannot afford to work according to narrow, technical viewpoints and mandates. The subjective, complex and hazardous questions of reconciliation, coercion and political negotiation make 'blueprint' approaches impossible to implement. Especially in countries that have had little international exposure prior to the humanitarian crisis, those working on post-conflict reconstruction can find themselves suffering from a blindness to history – amongst the

shattered masonry and institutional wreckage they imagine a *tabula rasa*. The temptation is then to assume that a pre-packaged plan for return, reintegration and resettlement can be easily implemented. Instead, experience shows that an awareness of historic and political dimensions is vital.

Notes

1. These traditional gacaca are not to be confused with the government-initiated gacaca established to try genocide suspects.
2. Although there is a popular belief that there was a set of written principles to guide the land-sharing process, key government institutions are unable to provide copies, and it seems that they may never have existed in the first place (interviews, Kigali, August 2005).
3. In a sample of some 500 imidugudu residents in late 1999, only 8 per cent of those who had been expropriated for imidugudu received something in exchange (Human Rights Watch, 2001).
4. Rwandan officials have at times acknowledged in small public meetings that the implementation of agricultural policies have been 'unpopular' (confidential interview with Ministry of Agriculture official, Kigali, September 2007).
5. Bruce (2007) notes that the international community failed to provide guidance on land issues during the Arusha peace agreement negotiations, and that a focus on emergency shelter blinded international agencies to the wider land tenure issues involved in the 'villagization' policy.
6. Training and scholarship opportunities have in the past been monopolized by a clique (composed mostly of Tutsi) associated with the inner circles of power.
7. Under law n°1/18 of 04 May 2006, the CNTB was given several responsibilities, from providing technical and material assistance to returnees and IDPs, to updating the existing inventory of state land and reclaiming illegally occupied land.
8. These include for example the Catholic Peace and Justice Commissions that have been installed across most of the country, the local peace commissions created by the Agency for Cooperation and Research in Development (ACORD) and the Ministry of Peace and Reconciliation under the Cross (MiPAREC), and the Councils of Leaders put in place by Search for Common Ground.
9. The UN Peacebuilding Commission has since developed the Strategic Framework for Peacebuilding in Burundi, which identifies land issues as a key challenge to peace. Donors are supporting the National Commission for Land and Property and further development of the draft land law.
10. External pressure on the parties to sign an agreement increased during the build-up to the US Presidential elections, with the US seeking a pre-election peace deal. According to some analysts, excitement about the peace deal led people to sign quickly without due attention to the details (see Prunier, 2005)
11. The situation in Rwanda illustrates this point. Rural NGOs have been accused of harbouring and promoting 'genocide ideology' for defending

rights to private property and for constructing local-level food security granaries. Donors have been inconsistent in defending civil society organizations from persecution (personal observations, Rwanda, 2005–2007).

12. Many of the examples cited in the Handbook (UN-FAO et al 2007) on implementing the Pinheiro Principles are taken from Eastern Europe. Without underestimating the constraints in these countries, in general these are societies where legal and administrative measures can rapidly be effected at the local level, and where financial and market-based solutions are generally appropriate. In addition, most discussions of housing land and property rights have been characterized by case studies of countries where urban or agricultural livelihoods predominate. More analysis is needed of experiences from those parts of the world where grazing, fishing, hunting or other complex kinds of rights are to be found.

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