

# Post-conflict land tenure

## Using a Sustainable Livelihoods Approach



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2004



**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

**Livelihood Support Programme (LSP)**

An inter-departmental programme for improving support for enhancing livelihoods of the rural poor.



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## The Livelihood Support Programme

The Livelihood Support Programme (LSP) evolved from the belief that FAO could have a greater impact on reducing poverty and food insecurity, if its wealth of talent and experience were integrated into a more flexible and demand-responsive team approach.

The LSP works through teams of FAO staff members, who are attracted to specific themes being worked on in a sustainable livelihoods context. These cross-departmental and cross-disciplinary teams act to integrate sustainable livelihoods principles in FAO's work, at headquarters and in the field. These approaches build on experiences within FAO and other development agencies.

The programme is functioning as a testing ground for both team approaches and sustainable livelihoods principles.

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## Access to natural resources sub-programme

Access by the poor to natural resources (land, forests, water, fisheries, pastures, etc.), is essential for sustainable poverty reduction. The livelihoods of rural people without access, or with very limited access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating other assets, and recuperating after natural or market shocks or misfortunes.

The main goal of this sub-programme is to build stakeholder capacity to improve poor people's access to natural resources through the application of sustainable livelihood approaches. The sub-programme is working in the following thematic areas:

1. *Sustainable livelihood approaches in the context of access to different natural resources*
2. *Access to natural resources and making rights real*
3. *Livelihoods and access to natural resources in a rapidly changing world*

This paper contributes to the third thematic area by analysing how the use of sustainable livelihood approaches may enrich FAO's current work on land access and land administration in post-conflict settings.

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## 1. INTRODUCTION

This paper addresses the application of sustainable livelihood approaches to access to land and land administration in post-conflict situations.

FAO's Land Tenure Service has observed that providing secure access to land is frequently not easy, and it is particularly complex in situations following violent conflicts: getting the answer right can go directly to the matter of achieving sustainable peace. The effects of violent conflicts are usually widespread in a country but they can be particularly severe in rural areas. As most of the population in poor countries is rural, violent conflict in rural areas can result in vast numbers of people being displaced. Rural areas often lack access roads and other infrastructure and services, and their absence hampers the establishment of good governance during the transition to peace. Following conflicts, access to land in rural areas is required by those displaced, and often by former militia members. Of particular importance in such an environment is the recognition of the vulnerable which invariably include women and children, and may also include ethnic or political minorities.

FAO has provided technical assistance to improving access to land in a number of countries emerging from violent conflict within the context of food security, poverty alleviation and rural development. While every conflict situation is likely to be different, they nevertheless share a number of common characteristics. FAO, through its Land Tenure Service, is working on the preparation of a guide for land administrators responsible for the re-establishment of land tenure/administration systems in countries emerging from violent conflicts.

In support of these efforts, a sub-programme of the Livelihood Support Programme (LSP) is addressing the question as to how a sustainable livelihoods approach can be used when addressing land access and land administration in post-conflict countries. The LSP is a FAO project, funded by DFID, to improve the impact of interventions at country level through the application of sustainable livelihood (SL) approaches. Its sub-programme on access to natural resources aims at enhancing SL approaches by making them more effective in reducing poverty by improving access to natural assets by the poor.

By focusing on livelihood outcomes, the SL approach can draw attention to:

- the assets that people have, rather than what they do not have;
- the cross-sectoral nature of many people's livelihood strategies, and the fact that assumptions based on an analysis of a single sector may be incorrect;
- the vulnerability context, and to influences that are beyond local control but which are responsible for many hardships faced by the poor;
- the role of policies, processes and institutions.

The preparation of this paper is based in-part on the author's land tenure project, policy and research experience in conflict and post-conflict settings, particularly in Somalia, Mozambique, East Timor, Uganda, and Ethiopia, complemented by additional land tenure work in Zambia, Madagascar, Saudi Arabia, and Peru. As well the paper draws on a variety of academic, government, donor, and NGO publications, in order to provide substantive grounding and wider relevance than what the author's

own experience provides. Of particular utility were the FAO papers on access to land in post-conflict situations; including an initial scoping paper (Thomson 2003), the case studies on Nicaragua (Barquero 2004), East Timor (Thomson 2004), Kosovo (Andersson 2004), and Rwanda (Huggins 2004). Other sources describing the post-conflict situation in Sri Lanka, Bosnia, Guatemala, and the Middle East were also used. Also of considerable value were the DFID Sustainable Livelihoods Guidance Sheets publications, and working papers and briefing notes from the FAO Livelihood Support Program.

The scoping paper, “Access to Land in Post-Conflict Situations,” (Thomson 2003) along with the case studies on Kosovo, Rwanda, Nicaragua and East Timor, describe important aspects of formal, state administration and legislation in post-conflict land tenure situations. “Key questions” identified in the scoping paper and addressed in the case studies are presented in Box 1.

This paper, in section 2, builds on those important analyses by articulating why, in a sustainable livelihoods context, it is also important to look at the “on the ground” informal, tenurial reality of rural inhabitants (e.g. the Nicaragua case study), and how they interface with the postwar efficacy and functioning of the formal land tenure system. This section outlines why there is a primary connection between this informal tenurial reality and the priorities of the sustainable livelihoods approach. And while this section along with significant parts of the paper articulates the differences, problems and possibilities involving informal vs. formal land tenure, this is not intended to present these two aspects of post-conflict tenure as a complete dichotomy. In a number of cases in Africa and elsewhere customary tenure systems are recognized by formal law. At the same time, in other cases the formal system can operate in such a chaotic fashion as to be informal itself. And in reality in many post-war situations the state property rights system can operate in a fairly crippled and disorganized manner. This weakening of the state, in regards to land tenure is highlighted in the paper, as are the attendant repercussions and opportunities.

Section 3 articulates how informal, or customary land tenure systems function “on the ground” in post-conflict scenarios, and the intersection between this reality and the reduced capacity of the formal system. Because the sustainable livelihoods approach can be used to focus on smallholders, an understanding of the post-conflict tenurial realities faced by rural producers is important to exploring how the sustainable livelihoods approach would be able to contribute to resolving the problems associated with land access in such environments. The idea here is to provide insight into smallholder post-conflict land tenure fundamentals that can then be dealt with from a sustainable livelihoods perspective (Section 4). The fundamental components of tenure issues in post-conflict scenarios include both an awareness of the different sets of tenure issues and their role in conflict and recovery, and the need to embrace an approach that engages local level post-conflict realities as building blocks in new property rights legislative and development activities.

Section 4 describes and assesses how the application of SL approaches could enrich FAO’s work on post conflict land tenure by translating important aspects of post-conflict tenure reality (described in section 3), into the sustainable livelihoods framework. By looking at post-conflict tenure through the framework, important constraints and opportunities can be revealed.

Section 5 provides a “lessons learned” outcome of the intersection between “on-the-ground” post-conflict land tenure and the SL approach (Section 4), together with a consideration of the SL approach in a post-conflict case study.

Section 6 describes some of the primary critical issues that may require further attention, so as to tailor both post-conflict assessment, and the SL approach to post-conflict settings.

### **Box 1**

#### **Key questions during various activities following conflicts**

##### ***During emergency activities:***

- (1) What are the priority issues in relation to providing access to land and the development of a functional land administration? And what interim policies (if any) can be quickly developed and implemented to deal with emergency land access issues?
- (2) What are the similarities and differences between ‘ordinary’ land access issues and those associated with the post-conflict environment?
- (3) What is the scope of government power to give improved access to land? To what extent is this affected by the type of government (e.g. international transitional administration or independent government)?
- (4) Is land access on the political agenda?
- (5) What means are available to develop and implement land policy initiatives?
- (6) What are the likely limitations on re-establishing an operational land administration?
- (7) What are the main land-related issues affecting good governance and how can they be addressed?
- (8) What issues should administrators be wary of tackling?
- (9) What ability is there to communicate effectively with the region’s peoples?
- (10) What ability is there to communicate effectively with other arms of government, international organizations and NGOs? Do the necessary institutions exist and are they coordinated? Which institutions should be dealt with?
- (11) Who must be consulted in respect of land-related issues? In what form should consultation take place? How should it be managed?
- (12) Are there vulnerable groups? Who are they? Can their plight be prioritized? How?
- (13) What land tenure systems/legal infrastructures notionally exist? (eg formalized written legal systems, unwritten customary systems). What legal institutions remain, if any? What institutions should be re-established?
- (14) What are the characteristics of the former/existing legal infrastructure? Does it conform to recognised human rights standards? If not, what is to be done about them?
- (15) What local expertise is available to advise/manage re-establishment of new or existing legal/infrastructure?
- (16) What changes, if any, are required to make land administration systems operational again?
- (17) What official and unofficial records of land rights exist and where do they reside?
- (18) From what buildings/regions does land administration process operate?
- (19) What changes, if any, are required to make land administration systems operational again?

***During activities related to infrastructure and policy development***

- (20) What more formal policies are developed to facilitate access to land?
- (21) What sustainable administrative infrastructure is required to implement the formal policies proposed?
- (22) What resources (in terms of expertise and equipment) are potentially available to implement the formal policies proposed?

***During activities related to policy implementation***

- (23) Is there public awareness of the policies and procedures?
- (24) Are the human and other resources adequate to implement policy in the proposed institutional framework?
- (25) Are the policies implemented working? If not, why not? (this pre-supposes that appropriate quantitative and qualitative indicators have been identified for monitoring and evaluation purposes)
- (26) How can policy implementation be effectively monitored and evaluated?
- (27) What part can land administrators and Governments play in facilitating access to land?

## **2. THE SUSTAINABLE LIVELIHOODS PRINCIPLES AND POST-CONFLICT LAND TENURE**

This section uses the sustainable livelihoods principles (people-centered, sustainability, dynamism, multi-level) to look at the “on the ground” informal, land tenure of rural inhabitants in post-conflict settings.

### **2.1 People centered – changes in tenure constructs**

The people centered priority of the SL approach, focusing on what people do have and are doing, is a particularly good fit with an examination of what people are actually doing on the ground with regard to change in land access in post-conflict situations. While there are a number of aspects of a post-conflict tenure setting that individuals, households, and communities can have control over, an examination of the emergence of norms in post-conflict situations, (particularly land tenure relevant informal institutions and evidence), and identifying these as strengths (particularly due to their local legitimacy and their pervasiveness), and considering how they operate, how they might be compatible with norms of different groups, as well as emerging formal law, will be a primary advantage in the building of legitimacy into formal law and development efforts, and will facilitate people’s ability to build on local choices.

While few civil institutions can endure the stresses of armed conflict, there are, nonetheless, specific institutional needs important to social relations even during times of strife. At the same time, the institutional fluidity of armed conflict allows for opportunities to reconfigure certain institutional arrangements to more closely suit the needs of particular groups and situations. This can result in the emergence of norms or “normative orders”, which attempt basic but important institutional services (Unruh 2003). Land tenure or more specifically tenure security is such an institutional need, especially for agricultural populations, due to the relationship between land tenure security and food security. The confusion, competition, confrontation, and yet importance of seeking secure access to rural lands during and following civil conflict can lead to a number of different ways (legal pluralism) for attempting to legitimize land access, claim, use and security in a fluid sociopolitical setting. And because legitimacy is an important part of this process, it can be, or become, bound up in the larger conflict (Unruh 2003). Civil conflict is based on the perception of legitimacy and non-legitimacy in various forms. Since it is legitimacy that is contested during conflict, the emergence or further development of legal pluralism in approaches to land access is highly likely, with different normative orders emanating from different loci of what is perceived to be legitimate authority (Howard P and Homer-Dixon T 1995; Kelly, K and Homer-Dixon T, 1995; Percival, V. and Homer-Dixon T 1995; Homer-Dixon, 1990).

The possession of evidence to prove and support rights of access and claim to land resources is a fundamental feature of land tenure systems. While formal tenure regimes generally hold the document to be the primary form of evidence in relations with undocumented tenure arrangements, customary tenure systems and normative orders regarding land contain a wide variety of informal evidence connected to relevant customary social and cultural features. During the course of conflict, forced dislocation and migration, evidence and legitimacy of evidence is subject to

considerable change, primarily due to the role that community plays in determining what evidence is regarded as legitimate (Unruh 2003). Such control over what is or becomes evidence, legitimizes or de-legitimizes units of aggregation, kinds of rights, transactions, rituals, and ways of land use (Shipton, 1994). Thus competition and confrontation over who exercises this control with regard to a specific land area, or specific rights within an area, can influence the development of legal pluralism. This occurs as some claimants find themselves with evidence different from that considered legitimate or possessed by others as dislocation and migration scenarios reconfigure the important aspects of evidence (e.g. community, occupation, relevant cultural-ecological features, customs, ways of administration, etc.).

The significant role that documentation plays in attempting to assert rights, can become quite problematic in post-conflict environments where confusion, abuse, and incapacity of formal institutions can combine to create a situation whereby multiple, often contradictory, documentation (often of questionable origin, or obtained under questionable, or unfair circumstances) can be used to claim lands—and often the same lands. The uncertainty created by such a confusing use of multiple forms of documentation can serve to decrease tenure security, and increase the desire for land and property restitution efforts as a post-conflict environment matures. Mozambique has attempted such an effort, whereby many pending applications (foreign and national) under the previous law had one year to reapply under the new law or otherwise be cancelled (Norfolk and Liversage 2003). Given the large number of foreign property holders operating under “application in progress” for long periods of time, this was one approach to clearing up some of the overlapping claims and incomplete documentation (Tanner 2002).

## **2.2 Sustainability - Transitioning between sustainability during conflict, post-conflict, and development environments**

Differences in decision-making time horizons, from short (war) to near-term (post-conflict) to longer-term (development), will influence the type of sustainability pursued by individuals and communities. In one sense, conflict, and post-conflict sustainability in livelihoods will be difficult for much of the rural population given how extractive (exhaustive) livelihoods can be, in terms of the depletion of assets (natural, social, physical, financial). In another sense however there are wartime and post-conflict approaches that, while exhausting particular assets, do exhibit resiliency. In this regard two features of sustainability are noteworthy in a post-conflict environment: resiliency in the face of external shocks, and non-dependence upon external support. If people are still alive after a war then they have enjoyed some form of resiliency in what they were doing; and with the exception of refugees, non-dependence on external support is common. Thus the short-term decisions involving migration, dislocation, highly extractive natural resource use, banditry, borrowing, calling in loans, status as refugees, etc. – in aggregate constitute a sustainable way of dealing with conflict situations.

As well post-conflict pursuits of sustainability, especially with regard to land tenure, can include, farming quickly on land not one's own (including planting quick producing crops) and then moving on; or for some farming a plot every year so as not to lose it in extremely tenure insecure situations; use of naturally occurring famine foods; and extraction of natural resources (timber, wildlife and other natural products

that have a sale value). In other words what can be pursued in terms of resiliency is a constantly changing menu of extractive, low investment, opportunistic, short term, and usually dead end (resource exhausted) activities that can, taken as a set of activities, be seen as sustainable in post-conflict scenarios. An important feature of this approach is a fortuitous access to a variety of assets that may or may not legally belong to individuals, along with an ability to switch asset access quickly once asset exhaustion occurs.

### **2.3 Holistic and multi-level aspects of post-conflict land tenure**

Examination of post-conflict land tenure through the informal tenure domain allows multi-sectoral, multi-level constraints and opportunities to be identified. In post-conflict settings new laws have the opportunity to address land and property issues in the context of what people are already doing “on the ground”, with a view to moving from the fluidity of post-conflict situations to a more solidified and peaceful social and legal environment. Positive examples exist. In a case from India, local-level state officials in some locations are given the discretion to operate at the interface between formal and informal legal systems and pursue opportunities for adjustments between systems. In this case local-level officials do not seek to impose state law, but instead attempt to convince, co-opt, or realistically use any legal system, custom, norm or combination thereof to attain the state's objectives (Bavnick 1998).

While not born out of armed conflict, the example nevertheless provides some potential utility for post-conflict scenarios. Local-level officials can be charged with facilitating the dialogue, interaction, and adaptation between the state and other normative orders which are in place subsequent to a conflict, especially with regard to land dispute resolution—one of the most volatile aspects of a peace process (Unruh 2003). Ethiopia provides a different, and more formalized example. After several decades of civil conflict, Ethiopia's constitutional article 78 (5) now accords full recognition to non-state customary, and religious courts of law and their legal guarantee is ensured. In Ethiopia significant room appears to be allowed for litigants to “forum shop” where customary and religious courts only hear cases where contesting parties consent to the forum. 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. In East Timor a special restitution law is to be put into place as a priority law to deal with the many problematic issues involved in the post-conflict situation.

### **2.4 The dynamic nature of post-conflict land tenure and livelihood strategies**

Outside of armed combat, post-conflict scenarios are arguably some of the most dynamic and fluid of circumstances regarding the interaction between society and resources. This is especially the case due to the proximity of conflict and recovery settings, and the often ambiguous distinction between the two for large numbers of civilians. Landmine presence plays an important role in this dynamic, a role which grows significantly as other forms of violence end, but landmine encounter continues (Unruh et al 2003). In post-conflict situations the scramble for access to the assets necessary to re-establish livelihoods for large numbers of people, together with the pursuit of land access by large-scale commercial interests, speculators, and others who use the fluid land tenure situation to acquire resources (Unruh 2001), brings how

actors intersect with land-based resources to the forefront of tenure activity very quickly. As well, groups and individuals disenfranchised from the gains of transition from war to peace may resort to violence in order to survive—or to obtain what is perceived to be deserved in terms of a peace dividend—with serious impacts on a peace process (Willet 1995).

In work relevant to post-conflict tenure situations, Lund's (1996) land tenure work reveals that "open moments" become important, in which intense periods of social rearrangement occur—particularly in land disputes. As a result an open moment is an opportunity where the room for "situational adjustment is great and hence where the capacity to exploit it is crucial for the actors". In war and post-conflict situations, legitimacy, authority, and rules (social assets) are much more fluid and open than perhaps at any other time. And while such a situation can provide for some difficulty (such as low predictability) on the other hand it can be of considerable utility for smallholders attempting to access or re-access land and other capital.

### **3. THE FUNCTIONAL REALITY OF INFORMAL AND FORMAL LAND TENURE IN POST-CONFLICT SCENARIOS**

This section elaborates how informal, or customary land tenure systems function “on the ground” in post-conflict scenarios, and the intersection between this reality and the reduced capacity of the formal system. Because the sustainable livelihoods approach focuses on smallholders, an understanding of the tenurial realities faced by rural producers is important to exploring how the sustainable livelihoods approach would be able to contribute to resolving the problems associated with land access in post-conflict environments. The idea here is to provide insight into smallholder post-conflict land tenure fundamentals that can then be dealt with from a sustainable livelihoods perspective (section 4 below).

Because of the spatial nature of both armed conflict and land tenure, the result can be profound within the context of a delicate and incipient peace. The importance of land and property rights issues during and subsequent to civil conflict is reflected in the significant role that agrarian reform has played in many insurgent and revolutionary agendas. Managing such issues in an effective manner in a peace process is not only important to avoiding disenfranchisement of local populations from land rights, a primary factor contributing to instability (Hutchinson 1994), but also to the secure re-engagement of populations in familiar land uses and the resulting agricultural production, food security, and trade opportunities important to recovery. There are three primary sets of land tenure issues in a peace process: 1) those that may have contributed to the initial cause and conduct of the conflict, 2) those – usually volatile – land and property issues that emerged during a conflict, and 3) a set of tenure related issues necessary for effective recovery.

#### **3.1 Land tenure issues in the cause and conduct of conflict**

##### *Identity and grievances*

For considerable numbers of people who find themselves in conflict scenarios, identity can be, or can become intricately bound up in land occupation, access, or perceived rights to specific lands in very powerful ways. In many cases the existence of ethnic, religious, geographic, or other identities to which primary attachments persist, can be based on connections to land, home area, or territory (Unruh 1998). Smith (1998) notes that if local identity-based groups do not have a relationship with the state that involves attachment and loyalty and ultimately provides for an acceptance of state authority as legitimate, then the state and group identities will be in competition. In pre-conflict settings this becomes relevant when coupled with land-related grievances against the state.

Pre-conflict ideas of the unjustness in the way the state dealt with land rights for portions of the population can constitute an important aggregate force in pursuing violent means to deal with perceived wrongs. Such ideas can range from simple disappointment in, or distrust of the state and its ability, willingness, or bias in handling land issues, to the perception of the state as the enemy. In El Salvador grievances toward the landed elite and the state were at the core of the country’s problems since the colonial era, and a primary cause of the conflict in the 1980s. This

was also the case in Zimbabwe's liberation war due to land expropriations by the Rhodesian state, and in Mozambique's RENAMO war and Ethiopia's Derg war as a result of government villagization programs. Variants of such conditions also prevail for problems in southern Mexico, and in the way the land issue has been handled over the course of the conflict between the Palestinians and the Israelis. In the latter example, land confiscation for Israeli settlement-building and the resulting Palestinian grievances has been a significant feature of the overall conflict (Unruh 2003).

Pre-conflict ideas of injustice regarding land and property can become especially problematic if they merge with other issues not necessarily related to land, serving to further decrease the state's influence. This is a fundamental part of the situation in Somalia, where disputes over access to grazing and water resources quickly merged with a history of perceived wrongs done to clans and subclans on issues not directly about land (Unruh 1995a). Animosity tied to historical events also have played a fundamental role in perceptions about who has legitimate access to what lands and properties in the Balkans (Holbrooke 1998). The social fluidity of conflict then allows for the opportunity to act, with outcomes resulting in a very different tenure situation than what existed prior to a conflict. This is one avenue toward legal pluralism whereby there are different sets of legalities (and often formal laws) for different peoples.

An accumulation of land-related grievances against the state can be brought on by land alienation and discrimination, corruption, state intervention in agricultural production, dislocating agricultural and/or population programs, and heavy-handed approaches to enforcement of state decisions and prescriptions regarding land issues. In aggregate, this can result in what Ranger (1985) calls a "historical consciousness of grievances" with regard to land rights issues. In such cases plural normative orders, once developed, can persist with considerable tenacity, justifying themselves by appeals to perceived historical wrongs done to certain groups (Merry 1988; Korf 2002).

### ***Evidence – legal validity***

In pre-conflict settings formal land dispute resolution employed by the state can favor claimants in possession of some form of documentation as evidence for a claim and often ignore customary evidence. Those not participating in the state land tenure system can use a selection of customary evidence that connects them to a community and lineage, and to community land, with history of occupation and physical signs of occupation playing a significant role in this connection. Similarly commercial or "outside" land interests do not have access to local customary evidence. And while documents are admissible forms of evidence in formal law, oral testimony and corroboration usually are not. Thus based on admissible forms of evidence, formal dispute resolution decisions can be made in favor of documentation. Such an inequitable arrangement, operating in aggregate, carries serious risks toward instability, impoverization, land degradation, and rural exodus (Unruh 2004).

### ***Status of the state land tenure apparatus – effectiveness, equity, and pluralism***

National land legislation often takes precedence over customary tenure regimes, and can be formulated to give advantage to state enterprises and mechanized agricultural

schemes; with limited rights accorded to smallholders, and at times no rights given to marginalized groups such as pastoralists, those with questionable citizenship, or migrants, other than those included in government sponsored cooperatives and associations. Sections of the 1973 Unified Civil Code in Somalia abolished traditional clan and lineage rights of use and access over land and water resources (Hooglund 1993). In Bosnia discriminatory land and property legislation was enacted before the conflict in order to pursue what became legal forms of ethnic cleansing (Cox and Garlick 2003). And in Latin America pre-conflict inequity regarding land was frequently a fundamental part of revolutionary aspirations. Nicaragua (Barquero 2004) is one example, as was the situation in El Salvador and Guatemala (Bailliet 2003).

Pre-conflict differential awareness of and access to the means for becoming involved in the state system, results in many instances of both multiple claims to land, and disadvantage for those without access to the state system. While there are frequently steps within national registration programmes intended to avoid this, namely by notifying population centers proximate to the land in question that a party was interested in registration, and by inviting all other claimants (with documented title or not) to come forward and contest the claim, this and other procedures can be frequently sidestepped. Land tenure dispute resolution mechanisms are often inadequate to resolve many competing claims, and can, where they exist, embrace a variety of means of mediation that can be in jurisdictional conflict (e.g. Unruh 1996).

### **3.2 Land tenure issues emerging during conflict**

Attempting to address only pre-conflict territory, land, and property issues in a peace process (especially in a peace accord) can miss the very volatile tenurial issues on the ground which develop during conflict, and which are most operative at the close of a conflict. While such issues can build upon pre-conflict tenure problems, they nonetheless act to thrust the post-conflict lands situation in new directions. This is primarily because the social and spatial repercussions of violence, dislocation, destruction of property, battlefield victory and loss, and food insecurity, together with the breakdown of administrative, enforcement, and other property-related institutions and norms, significantly alter ongoing relationships between people(s), land uses, production systems, and population patterns. Armed conflict and its repercussions reconfigure the network of social relations upon which all land tenure systems depend (Unruh 2004a).

#### ***Dislocation***

There are two broad processes by which this reconfiguring happens in a dislocation context. First, dislocation of people from established home areas and ways of land use and tenure, can be the first and most dramatic step toward the development of a changed (enhanced) approach to land rights. Physical separation changes, terminates, or puts on hold prevailing rights and obligations among people regarding land and property, especially where actual occupation, or social position forms the basis or a significant aspect of claim. In Guatemala dislocation meant a changed approach to land rights for disadvantaged groups within communities, such as women and those of lower socio-economic strata (Krznic 1997).

Second, once dislocated, people seek land elsewhere – especially for agricultural populations in pursuit of food security – but with an approach to access, claim, and disputing now different from what prevailed in a home area. This comes about with a change in status as people who were once community members become dislocatees, migrants, squatters, female-headed households, and refugees in new locations. Many African populations rely on relatives and other community members for security of person and property. Such a network is an effective rule making and sanction-applying construct. In dislocation due to conflict however, many variables serve to rework this construct, especially if the new area has little or no community entry. Affected populations (both arriving and receiving) can fairly quickly move to establish alternative land tenure arrangements that follow newly emerging situations, or pursue variations of old arrangements which work under prevailing circumstances. The direction that this takes and how rapidly it occurs can depend to a significant degree on wartime and dislocation experiences. In Mozambique the dislocating effects of the war led to concentrations of migrants, largeholders, and local customary groups in agronomically valuable areas, all pursuing very different approaches to land access, claim, and use. In this case significant incompatibilities in these approaches created problems for the peace process in these locations (Unruh 1997).

The Middle East provides an important grievance-based example. Land confiscation and the way it occurs for Israeli settlement-building drives legal and normative rules regarding land into separate fields or domains, as they are applied to and are pursued by the Palestinians, Israelis, and subgroups, with the boundaries of such domains defined in large part by issues inherent in the conflict (Cohen 1993). The overall effect is the fairly rapid derivation or resurgence of a variety of alternative forms of land and property rights reactions during conflict, with the speed and direction of such change dependent on the character of the grievance felt by a particular group and how this intersects with preferred ways of land tenure. One of the more acute examples to emerge during the conflict in this regard is again in the Middle East among Palestinians themselves, with those caught selling land to Israelis now facing a potential death sentence (Greenberg 1997).

### ***Reduction in power and penetration of state law***

Civil conflict necessarily results in a reduction in the power and penetration of state law, with the overall effect spatially variable. Early in a conflict the state's land administration institutions in affected areas of the country can be rendered crippled or inoperable, and rules unenforceable. This comes about due to general insecurity, areas occupied by opposition groups or populations sympathetic to them, diversion of resources, and the destruction of the physical components of the lands system such as local registries and other records. The absence of employees to carry out administrative functions, along with people who previously engaged the state for administrative services, further undermines the functioning of formal property rights institutions. While such effects may be most pronounced in areas directly involved in conflict or taken over by opposition groups, or where state enforcement or concern was historically weakest, the federal land and property administration can, as a conflict continues over time, experience an overall national reduction in capacity as specific influences become mutually reinforcing. These can include: (1) the state's financial resources are diverted to a war effort and elsewhere, (2) administrative and technical personnel become unwilling or unable to travel due to general security

concerns, (3) significant sectors of the national population begin to question the legitimacy of state institutions, (4) records pertinent to non-affected areas of the country become outdated as land and property transactions take place and go unrecorded, (5) a general recognition emerges of the unworkability of lands and property administration as a national institutional endeavour, and (6) increasing numbers of people abandon the state tenure system in favor of alternatives, which then act to further subtract adherents to state law in a “momentum effect” (Unruh 2003). In East Timor the land and property building was among the first destroyed by militia activity along with most property rights records (Marqhart et al 2002). In Rwanda much of the national geodetic system was destroyed, along with most official records, especially at the district level (Huggins 2004). As civil conflict grew in Somalia in the early 1990s, a reduced state capacity contributed to certain areas of the country being claimed by nomadic pastoralists under clan transient-access rights arrangements, by small-scale agriculturalists, by large scale-land interests accessing lands through the instruments of the crumbling state, and by heavily armed interests seeking access and control over lands by force (Unruh 1995a). Also in Somalia, land registries for the valuable irrigated areas in the central part of the country were largely destroyed and will lead to significant problems once a central government and peace prevail (Unruh 1996).

As well, forms of land tenure may be created which are directly connected to the opposition or insurgency which is made legitimate by direct military occupation and military strength (Unruh 2003). And there can be a reaction to the combination of insecurity generated during conflict, reduced capacity of the state, and the desire for the return of some form of order in society. The emergence of Shari’a courts in Somalia is one example of this, as is, arguably, the emergence of the Taliban in Afghanistan. Both were able to field their own mechanisms of enforcement for a variety of institutions, including land tenure (Unruh 1993). In Mozambique, because local rivalries between communities were caught up in the war, the result in some areas was a checkerboard effect of community-level alliances with Renamo and Frelimo with proximate communities’ electing to side with the opposite of their neighbors (Hanlon 1991). The two sides in Mozambique’s war employed quite different approaches to local communities and land administration, which in several ways were purposefully different from the opposition. This checkerboard effect (also observed in East Timor), together with the presence of land mines, highlight that even conflicts that did not initially have a land component can come to experience tenure problems in a peace process due to the spatial nature of conflict and land access.

### ***Land mines***

Land mine presence deserves particular mention in a land access context during conflict. While traditional land mine use primarily focuses on defensive purposes and route denial, in the developing world they are used as an offensive weapon. This is because the relative lack of resources that characterize insurgent groups, militaries, and militias, mean that combatants need to provide for themselves by obtaining what they can from local farms and fields while on the march. In this regard an important objective in mine laying is to deny access to land based resources by both farmers and one’s opponents, thus denying food supplies to the enemy (Unruh et al 2003). Of course as lines of control move back and forth across the landscape during the course of a conflict, waves of mine-laying over large areas can take place with little or no

record keeping. And, the general social disruption associated with landmine presence can be advantageous for a variety of reasons to both sides involved in a conflict, and as a result can encourage the further use of mines (Ascherio et al 1995).

### ***Identity***

With armed conflict underway, some groups will seize the opportunity to advance the goals of substate self determination, especially with regard to land. The result can involve land claim justification based on historical occupation. Such justification can gain renewed strength during conflict, and the pursuit of a “return” to historical lands or territory from which groups were expelled or departed, recently or long ago, can become a priority in a peace process – the Middle East again being a notable example. And as the identities of those involved in armed conflict develop to take on significant enmity with an opposing group or groups, approaches to land issues will reflect this and can become a prominent feature in the conflict and subsequent peace process. The difference between Palestinian and Israeli approaches to land and land tenure, are in a number of ways grounded in identity. Identity for Palestinians especially, has developed to a significant degree to mean opposition to Israel, Israelis, and Israel’s approach to land administration (Unruh 2003).

### **3.3 Land and property issues that emerge after a conflict**

#### ***The donor community***

Decisions about where government and donors locate concentrations of refugees and IDPs are rarely made with local community consultation, compensation, or coordination, especially with regard to how land is accessed for this purpose. Land access for migrants in such a situation is often derived from the presence of a government or international entity seeking to service concentrations of refugees or IDPs via the formal tenure system (McGregor, 1994). Meanwhile local communities often continue with customary tenure. Differences in tenure security between local and dislocated communities in such a case can be significant.

As well, coordination between donors and government is often difficult to come by. There are differences in definitions and interpretations of international human rights norms and how these intersect with the priorities of post-conflict land access, and there can be competition and overlap between donors over responsibility of aspects of the national land question or important issues (restitution, resettlement, policy assistance, etc.). There can be disagreements between donors as to the direction that the development of the property rights system should take after a conflict, with differences often tied to the economic and foreign policies of the donor countries involved. Thus post-conflict situations can be seen as opportunities by some bilateral donors seeking to reconfigure property rights along the lines of their own economic, political, or ideological preferences. This is especially the case with regard to private property vs. more communal property arrangements. In Rwanda there emerged strained relationships between a group of donors and the government, partly over the issue of the government feeling that it was abandoned during the genocide, and partly for questions raised by donors over aspects of the resettlement program, and the progress of land policy and legislation (Huggins 2004).

### *Land mines*

Land mine presence continues to play a significant role in affecting land access subsequent to the end of a conflict. Large areas of prime agricultural land can remain uninhabitable or problematic for long periods due to mines (McGregor 1995; Ascherio et al 1995; UNOHAC 1994). One study in Mozambique estimates that as many as 500,000 landmines exist primarily in the most fertile areas (HRWAP 1994). At the same time, rural households are attempting to expand areas under cultivation after the war with each successive season, as farmers attempt to bring areas long under fallow due to war back into cultivation (USAID 1996), thereby increasing the likelihood of mine encounters. As a result, land access remains one of the most fraught issues in Mozambique, and landmines play a significant role in determining access (Mather 2002).

### *Evidence*

The fate of evidence (proof) of rights to land and property subsequent to armed conflict is a particularly acute recovery problem. Claims to properties, lands, and territories have as their defining feature evidence that is regarded as legitimate by members of a certain “community” (broadly defined). Control over what is or becomes recognized as evidence, makes legitimate or not an array of rights definition. Competition and confrontation (especially formal vs. informal) over who exercises this control (definition of legal evidence) with regard to specific land(s) and properties can result in problems, as some claimants find themselves with evidence different from that considered legitimate or possessed by others as post-conflict scenarios develop. The decision by the international community to allow the Bosnian Serbs to keep lands seized from Bosnia and Herzegovina meant that virtually no evidence other than ethnicity was legitimate subsequent to the conflict. Property holders who were “cleansed” from certain areas were no longer able to use what were once legitimate titles or other documents as evidence for possession of property (Holbrooke 1998). Changes in evidence can also manifest itself in a more nuanced fashion as the relative value of pre-conflict evidence can shift to reflect changed circumstances. This was the case in Mozambique, where “social” customary evidence such as testimony, community and lineage membership, and history of occupation were significantly devalued due to widespread dislocation. At the same time, the existence of permanent, physical investments in land, such as agroforestry trees, greatly increased in value as evidence (Unruh 2002a). Outright victory in a conflict can result in profound change in legitimate evidence, particularly as pursued by the state. Such was the fate of many land documents in Ethiopia when the Derg military regime took power in the mid 1970s, and again a decade and a half later when the Tigrayan-Eritrean forces took over.

### *The time dilemma*

The post-conflict tenurial environment embodies a particular time dilemma with regard to the interaction of informal tenure (moving quickly) and formal state tenure (re-established slowly). Much of what has been described above with regard to conflict and post-conflict customary tenure moves quite quickly compared to the reconstruction of the state tenure apparatus (including organizations, institutions, and laws). In many post-conflict situations a land rush can occur after a conflict, which

very quickly outruns the ability of a re-establishing formal tenure system, and the best intentions of government and donors to manage. This can take community and household land tenure, resettlement, eviction, restitution, and disputing in directions that are largely outside of the control of a slowly reformulating formal tenure system.

In post-conflict situations the scramble for access to the means of survival and livelihood for large numbers of people, together with the pursuit of land resource opportunities by commercial interests, brings how actors intersect with each other over land resources to the fore very quickly. As well, different political factions that emerge from the war will move ahead with their own agendas, priorities, and ideas (e.g. the insurgency as a political party) in many cases regarding land. In this regard emergent political groups (potentially unhappy with their allotment of a peace dividend) can work to accuse the government of inaction on land issues, opposition to land reforms, etc. Such an effect can take advantage of the comparatively slow progress of formal land policy reform, development of institutional effectiveness, and derivation and passage of legislation, in order to win support from those who consider themselves disadvantaged by the process. This is the case in East Timor, where veterans of the 25 year insurgency against Indonesian occupation presently feel left out of the benefits of peace, including access to land, and have been involved in a number of violent incidents.

In another example from Rwanda, approximately 2.3 million refugees entered the country quite quickly between 1994 and 1997. And the formal re-establishing land tenure system (along with the international community present) was not functionally able to handle the influx and the speed with which it occurred. As a result, the direction that the refugee resettlement took in some areas was little influenced by the state, and included violent property takeovers, and other forms of self-settlement in lands and properties that were abandoned, or held by the remaining Hutu occupants (Huggins 2004). A full draft policy is only now just being completed, long delayed due to the sensitive nature of a number of land issues, and difficulty mustering the needed political will (Huggins 2004).

Significant aspects of the formal system will require substantial time to establish or re-establish. Some of the more important aspects include:

- Find and train land tenure personnel (absent due to layoffs and lack of training),
- Reconstitute cadastre and formal registry systems,
- Locate lost records, decide on a course of action when records are missing or have been destroyed,
- Re-construction and re-establishment of the political, structural, and organizational aspects of an emerging government that are responsible for different aspects of the land tenure system, e.g. courts,
- Lack of physical aspects of a formal land tenure system: vehicles, maps, surveying equip, computers, office supplies,
- Lack of and need to re-establish: salaries, per diem, and travel allowances,
- Lack of interagency and NGO project coordination regarding the land issue, both domestic and international (in Bosnia there were over 100 different agencies involved in the land restitution and return process (Leckie 2003)),
- Rebuild the low level of confidence in state institutions and donors among the general population,

- Deal with the uncoordinated legislative activity common in jurisdictions, competencies, etc.,
- Put a legislative and administration framework together for land tenure issues,
- Problems of money for all tenure-related needs,
- Deal with unresolved citizenship and nationality issues (people, confiscated and abandoned lands etc),
- Need to re-establish or establish effective enforcement powers and mechanisms for land tenure decisions regarding claims, evictions, and dispute resolution.
- Time will be needed for government experimentation with different approaches, or correction of mistaken approaches that emerge as unworkable or unrealistic (e.g. registration of all smallholder plots in post-conflict settings – Rwanda),
- Respond to pressure from the international community to have international law and human rights norms be consistent with domestic legislation,
- Derive and implement approaches to specific, highly sensitive land issues,
- Derive the political will to derive workable, legitimate formal institutions and approaches,
- Derive and implement effective ways of communication with most of the population for dissemination of aspects of the formal land tenure effort: laws, restitution, claims, community consultations, conflict resolution,
- Deal with corruption and abuse in government, and in the government’s land tenure effort.

Apart from these organizational, institutional and financial aspects of reconstruction of formal tenure systems, is the additional problem of legitimacy and capacity. Although a peace process can attempt to reconstitute institutions, the primary difficulty over time, stems more from issues of legitimacy and capacity of institutions to effectively recognize and resolve important tenure issues than from the ability of the government and donors to derive and place institutions within different levels of government (Tanner and Monnerat 1995).

The overall time dilemma can mean that in many cases land access or re-access problems at the individual, household, community and commercial levels will operate in a formal system institutional vacuum. The overall property rights arrangement then risks becoming unwieldy, with wider repercussions on agricultural recovery, economic opportunities, food security, and the political problems associated with ideas about “home area”, ethnicity, and areas gained or lost by different groups (Unruh 2002b). On the other hand the aggregate result of the differences in the rates with which change occurs in the formal vs. the informal tenure sectors, means that local authorities (traditional or emerging) will have much increased relative power in the post-conflict tenure setting—and this (in the SLA context) can be an advantage to smallholders in terms of what they do have control over. But such a situation provides for large variation in how land issues are handled. In Rwanda local authorities held much responsibility for resettlement and reallocation of land, in a formal legal and policy vacuum after the conflict (Huggins 2004). How the re-establishing formal tenure institutions and laws deal with such effects when they are implemented will be significantly important if the ultimate objective is to utilize the formal tenure sector for improvements in tenure arrangements in the informal sector.

### ***Binding rights and obligations***

Legislative change in post-conflict settings, given the time dilemma, can be overlaid onto sets of rights and obligations that are already in existence, very binding, and often much stronger than new or revised laws. In a land tenure context this means that during a peace process, relationships that have been created and maintained during a war to facilitate property, land, and territorial needs and aspirations will predate and can be significantly stronger than any new laws attendant on a fragile peace and a war-weakened state. The effect can be particularly pronounced as mechanisms for disseminating and enforcing new laws (especially with agrarian, semi-literate, war-weary populations) will also be weak or nonexistent. Hence the objective of changing social arrangements in certain ways with legislation frequently can fail or be deflected in a peace process (Unruh 2002b).

### ***Land issues and the peace accord***

While land issues can be at the center of many civil conflicts, in subsequent peace efforts they are frequently addressed in a general framework presented in peace accords. While a peace accord or victory in civil conflicts can to a certain degree resolve a spatial contest in a macro sense, implementation of accords (or new constructs associated with victory) for a population constitutes a local to macro level land and property institutional dilemma not easily overcome. Several problems can emerge from the way the peace accord is carried out in a post-conflict setting. There can be disappointment or disagreement in wording or implementation of the accord among donors as well as with the general population. This can translate into a significant weakening of the accord, and its binding nature on the various sides in the conflict, groups of combatants, and the members of the international community who are obligated to provide assistance in a timely manner (Bailliet 2003). Subsequent to the signing of an accord there can be little confidence in the general population that peace will actually follow (Unruh 2001). This will particularly be the case if there has been repeated attempts at constructing a workable agreement depending on the nature of the conflict. In Mozambique but particularly in Angola, there were repeated attempts at constructing and following through with peace accords, and expectations of peace had been dashed repeatedly. An accord can take significant time to negotiate, and in the meantime there can be a quick development of a variety of tenure situations. As well, certain land-related issues can be left out of an accord if they are too delicate, and there is a risk of compromising the integrity, timing, or participation in the accord.

In Guatemala concerns arose regarding the legally binding nature of the accord (Bailliet 2003); while in Rwanda by the time the Arusha accords were negotiated in 1993 all of the lands set aside for refugees had been occupied already on an informal basis (Jones 2003). Also in Rwanda, there was disagreement between the accord and Rwandan law with regard to the time limits under which returnees could expect to reclaim land (Jones 2003). In Mozambique the issue of eventually dissolving the distinction between Frelimo and Renamo held areas was seen as too delicate to include in the accord, and the issue was left to evolve on its own, which in some cases led to a solidification of the division (Unruh 2001).

### ***Restitution***

Land restitution can be a particularly a difficult component to include in a peace accord. Post-conflict land restitution has gained significant attention in recent years, with the international community increasingly linking this (for both IDPs and refugees) to international human rights standards (Leckie 2003.) The complications attending to restitution issues are complex, and significantly important to solidifying peace. While the trend is laudable, it does add a large complex and at times intractable aspect to post-conflict land tenure. Because land issues will in many cases be one of the reasons for the conflict, pre-conflict ideas about land return and restitution that have been neglected will come to the fore in the post-conflict environment.

Complicating this will be large-scale dislocations of people with little or no documentary evidence as to their claims; principles of adverse possession for those that occupied land during the absence of the original inhabitants; restitution claims pursued by largeholders, foreign and domestic; and the efforts on potentially both (in some cases several) sides in the war to purposefully re-locate people for the purpose of claiming land for a particular group. In a post-conflict environment, it must be appreciated that, there exists an operational tension between the need and desire for restitution on the part of those who feel it is due, and the much reduced capacity of the state in post-conflict scenarios to effectively move ahead with the issue within formal law. As well a new “restitution law” may be required, necessitating quick and effective legislative capacity. The result may be that restitution efforts proceed ahead informally by those who feel that justice is due them, and herein lies an important potential flashpoint for a return to conflict, or to significantly impact the progress of the peace process.

## **4. POST-CONFLICT LAND TENURE WITHIN THE SUSTAINABLE LIVELIHOODS FRAMEWORK**

### **4.1 The vulnerability context – conflict**

#### *Shocks*

Shocks connected directly with conflict events exist in two types: 1) the effects of specific, including repeated, combat and combat related events on individuals, households, and communities; and 2) the effects of the overall conflict on livelihood systems. The first concerns the temporal and spatial combat and combat-related (banditry, pillaging, land mine encounter, food provisioning from communities by troops, etc.) repercussions, which have a direct impact resulting in deaths, household and community disruption, asset stripping, conscription, trauma, loss of crops and livestock, food store depletion, and immediate dislocation. The repercussions of these events can vary with the temporal and spatial nature of the conflict and can range from areas being repeatedly subjected to large-scale combat events, to areas subjected to one or two small-scale combat-related events, to areas that endured the war with little or no experience of such events. Such direct effects, while spatially prescribed, have wider repercussions as people flee, and markets collapse; which in aggregate constitute the second type of direct shock—the broader effect on livelihood systems. The latter includes disruptions in coping strategies regarding how households and communities deal with direct combat events or fear of them, and lack of assistance and support provided by like groups (lineage, geographic, religious, ethnic, etc), the state, or the international community.

While dislocation can be due to direct or indirect conflict events and trends, dislocation itself is a shock as individuals, households, and communities deal with the experience of greatly reduced and often complete loss of assets or access to them. Arrival in destination locations for displaced persons can result in an ongoing series of shocks as individuals and households are subject to discrimination, and ongoing asset in-access or deprivation, in contexts where there can be a range of support—from effective support by kin, the state, or an international agency, to little or no support or assistance by the host community, to outright conflict, animosity, and depredation by locals, troops, and social banditry. The results can range from a permanent or semi-permanent hosting in a destination location, to repeated dislocation as people continue to attempt to locate an area with near-term personal security as a priority. A primary question in such a context is how to view and assess such a population in aggregate, given that the experiences involving the shocks of dislocation will be so varied across a post-conflict landscape.

Dislocation-related shocks can also affect host communities. The settlement of IDPs or refugees in areas occupied by local communities can result in compromised property rights, from decreases in tenure security, to loss of access to lands or land-based resources. Often dislocatees are relocated in new areas and lands with little or no consultation with host communities. This can result in loss of access rights to agricultural lands, along with forest product, grazing, and water resources. The shock can become aggravated with additional factors such as droughts, floods, and disease, resulting in significant competition between IDPs and local communities over

diminishing resources. With the presence of significant numbers of dislocatees, competing land use and claims can result in local landholders abandoning features of their own tenure systems because disputes and the lack of legitimate mechanisms to resolve them have made such features unworkable, or they believe there is little point in adhering to tenurial constructs that others (IDPs) are not following. Such a situation then leads to considerable disruption of local customary tenure.

The destruction of crop and livestock assets (liquid financial capital) during and subsequent to conflict has a primary impact on livelihoods and coping strategies. In addition to direct loss of both due to combat, forced abandonment, and theft; this shock also involves the destruction of or in-access to the means to reproduce both crops and livestock. These include, predictable access to land(s) and water for cultivation and grazing, participation in trading networks involving seeds, new herd additions, market opportunities, and delegation of responsibilities among family members who must travel varying distances from households and communities in a potentially insecure environment.

Market collapse and in-access due to conflict can be one of the most pervasive and enduring shocks due to conflict. The spatial network of infrastructure, institutions, and norms which support contacts, trust, transport, and facilities are delicate and difficult at best in developing country contexts, even in times of peace. Market network collapse can be among the first shocks delivered with wide impact in conflict scenarios, and among the last to be re-established after conflict. The effects of market collapse and in-access can be felt far from actual conflict events as combinations of transport, political affiliation, non-delivery of products, monetary institutions, and dislocation are reworked over large areas. The influence on non-reproduction of the means of livelihood (crop and livestock production) then feeds back to perpetuate market dissolution and militates against market network re-establishment after conflict.

While the shock events associated with many forms of direct combat do not occur in post-conflict situations, this is not the case with land mines. Ongoing shocks due to landmine encounters after the end of open hostilities continue for years, as does the fear (and subsequent decision-making) that certain areas still contain mines. This leads large, often agriculturally productive assets to be treated as “off limits” to rural inhabitants, with ongoing repercussions on crop and livestock sector rehabilitation, livelihoods, and resettlement (Unruh et al 2003).

### ***Trend-related vulnerability***

The dissolution of communities and their long-term reorganization subsequent to conflict is one of the most important trends influencing vulnerability and the re-access and accumulation of assets. Due to the very large role that community plays in rural livelihoods in the developing world, its reorganization subsequent to conflict can be a long, and often difficult process. While some communities will be able to re-establish themselves quickly due to easy access to natural, social, and human capital that accompanies community cohesion which can favor the more isolated areas, often there are complicating factors. The effects of political affiliation during a conflict, notions of victimization, victory, or blame, IDP return problems between those who fled and those who stayed behind, the often large increase in the roles and

responsibilities of women during and after conflict, and lessons learned in refugee camps and cities, can combine to make reorganization of communities of agriculturalists problematic and long-term. But because the prospect for such reorganization will vary markedly over a post-conflict affected landscape, aggregations and single notions about this trend will be difficult.

Profound shocks to human societies such as conflict, famine, some natural disasters, and recovery from these, frequently result in socioeconomic segmentation, whereby many people become poorer or worse off, but at the same time there emerges a segment that is able to grow wealthier (Unruh 1997). This occurs as crisis, adaptive, and livelihood coping strategies comprise progressively selling off assets (including land), sometimes at very low prices in order to move them quickly and gain a quick income. These assets are sold to others who can afford to buy them, ensure their security and hold them, and sell them either to others or back to the original owners subsequent to a crisis, but at higher prices. This allows those in a position to do this to become wealthier. While this trend occurs at the village level, it can also occur at higher levels, including the level of the state, and can reach a point whereby such an activity is so lucrative that those in such an advantaged position can seek to slow or stop the resolution of the conflict or progress of a peace process.

While shock-related disruption of production systems can result in an immediate stripping of assets fundamental to production systems, trend-related dissolution of production systems are longer term and more complicated. For example, dislocatee return and attempts at reintegration into production systems finds that significant system components are missing or not operable, and alternatives must be sought in their place. This can result in trends in post-conflict situations progressively acting to dissolve aspects of pre-existing production systems due to, (1) conflict over land with no legitimate, respected in-place institutions to resolve them, and (2) lack of market opportunities and state support which leads to significant difficulties in re-establishing the crop-land and livestock-land mix fundamental to livelihoods.

Subsequent to the end of a conflict disappointment and distrust trends in a newly reconstructed state can manifest themselves in the development of different forms of local alternatives; particularly since the ideology, mobilization, and wartime aspirations are still fresh in the minds of many, and a post-conflict state can find that it has less influence than initially thought. In Zimbabwe local distrust of the state became significant even when the insurgency won and went about establishing a government and policies regarding land, because local chiefs were purposefully left out of the new state due to their alliance with the Rhodesian administration (Ranger 1985).

### ***Seasonality in a post-conflict context***

While seasonality can be a difficult variable in times of peace for smallholders, the difficulty can be magnified in post-conflict scenarios. This occurs as the timing of the biophysical and social aspects of the agricultural calendar intersect with the timing of priorities involved in post-conflict survival: migration and resettlement; pursuit of short-term food, personal, and livelihood security; re-claiming land and land disputes; and the lack of seeds, agricultural implements, labor, and livestock, along with other forms of financial capital. The overall effect can be to significantly extend any

“hungry season” effect (the time when food stocks are low, but crops are not yet harvested) in locations where this occurs normally, and to potentially introduce a hungry season where it did not previously occur. Such an extension can occur over additional weeks, months, or encompass the entire agricultural year, depending on the area’s intersection with the conflict and recovery.

The intersection of crop and livestock destruction with seasonality in post-conflict settings, will, in addition to the hungry season effect, likely mean that recovery of these assets will take a significant amount of time. While economic, social, and biophysical rates of increase for both crop (rebuilding seed supplies, reacquisition of implements, and land and labor) and livestock (herd rebuilding tied to purchasing power, availability of livestock, and reproductive rates of livestock species) can be predicted in times of normal production system function, in post-conflict settings the issues associated with recovery will significantly magnify the role that seasonality plays in agricultural asset recovery. This will particularly be the case if drought or flooding, or erratic onset and duration of rainy seasons are present.

Food prices in post-conflict settings, in both rural and urban areas are ongoing trends affected by available supplies after a conflict (often low), together with infrastructure and market recovery, and the quantity, distribution, and type of post-conflict food aid and productive asset development assistance. The combination of high prices, and low purchasing power is arguably one of the factors involved in the upsurge of “social banditry” after a war (Unruh 1997). The influence of prices on agricultural strategy will involve: continued use of “famine food” including wildlife (particularly given the prevalence of light weapons), and plant species considered edible only in times of stress. In Ethiopia the naturally occurring “vetch” plant is eaten in times of food insecurity and conflict, usually mixed with grain stores to stretch out supplies. In times of extreme stress it is eaten on its own, and has a crippling effect on children and the elderly. As well “shortcuts” in food preparation can occur as high prices prevent the purchase of alternatives. In post-conflict northern Mozambique, returning populations were unable to afford the purchase of foodstuffs, necessitating the immediate consumption of cassava without the normal processing of the plant that would have removed the naturally occurring poison. High prices will likewise delay the recovery of crop and livestock assets and the attendant production systems, necessitating the pursuit of alternative agricultural strategies more focused on extraction, overuse, and mobility (Korf 2002).

## **4.2 Livelihood assets**

### ***Natural capital – land***

Changes in land asset access during conflict can come about with, (1) dislocation; (2) dislocatee claims in destination locations; (3) victory or loss of particular sides in the conflict and the rural inhabitants connected to these sides (including ethnic cleansing and the subsequent purposeful ethnic re-population of areas); (4) land losses and gains connected with opportunistic activities of individuals and groups intending to take advantage of the fluid post-conflict environment and the lack of functioning state institutions to pursue economic, religious, or identity-based land taking; or what can be perceived of as re-taking of lands. In Rwanda various rationales were derived to facilitate the post-conflict taking, or occupying of land and property that were tied to

the character of the conflict; particularly involving perceived, actual, or accused guilt with regard to participation in the genocide (Huggins 2004).

An important aspect of land as natural capital is the security with which it is held. Thus while quantities of land as capital can be high or low, what one is able to do with this capital depends on the degree of tenure security enjoyed. Ongoing reductions in secure access to lands in post-conflict settings (different than no access) result in continued short-term resource use and extractive use of land resources (Korf 2002), with repercussions on the agronomic resources necessary for recovery and subsequent development. While wide-spread decreases in tenure security may be the logical assumption in post-conflict settings, research in post-conflict Mozambique reveals that there can be a segmentation of tenure security with most members of a sampled population having very low, but a significant number having very high indices of tenure security (Unruh 1997). High measures of tenure security in post-conflict settings for particular segments can emanate from the peace accord, solidification of gains made by one side or another in the conflict, the presence of state or international actors connected to particular pieces of land, or security exerted over lands through force of arms.

Tenure security is ultimately a product of the mix between natural, human, social, and political capital. In this context tenure security is to a large degree less about the rights possessed by a particular individual, than it is about the respect for those rights that a community provides (Unruh, 2002b; 2003). Tenure security is fundamentally about this community role. Where locals, IDPs, and commercial interests find themselves in one broad community, the degree to which an individual believes “others” in the community are willing to respect rights based on specific evidence attesting to those rights, is fundamental to one's sense of tenure security (Unruh, 2003). As newcomers, IDPs can (in many cases from their own experience) believe that they are second class members of a community, and this belief may prevail over other indications of actual adequate rights provision (Unruh, 1997).

While land as a form of natural capital in a post-conflict period is of high value in terms of food security and production system recovery, the asset itself can change value in an agricultural context, as lands are overgrown due to abandonment, unconnected to markets due to infrastructure destruction and neglect, mined, or degraded due to high concentrations of dislocatees during the conflict. While such changes may eventually be overcome with time, the real value of land as a natural asset comes as it intersects with primarily social and political capital.

### ***Human and financial capital***

Human capital retention and acquisition in terms of education and awareness of formal and customary tenure structures (rights, laws, norms, authority structures, procedures) will be particularly hard hit by conflict scenarios, and significantly debilitated during the post-conflict period. In-place customary communities that experienced limited or no dislocation, and did not receive high concentrations of dislocatees during the war will likely have retained greater human capital in terms of land access issues. Dislocatees, and demobilized combatants will likely have very low human capital upon which to draw to gain access to lands, or defend rights to land nonviolently. With regard to the latter, in some cases the result can be attempts at

replacing the necessary human capital with more easily accessed political-financial capital in the form of light weapons (power) in order to defend or acquire rights to land.

The importance of knowing about the changes in human capital that are underway in both formal and informal tenure systems are important to one's ability to pursue opportunities in changed circumstances with regard to evidence, tenure security, and access and claim in post-conflict settings. The overriding problem in this awareness for smallholders is the rapidity with which customary norms can change in post-conflict settings particularly with neighboring groups, and the remoteness of new happenings in the formal system, especially when government efforts are hampered by delays and information dissemination limitations. While those who are more educated or with state connections may be more able to obtain information and understand how the formal system is evolving in a post-conflict environment, they may also be in leadership positions within customary systems, and in a position to lead with regard to how the customary system will operate over a given area.

A primary aspect of human capital in post-conflict settings will be its role in dealing with the many land disputes that will result from reintegrating rural populations – in a context of a limited, but growing state ability to resolve land disputes. In the immediate post-conflict period, most dispute resolution and mediation will be accomplished by community leaders and others (including warlords) with the authority and power to decide such issues. The role of such an aspect of human capital however can become eroded in some cases as forces favor the deployment of physical power (weapons) over traditional authority. This is a significant aspect of the ongoing land problem in Somalia, and the Karamajong Cluster (border area of Sudan, Uganda, Ethiopia, Kenya) where weapons (as a form of political-financial capital) supersedes local traditional authority (human capital), over sometimes large areas.

For much of the immediate post-conflict landscape, the presence of local farmers, dislocatees, commercial interests, and demobilized combatants from different sides in the conflict, all located in the same areas will mean that land disputes involving these players will unlikely be able to locate a commonly respected and legitimate authority. This will be a significant degradation of an important aspect of human capital regarding land tenure in post-conflict situations and a trend-related shock to recovery. What can emerge in some circumstances however are mediation efforts (different from land dispute resolution) by people, committees, or groups who can be seen as objective (different from authority). This was the case in East Timor near the West Timor border, where the lack of state or locally respected authority together with the large presence of UN troops to prevent violence as an option, led to the emergence of mediation efforts that, while not deciding dispute resolution, were effective at mitigating disputes and their effects so that peace, farming, and recovery continued. The effect essentially was to put off ultimate resolution until a later date. This also occurred in post-genocide Rwanda, where lack of state involvement led to the spontaneous formation of local land commissions to attend to the emerging land disputes over “land sharing” and boundary problems (Huggins 2004). This form of objectivity is likely to be an important form of human capital regarding land dispute resolution in problematic post-conflict settings. That it differs from other forms that human capital can take (authority, education, training, and experience) is worth noting, and it would be well considered to include this form of objectivity in the post-

conflict variant of human capital.

The information dissemination environment in post-conflict settings will be significantly compromised both in the formal and informal tenure sectors. Because of the often significant delay between the cessation of overt hostilities and the effective implementation of new laws regarding land access relevant to smallholders (e.g. Rwanda over ten years), and therefore dissemination and enforcement of new formal legal arrangements, there will exist a “sequencing effect” regarding dissemination about formal and informal tenure constructs. Because local informal tenurial constructs will emerge quicker, and operate over much smaller areas subsequent to conflict than formal constructs, local dissemination about these constructs will also occur sooner than the state will be able to pass laws and disseminate relevant information regarding how they operate. This means that binding obligations involving land assets attached to informal constructs will be up and running when dissemination regarding formal law does finally occur, significantly complicating the implementation and enforcement of formal law. Such a situation reveals information itself as a form of capital, mitigated by dissemination, sequencing, or other forms of information control. However there are ways to mitigate this effect. The Rwanda case study (Huggins 2004) noted the effects of a radio broadcast speech by then vice president Paul Kagame, whereby a combination of respect and implied use of military force appeared to have a significant effect on informal resettlement where lands allotted to refugees were already occupied.

Exclusion of specific groups from awareness, training, or information dissemination regarding evolving tenurial arrangements (formal and informal) will be a significant concern in post-conflict settings. On the one hand government exclusion (purposeful or not) of smallholder awareness, education, and training regarding what the state is doing in terms of formulating new land tenure arrangements will disadvantage smallholders, and complicate consultation, input of ideas, notions of legitimacy, and equity. On the other hand, the state will likewise be excluded from information about emergent smallholder local tenure constructs which will have allowed them to resettle and to a significant degree manage disputes, and restart production system activity. As well there are constructs of exclusion within the informal sector. In an example from Guatemala, those that fled lands and ended up as refugees in camps run by the international community in southern Mexico became very well educated as to their rights to lands in the post-conflict setting due to their exposure to international sources regarding human rights, rights of return, and the peace process. Those that stayed on their lands in Guatemala however were excluded from this education, awareness, and information. Such that upon the return of the refugees, there were pronounced differences in notions of land access rights arrangements. At the same time, the absence of significant parts of the customary landowning population (as refugees) meant that for those who stayed, there was a development of new local tenure arrangements that allowed them to function as an agricultural community during the conflict. One of the most dynamic aspects of this was the much elevated status of previously marginalized groups, such as women, poorer members of the community, migrants, etc. Those that fled and became refugees in Mexico were excluded from this awareness and education, which added an additional complication to their return to home areas in Guatemala (Krznic 1997).

Building human capital in post-conflict situations will entail taking advantage of the sequencing of formation of tenurial constructs (informal then formal) by seeking to include the informal constructs within the process of deriving formal laws regarding land tenure. This will have the advantage of working with the grain, as opposed to expecting people to disengage from binding obligations made involving land when formal laws do come on line and information about them is disseminated. At the same time significant effort put into dissemination of what the state is doing with regard to national land tenure, along with consultation and input from the smallholder sector would go a long way to mitigating the formal – informal tenurial disconnect.

### *Social capital*

Subsequent to conflict, and particularly conflict which has lasted for long periods of time, the rural population will, in general have experienced a much reduced degree of social capital. While connections, networks, group membership, and relationships of trust, reciprocity, and exchanges that provide for important informal safety nets will be quite valued and heavily relied upon in the early years of conflict (where they are not abruptly disrupted due to the conflict), these can become exhausted as continued food, personal, and livelihood security is progressively degraded, and new relations (as IDPs, refugees, migrants, combatants, political, etc.) are defined to ensure survival and pursue notions of opposition or allegiance to a particular side in a conflict due to personal experience. But again segmentation is an important feature of social capital during and after conflict, as it is with other forms of capital. While connections, networks, and membership for some can provide for complete removal from conflict's effects, or an advantaged position with regard to a conflict, often for rural inhabitants there is either a progressive degradation of social capital over time, or quite rapid disintegration depending on the nature of the conflict and one's exposure to it. Disruption of social networks, especially trust, was a large part of the post-conflict land access environment in Rwanda (Huggins 2004).

Distrust is a general feature of post-conflict settings, and can include distrust of the state; traditional authorities; other ethnic, religious, or geographic groups; and refugees, and IDPs. Such distrust can come about due to attachment of specific groups to one side or another in the conflict, historical animosities and disagreements aggravated by conflict-related factors (economic, livelihood, or cultural disruption); or non-compliance with inter-community and inter-personal contract arrangements or agreements involving trading, marriage (particularly between lineages), and boundaries.

Continued social disruption after a conflict can serve to delay, degrade, and rework social capital, as attempts to resolve land disputes, government missteps with regard to how rural inhabitants are treated in the context of land issues, social banditry, and lack of land access, along with personal, food, and livelihood insecurity lead to the abandonment of connections, networks, and forms of trust and exchange that do not work, in favor of alternative approaches which may (Korf 2002). But because alternative approaches are new, they are by necessity experimental and unpredictable, which leads to a potential continued "switching" from one form of arrangement to another, which in aggregate can significantly slow the reformation of durable, predictable, workable forms of social capital involving trust and of utility over the long term. On the other hand certain forms of this "choosing" can be beneficial. In

Ethiopia significant “forum shopping” continues to go on in terms of searching for ways of land dispute resolution that work, and are connected to important aspects of enforcement and legitimacy. Such forum shopping in fluid post-conflict settings can be a valuable form of social capital. Valuable in that it can allow for a peaceful “process” (in a PIPs context) of dispute resolution, mediation, or simply repeated attempts at these for large numbers of people and different groups. That forum shopping emerges on its own, and is operated and engaged in by local participants, and serves an important institutional need that the state is unable to provide in post-conflict settings, can be seen as a positive asset that local rural inhabitants do have control over.

Subsequent to conflict there can be significant interest in rebuilding social capital (particularly involving trust), but given the starting point, and that rebuilding can be slow, experimental, and sometimes unconnected to pre-existing forms, there can be continued low access to effective forms of social capital in post conflict settings. At the same time social capital built around situations of dislocation, combat, and opposition can grow weaker as the conflict ends and people return to home areas, are resettled and demobilized; and refugee, IDP, and demobilization support by the international community comes to an end. As well government activities can work against the establishment of social capital with regard to land by not disseminating information, and seeking to marginalize portions of the population (possibly due to their affiliation to one side in the conflict). In aggregate social capital for rural inhabitants after a conflict will be in a state of flux, and weakened overall, with predictability of connection, trust, and reciprocity also low.

How social capital is retained in post-conflict settings is an important question. While one’s sphere of social connections may contract due to conflict, and post-conflict difficulties in maintaining a wide network, noting what “purpose of connection” is associated with retention of social capital is worth investigating. Do points of connection such as household, livelihood, production system, lineage, religion, political affiliation, or others allow for certain types of social connection to endure conflict and post-conflict scenarios? Are specific forms of social capital retained under some post-conflict conditions and not others (e.g. food insecurity, ethnic strife, dislocation,

Political capital, as a variant of social capital in post-conflict settings, can be influenced by the degree of connection or alliance to one side or another in the conflict. What can be a significant political asset in a crisis strategy (connection to the combat, support, or sympathetic aspects of a particular side in the war) can turn into a liability or a much reduced asset depending on the fate of those involved in that side, or involved in a peace accord, or local to national intersections with particular battles, victory or loss in the larger conflict, transformation of a warring party into a political party, etc.

### *Physical capital*

There can be significant intersection between physical capital and post-conflict rural land tenure. The status of transport infrastructure (due to destruction, neglect, or as “off limits” due to land mine presence) and its effects on marketing of agricultural produce, can effect the amount of land put under production during recovery. But as

well there are significant intersections with the placement of specific forms of physical capital (infrastructure, water, shelter, etc.) that, combined with security and fertile land, results in either large concentrations of IDPs and land degradation, or dislocation, migration for economic reasons, and the subsequent land abandonment.

***The strong connection between human, social, and natural capital in the post-conflict tenure context, and connections to vulnerability***

The co-location of forms of physical capital together with security, water, and relief supplies can result in large concentrations of small scale agriculturalists in certain areas even long after a conflict is over. Such “critical resource tenure” areas (Unruh 1995b) are derived due to the presence of a mix of physical, natural, social, human, and political (security) capital and can constitute significant influence on land tenure issues more broadly. While such locations can be problematic politically (just as refugee camps can be) these are also locations where human capital (awareness, education, training) and social capital (networking, information dissemination) gains can be quickest.

While access to land as a form of natural capital is important in post-conflict settings, by itself land as an asset has little utility apart from short-term extraction activities. It is the mix of land with human and social (including political) capital where tenure security emerges, and how the resulting longer-term production system and livelihood security come about. As noted earlier, tenure security is significantly based on a community’s respect for an individual’s claim and rights to land. Such respect can be based on degree of connection to the community as a social network, including connection to the authority structure (human capital), and an ability to defend one’s rights via dispute resolution within institutions that a community holds to be legitimate. The human capital involved in knowing how to do this (including knowing how a customary system works, and what is valuable evidence at a given point in time) is an important connection to natural and social capital. But because it is human and particularly social capital that suffers significantly in conflict and post-conflict scenarios, security of tenure declines markedly, along with security of livelihood, and land as natural capital is then accessed on its own—in an extractive format. At the other extreme, the locations where human and social capital exist in highest potential for being rebuilt (refugee camps, IDP concentrations, settlements around cities and other secure locations, membership in militia groups), agricultural land as a natural asset is in extremely short supply. What can exist in aggregate, is largely a spatial problem, where the forms of social and human capital of greatest potential are not located where productive land resources or rights to those exist.

### **4.3 Policies, institutions, processes (PIPs)**

#### ***Structures***

Organizational structures within the formal land tenure sector in post-conflict settings constitute a weakened set with regard to rural land tenure. While reconstruction of formal tenure structures will begin at the national and provincial, and possibly at the district levels, reconnecting (or connecting for the first time) these with rural smallholder structures and processes will be a separate, and significantly large-scale and sustained effort. However in many developing countries (especially in Africa) the

disconnect between formal and customary structure remains the prevailing tenurial theme even in peacetime, and constitutes one of the primary development dilemmas. Such that if smallholder rural structures in a post-conflict country has had little or no history of connection to formal land tenure structures even in peacetime, it may not suffer overtly due to the existence of a disconnect in a post-conflict setting, and may experience a degree of benefit from a debilitated set of formal structures. This may come about as those formerly well positioned to use the state's structures to their advantage (elites, state officials), are less able to pursue land claims in rural areas using formal organizations, which smallholders may have had little ability to defend themselves against in the past. But this effect will be spatial and temporally variable and operate in a continuum over both. Thus while formal organizations that are weakened in a minor way can allow for increased abuse in terms of land claims by those able to use the state structure to their advantage (obtaining documents and lands fraudulently, coercively, or through force), a very severely debilitated set of state structures will not even provide for an opportunity for abused functioning. The latter will especially be the case where security issues were prevalent during the conflict, and where sympathies connected to the opposition are in-place after the conflict.

The lack of appropriate legislation dealing with property rights in post-conflict settings does not prevent a land market (as a structure) from operating – however informally. But without a formal legal and economic framework the informal nature of the market can breed tenure insecurity in urban areas, discourages larger-scale investment and reconstruction, and has the potential to become conflictive later if subsequent property rights legislation is unable to adequately embrace what has occurred in market transactions during this informal period (Marqhart et al 2002). Significant questions here include, what is the nature of the informal land market as it operates on its own; and, what is used to secure and enforce these transactions? As well, who is involved in such transactions can indicate if security of transaction is related to personal relationship. Transactions of unregistered properties over time, present particular problems to constituting a comprehensive land titling and cadastre program, if the latter does not intentionally connect with the former. The development of a formal market that does not engage what has already gone on in the informal market runs the large risk that smallholders will not engage the formal market, that large scale evictions will take place, particularly in and around urban areas, and that the formal market will end up being for the educated elite only, while discouraging both foreign and domestic investment.

### ***Processes***

The NGO domain is of particular note in post-conflict situations, in an SLA “process” context. Subsequent to war, developing countries can be inundated with international NGOs who then assist in creating domestic NGOs as counterparts who can receive funds (and often direction) from donors. While there are problems with a very high volume of this activity (e.g. creation of parallel institutions to government, attracting trained personnel away from government), the positive aspect is that structures can be built that represent the poor. In Mozambique a number of land-related domestic NGOs operated together with international NGOs, donors (in particular FAO) and their institutional contractors to push the land issue on behalf of the rural poor, significantly influencing national debate and ultimately policy reform. In Mozambique several organizations were created, including the Interministerial Land

Commission, that dealt with the connection of rural smallholder land tenure to policy reform (Unruh 2004b).

Processes involving informal institutional change regarding land during conflict can be in a state of continual flux, as rural inhabitants employ a variety of crisis and adaptive coping strategies focused on the short-term in order to engage in risk avoidance, vulnerability reduction, asset retention, and food and livelihood security. Getting an aggregate understanding as to the direction of this change, apart from large-scale moves toward or away from extractive, short-term decisions, is difficult due to the high spatial, temporal, and type variation in smallholder strategies. However subsequent to a conflict there can be a directional surge in the process of informal institutional change (described above in emergence of normative orders and legal pluralism) as large numbers of dislocatees return to home areas, and in-place agriculturalists re-claim lands and begin what in aggregate is a large-scale increase in the cultivation of previously abandoned land (Unruh 1995b). At such a time a variety of conflict, and pre-conflict institutions that provided for access to land will be tested against post-conflict rule-set derivation designed to facilitate access, reclaiming, eviction, dispute resolution, and intersection with the formal system for specific groups. Power relations change in a post-conflict process context as gender, caste, socioeconomic and class relations from a pre-conflict setting clash with roles taken on by female-headed households and marginalized groups who became combatants, land use decision-makers, leaders, and/or simply operated without the confines of former power relations.

Because all societies experience land conflict, what is important to a peace process in a land tenure context is equitable access to legitimate land tenure dispute resolution institutions between groups who may view land resources very differently, possess profoundly different evidence with which to pursue claims, and may have occupied different sides in the armed conflict. For dispute resolution institutions to effectively operate between different forms of informal and formal tenure systems in the context of a peace process, it must ultimately be realized that it is easier to modify national land legislation to accommodate what is seen as existing legitimate rule-sets and evidence, than it is to legislate out of existence smallholder norms regarding land tenure and land use, in an attempt at replacing the local tenure systems with the formal.

Dennis (1999) examines such legitimacy in the context of adjudication applicable to land claim and dispute resolution legitimacy issues in post-conflict environments,

“adjudication is a form of official decision-making concerned with the resolution of disputes and the implementation of law. This remains true whether the forum of the dispute is criminal court, a civil court, or an administrative tribunal. If official adjudications are to succeed in gaining acceptance and respect as authoritative decisions, it is essential that they are, and are seen to be, legitimate”.

This form of legitimacy in law, (termed “legitimacy of decision”), is different than factual certainty of decision, regarding true facts of a dispute (Dennis 1999). Legitimacy of decision seeks legitimacy from the parties concerned and society at large, regarding notions of integrity, acceptability, and moral authority (Dennis 1999). In civil matters particularly, “the aim of adjudication is to settle disputes within a

framework of economic, social and political relations that attaches considerable value to self-determination” (Dennis 1999). Thus in civil adjudication, such as cases involving land, “[p]rocedural fairness and equality of treatment for parties in the litigation process may assume greater importance” (Dennis 1999). This is because “the aims of the civil process have at least as much to do with the restoration of equilibrium and harmony (via the peaceful and acceptable settlements of disputes) between warring parties as with the implementation of state policy on matters of civil law” (Dennis 1999). This notion of legitimacy of decision and procedure is fundamental in that the parties concerned must be able to present evidence (proof) that they believe to be of probative value in order for the procedure and resulting decision to be regarded by the parties as legitimate (Dennis 1999). In this regard the “adversary system,” as a method of formal adjudication in common law, whereby the opposing parties in a conflict gather, interpret, and present evidence for their claim (Rectlinger 1996) can be of significant utility. A dispute procedure viewed as legitimate by smallholders then is able to employ customary “customs and controls” in enforcement and administration of decisions, effectively relieving the state of this cost, which in many developing country cases it is not able to afford.

### *Opportunities*

Post-conflict situations are unique settings in their combination of a weakened and chaotic formal system, robust, vigorous, but fluid, informal tenure activity, along with the presence of a peace accord, political demands and concessions regarding land, and international actors that can have a large interest in the success of the peace process. While this combination carries risks, it also represents real opportunity. In this regard the tenure reorganization and reform efforts, need to look outside the confines of ministries and missions, to assess how the development of tenurial institutions, problems, and processes are proceeding “on the ground” in what will be a very lively rural smallholder tenure sector—so as to draw legitimacy from these processes into reformulating national structure, policy, and law. Without this purposeful connection, tenure institutions at different levels risk evolving in different directions, with considerable difficulty later on in attempts to connect them. With such a connection, new policy can support what people are already doing, and engage in real ongoing problems of disputing, resettlement, restitution, proof of claim, and development.

Such an improved relationship can begin as a peace accord attempts to resolve land issues involved in the conflict itself (particularly if the conflict was about land, or came to involve a significant land-based resource component – oil, diamonds, timber, wildlife, export crops). As well, because the international community presence in post-conflict settings can be much larger, and much more empowered, it can have more influence on a weakened government than in peacetime. The result can be a significant effort, pushed by the international community, to resolve important or contentious issues, including attempting to craft laws which support livelihoods of the poor. This was the case in Mozambique (Unruh 2004b), Ethiopia (Unruh nd), and Nicaragua (Barquero 2004) in various ways and is a process currently underway in East Timor (Marquardt et al 2002). In Rwanda it was noted in the “1995 Guidelines” that “the post-conflict environment represented a great opportunity for land reform” (Huggins 2004). Thus positive reform of formal structures pertaining to land can take place within an opportune period subsequent to conflict. A period in which input from the rural informal sector can be influential. This is a significant component of what

the rural poor can participate in, in post-conflict situations, and which can be operationalized, particularly with the presence of international actors and domestic NGOs. Mozambique again provides an example of a case where mandatory consultations between largeholders seeking title, and resident smallholder communities on the same land has (albeit with some problems) served to help smallholders understand and use laws. While this can occur via the consultation process, it can also occur with NGO assistance in disseminating the need for and character of consultations, and by communication between groups of smallholders themselves (Norfolk 2004). This is an example of an approach whereby stakeholder capacity can be improved in order to gain understanding and utility of laws that can provide rights. While stakeholder capacity building and information dissemination exercises are of considerable importance in their own right in improving this capacity, their application in a particular window of opportunity (post-conflict policy reform; empowered presence of donors, etc.) can possibly allow for particular effectiveness.

As well there is ongoing experimentation in certain African countries attempting to build stakeholder capacity concerning land tenure by focusing on fundamental changes in formal law. In Zambia, the government funded Law Development Commission has re-worked its Commonwealth mandate to examine specifically the intersection between customary law and state law, with land tenure occupying a primary focus. In this case, studies are carried out by the Commission on specific tenure problems, and recommendations are provided to parliament regarding changes in formal law and sometimes fundamental concepts of formal law in order to support local livelihoods. In post-conflict East Timor new formal property rights laws are being proposed after significant research into customary land tenure, admitting testimonial and other customary evidence for claim, dispute resolution, possession, and restitution.

#### **4.4 Livelihood strategies in a post-conflict context**

Subsequent to multiple dislocation events, the combination of large numbers of people moving across the landscape for a number of years, and the need for near-term crop production for food security, will result in strategies whereby a significant percentage of the population will reside in a location for the duration of an agricultural season, before moving on of their own volition or being evicted by returnees. A primary feature of post-conflict livelihood strategies will be crop and livestock production that results in very quick yield or extraction. This may involve crop focus on quick growing and/or very hardy crop species, such as cassava, together with highly extractive modes of ensuring food security, ie., hunting, fishing, wild foods, and consuming reproductive livestock. In aggregate there can be a significant push toward a very high degree of diversity in livelihood strategy focused on making numerous small gains in food security, to the degree that extreme fragmentation of time and activity can work against the reforming of longer term strategies able to provide greater predictability, quantity and quality of agricultural yield.

Moving from crisis strategies (during conflict) to adaptive and then livelihood strategies after conflict will take time, and possibly more time than initially expected. Being able to switch from one type of strategy to another requires that the process of pursuing one type of strategy does not militate against changing (often itself a process) to another. In this regard timely, precise support may be needed to facilitate

transitioning strategies. And support in terms of land access and tenure security can play an important role here. For example, a temporary degree of tenure security (provided by the state, NGOs, or donor projects) for those that occupy lands to which others are returning, may mitigate against their eviction and a return to a crisis strategy. This together with provision of targeted food aid, transport, and land mediation services may provide the necessary space (in terms of personal and food security) for transitioning from crisis and adaptive livelihood strategies involving short-term decision-making, to more long-term livelihood strategies.

Transitioning from one form of strategy to another can result not only in a redistribution of capital (natural, human, social, etc), but redistribution between types of specific capital (i.e. types of social assets or types of natural assets). In other words the type of asset required for the functioning of a crisis strategy can be different than that needed for an adaptive or livelihood strategy even though the quantity of the asset may be the same. For example, in a crisis strategy one type of natural asset that households would likely want to maximize might be non-agricultural areas (forest, national park, woodlands) where wild game, fuelwood, natural cover, natural water supplies, and other natural assets supportive of a more resource extractive strategy exist. This would be different than needing to maximize natural assets involving fertile, easily watered agricultural or grazing land near transportation networks which are needed for livelihood strategies in peacetime.

#### **4.5 Livelihood outcomes – priorities for rural inhabitants in post-conflict scenarios**

Livelihood outcomes for a population subsequent to conflict will be variable, but there can be primary patterns that the SLA livelihood outcomes theme can illuminate. A priority for most rural inhabitants will be reduction in vulnerability. Simply the end to hostilities can contribute significantly to successful livelihood strategies in the immediate term. But this can then subsequently compromise sustainability and potentially increase vulnerability as a large percentage of the rural population begin moving back to home areas and properties, and others continue moving from place to place. Sustainability in livelihood outcomes will be difficult for most of the smallholder rural population after conflict, who will be focusing on re-acquiring assets while pursuing livelihood strategies designed for success in the immediate-term.

Food security is an important aspect of both vulnerability and livelihood outcome. Post-conflict outcomes involving food security will eventually switch, for most smallholders, from those related to a livelihood strategy comprised of natural and social asset extraction, food relief, and structures of welfare, to food security resulting from secure access to land resources, and the longer-term aspects of production system function able to provide for reliable, predictable food security. The sequencing of these will play a role. While secure access to land is usually needed to make significant investments in production systems connected to land resources, pursuit of production system activities (farming, clearing land, construction of houses, agroforestry) can, to a degree, themselves solidify claim in largely tenure insecure environments. While the state will take longer to be in a position to provide realistic and effective tenure security for rural producers, the reworking of customary structures and legalities (including laying claim and proving claim to land resources)

will be of primary importance to attaining food security in the near, medium, and longer-term.

In this context increases in tenure security as a component of livelihood outcomes will be tied to notions of “community” (community level respect for individual level rights). But in post-conflict settings the community is likely to be of a different character than prior to or during a conflict. There will potentially be large numbers of migrants, dislocatees, or returning refugees, along with commercial interests, demobilizing combatants, and international actors that will all belong to a “community” in terms of the needed acknowledgement and respect of land access claims. That components of the community will not adhere to local pre-conflict ideas of authority, evidence, dispute resolution and land allocation (i.e. migrants, combatants, commercial interests) makes this acknowledgement and respect considerably more difficult. And that this new post-conflict ‘community’ is comprised of actors that possess different notions of claim, evidence, and dispute resolution (the factors important to tenure security) that will not be shared by all members of the community, will also be a complicating aspect of livelihood outcomes.

Also important to livelihood outcomes will be issues involving restitution (properties or compensation), resettlement, and eviction of those on land claimed by others. A primary problem here can be that informal authority, equity, welfare (especially of those evicted), retribution, disagreement, and enforcement (and the connections to violence) can become very problematic if the state is not organized, available, and effective in a timely manner to deal with large, aggregate problems of restitution, resettlement, and eviction. If the state is not in a position to handle such issues in what is seen as a fair, supportive manner, with the appropriate alternatives ready, then negative impacts on livelihoods can result and vulnerability may increase. In many cases the state is not in this position, and it may fall on the international community present at the time. Because the UN is most involved in the early post-conflict stages, these issues will likely to eventually become part of peacekeeping and peacebuilding efforts.

## **5. LESSONS LEARNED, WITH APPLICATION TO A CASE STUDY**

### **5.1 Lessons learned**

In the course of intersecting post-conflict land tenure issues with the SL approach (Section 4), a range of lessons learned surfaced which are of further potential utility in enhancing SL approaches in poverty reduction by improving access to land resources.

#### *The relationship between structures and processes*

A post-conflict recovering population will not wait for a legal system to put itself together before engaging in land tenure activities. It is instead up to the formal system to engage the emerging trends of the informal tenure sector early and continually in the re-establishment of the formal system, so that the two have a shared legitimacy and effectiveness that is of real utility. In the case of Rwanda, a senior government official noted that when local people were left to manage land distribution, issues were usually resolved. But when local authorities took the lead, problems often arose (Huggins 2004). Such a situation reveals that the informal and formal tenure systems in a post-conflict situation have developed in different directions, such that when they do interact, problems result. The SL approach, with its overall focus on the interaction between formal and informal tenure actions (how to make rights real), presents significant potential in this regard, particularly if the purposeful interaction of the formal and informal in the “processes, institutions, and policy” component is given priority.

It is expected that there are significant legal opportunities latent in the relationship between the “policies, institutions, and processes” component and “livelihood strategies.” This relationship provides one of the better ways to get at the informal institutional character (embodying informal norms, culture, and governance) regarding what people are actually doing, thereby providing the needed information necessary to inform formal laws regarding property rights.

Building human capital in post-conflict situations will entail taking advantage of the sequencing of formation of tenurial constructs (informal then formal) that will emerge on its own. This will have the advantage of working with the grain, building on what has already been learned, disseminated, and accepted within the informal system as the legal system later is able to be implemented. At the same time early and effective effort put into dissemination of what the state is doing with regard to national land tenure, can have the effect of influencing the development of the informal system, but not always in predictable ways — hence the need for ongoing information gathering from stakeholders.

#### *Objectivity as human capital*

A different form of human capital emerges in post-conflict land dispute circumstances — “objectivity” with regard to mediation of land disputes. In both Rwanda and East Timor dispute mediation processes occurred where lack of state involvement led to the spontaneous formation of local institutions to attend to emerging disputes, including large-scale community-level disputes in East Timor. Important in this institution is the objectivity of an individual or committee that oversees the mediation,

and the recognition of this objectivity by the various sides in the dispute. This form is likely to be an important form of human capital regarding land dispute resolution in problematic post-conflict settings. That it differs from other forms that human capital can take (authority, education, training, and experience) is worth noting, and it would be well considered to include this form of objectivity in the post-conflict variant of human capital within the SL approach.

### ***Forum shopping***

In the context of informal land dispute resolution, forum shopping can emerge as a positive aspect of the PIPs component. Valuable in that it can allow for a peaceful “process” (in a PIPs context) of dispute resolution, mediation, or just repeated attempts at these for large numbers of people and different groups. That forum shopping emerges on its own, and is operated and engaged in by local participants, and serves an important institutional need that the state is unable to provide in post-conflict settings, can be seen as a positive asset that local rural inhabitants do have control over. Given the history in many developing countries of the tenurial disconnect between formal and informal tenure systems, and that the re-development of formal systems in post-conflict settings will reproduce this if there is not concerted effort on the part of government and the relevant international community, a state forum may emerge later as only an addition to the shopping list of possibilities (e.g. Ethiopia, Uganda), as opposed to a single, national approach to dispute resolution.

### ***Opportunity for policy reform***

Post-conflict situations are unique settings in their combination of a weakened formal system, robust, vigorous, but fluid, informal tenure activity, along with the presence of a peace accord, political demands and concessions regarding land, and international actors that can have a large interest and influence in the success of the peace process. While this combination carries risks, it also represents real opportunity for organizational, institutional, and policy reform in the formal land tenure sector. This can potentially lead to an improvement over the arrangement that existed in peacetime. Such an improved relationship can come about as a peace accord seeks to resolve land issues involved in the conflict itself, and because the international community presence in a peace process will be much larger, and much more empowered, and therefore have more influence on government than in peacetime. The result can be a significant effort, pushed by the international community and attendant NGOs, to have legislation support local livelihoods. If this is the case (e.g. Mozambique, East Timor) then this is a significant component of what the rural poor can influence. While variables inherent in such a process can be articulated in the PIPs component, this component needs the addition of international actor policies, institutions, and processes to reflect this large role.

### ***Livelihood strategy switching***

The livelihood strategies component in the SL approach allows an examination of moving from crisis strategies (during conflict) to adaptive and then livelihood strategies after a conflict. Being able to switch from one type of strategy to another requires that the process of pursuing one strategy does not militate against changing

(often itself a process) to another. In this regard the SL approach can isolate what precise support may be needed to facilitate transitioning strategies.

Transitioning from one form of strategy to another can result not only in a redistribution of assets (natural, human, social, etc), but redistribution between types of specific assets (i.e. types of social assets or types of natural assets). In other words the type of asset required for the functioning of a crisis strategy can be different than that needed for an adaptive or livelihood strategy even though the quantity of the asset may be the same.

### ***Post-conflict vulnerability increase***

An initial decrease in vulnerability due to the end of overt hostilities, can be followed by an increase in vulnerability as a significant percentage of the rural population begin moving across the rural landscape, seeking to return to home areas, proceed to new ones, engage in eviction of others, encounter land mines, and lose assistance provided during the conflict and immediate post-conflict period.

## **5.2 Application of the SL approach in a post-conflict case study**

This section describes the utility of the SL approach to “characterize” or better define post-conflict situations, in order to bring clarity to priorities, legislative direction, and development efforts. The case study design would focus on assessing the utility of SLA methods, and advise on changes that would tailor these to post-conflict situations.

This section outlines issues and questions that comprise an initial design to analyze the application of SL approaches to post-conflict land tenure and land administration. The lessons learned above provide a preliminary guide here for looking at specific aspects of the post-conflict environment.

1. A primary macro level question is whether land access problems are acting to slow the progress of the peace process and recovery. Such an issue emerges from the overall outcome of the relationship between structures and processes. The development of this relationship can provide for an overall aggregate process of secure re-access of land, or considerable difficulty in this regard. If the latter is the case, then what are the livelihood strategies of those unable to re-access (or access) land (e.g. resident in shanty towns, engaged in resource extraction, banditry, etc.), and how are these serving to slow recovery. Information necessary to assess this would include an examination of the resettlement and reintegration process, the resulting security of tenure, and the activities of those unable to secure access. Aggregate level views can be difficult to obtain, and may require access to district level officials, NGOs, and donor efforts.
2. The match, or degree of support, between any new or existing legislation (along with government structures and institutions), with what is going on “on the ground” for the national smallholder community will be important. What do the current ‘laws in existence’ provide (legal analysis) in terms of support (specifically) for land access or re-access and the security of these lands in the

post-conflict environment? If there is a process of legislative reform underway, what is the stage of the process, how open or closed is it, and how influential are representatives of various stakeholders in the process, including smallholders or their representatives or advocates; largeholders; and members of the international community? How is information dissemination pursued in the reform process, i.e. to what degree does the smallholder community know about such a process?

3. Related to number 2 above, are the primary patterns of land tenure (and tenure problems) that are emerging from the smallholder sector in different parts of the country. Will either the current “laws in existence” or new legislation be able to adequately connect with these emerging patterns and problems in a way that supports smallholder livelihoods and demonstrates legitimacy, equity, and enforceability? If not, what “direction” are these patterns taking in terms of livelihood strategy and livelihood outcomes? Important sub-questions here can include: what is the current status of the land market and what structures and processes attend to this market; what institutions (at what levels) are in place for land-related conflict resolution or mediation (including human capital), and what is the effectiveness, fairness, utility, and accessibility of these institutions; is “forum shopping” a developing alternative for smallholders, and is the state structure and institutional arrangement for resolving conflicts one of several possibilities?
4. A fluid post-conflict environment will see many in the smallholder sector attempt to switch livelihood strategies between crisis, adaptive, and sustainable strategies. In this regard a case study would need to examine, what land-related problems are involved in transitioning between livelihood strategies? What are the primary obstacles to transitioning to more durable, sustainable strategies, and how does land access, tenure security, land conflict resolution play a role? What are the capital assets (and asset change) needed (as attached to land access) that would facilitate more effective transitioning?
5. The combination of an accumulation of land tenure problems and issues that need near-term attention after a conflict, together with a much weakened post-conflict administrative capacity to deal with these, means that significant categorization of problems may be needed in order to quickly reduce the overall magnitude of issues, and more effectively deal with the large number of problems (categorical level solutions). The results of such a categorization can have real utility in an analytical, policy and legal effort that seeks to be able to address a host of issues with some rapidity—time being an important factor in post-conflict land tenure. Currently in East Timor the donor supported effort by the Ministry of Justice’s Land and Property Unit is categorizing a large volume of complex (and often overlapping) access and claims problems that deal with dislocation, transmigration, resettlement, restitution and eviction. Much of this results from a chaotic documentation setting in which coercion, and abuse of the Portuguese, and Indonesian formal tenure systems took place. In East Timor there exists a complex set of issues involving mixes of formal and informal claims and access problems which reside in a fairly fluid sociopolitical environment. The need to reduce the overall volume of such problems quickly is significant, so that the government

is seen as 'active' on the land question, and in order to reduce the prospect of local returnees taking such matters into their own hands (particularly eviction and restitution), with potentially volatile consequences. This attends to the issue raised in Section 4 on livelihood outcomes, whereby the state stands to gain if it is in a position to handle certain large problems quickly. In East Timor access issues are categorized by type of problem involving sets of title and informal claims, and history, and existing law. And while this appears to be serving East Timor well, the question emerges, what other types of categorization might be workable in an SLA context, and how might the SL approach be used to define categories. Such categorization might be defined by:

- a) livelihood outcomes
- b) by forms of relationship with the state
- c) by asset sets
- d) by evidence
- e) livelihood strategies

## **6. CRITICAL ISSUES THAT REQUIRE FURTHER ATTENTION**

### **6.1 Additions to key questions**

While the scoping paper “Access to land in post-conflict situations: an analytical paper” (Thomson 2003) contributes much in terms of a way ahead for assessing formal tenure structure in post-conflict environments, additional questions added to the section on “Key Questions” might allow for more of the informal land tenure activity, patterns, and direction to be included. Such questions might include, among others: what is government doing to draw legitimacy from what is already going on in the informal sector? What is government doing to actively engage the informal sector so that the redevelopment of the formal sector stays connected to the direction that the informal sector is taking? More basically, what is government doing to find out what is actually going on “on the ground?”

### **6.2 The time dilemma**

The time dilemma (informal tenure activity occurs quickly, formal tenure system reconstruction occurs slowly) is a significant problem. Attention needs to be placed on finding out what the formal system can do quickly to engage, and stay connected to the evolving informal system. The Rwanda case study provides an interesting example for part of this problem, where the government publicized the 1996 Ministerial order on temporary occupation of land in order to reassure refugees that they would be able to reclaim property when they returned (Huggins 2004). As well, the speech given by then vice president Paul Kagame, at the end of 1997 had an interesting effect on those that had occupied the houses and lands of refugees. To many of the occupiers (old caseload refugees) the motivation for vacating properties was this speech, and not the new regulations that obligated them to do depart. This seemed to operate from a mix of both respect for Kagame, and also to the commitment he made in the speech ensuring that the army would be available to evict any temporary occupants who refused to depart from properties on time (Huggins 2004). Both can be seen as attempts to connect with the informal sector early on in the process of formal tenure reconstruction. Whether or not such efforts can be sustained, refrain from being heavy-handed, seen as fair, and can learn to adapt to the informal sector, remains to be seen. The potential for this type of connection resides in the PIPs component of the SL approach, and further consideration of this component in a post-conflict tenure context might benefit from an examination of the possibilities involving time.

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## Further information about the LSP

The Livelihood Support Programme (LSP) works through the following sub-programmes:

### **Improving people's access to natural resources**

Access of the poor to natural assets is essential for sustainable poverty reduction. The livelihoods of rural people with limited or no access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating assets, and recuperating after shocks or misfortunes.

### **Participation, Policy and Local Governance**

Local people, especially the poor, often have weak or indirect influence on policies that affect their livelihoods. Policies developed at the central level are often not responsive to local needs and may not enable access of the rural poor to needed assets and services.

### **Livelihoods diversification and enterprise development**

Diversification can assist households to insulate themselves from environmental and economic shocks, trends and seasonality – in effect, to be less vulnerable. Livelihoods diversification is complex, and strategies can include enterprise development.

### **Natural resource conflict management**

Resource conflicts are often about access to and control over natural assets that are fundamental to the livelihoods of many poor people. Therefore, the shocks caused by these conflicts can increase the vulnerability of the poor.

### **Institutional learning**

The institutional learning sub-programme has been set up to ensure that lessons learned from cross-departmental, cross-sectoral team work, and the application of sustainable livelihoods approaches, are identified, analysed and evaluated for feedback into the programme.

### **Capacity building**

The capacity building sub-programme functions as a service-provider to the overall programme, by building a training programme that responds to the emerging needs and priorities identified through the work of the other sub-programmes.

### **People-centred approaches in different cultural contexts**

A critical review and comparison of different recent development approaches used in different development contexts is being conducted, drawing on experience at the strategic and field levels in different sectors and regions.

### **Mainstreaming sustainable livelihoods approaches in the field**

FAO designs resource management projects worth more than US\$1.5 billion per year. Since smallholder agriculture continues to be the main livelihood source for most of the world's poor, if some of these projects could be improved, the potential impact could be substantial.

### **Sustainable Livelihoods Referral and Response Facility**

A Referral and Response Facility has been established to respond to the increasing number of requests from within FAO for assistance on integrating sustainable livelihood and people-centred approaches into both new and existing programmes and activities.

For further information on the Livelihood Support Programme,  
contact the programme coordinator:  
Email: [LSP@fao.org](mailto:LSP@fao.org)

## **LSP WORKING PAPERS to February 2005**

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