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

Part III – Securing tenure of smallholder peasants

In post-conflict settings, securing tenure of local smallholders is considered of major importance to reduce and prevent local land disputes, to contribute to the recovery of rural livelihoods, and to improve agricultural production. Registration and other ways of formalizing land ownership are generally believed to significantly enhance local tenure security and rural development. Our research in Uganda, Burundi and South Sudan suggests, however, that post-conflict settings pose particular challenges to the formalization of land ownership, which may, for instance, ignite conflict and competition, or add to confusion about local ownership and tenure security.

A particular challenge is how to improve the land tenure security of women, who experience specific vulnerabilities in accessing land, notably in post-conflict settings. Both customary and statutory tenure arrangements pose opportunities as well as threats to securing women's access to land.

Formalizing land ownership

Debate is ongoing about the extent to which formalizing land ownership may enhance tenure security and increase investment in land and production. While in the 1980s and 1990s experiences of formalization in Africa were unpromising, contemporary debate highlights how formalization might be at the expense of women (who mainly have secondary rights) and communal rights (due to individualization), and disregards the variety of rights different people might have to the same land. That said, many policymakers consider registration of ownership, in one form or another, to be necessary to secure tenure, and to enable economic development.

Concerns about the unwelcome side effects of formalization have resulted in exploring alternative approaches, such as promoting complementariness between customary and statutory tenure, simplifying state registration, and making land records more transparent and accessible. The 'Madagascar model' of local land registration is currently replicated in different settings, and in various localities aerial photographs are used to locally identify land claims. Efforts are also made to institute collective registration. However, such new strategies raise questions about sus-

tainability. Moreover, to what extent do these strategies still exclude certain people or feed into a neo-liberal project of commodifying land? And are they able to deal with the high numbers of land-related disputes and contested land governance after violent conflict?

Land certification office in Ngozi Burundi

Our fieldwork demonstrates that after conflict, people often feel highly tenure insecure. Local memories of land ownership are lost due to long-term displacement, while the legitimacy of traditional or statutory land governing authorities is questioned. Efforts to register and formalize ownership in such settings may be challenging, and sometimes turn out to be problematic.

Pilot experiences of decentralized land registration (certification) in Burundi reveal that local registration might prevent certain land conflicts, yet not solve existing disputes, as donors had hoped. Consequently, contested properties remain unregistered. Certification is also reported to result in or reawaken existing disputes, and might formalize irregular acquisitions from the past. In South Sudan, demarcation may create conflict, by solidifying boundaries between communities at a time when claim making is still highly contested.

Another challenge is to prevent vulnerable people falling away. In Burundi, registration fails to protect the claims of those still residing in displaced camps, or of those on whose land these camps are located. A key

challenge is how to protect women's tenure security, as certification tends to identify men rather than women as legal owners. Likewise, it neglects rights that others relatives and community members, tenants, or custodians of the land might have. Another challenge is how to deal with the registration of communal land, which tends to result in the carving up and individualization of such lands.

Surveing land as part of a pilot for decentralized land certification in Ngozi, Burundi

It is also difficult to make land recording self-sustaining. Eventually, most people participating in pilots in Burundi and south-west Uganda did not collect (and pay) their land certificates, as they considered that the demarcation exercise itself, together with their neighbours and local authorities, provided enough clarity on boundaries. Also, consecutive transactions were not reported, with people making manual changes to the certificates. In Burundi, local authorities were more concerned about the accountability of the registration procedure towards the donors than to the population, and cared more about the resources it generated than its sustainability.[1]

The introduction of certificates in addition to titles is problematic insofar as it adds to legal confusion. Many people are unaware of the different legal status of certificates and titles, and have wrong expectations about the extent to which certificates constitute evidence of ownership. Moreover, people doubt whether a next government will acknowledge the certificates currently given out. Such doubts about the future validity of government documents were also encountered in south-west Uganda.

Finally, it is questionable whether titles and certificates increase agricultural production. In Burundi, certification did not increase access to credits. For example, in their decision to grant a loan the majority of financial institutions considered the overall financial

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[1] Fieldwork Rosine Tchatchoua Djomo

credibility of the applicants, or requested a title rather than a certificate.

A key question is the extent to which formalization indeed contributes to tenure security. In south-western Uganda, people value titles. They hope titles will prevent land disputes, or serve as evidence in case disputes erupt. Titles are thought to increase freedom of individual ownership, and prevent interference from the extended family in land transactions. However, actual applicants tend to be the rich people in the communities, as the procedure is still expensive, due to the need for detailed surveying.

In fact, the new procedure has significantly altered local understanding of tenure security, and sometimes renders customary land less tenure secure. The procedure is perceived as predisposed towards the rich, and as an ideal opportunity for encroaching on the land of others. In the Lake Albert region, the introduction of land titles reportedly contributed to land grabbing. As people with titles will get compensation for acquisitions for oil exploration, this induces rich people to acquire titles there.

Moreover, titles are seen as the only way to stand a chance against the state, which is considered to be one of the main encroachers on citizens' land. Unfortunately, the promotion of titles also creates feelings of *in*security, by popularizing the notion that titles are indispensable for securing tenure, while most people cannot acquire them. The state's emphasis on titles also erodes trust in local institutions as protectors of tenure security.

Recommendations

- While it is necessary to create secure evidence of claims to land and local ownership, policymakers should be more concerned about the kind of tenure insecurity that prevails, and how this should be prevented. Titles or certificates may not enhance local tenure security if institutions cannot protect the claims based on those titles, or are simply circumvented. Formalization should not be an end in itself; notably, it can be problematic in post-conflict settings.

- Protection of communal land is especially problematic. As long as communities do not have evidence of communal ownership, it will be difficult for them to negotiate with outsiders and offer resistance against infringement on communal land.

- It is important to be specific about the problems that need to be addressed when designing registration strategies. Registration requires rule of law, and does not help if political elites and government still ignore claims that have been legalized. If the problem is vagueness about boundaries rather than ownership of properties, communities might be better served by more transparent ways of indicating boundaries.

- More attention should be given to local mechanisms of securing tenure, including local land recording and dispute resolution. Reforms should build on these, rather than on models of securing tenure introduced from out-

side. At the same time, interveners should promote participatory, transparent and accountable practices within communal tenure systems.

- Any exercise focussing on the registration of land claims should take care to document the diversity of rights of different users, including rights of access.

Protecting women land rights after conflict

Many studies and evaluations have highlighted the plight of women in conflict-affected settings, and it is evident that women experience particular vulnerabilities in accessing land. In many African rural settings, women access land through (the lineage of) their husbands. This may make divorced and widowed women, those in polygamous marriages, and those with only female children particularly vulnerable, especially when customary protection mechanisms increasingly come under pressure. This is all the more problematic during protracted violent conflict and displacement, when customary arrangements and social relations through which women access land are destroyed.

In our case studies, we encountered many examples of women's land rights being infringed in post-conflict situations. Research by Mbarara University demonstrates that secure land tenure is an important factor for mental health. Contestation about land within families not only impacts food security but causes distress, anger, and a breaking up of the family structure. Moreover, in (post-) conflict situations, land is a key issue around which gender relations are being renegotiated. Men try to regain their masculinity, after the 'collapse of masculinity': during the war women have taken over their roles as providers and decision takers, which men now try to reclaim.[2] In several settings we encountered struggles between husbands and wives about gender relations. Women start to get educated and buy land themselves, and they have to prevent men from making claims on the land they buy or inherit. That said, women may be generally more vulnerable and mainly poor, uneducated women fail to get access to land.

A particularly challenging situation was encountered in northern Uganda, where some women are still stranded in former camps for the displaced, because they can neither return to their husband, nor to their parents due to land disputes. In this case, customary social safety nets are no longer operational. With increasing pressure on land, women are seen as a threat to male landownership. Most women do not know which authorities might help them, they lack the financial means to get help from (sometimes corrupted) authorities, or are stigmatized both by their families and public authorities. The decentralized administration cannot help them, because local authorities

in charge of the former camps for the displaced have no authority in their communities of origin.[3]

Women cultivating land in Ngozi, Burundi

After conflict, there is often a lot of debate about the extent to which local and customary practices need to be strengthened or replaced. A recurring observation in our research was that customary practices might sometimes help women to secure access to land, or protect their children, but are often eroded due to conflict.[4]

Policymakers frequently question customary practices regarding women and promote alternative regulations regarding inheriting land. The extent to which this is effective is diverse. In south-western Uganda, we observed that local perceptions of the rights of women are slowly changing. Yet, women often lack the means to get their legal rights acknowledged. Given local controversy about the ability of state legislation to protect women land rights, local authorities often hesitate to apply the new rules, as they worry about their own legitimacy, position, or personal interests. Thus, issues around women's land access were referred more often to the formal court system than other cases, putting poor and not well-connected women in a disadvantaged position.[5]

More generally, authorities may be willing to promote women's rights, yet unwilling to interfere in intra-family relations and custom. In Burundi, at the start of fieldwork, the president warned civil society and international NGOs not to advocate for women's inheritance rights, claiming the state should not inter-

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[2] Fieldwork Viola Nyakata

[3] Video-documentary 'Governance off the Ground', www.youtube.com/watch?v=mkG_g3h_5Og

[4] Eddie Nsamba Gayiiya, presentation 'Unpacking contradictions and tensions between customary land tenure systems and imported/modern property rights regimes: Towards a reform agenda', 'National Workshop on Land Governance', Imperial Royale Kampala, 19 May 2015.

[5] Van Leeuwen (2014) 'Renegotiating customary tenure reform…'

fere in customarily accepted norms. Consequently, many local authorities are afraid to get involved in any women-related land issues. In recent years, donors have managed to restart dialogue with government on the issue.

Women from Pabbo IDP camp who cannot return to their communities because of land disputes, Amuru district northern Uganda

Our fieldwork in various localities underscored the changing value of land, and the consequences for women's possibilities to access land. As a result of residing in IDP camps, where the displaced had to rent land, ongoing migration to urban centres, and interests expressed by outside investors, people are increasingly aware of the monetary value of land. This is accompanied by a perception of land as a commodity that can be individually owned, rather than as an asset belonging to the community at large, to which certain rights can be delegated to a group, family or individuals. In the customary system, in fact both women *and* men did not have full control. Monetization of land and formalization of land ownership seem to induce a shift towards full ownership, which may be largely disadvantageous to women.

Finally, in addition to women, we should not forget about other vulnerable groups, like young males. A very common dispute within families is the handing over of control to the younger generation. Often, such 'intergenerational' disputes between youngsters and their fathers not only represent a struggle about resources, but are also a struggle about authority within the family. Such disputes may have severe consequences for community stability (including murder) and also for agricultural productivity.

Recommendations

- Given the limited implementation capacities of governments in the region, the question is whether women's access to land should be protected through state legislation, or instead through a strengthening of customary arrangements that protect the rights of women (and men!). The debate is currently framed in terms of own-

ership, and would likely resonate better with local concerns of both women *and* men, if the question was how to protect family property for the next generation. Neither idealization, nor demonization of customary tenure is very helpful in this debate.

- Likewise, the problem needs to be defined more precisely: do women lack ownership, or do they lack access and a role in decision taking? Moreover, which women's land access should be promoted, given that middle-class women increasingly find employment outside agriculture? Is the problem a matter of customary rights versus the rights of women, or is it more about inequality in land ownership nationwide, and elites owning a large percentage of agricultural land they do not need or use?

- To improve women's access to land requires involving both men and women in the debate. It needs awareness that local decision takers are part of their communities and influenced by custom themselves. This not only necessitates dissemination of policy at a local level, but also a better exploration of how fair tenure is locally perceived and promoted.

Authors:

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