

John W. Bruce
with Sally Holt

Land and Conflict Prevention



Initiative on
Quiet diplomacy

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The Initiative on Quiet Diplomacy (IQd) seeks to address the root and proximate causes of violent conflict—before they escalate into violence—by helping develop institutions in regional, sub-regional and other inter-governmental organisations, providing key actors with tools and techniques to identify, assess and respond to recurring issues in conflict situations, and supporting and facilitating dialogue and mediation processes.

IQd brings normative and security perspectives to the development of effective institutions at inter-governmental, national and local levels to help peacefully mediate the differences that can lead to tensions in any diverse society. Our value-added is knowledge of recurring issues in conflict situations, and experience developing and implementing responses via a quiet diplomatic approach that bridges the gap between norms and action.

IQd is working to achieve a just and stable world without violent conflict, in which individuals and groups can peacefully reconcile their interests, enjoy their rights, satisfy their needs, and pursue social and economic development.

For information about the Initiative on Quiet Diplomacy, please visit our website at www.iqdiplomacy.org or contact Craig Collins, IQd Coordinator, at ccollins@iqdiplomacy.org

Initiative on Quiet Diplomacy
University of Essex
Colchester
CO4 3SQ
United Kingdom

T +44 1206 872829
F +44 1206 873627

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About the Authors

Principal author, **John W. Bruce**, has worked on land policy and law in over fifty developing countries and has worked on land and conflict issues in contexts as diverse as Mozambique, Cambodia, Malawi, China, Sudan, South Africa, Rwanda, and the West Bank and Gaza.

Dr. Bruce began work on land tenure in the late 1960s as a Peace Corps legal advisor to the Ministry of Land Reform in Ethiopia and later undertook research for his legal doctorate on customary land tenure in Ethiopia's Tigray region. He spent five years in Sudan as the Ford Foundation's representative in the 1970s, teaching Property at the Faculty of Law of the University of Khartoum and coordinating the Faculty's Sudan Customary Law Research Project. He returned to the USA in 1980, to the University of Wisconsin-Madison's Land Tenure Center, an interdisciplinary research centre working on land tenure issues in developing countries. He served first as African Program Coordinator, and then as Director. In 1996 he left the University to join the World Bank, where he served as Senior Counsel (Land Law) and Senior Land Tenure Specialist for the Bank's Rural Development Department. He retired from the World Bank in 2006 and now consults for development agencies through Land and Development Solutions International, based in Vienna, Virginia.

He has published extensively on land policy and law, focusing on legal empowerment of the poor, land governance, and land and conflict. He holds a BA in International Relations from Lafayette College, a JD from Columbia University Law School and an SJD from the Law School of the University of Wisconsin-Madison.

Sally Holt oversees IQd's Knowledge and Practice activities including development of the Conflict Prevention Handbook Series. A former archaeologist, she has worked for over ten years in the fields of security, development and human rights, specialising in minority rights. Prior to joining IQd in 2008 she managed a project on social inclusion for the Aga Khan Foundation. She has also been a Research Fellow in Peace Studies at the University of Bradford, UK (2004-2007), and a Legal Officer for the OSCE High Commissioner on National Minorities (2000-2004). Ms. Holt's recent research and publications relate primarily to diversity management, social integration, and conflict prevention. She is the principal author of the IQd handbook on the management of cultural diversity and holds an MA in Human Rights from the Institute of Commonwealth Studies, University of London.

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Series Overview

The aim of the Conflict Prevention Handbook Series is to enhance the capacities and improve the effectiveness of conflict prevention actors, especially those at inter-governmental level. These ‘third-parties’ involved in inter-communal and related conflicts are faced with the difficult challenges of how to contain and de-escalate tensions and disputes before they erupt into violent conflict. Such conflicts typically build over a long period of time and are fuelled by real or perceived grievances about matters that affect the everyday life of members of different communities in a society. Successful third-party engagement must therefore be capable of responding to immediate triggers and proximate causes of a dispute, while also addressing root causes through reconciliation, institution-building, and political and economic transformation. Successful engagement requires the tools appropriate to the related issues and to processes.

In this light, the Conflict Prevention Handbook Series provides previously unavailable practical resources around selected issue areas that are amongst the common grievances of parties to inter-communal conflicts and, thus, are sources of tension that international, national and local actors require to manage, if not resolve, in order to avoid violence. The handbooks present, analyse and evaluate options available to address these recurring substantive issues. Though primarily issue-oriented, the series also consists of process-related topics. Subjects treated reflect the specific needs of conflict prevention actors, and have been chosen from experience, observation and the recommendations of senior inter-governmental officials and other practitioners.

Each handbook provides: methodologies for assessing a situation and determining the causes of conflict; a process for the selection of possible approaches and measures to address the issue(s); considerations and conditions relevant to the selection and implementation of the measures; information about expected outcomes; concrete examples (including comparative law and practice) from different contexts; and practical resources upon which actors can draw. The handbooks draw clearly from international normative frameworks and follow a problem-solving approach.

The relatively concise, easily accessible and specific nature of the handbooks is intended to provide concrete and immediate guidance to conflict prevention actors, thus enhancing both the processes and outcomes of their activities. As such, they are not meant to replace deeper learning or training, but rather be useful tools for practitioners who may not be specialists on various topics and can benefit from initial guidance and further references. Each commissioned handbook is written by experts in the field, developed and edited under the close supervision of the global Initiative on Quiet Diplomacy, peer-reviewed, and subjected to external scrutiny and critique. The author(s) of each handbook are responsible for its content.

Land and Conflict Prevention is the sixth topic in this Handbook Series. It addresses one of the recurrent causes of conflict which intimately links security, development, and human rights. Principally authored by a land specialist, it enables conflict prevention actors easily to identify and respond to the root and proximate causes of land-related conflict before violence erupts or recurs.

John Packer

Senior Adviser, Initiative on Quiet Diplomacy

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Foreword

Many, if not all, violent conflicts involve some form of tensions over land. Historical grievances and competing claims to access rights, tenure insecurity and unequal distribution of land are common causes of tension which can all too easily tip over into violence in the face of significant changes in the social, political and economic balance of a country. Current trends in population growth, climate change, environmental degradation, land use and resettlement patterns create a very real and rapidly growing potential for conflicts as demands multiply and competition for land increases. My own country of Liberia is a case in point. In the aftermath of fourteen years of civil war, small conflicts between individuals and families over land persist and bigger conflicts involving foreign concessions and local communities loom on the horizon as weak institutions struggle with environmental and population challenges such as urbanisation.

Conflicts over land are not always the precursor to violence. Indeed they can be a positive force for catalytic change—when access is provided for the previously landless poor, for example. But, it is essential that they are actively and effectively managed to ensure peace is reinforced rather than threatened. In my experience this can involve a difficult and on-going balancing act between competing interests and claims. In the case of Liberia, claims between big concessions and small-holders, between those engaged in tree crop production and food production, and between the extensions of the defunct oligarchy and newly empowered claimants, among others, have the potential to destabilise the peace. Conflicts tend to be complex, multi-layered and multi-dimensional. Each is different and must be considered in the context of its own particular history, development and possible resolutions. This handbook provides invaluable practical step-by-step guidance for those seeking to address and mitigate such conflicts to identify, analyse, and respond to sources of tension before they can escalate into violence.

Drawing on his academic work and extensive practical involvement as a land expert in numerous situations and processes the principal author sets out a clear and comprehensive range of options in policy, law and practice that can be tailored to the situation at hand. Examples from across the globe illustrate the advantages and potential drawbacks of different options in practice. Emphasis is on creation of sustainable structures, systems and institutions for the effective management of land-related disputes and conflicts in the long term. Short-term measures which can be critical to managing conflict and help buy valuable time are also presented. Some useful pointers are also provided for third-party actors in selecting approaches and developing strategies for encouraging and influencing change and in recognising the critical windows of opportunity which can make the difference between war and peace.

As a practitioner who has been actively involved in seeking solutions to conflicts over land in Liberia, as well as deeper understanding of such conflicts in Kenya and elsewhere in Africa, I particularly welcome the problem-solving and assistance-oriented approach presented in this handbook. I also believe that ensuring considered, well-chosen responses to disputes and conflicts over land which are rooted in international standards and draw on accumulated knowledge derived from comparative practice not only grants them legitimacy, but increases the likelihood of effectiveness and durability in practice. The need for careful study and analysis, as well as innovation and adaptation in crafting and deploying institutions and other measures for addressing the governance challenges involving land cannot be overstated. I congratulate IQd on this valuable initiative which yields a particularly accessible tool.

Dr. Amos Sawyer

Chairman of the Governance Commission, Liberia; Interim President of Liberia (1990–1994)

1. Context and Analytical Framework

1.1. The Link between Land and Conflict

Land is a valuable resource, with economic and strategic value, and political and cultural significance. Individuals, communities, private sector actors, the State and others use land for different, often opposing, purposes and seek to benefit from land, sometimes to the detriment—real or perceived—of others. While land remains a largely fixed asset, the demands upon land generally increase, with resulting tensions. The last decade has seen growing recognition of these dynamics, and of the major role played by competition for land in generating conflict.

Land as a valuable resource: Land plays a central role in livelihoods in developing countries. As a base for agricultural production, it is the primary source of the food security of rural people and the major source from which countries feed their urban populations. Land is increasingly sought after by international corporations as prices of food, biofuel crops and wood products have risen. At the same time, the use of land for conservation purposes has grown, most dramatically as international actors now seek land to preserve trees and plants, driven by concern over climate change. In addition to its economic value in current uses, land has a broader economic role as a capital asset. Land values are leveraged through mortgaging and similar arrangements to obtain funds for investment and development, making land critical for the generation of domestic capital.

Increasing demand: While land is a fixed asset which cannot be significantly increased, population and demands for land and land-based resources have multiplied inexorably over time. Land use can be intensified, but intensification is often costly and has difficulty keeping up with demand. New land development is less expensive and so competition for that land grows. Pressure on land can grow on a local basis, as when a land-using community finds its natural expansion areas encroached upon by outsiders and different land uses, or on a national level or even the international level. Globalisation means that land in locales viewed a decade ago as areas of abundant land is now becoming, in global terms, a scarce and sought-after resource. This growing external demand for land—whether for biofuel production, food production, carbon sequestration, biodiversity and other conservation purposes, coupled with diverse interests and needs at national and local level—creates a real and rapidly increasing potential for serious conflict which lends urgency to the challenges dealt with in this handbook.

Political, strategic, and cultural significance: In addition to its important production and other economic values, land has political, strategic and cultural significance. It constitutes the territory of political entities, from States to tribes. Control of land is seen by many governments as critical to the influence they exercise over their populations and control of their nation's economic development and security. Land is a strategic resource, over which States and other communities have often gone to war. It is a highly politicised resource, because access to land is a major determinant of who benefits from growth and who lives in poverty. Long-standing concentration of land and housing in the hands of a few has fuelled insurgencies and revolutions

around the world, as have on-going elite appropriations of land from local communities. Some communities, who may occupy land and other land-based resources under their own customary systems of land governance, regard their relationship to those resources as critical to their cultural identity. Those resources compose their environment, their living space, and their patrimony—their homeland. They regard continued (or renewed) control of them as vital to the survival of their cultures.

Nature and levels of conflict: Given the economic, political and cultural significance of land, access and rights to land are crucial issues underlying land-related tensions and conflict. It should be stressed that competition and conflict are natural aspects of change. They can play a constructive role if managed effectively. But they can easily escalate into violence. Such conflict may be local, as when governments confer land on concessionaires who seek to expel users who have utilised the land for generations—and then fail to develop the land; or when a city begins a programme of ‘slum clearance’ that deprives the urban poor not only of shelter but of access to the city-centre labour opportunities on which they have depended. Conflict may be on a national scale, as when a State is convulsed by the political ascendancy of the dispossessed who overturn old regimes and land reforms and counter-reforms ensue, or an alienated region seeks to secede and civil war results. It may be international, as when a landlocked country fights for coastal access or countries dispute control of islands on their frontiers.

Underlying causes and triggers of conflict: There are conditions that create vulnerability to conflicts, such as acute land scarcity, insecurity of tenure and long-standing land grievances between groups. There are also events that tend to trigger such conflict, events which suddenly intensify competition for land, such as displacement by war, government takings of land, or State failure. And while competition for land is often a cause of conflict, it is important to note that what is ostensibly a conflict over land may have a different cause altogether. Land has great emotional import, and in some cases conflict entrepreneurs introduce land issues into contentious contexts to arouse people to violence.

Neither land use nor the actors who use it are static. Land use evolves in response to changes in technology, markets and climate, and actors adjust to accommodate these changes. In this constantly shifting context, old tensions between different actors around the control and use of land may be exacerbated and new ones emerge. Unless managed effectively, such tensions can easily result in violent conflict.

1.2. About the Handbook

1.2.1. AIMS AND AUDIENCE

The **aim** of this handbook is to provide guidance to key actors in the prevention, mitigation and resolution of land-related conflicts. As with the other volumes in the IQd Conflict Prevention Handbook Series, the handbook presents, analyses and evaluates means and measures available to address recurring issues and matters of process in conflict situations and provides concrete guidance in the selection and development of the most appropriate and effective measures for preventing or de-escalating violence. These include long-term initiatives targeting root causes of conflict, which may fall in the category of structural prevention, as well as operational prevention to address root and proximate causes as tensions escalate and/or once violence subsides and outstanding issues (as well as new ones generated by conflict) once again become live to negotiation.

Structural prevention comprises long-term interventions that aim to transform key socio-economic, political and institutional factors that if left unaddressed could lead to violent conflict in the future.

Operational prevention refers to relatively short-term measures in the face of an immediate threat or crisis.

The handbook aims to present the conflict prevention (CP) actor with a range of potential tools that can be usefully employed in the management of tensions and disagreements over land, while indicating related risks and limitations (including, for example, in terms of the context in which particular options might be applied).

The **target audience** includes diplomats, senior officials and relevant staff of regional and other inter-governmental organisations (ROIGOs) acting as mediators and facilitators to prevent and resolve land conflicts, as well as negotiators from parties in conflict. These CP actors will often not have a strong background in land issues, and this handbook seeks to strengthen their understanding of those issues. At the same time, it may be a useful tool for land experts with relatively little exposure to the practice of conflict prevention and conflict management. Ultimately, a greater number of actors with an integrated knowledge of land and conflict prevention are needed to enable more effective preventive action. The handbook will hopefully also be useful to a range of other actors, including national and local officials as well as civil society representatives dealing with these issues.

1.2.2. FOCUS

The handbook's focus is on **land and property rights in land**. Land is the physical resource itself, and can be subject to use and possession. Use and possession are matters of fact, with 'possession' suggesting a regular if not necessarily constant presence on the land and control over it. Neither use nor possession necessarily implies a right to the land. Land is sometimes occupied and used by those with no right to do so. Property rights, however, may exist over land and provide a legal basis for use and possession of that land, including the right to exclude others.

Property rights over land are known as 'real property rights' in common law systems and 'immoveable property rights' in civil law systems. They are often referred to as land 'tenure', the legal terms under which land is held.

Such rights in most legal systems include both the land and things relatively permanently attached to it, such as residences or trees. These rights are often the focus of disagreements over land.

This handbook deals primarily with land in its most common roles related to livelihoods: land as farms, residences, pasture and homes. Issues of commercial properties or industrial properties are hardly addressed, and so urban coverage is similarly limited. Another handbook on conflict over natural resources is being prepared as part of this Series, so little treatment is given to forest and mineral resources. These categories of land-based resources tend to overlap, of course, and no hard lines can be drawn, but the relative emphasis of the handbook will be apparent.

Land-related Concepts and Terms

The discourse on land policy and tenure involves terms from both law and economics. Consistency in use of land terminology greatly facilitates understanding and discussion of land-related conflict. Failure in this respect allows parties with competing claims to ‘talk past’ one another. Such communication failures can be dangerous.

Land: a physical asset, consisting of the soil and sub-soil. However, in most modern legal systems, ownership of land carries with it ownership of houses, trees and other items relatively permanently ‘attached’ to it. ‘Land’ is therefore sometimes used as shorthand for these assets and land-based resources generally. This is not always the legal position, however, and should not be assumed.

Land access: The opportunity to acquire and use land; also the fact of having acquired access.

Land policy: An official statement by a government or other institution of its intentions and plans regarding the conservation, use and allocation of land. Such policies usually lack the force of law.

Land law: The body of law relating to the acquisition, use and disposal of land, including laws defining and regulating property rights and those conferring on State or other institutions competences with respect to land (e.g., land administration, land management, land use planning and land taxation).

Land tenure: The ‘bundle’ of privileges and responsibilities inherent in a particular property right such as ownership, leasehold or mortgage. ‘Land tenure’ and ‘property right’ are often used synonymously, and are roughly equivalent. ‘Land tenure’ is a term of feudal English land law, but is often used today in discussions of property rights in land.

Land tenure system: The totality of property rights in land operating within a State or sub-State polity, as well as the institutions responsible for implementing them, the patterns of land distribution they have formed and protect, and the cultural meanings of land—all understood as a system in which the various elements work together to achieve policy objectives.

The handbook’s focus on **conflict** is motivated by a concern over the potential for and need to avert violent conflict, but it necessarily deals with land-related conflict more broadly. The term ‘land-related conflict’ as used here means active and incompatible claims to land. It does not necessarily imply violent conflict, which is specified where intended. The handbook often refers to land disputes, which are more limited in nature and which may or may not be a reflection of broader conflict over land.

Land dispute: Competing or conflicting claims to rights to land by two or more parties, individuals or groups. Land dispute is used here to describe a competition that is local, focused on a particular piece of land, and in which the parties have framed claims which can be addressed under existing law. The dispute is over the facts or the interpretation of law agreed to be controlling. Land disputes between individuals may or may not reflect some broader group conflict over land.

Land conflict: Competing or conflicting claims to land, often to large areas of land, typically by groups, which reflect broader and deeper competing interests than those involved in most land disputes and which are not easily resolved through negotiation or adjudication within the existing legal framework. There may be no agreement as to the applicable law, and parties often have fundamentally different views of the nature of the conflict. The term ‘conflict’ implies tension and danger of violence but not the presence of violence unless this is specified.

Finally, the handbook’s focus on **prevention** distinguishes it to some extent from the considerable and valuable work done in recent years on land in the post-conflict context. It is intended for CP actors in situations where conflict is present and violent conflict appears to threaten. Competition over land is almost always present, and becomes conflict when conflicting explicit claims are made, and tensions rise. Prevention in this context often means managing competition and conflict so they do not become violent. The prevention focus requires the CP actor to ask both what immediate measures may be needed, and to take a longer view, asking what reforms of policies, laws and institutional frameworks can reduce the prospects of future conflict.

The focus on prevention does not exclude discussion of post-conflict situations, which often have potential for further conflict. This potential may relate to old claims unresolved by war but may also include new problems growing out of the dislocations caused by war and civil strife. The post-conflict context has special characteristics; restitution of land to refugees and internally displaced persons (IDPs) is the priority for humanitarian organisations, and national institutions tend to be incapacitated and in disarray. Lessons from that context may still have broader applicability, and the handbook draws upon these. In addition, there are windows of opportunity for conflict resolution in the post-conflict context as the political situation becomes set—after which potential for reform and implementation may diminish. This period also presents particular risks, including opportunities for conflict entrepreneurs. This experience is noted as appropriate.

Warning:

‘If countries emerging from conflict are to begin the process of economic recovery, resettle refugees and displaced people, and prevent land grabbing by the powerful, they will have to deal with land rights. And they have to do this while avoiding further social tensions, injustice or secondary conflicts.’

UK Department for International Development. *Land: Better Access and Secure Rights for Poor People*, 2007, p. 18.

Ultimately, the purpose of this handbook is to inform and enable CP actors to find the space for legal, institutional and policy reform, and to promote substantive reform that is in line with international standards and effective practices. The approaches described in the next sub-section reflect this.

1.2.3. APPROACHES

Normative approach: The guidance provided here is rooted in international norms and principles, including human rights, which provide a helpful framework for diagnosing ‘what’s wrong’, as well as indications of ‘what works’. Such a ‘**human rights-informed**’ approach recognises the potential of international human rights standards to contribute to the de-escalation (if not complete resolution) of disputes and tensions

around contentious land issues, but also their limitations in this regard. The process of identifying, analysing and responding to land-related sources of conflict should be informed by respect for the human rights of the populace at large and those of specially protected groups, as well as principles of good governance. This implies an inclusive approach to dispute resolution and the management of land resources informed by a concern for fairness and equity, as opposed to a more exclusive focus on power-brokers. The normative framework is a resource, to be drawn upon in devising practical solutions that achieve these objectives.

The handbook also recognises that normative frameworks other than human rights (such as humanitarian, refugee, or religious law) can be equally—if not more—useful and effective in certain circumstances. The normative framework for this handbook draws on international law, national law and local norms, as well as general principles of good governance in land matters.

Quiet diplomatic approach: In keeping with principles of good governance, the handbook seeks to avoid a zero-sum approach in the resolution of disputes and management of land-based resources. In many cases it can be the claim or realisation of a right—or the way that right is expressed—that is a source of tension. The handbook therefore alerts CP actors to a range of diplomatic means for managing tensions arising from competing interests and claims, including through techniques and mechanisms for dialogue and mediation. This **assistance-oriented** and **problem-solving** approach relies on cooperative and facilitative processes to identify viable and sustainable solutions to which all parties can adhere. Early, meaningful and substantive engagement is essential, because addressing the fundamental causes of conflict is a long-term process that will often take many years, requiring careful planning and the creation of effective systems and structures. In the short term, the emphasis is on the management of conflict to reduce the risk of—or diminish existing—violence, rather than the less realistic objective of total avoidance of conflict. But it is important not to stop at addressing the symptoms of conflict, such as a backlog of court cases on land, without addressing the underlying causes for those disputes. Indeed CP actors are encouraged to recognise and exploit the potentially catalytic role that conflicts over land-based resources can have in bringing about positive transformative structural changes, in terms of reforms that promote greater access and equity, for example.

Comparative States' practice: While situations may differ, precluding universal policy prescriptions, a number of lessons can nevertheless be drawn from an examination of comparative practice across States. The handbook draws on examples of 'effective practice', i.e. generally or specifically successful practices proven to work in real situations. Throughout the handbook, examples of effective or ineffective practice, as well as the consequences of failure to act, are provided both in the text and in boxes.

Process-oriented approach: Conflict and its prevention are highly contextual, and realistic solutions must respect and take into account national and local values and sensitivities. These can be pronounced in the case of land resources, for the reasons noted in the introduction. Respect for the local context requires a structured process, and this handbook sets out clear step-by-step guidance for the CP actor in identifying, analysing, and responding to the sources of tension in a particular situation that left unmanaged or managed poorly may lead to violent conflict.

1.2.4. HANDBOOK STRUCTURE

Section 1 has presented the intentions behind this handbook, including its objectives and the main audience to which it is addressed.

- Section 2 sets out a clear step-by-step process for the CP actor to follow when engaging on land issues in (potential) conflict situations. It identifies principles and factors applicable throughout the process, as well as key objectives.
- Section 3 explores the normative environment which those seeking to manage and, if possible, resolve land-related disputes and conflicts must understand. It is oriented by recognition of the pervasiveness of legal pluralism in most national situations and the complexity of land conflict when a number of different bodies of norms of different origins are at play.
- Section 4 sets out a normative approach to assessing and addressing land disputes and conflicts drawing on international standards and practice including international human rights, humanitarian and refugee law. It sets out fundamental rights and freedoms to be universally enjoyed and those to be enjoyed by specific groups. Guidance is provided in the assessment of grievances arising from violations of rights, including discrimination, as well as in assessing competing claims.
- Section 5 assists the CP actor in identifying the causes of land-related conflict. It first identifies some common ‘vulnerabilities’ in land tenure systems that create potential for land-related conflict. These root causes may be reflected in on-going conflict and portend violence. Proximate factors that may intensify tensions and create conditions for violence, and ‘trigger events’ that can tip the balance from tense but peaceful conflict to violence are then identified. Finally, the phases in which land issues can be seen playing a role— before, during and after conflict—are introduced.
- Section 6 guides the CP actor through the process of identifying and assessing conflict related to land resources. It sets out the use of stakeholder analysis, and assessment of the normative environment, including identification of normative failures. Some important factors that should inform processes of assessment and response, such as regime capacity and will for change are also noted.
- Section 7 provides guidance in thinking through and promoting responses to situations in which there appears to be a danger of conflict over land becoming violent and endangering national or international peace. It outlines both process measures aimed at improving the operation of existing land tenure systems and substantive measures to address issues such as land access, land rights, and land distribution. Key options and methods for reform in the spheres of policy, law and institutional practice and dispute resolution are outlined. Specific guidance is provided as to how to avoid displacement, build security of tenure, improve land access, and resolve disputes. In addition to these longer-term measures, short-term options where violent conflict seems imminent are explored.
- Section 8 looks at the role of the conflict prevention actor in promoting the adoption and implementation of effective responses, and discusses some possibilities for dealing with related political sensitivities. Finally, it considers how implementation can be monitored and evaluated, and the possibilities for donor funding and coordination.
- Annexes provide: a table of selected international standards; extracts of some key provisions from international instruments; and web-links to some relevant organisations and useful resources.

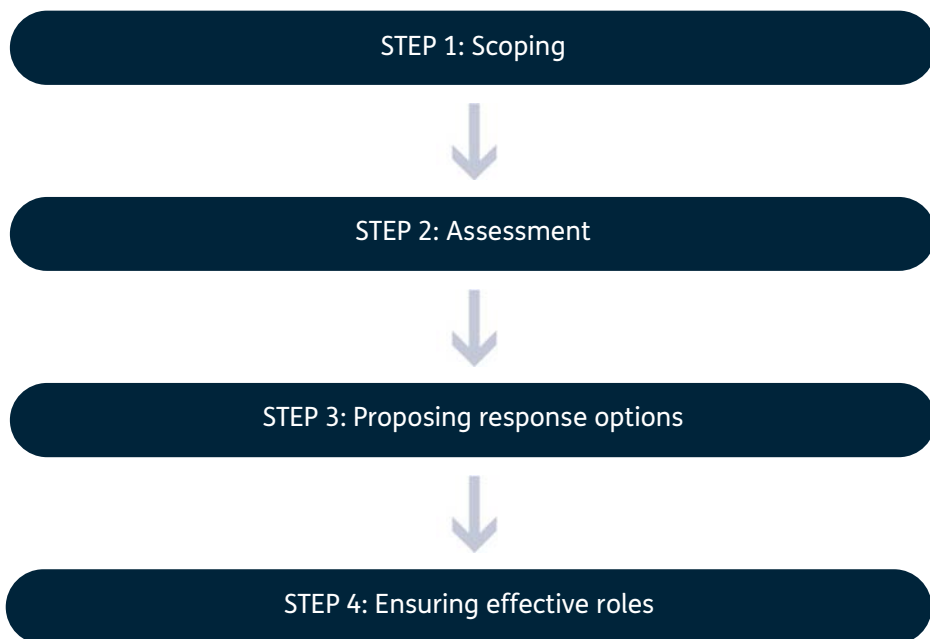
BOX 1. Ten Key Points to Remember

1. Competition over land can generate conflict, and often violent conflict, because land is closely tied to issues of livelihoods, identity and power.
2. Land-related conflict often has deep roots in history and culture and must be understood in those contexts.
3. Property plays an important role in conflict over land, but should be seen from two perspectives: the right of people to access the land they need, and the right of those who hold land to be secure in it. A creative tension exists between these two concepts, which must be constantly balanced. Land rights thus have social and political dimensions.
4. It is important for CP actors to ground their efforts in international standards and effective practices. These provide both a principled and pragmatic platform from which effective engagement may be developed.
5. In addressing land-related conflict, it is important to understand whether actions treat the cause or merely the symptoms.
6. Emphasis should be on the creation of sustainable systems, structures and institutions for the effective long-term management of land-related disputes and conflicts.
7. Conflict over land tends to pass through pre-conflict, conflict, and post-conflict situations—transforming conflict and being transformed by conflict—and CP actors may find opportunities to act at any of these stages.
8. Expectations should be modest. Complete resolution may be impossible, but mitigation and management of land conflicts may make the difference between peace and war.
9. CP actors have key roles to play, but much depends upon how they create new understandings and motivate others. In particular, lack of political will on the part of governments is a major impediment to defusing or resolving conflict over land. It is important to monitor land conflict situations carefully, identify political windows of opportunity which permit effective action, and act promptly.
10. Limited government capacity is also an impediment to preventing violence, and so any robust approach must include building capacity in government to deal effectively with issues in the land sector.

2. Process, Principles and Objectives

2.1. Process

The following four steps provide a procedural framework to identify and assess problematic land-related situations which need to be addressed, and develop appropriate immediate and long-term measures and responses. Guidance for executing this process is elaborated in detail in Sections 5-8.



STEP 1: SCOPING

Scoping is the process by which CP actors should seek to identify and understand, in a preliminary fashion, the potential and existing conflicts in a given context. The process must be field-based and inclusive.

STEP 2: ASSESSMENT

An assessment should be carried out involving the systematic gathering and analysis of data on causes of conflicts, the nature and frequency of disputes, interests and roles of different stakeholders, and identification of the potential responses (institutional and substantive) for managing tensions and preventing violent conflict.

STEP 3: PROPOSING RESPONSE OPTIONS

CP actors may then identify concrete options in policy, law and practice for managing and resolving conflicts, propose them to governments and other actors, and promote their implementation. Specific substantive and procedural responses will be required.

STEP 4: ENSURING EFFECTIVE ROLES

Having identified appropriate responses, CP actors should examine the roles they can themselves most usefully play—what they can do directly, where they can effectively influence and which national actors they can most usefully support. Monitoring and evaluation (M & E) is an area of crucial importance for ensuring effectiveness of measures and processes, which CP actors can promote and/or contribute to directly.

2.2. General Principles

The process outlined above should be informed throughout by general principles and accumulated knowledge.

2.2.1. STAKEHOLDER ENGAGEMENT

Stakeholder engagement is essential for conducting an accurate scoping/assessment and ensuring the success and legitimacy of any policy, legislative or institutional measures or programmes subsequently developed.

PARTICIPATION AND REPRESENTATION

Scoping/assessment processes and subsequent making and implementation of land policy and law should be conducted in an open, democratic and inclusive manner involving directly-affected persons and communities, as well as other stakeholders (e.g. independent experts, relevant governmental officials, and private sector and civil society representatives), and the general public more broadly. In this respect:

- **Careful and early identification of stakeholders** and their active and meaningful participation throughout subsequent processes are essential, from scoping/assessment through all phases of policy, legislation or programme implementation and evaluation.
- **Procedural safeguards** should be in place so that official processes touching on land, and especially those involved in takings of land, provide fair notice periods, adequate hearings, and appeals.
- **Community-centred approaches**, designed to facilitate peoples' own identification and analysis of their land-related needs and interests, and find 'home grown' solutions which can help promote ownership and 'buy-in' should be followed.
- **Broad public consultation** with affected individuals and groups can take place through a variety of mechanisms including rapid appraisals, conflict mapping, public meetings and focus groups, as well as more extended studies utilising surveys and other household interviewing.

Tip:

Direct engagement at the scoping/assessment stage provides factual information and insights, as well as opportunities to build relationships with different parties that help establish a process of dialogue.

- Efforts should be made to **engage with all constituencies** within different claimant or stakeholder groups, especially those who may be vulnerable or marginalised within their communities. Such diversity should be reflected in consultative processes, and in envisaged measures, where appropriate.
- A **gender perspective** should be mainstreamed throughout the process, remembering that both problems and proposed solutions affect men and women differently, and it is especially important that women are involved in processes and programmes for change.

CONFIDENCE-BUILDING

Before constructive dialogue and consultation between parties to land conflict is possible, confidence-building measures may be needed to help de-escalate existing tensions and re-establish trust. These may include:

- **Establishing reconciliation processes**, which may entail establishing a task force or commission or holding public hearings to examine grievances and propose action. Public awareness campaigns may also be useful in such situations.
- **Public recognition** by officials or political leaders of a particular problem and a commitment to take action to address past or present injustice and inequalities can help reduce tensions and establish trust and constructive communication with communities. The timing of a particular action or statement for maximum effect can be an important consideration.
- **Transparency** is fundamental in carrying out scoping/assessment processes, presenting the outcomes, and developing subsequent responses. Processes of consultation, dialogue and information dissemination (e.g. through the media) can be particularly useful for informing various stakeholders of the rights and interests involved and the basis upon which the most appropriate response has been (or should be) determined.

CAPACITY-BUILDING:

Although affected individuals or communities are often acutely aware of the problems they face, they may not be fully aware of all the causes or in a position to articulate or effectively pursue their interests or specific claims with regard to land.

- **Information and awareness campaigns** can help parties in the process gain a deeper understanding of their rights, as well as the different policy options available, processes and conditions for developing them and their likely effects.
- **Involvement of communities** in consultative processes, as well as support for legitimate local leaders and community organisations, are examples of useful capacity-building tools.

2.2.2. DEVELOPING RESPONSES

Additional principles and factors that should be taken into account specifically in the process of developing responses in law, policy and practice include:

- **Holistic approach:** CP actors should be aware of the inter-related effects of policies, laws and measures recommended. Appropriate responses need to be coordinated and carried out simultaneously or carefully sequenced across legal, political and socio-economic spheres.

- **Political patience:** it is important to avoid piecemeal and reactive policy in response to immediate political or economic pressures. Long-term sustainability and the likely effects of proposed responses should be carefully considered. Suitable short-term measures to address a particular issue should be part of a long-term strategy.
- **Local and traditional knowledge:** respect for local and traditional values and customs should be integral to the formulation of response options insofar as they respect individual human rights. In particular, the potential of traditional systems and structures to manage or resolve land-related disputes and conflicts should be acknowledged and harnessed where appropriate.

Be aware:

Traditional customs, systems and institutions may incorporate discriminatory elements or otherwise conflict with fundamental human rights. In such case, they should not be supported *per se*, but efforts made to influence change.

2.3. Objectives

Throughout the process, CP actors should keep in mind the following substantive and procedural objectives derived from international and comparative law, principles of good governance, and examples of effective practice.

- **Affordable access to land and housing:** Persons in need of land or housing should be provided access to those resources at a cost they can afford.
- **Equitable distribution of land resources:** Distribution should be fair, ensuring broad access to avoid landlessness and homelessness.
- **Non-discriminatory access to property rights:** Property rights should be available and protected without discrimination. The vulnerability of women, minorities and other disadvantaged groups may call for special protections.
- **Efficient use of land resources:** It is important to conserve for local communities the land upon which their livelihoods depend. At the same time, their more efficient use of that land should be promoted, and limited opportunities for access provided for outsiders who can introduce improved, more efficient technologies.
- **Robust rights to land resources:** Those using land and buildings should hold them under clear and effective rights, be entitled to determine how the land and buildings are used, exclude those who seek to interfere with their use, reap the benefit of their investments, and transfer those resources to their heirs and others as they choose.
- **Security of tenure in land resources:** The rights of those using land resources should be protected against interference by adequate enforcement arrangements. Users should have a confident expectation that they will continue to be able to use and benefit from those resources.

Be aware:

These objectives do not reflect reality in many countries, though many are required by international and domestic law. Realising them requires the effective coordination of many policy and legal initiatives and it is recognised that there are challenges to balancing among them. These are addressed in later sections of the handbook.

3. Navigating the Normative Environment

This section sets out the normative environment within which land disputes and conflicts may develop and need to be addressed. The normative framework can play different roles:

- As **part of the problem**, embodying injustices or forestalling their reform, and thus contributing to conflict.
- As **part of the solution**, providing tools that can be used to mitigate and resolve conflict.

This normative environment is often complex. It includes not only the law on rights of persons in land and housing, but also the prerogatives and responsibilities of governments and local communities. As illustrated in the following sub-section, it often involves law or other standards from a variety of sources.

3.1. Legal Pluralism

Legal pluralism is the co-existence within a single polity of different bodies of law with different origins, and in the case of land involves the co-existence of different bodies of norms governing the use of land.

States harbour great social complexity, and their normative systems reflect this, including laws from a variety of legal traditions which co-exist, easily or uneasily, and are sometimes in conflict. This phenomenon is referred to as legal pluralism, and most national legal systems are pluralistic to some degree. This is obvious in countries which have federal systems or other decentralised systems of law-making. Other bodies of law that may not originate in any level of government may also be in play. It is essential to understand the variety and interplay of normative systems present in a given situation.

Figure 1: Co-existing Multiple Sources of Property Rights



Source: Meinzen-Dick, R.S., and R. Pradhan. *Legal Pluralism and Dynamic Property Rights*. CAPRI Working Paper No. 22. Washington, DC: International Food Policy Research Institute, 2002. Available at: <http://www.capri.cgiar.org/pdf/capriwp22.pdf>.

3.1.1. BODIES OF LAW

The State may have operating within it not only its own law but also a number of bodies of law of non-State origin and of either general or local application. The operative bodies of law will often include a combination of the following:

- **International law** consists of both customary international law and international agreements and conventions, particularly those to which the country concerned has acceded.
- **National law** includes statutes promulgated by national, regional or local governments, the decisions of courts interpreting those statutes and their subsidiary regulations, and other bodies of law that may have by statute been incorporated within the national legal system.
- **Religious law** such as Islamic law, which crosses national boundaries, may be made directly applicable by national statute, as in many Muslim countries, or recognised as the custom applicable to Muslims in other countries, especially in areas such as family law, including inheritance of land. In some countries numerous religious laws may exist (e.g., Islamic and Hindu religious law in India), each applicable to the adherents to the faith.

- **Customary law** in the case of land is customary land tenure. Such traditional systems of customary land tenure are developed by sub-State political entities which differ widely in size, from village community to tribe. Many different varieties of customary land tenure exist in countries with ethnic territories, conditioned both by culture and by local land use patterns. Customary land tenure may or may not be recognised by the State, but is nonetheless a normative reality that frames and drives behaviour.

Be aware:

Custom often allows for different interpretations—even within a single ethnic group (e.g. each chief may interpret it differently). Moreover, custom is subject to change, in a gradual fashion or sometimes through an intentional adjustment by traditional leaders.

- **‘Project law’** exists when a project (typically a donor-funded development initiative) introduces rules that it enforces, for instance through conditions which require compliance in order to access project benefits. An example related to land would be an area-based development project which requires a particular tenancy relationship between landlords and tenants before allowing them access to agricultural credit, creating a normative mini-environment with regard to land.
- **Insurgency norms**, though not shown in Figure 1, are an additional source of rules controlling access to and use of land. Insurgent movements often control ‘liberated areas’ and promulgate rules that affect land use in those areas.

Example:

Ethiopia’s Tigray People’s Liberation Front implemented land reform in ‘liberated areas’ prior to seizing control of the national government.

3.1.2. LEGAL PLURALISM AND CONFLICT

POSITIVE POTENTIAL

Legal pluralism potentially contributes to conflict prevention and resolution through its recognition and accommodation of the claims of various groups in a diverse society.

NEGATIVE POTENTIAL

The presence of alternative legal systems in a country can also signal the existence of contending notions of rights and values concerning land resources which can be a source of conflict. These different perceptions will have cultural bases, but they can also be rooted in historical events such as displacements. In the absence of a legal framework that effectively harmonises the operation of the various bodies of land law, different groups may assert the applicability of competing bodies of law in their contest over land. Such a situation is known as ‘normative dissonance’, an underlying cause of land-related conflict. Guidance for assessing the positive and negative impacts of plural legal systems is elaborated in Section 6.2.2.

3.2. National Law and Practice

The national law that governs access to—and security in—land and other land-based resources is a critical part of the context in which land-related conflict can occur. To the extent that those laws are perceived as just, clear, and enforced, they create an environment in which conflict is less likely to develop. This section provides an overview of the nature and sources of national law and related institutions that CP actors are likely to encounter.

3.2.1. THE NATURE OF RIGHTS IN LAND RESOURCES

PURPOSE

The purpose of access or property rights in land resources is primarily to:

- Avoid chaotic competition for scarce and valuable resources; and
- Create predictability and security which provide resource holders with food security and security in their shelter, and allows them to invest in the land in confidence that they will hold it long enough to reap the benefits of their investment.

Be aware:

Property rights have diverse, sometimes contentious, and even illegitimate origins. National laws often recognise as a source of rights the appropriation and clearing of land by farm families, the acquisition of land through transactions, or the granting of land to cronies by governments which have appropriated it, sometimes through conquests which stripped earlier holders of their land. The colonial experience of land appropriations is a common heritage of many of today's conflict-prone countries, and the problems they created continue to contribute to conflict over land resources.

TYPES OF RIGHTS

A national legal system typically recognises several types of rights. Each type of right (tenure) encompasses a bundle of rights and responsibilities with respect to others and to the State. Property rights are really not rights *in* land resources, but rights *against others* with respect to land resources, for example the right to exclude others from the resource one owns. That bundle differs, with some rights conferring more robust privileges than others.

Example:

Although ownership typically confers a right not only to use but to leave the land to heirs and, if desired, sell the property, the holder of a usufruct (use right) is often not allowed to bequeath the land or sell it.

Some common property forms, which are remarkably similar in most national legal systems, are ownership, tenancy, usufruct, and mortgage. Rights are also often classified by their holders: private property (individuals or firms), public property (the State or its subdivisions) and collective property (communities). For example, one may have private ownership, State ownership and/or community ownership.

LIMITATIONS ON RIGHTS

While most national laws protect property rights in land resources, those protections are never absolute; virtually every national legal system allows the State to take land from holders when it is required for public purposes, subject to more or less satisfactory compensation. In addition, most national laws subject even private ownership rights to many regulatory requirements, such as those of land use planning and land taxation.

THE MIXED NATURE OF MOST NATIONAL SYSTEMS OF PROPERTY RIGHTS

Characterisation of national systems of property rights is difficult, in part because most systems incorporate more than one of the following basic types:

- **Private ownership systems**, in which full ownership of land by private actors is the rule and in which there is relative freedom on the part of owners to manage such land. These systems have diverse origins. Most are the product of importation of legal norms from market economies during or since the colonial era, but others reflect norms with origins in Islamic law (Shari'ah) or other religious laws.
- **Use right systems**, in which the State owns all land and landholders have use rights, which may be leases or usufructs. The duration of these rights varies widely between national systems, as does the extent to which they are inheritable, devisable, or transferable. Some such systems approximate private ownership systems, while others provide only very limited rights to land.
- **Customary land tenure systems**, under which rights are recognised and enforced primarily by a community, which may be based on common descent or common residence, and can differ in size. Such rights are sometimes characterised as being derived from more fundamental community rights, leading such systems to be characterised as 'communal'. In market economy environments, custom tends to evolve and recognise stronger individual and household rights in land. Customary systems and the institutions which enforce them may or may not be recognised by national law.

Most national systems mix and match tenures with land uses, such that, for example, most residential and some farmland may be held under private ownership, while substantial public land is leased to private users, and some areas of the country are under customary tenure arrangements. One tenure model often predominates, or is considered the default tenure absent special circumstances, and then the national tenure system may be characterised as that dominant model. The United States of America (USA), for instance, is characterised as a private ownership system notwithstanding vast public lands and areas of reservation land under customary tenure.

Tip:

Land tenure systems include not only rules but the institutions which make, implement, and enforce them. Understanding the roles played by these institutions can be as important as understanding the rules themselves in assessing the normative environment and potential for land-related conflict. This is discussed in Section 6.2.4.

3.3. Customary Land Law

3.3.1. NATURE AND CHARACTERISTICS OF CUSTOMARY LAND LAW

Customary land law (also referred to as ‘customary land tenure’) is a major component of the normative framework in many developing countries. The terms refer to the rules determining land access and use which have been generated and are observed by a traditional community such as a tribe. Customary land tenure is most extensive in Africa, but is also found in substantial areas of Latin America (those occupied by indigenous peoples), Southeast Asia (notably Indonesia and the Philippines), and in numerous Pacific Island States. In the developed world, customary norms continue to affect the land rights of indigenous peoples in countries such as Australia, Canada, New Zealand and the USA.

Customary land tenure: The rules generated and enforced by a community or larger sub-State polity to govern the holding and use of land by its members. Customary rules are typically but not always unwritten.

Customary land rights require special attention, as they have often been poorly understood by outsiders, and CP actors may have limited familiarity with them. The terms ‘common property’ and ‘communal property’ (or ‘communal land tenure’) are frequently used.

Common Property: Land used as a commons by members of a community which regulates its use. Typical cases are pastures and forests. Common property is often contrasted to ‘open access’, i.e. shared but unregulated use of a commons.

Communal property: Land held by a community which may be partly used as commons, and partly held with individual or household rights.

KEY CHARACTERISTICS

- Customary land tenure systems are diverse. Their rules derive partly from cultural values, and it is common to speak in terms of the custom of a certain ethnic group. But the rules also reflect land uses and relative scarcity of land, so that two communities with the same culture which use land differently (for instance as farmers or pastoralists) can have different customary land tenure rules.
- Most customary land tenure systems work on the basis of one of two basic principles: residence and descent. One has a right to land by virtue of residence in the community, by virtue of descent from an original settler, or by some combination of the two. In most customary land tenure systems, if these conditions are met, the community member has a right to land.

Be aware:

There are different ‘levels’ of resident members. For example, wives from other communities may not be considered true or full members of their husband’s community.

- Customary rules have often been considered static, while in fact there is considerable evidence that they evolve and change to respond to new needs.
- While customary rules are most often unwritten, there are cases in which they have been codified by traditional authorities.
- Often characterised as ‘communal’, it is now clear that in most communities, while the community holds authority over the allocation of land so far unused and over some common pool assets such as pastures, most residential and farm land has been given to households and is owned by the descendants of those households, inherited from generation to generation. It is communal in the sense that the community has an overall responsibility for the land, with rights which conflate western notions of territoriality and property.
- There are however often land areas owned by a community of which members share the use, such as pastures and forests. These are genuinely ‘communal’, and may be managed as ‘common property’.
- Communities vary widely in size and are often ‘nested’ within another, as in the case of villages under the authority of the tribe to which they belong. A hierarchy of traditional land administration may exist, with different competences at different levels, such as where a local chief or elders may allocate unused land but the allocation may require confirmation by a higher authority. In other cases, such land matters may be handled entirely by the local group.

BOX 2. The Diversity of Customary Land Tenure

Customary land tenure can take a variety of forms. In Africa some common types are:

1. Lineage-based systems: Land is held by descendants of ancestors who first established titles to land. Most often land is inherited from father to son, in the patrilineal line (among the Kikuyu of Kenya, for example), as is the most common pattern in Africa). But there are also matrilineal systems in which land passes in the female line or from maternal uncle to nephew, and even ambilineal systems in which claims to land can be made in both the male and female lines (for example the Amhara of Ethiopia). Descent from the ancestor creates an entitlement to land.
2. Residence-based systems: Physical residence within the community is the source of the right. This may be combined with some requirement, more general than that in lineage systems, that the individual be descended from an ancestor, but without reference to the precise line of descent. The traditional *diessa* system in highland Eritrea is an example.
3. Hierarchical systems: Distribution of land is seen as a prerogative of chiefs, and a traditional hierarchy is built upon control of land, which outsiders have analogised to feudal systems in Europe. The land tenure of the Lozi of western Zambia is an example.

3.3.2. RELATIONSHIP WITH NATIONAL LAW: CONFLICT POTENTIAL

Where national land law and customary land law co-exist, one often finds disputes involving claims based in the different systems, raising difficult and sometimes politically sensitive issues of which law should be applied. Parties may seek resolution of the dispute in a forum that will apply the law that favours their claim. This dichotomy figures prominently in some conflict situations.

Example:

In Liberia, failure to recognise the customary land rights of peoples of the interior has been a major grievance of those peoples against the politically dominant descendants of freed slaves who colonised the country and introduced western law and property concepts.

Guidance in identifying and assessing conflict potential arising from the relationship between national and customary law is further elaborated in Section 6.2.2.

Be aware:

Customary land tenure systems have administering institutions, which may be chiefs, committees of elders, or religious authorities. These have vested interests in existing land tenure arrangements, as control of land is often an important source of their power. Those institutions are discussed further in Section 6.2.4.

4. International Law and Practice: A Framework for Assessing and Addressing Conflicts Over Land

International law and practice play an essential role in situations that CP actors will encounter in several ways:

- **Violations as a source of conflict:** failure to observe international standards, such as the principle of non-discrimination, can result in abuses with regard to land and generate land-related conflict.
- **Analysing and addressing disputes and conflicts involving land:** the system of human rights, in particular, sets some useful parameters for determining what is both possible and permissible in terms of developing policy, legal and institutional approaches to land management, as well as in mediating between competing interests or claims where the rights of one individual or community clash with the rights and interests of others or with the public interest more widely.

Sources of law:

While international human rights law (IHRL) is most broadly applicable, other important sources include international humanitarian (IHL) and refugee law, as well as standards pertaining specifically to internally displaced persons (IDPs).

- **As a source of leverage:** international standards can provide leverage to both national actors (including those whose rights have been violated) and international actors, including CP actors, in pressing for measures that will prevent or mitigate conflict.

Potential sources of conflict can be identified and assessed and appropriate responses developed through an approach focused on three aspects of IHRL:

- Fundamental rights and freedoms;
- Non-discrimination and equality; and
- Rights accorded to specific groups.

Other sources of international standards, including those pertaining to refugees and IDPs, as well as bilateral agreements and 'project law' should also be taken into consideration as part of this process.

4.1. Fundamental Rights: Protection of—and Access to—Land Resources

Two different versions of fundamental ‘rights to resources’ can be derived from the fundamental rights and freedoms enshrined in international standards:

- The right to **be secure in existing holdings of land resources**, expressed through guarantees of protection of property rights in land and housing and of compensation where those rights are disturbed for some public purpose; and
- The right to have **access to land resources**, expressed as an entitlement to adequate land and housing, and as a duty upon government to provide these.

‘HLP rights’ (housing, land and property rights) is an inclusive term used to emphasise not only property rights in land and housing but also the existence of rights to land and housing (i.e. access rights). The term has in recent years become broadly accepted throughout the United Nations (UN) cluster system as an alternative to a more narrow emphasis on protection of existing rights in property in land and housing.

4.1.1. SECURITY IN LAND AND LAND-BASED RESOURCES

Security in land and land-based resources derives from the classic civil/political right to property which protects existing rights and is essentially corrective in that it provides remedies for violations in case of the arbitrary deprivation of, or interference with, property.



Security in resources is particularly relevant to displacement events such as, for example, State appropriation of land for investment or conservation purposes, or refugee and IDP return, as discussed below.

Be aware:

IHRL does not dictate the full content of property rights or the objects to which they apply, nor does it define adequacy of compensation in relation to deprivations of property. As a result, countries which have excluded land from private ownership, and those which take property with little or no compensation, have been able to claim compliance with IHRL.

4.1.2. ACCESS TO LAND AND LAND-BASED RESOURCES

Such access derives from the classic socio-economic right to an adequate standard of living, food and housing which States have an obligation to fulfill progressively and to the maximum of their available resources. While there is no explicit ‘right to land’, access to land is a constituent element of the right to adequate housing which implies an obligation on the State to address lack of access where this is a problem.



Such ‘access rights’ have redistributive implications and are particularly relevant for processes of reform to address exclusion that may lie at the root of disputes and conflicts

‘Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, *including access to land as an entitlement.*’ (Emphasis added.)

UN Committee on Economic, Social and Cultural Rights General Comment 4, para. 8(e).

4.1.3. POTENTIAL TENSIONS BETWEEN APPROACHES

Both approaches embody legitimate objectives regarding land resources, access and security, but tensions may emerge in their application:

- While a security ‘in’ resources approach supports security of tenure and protects against arbitrary interference, problems arise where the status quo is fundamentally unjust (i.e. where sectors of the population are excluded from the enjoyment of property rights) or is unsustainable (e.g. in the case of mass landlessness).
- Applicability vis-à-vis informal or customary rights may also be unclear (as examined further below in Section 6.2.).
- At the same time, redistributive reform processes that upset the status quo may threaten the enjoyment of existing property rights and can potentially generate new disputes and conflict.

4.1.4. TRENDS

Philosophical and political divergence over the relative importance of securing these two different versions of ‘rights to resources’ (i.e. rights ‘in’ as opposed to ‘access to’) has delayed the incorporation into international law of a balanced vision incorporating both. Today, countervailing trends can be seen. New constitutions tend to contain strong guarantees of property rights, but in some cases, such as the constitution of Bolivia, there is balancing language stressing the ‘social function’ of property. In others, such as the South African and Kenyan constitutions, there are special provisions that facilitate redistributive land reform. In addition, rights of external investors are receiving stronger protection under networks of bilateral agreements. At the same time, however, there is increasing acceptance in international institutions of rights to housing and, to a lesser extent, to land. These developments are occurring independently of one another, in different institutional settings, and how they are balanced on the ground in particular cases will be decided primarily by national actors.

4.2. Non-Discrimination and Equality

Fundamental rights and freedoms are to be enjoyed by all, including members of potentially disadvantaged groups such as ethnic minorities, women, children, and the physically disabled, among others. While international law provides only limited guarantees concerning access to and protection of land, it is much clearer in its prohibition of discriminatory actions by States in terms of access and protection. This is critical in the conflict prevention context, as conflict related to land often involves one or more groups being denied the access or protections provided to others within the State.

- The **principle of non-discrimination** provides against the disadvantageous treatment of individuals or groups on grounds such as ethnicity, race, colour, language, religion, or sex without reasonable and objective justification. Discrimination can arise where persons in the same situation are treated differently or where those in different situations are treated the same (i.e. failure to accommodate difference).
- The **principle of equality** allows for—and in some cases calls for—the special, differential treatment of individuals by a State to ensure that they are able to stand on equal footing with other members of society.



Effective implementation of these principles is crucial to securing rights in existing holdings of land resources and to ensuring access to land resources.

4.2.1. DETERMINING DISCRIMINATION

Since not all differential treatment constitutes discrimination, CP actors must identify possible discrimination and its sources and determine whether there is in fact discrimination.

A group or its members may claim they are victims of discrimination, or possible discrimination may be indicated through other sources. In order to verify the existence (or absence) of such discrimination it is necessary to check laws and institutional implementation for conditions, criteria, practices, legal provisions and other factors that have an adverse impact upon the access of certain groups to land resources. This can be done by:

- Comparing the situations of similarly-situated groups; and
- Examining the reasons for the differential treatment.

Negative example:

The Constitution of Liberia provides that only Liberian citizens may own land. This is a common provision in other constitutions and is entirely legal under international law. It is regarded as having a reasoned policy basis. However, the constitution also limits Liberian citizenship to ‘persons who are Negroes or of Negro descent’, which effectively bars members of the long-resident and economically important Lebanese business community from ownership of land and raises serious questions under international law.

Table 1 provides a framework for determining whether discrimination exists in a particular case.

Table 1: Determining Discrimination

Characteristics	Forms and grounds	Examples
1. Unfavourable treatment	Unfavourable treatment resulting in disadvantage may take the form of: <ul style="list-style-type: none"> • <i>a distinction</i> • <i>an exclusion</i> • <i>a restriction</i> • <i>a preference</i> • <i>segregation</i> 	<ul style="list-style-type: none"> • One group is singled out for disadvantageous treatment, e.g. residents of only one group are entitled to own property. • Women are excluded by law from inheriting property. • One group is able to enter into contracts concerning land only where special formalities are met. • Only one group is entitled to housing subsidies. • Members of one group are only allowed to settle in designated areas away from the general populace.
2. Prohibited grounds	Prohibited grounds for unfavourable treatment include: <i>ethnicity, race, colour, language, religion, national or social origin, birth descent, political or other opinion, physical appearance, sex, sexual preference or disability</i>	Discrimination can be: <ul style="list-style-type: none"> • <i>Direct</i>, e.g. denial of access to land based on ethnicity; or • <i>Indirect</i>, e.g. where recognition of a community's land rights depends on formal documentation which it is difficult for them to obtain due to lack of knowledge, information, resources or other barriers such as language.
3. No reasonable and objective justification	Not all unfavourable treatment amounts to discrimination. There is no discrimination if the treatment: <ul style="list-style-type: none"> • <i>pursues a legitimate aim</i> • <i>is proportionate to that aim</i> 	<ul style="list-style-type: none"> • <i>Legitimate</i>, e.g. in a land reform context, where rights of a historically privileged community or class are targeted for taking in order to provide adequate access to land for the landless. • <i>Proportionate</i>, e.g. where members of such communities or classes are left with the land they need, rather than losing it all.

For comprehensive guidance on determining the existence of and responding to discrimination see further the IQd handbook on *Discrimination and Conflict Prevention*. Available at: www.iqdiplomacy.org

IMPLICATIONS FOR ACTION

- Discrimination should be formally prohibited and eliminated in practice through the establishment of legal and institutional guarantees.
- In cases where on-going discrimination occurs against a particular group, specifically tailored measures should be applied to address the sources of discrimination—be it laws and regulations, institutional implementation and practice, individual actions, or a combination of these.
- Measures may also be required to address past discrimination (often referred to as ‘**positive measures**’ or ‘**affirmative action**’). Such measures are time-limited until the past or existing discrimination has been redressed.

Examples of positive measures:

- A national fund is established to purchase land and transfer it to target communities.
- State-owned land is transferred to target communities.
- Beneficial conditions for loans to members of target communities for the purchase of property.

See further Section 7.2.5. on ‘Improving Access’ for an elaboration of options for promoting more equitable access to land resources.

Special measures may also be introduced to assist minorities and indigenous peoples (IPs) in maintaining differences that are crucial to their identity, including a particular way of life connected with the land. Unlike positive measures, these are not time-limited.

4.3. Rights Accorded to Specific Groups

While fundamental rights and freedoms are to be universally and equitably enjoyed by all within a State’s jurisdiction, some groups may require special protection by virtue of:

- Their specific situation (e.g. as a result of past and/or on-going discrimination); or
- Special characteristics (e.g. a special dependency on, and attachment to, land).

Key States’ obligations with respect to different groups are summarised below. Annex I provides a basic list of rights and their sources that should underpin the development of State policy in terms of both (a) protecting the rights in property and (b) promoting equitable access to land resources for all those within their jurisdiction.

4.3.1. RIGHTS OF WOMEN

Rights to non-discrimination and equality have direct implications for women’s inheritance, division of marital property upon divorce, and State allocations of land and property. IHRL protects the equal rights of women with men to own property and to adequate housing. Specifically it provides for:

- The equal rights of all women to own, acquire, manage, administer, enjoy, dispose of and inherit property. States are required to eliminate discrimination in this respect not only through legal reform (e.g. of laws of marital property)

where necessary, but to ‘modify the social and cultural patterns’ that work against gender equity.

- The equal rights of women to adequate housing and land.

IMPLICATIONS FOR ACTION

States should:

- Take temporary measures aimed at accelerating *de facto* equality between men and women, providing they in no way entail as a consequence the maintenance of unequal or separate standards and are discontinued when the objectives of equality of treatment and opportunity have been achieved.

Example:

Programmes which formalise land rights may encourage households to register the land jointly in the name of the husband and wife, rather than simply the husband, giving the wife survivorship rights that leave her in a much better position when the husband dies than under the applicable law of inheritance.

4.3.2. CHILDREN’S RIGHTS

Universal and regional instruments such as the African Charter on the Rights and Welfare of the Child recognise children as rights-bearers and further define their rights. Although a right to inherit may not be specifically mentioned in such instruments, certain provisions of care and against exploitation are relevant in cases where children are denied their rights, including inheritance of their parents’ property.

IMPLICATIONS FOR ACTION

States should

- Ensure the protection of children who are deprived of family care;
- Protect children against exploitation on the part of a parent, guardian, or other caregiver; and
- Ensure that male and female children are entitled to inherit parental land and other property in equal shares.

Be aware:

The rights of women and children are particularly threatened in the context of the HIV/AIDS epidemic—which often goes hand in hand with conflict. AIDS widows are commonly expelled from family lands, and AIDS orphans may be robbed of their land inheritance by family members who took possession of it as their guardians.

4.3.3. RIGHTS OF INDIGENOUS PEOPLES

Even in countries that offer strong private property rights, indigenous peoples (IPs) have historically been disadvantaged with respect to their land rights. They have suffered injustices including colonisation and dispossession of their lands. Some specific rights are granted by international law to IPs in recognition of their special relationship with the land they have traditionally inhabited, used for their subsistence economies and to which they have cultural and spiritual ties. Latin American countries

provide useful models of robust protection of these rights in national law. Bolivia and Ecuador, for example, recognise indigenous groups/communities. Such protection is less common in Asia and Africa. International standards now contain strong guarantees of the property rights of IPs in land.

IMPLICATIONS FOR ACTION

States should:

- Ensure recognition of ownership and possession rights and safeguard rights to natural resources pertaining to IP's land;
- Safeguard the use of lands to which IPs have traditionally had access (with special attention to the situation of nomadic peoples and shifting cultivators);
- Protect the rights to determine and develop priorities and strategies for development or use of their lands or territories and other resources;
- Protect against dispossession or forcible removal, protect the right to return, and ensure provision of adequate compensation;
- Ensure adequate consultation with a view to prior informed consent on matters affecting them, their lands and resources (including where the State retains ownership of mineral and sub-surface resources).
- Ensure transparent processes to recognise and adjudicate IP's rights; and
- Respect procedures established by IPs for the transmission of land rights.

BOX 3. In Africa, Who is Indigenous?

The concept of and international law relating to indigenous people originated in Latin America, where remnants of native peoples were pushed into hinterlands by European colonists whose descendants still hold power and have struggled ever since to preserve control over the mountains and tropical forests they occupy. In Asia and particularly in Africa, peoples living traditional lives in the hinterlands of increasingly modernised countries, such as forest-dwellers and bushmen, find themselves at a comparative disadvantage, their cultural survival threatened. This is the case even though the wider populations of these countries are also 'indigenous' in the general sense of the word. Those countries have often resisted application of the international protections for indigenous peoples on that ground, denying them the protection to which they are entitled under international law. However, this may be changing, in the wake of the African Commission's ruling in the *Endorois* case against Kenya which 'recommended' restitution of the Endorois' traditional lands from which they were evicted in the 1970s, recognition of their ownership rights, compensation for harm suffered during their displacement and other measures. The decision is a milestone in development of jurisprudence under Article 14 of the African Charter on Human and People's Rights, protecting property rights of communities, especially where the land had been held collectively by an entire community.

For more information on this case see the Minority Rights Group International website at: <http://www.minorityrights.org/6779/trouble-in-paradise/the-facts.html>.

4.3.4. RIGHTS OF MINORITIES

Minorities and other groups such as pastoralists may also enjoy a particular way of life associated with land and related natural resources. While international standards are not as developed as for IPs in this regard, they do enjoy some special protections.

IMPLICATIONS FOR ACTION

States should:

- Protect against displacement of such groups in accordance with the United Nations Guiding Principles on Internal Displacement (the so-called Deng Principles).
- Respect the right to ‘culturally adequate’ housing which requires that housing construction, building materials and related policies appropriately enable the expression of cultural identity and diversity of housing. While applicable to everyone, this right is particularly significant for minorities.
- Consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country. National policies and programmes, as well as programmes of cooperation and assistance among States should also be planned and implemented with due regard for the legitimate interests of those persons.

4.3.5. RIGHTS OF REFUGEES AND DISPLACED PERSONS

Rights to return and restitution are of particular relevance to refugees and those who have suffered internal displacement for whatever reason (war, ethnic cleansing, development or land reform, among other factors, as identified in Section 5.1.).

Sources and status of law:

The UN has been at the forefront in promoting acceptance of a right of returning refugees and displaced persons under international law to reclaim their land and homes. The key document is the **Pinheiro Principles** on Housing and Property Restitution. There has been a notable level of acceptance of these standards in post-conflict countries.

The **Deng Principles** contain similar provisions concerning voluntary return, recovery to the extent possible of the property and possessions of IDPs, and failing that, compensation or just reparation. Unlike the Pinheiro Principles, however, these provisions are formulated not as rights, but as duties on the part of officials.

IMPLICATIONS FOR ACTION

States should:

- Respect the right of all refugees and displaced persons to return voluntarily to their former homes, land or places of habitual residence, in safety and dignity—a right which cannot be subject to arbitrary time limitations.
- Ensure that national legislation related to housing, land and property restitution is compatible with pre-existing relevant agreements, such as peace and voluntary repatriation agreements, so long as those agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

- Provide for monetary compensation or in-kind compensation where necessary, but only in very limited cases, i.e. when restitution is not materially possible or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.
- Put in place fair and impartial legal and/or judicial mechanisms to ensure protection and enforcement of restitution and compensation rights.

KEY CONSIDERATIONS

When engaging in situations where return and restitution are issues, CP actors should be aware of the following crucial considerations:

- **The right of return is voluntary.** Displaced populations may not wish to return to their places of origin, preferring to remain and integrate locally. Forced or involuntary return would not only violate fundamental human rights but is unlikely to be successful in the long-term. Restitution does not depend on return: property can be claimed (and transferred) *in absentia* (as in Kosovo, for example).
- While the Pinheiro Principles, in particular, require States to demonstrably prioritise **the right to restitution** as the preferred remedy for displacement, return and restitution **should be viewed in the broader context of evolving land tenure systems** and the possible need for broader land reform to secure adequate shelter and livelihoods for all.
- The modalities for implementing the Pinheiro Principles are still being explored, and **implementation faces considerable challenges**, such as the weak land administration capacity of most post-conflict States.

Tip:

Consultation with affected communities—including refugees, IDPs and secondary occupants—is fundamental to understanding the nature and extent of demands and in achieving legitimacy for restitution or compensation processes.

4.4. Balancing Rights

The fundamental human rights and freedoms outlined above are not absolute, but may be subject to limitations, as long as these are provided by law and proportionate to achieve a legitimate aim such as wider public interests and the protection of the rights of others. This can entail a careful balancing act. A standard human rights methodology can be used for assessing the legitimacy of restrictions on human rights and for balancing the interests of the rights-holder and others in society, as demonstrated in Table 2.

In undertaking such an assessment, CP actors should check the international human rights commitments and relevant constitutional and legislative provisions of the State.

Sensitivity to context, policy and the needs and interests of individuals and groups is also required if change is to be realised in practice.

Table 2: Assessing Restrictions—Example of Evictions

Permissible grounds for interference	Determining restriction(s)	Examples of legitimacy of actions*
<p>For restrictions to be legitimate, all three conditions below must be fulfilled.</p> <p>1. The measure must be provided by law i.e. foreseen in legislation or other formal regulation</p>	<p>The possibility, criteria and procedures for evictions must be must be established by law, e.g.: <i>by the constitution; land or other relevant laws; decrees; regulations, etc.</i></p>	<p>✓ Legislative provision sets out criteria and procedures for State acquisition of private property and removal.</p> <p>X <i>De facto</i> evictions of indigenous groups where State concessions (e.g., to forests) are granted on the assumption that they are unoccupied. Procedures should be in place to ensure this does not occur.</p>
<p>2. The measure must pursue a legitimate public interest</p>	<p>The need (i.e. the motivations of the State that lead to a measure being imposed) should fall under one of the legitimate public interest grounds enumerated in IHRL:</p> <ul style="list-style-type: none"> • <i>promoting the general welfare in a democratic society</i> • <i>protection of the rights and freedoms of others</i> • <i>protection of public order safety, or health</i> • <i>protection of national security, or territorial integrity</i> • <i>maintenance of the authority and impartiality of the judiciary</i> 	<p>✓ Evictions of those who have illegally occupied public lands that are off-limits for health and safety reasons.</p> <p>X Removal of populations from their homes/lands for the benefit of another private party.</p>
<p>3. The extent of the restriction is proportional to a pressing social need falling within the grounds of legitimate public interest</p>	<p>The measure should be proportional to the aim, i.e. be the least restrictive for achieving the desired result.</p>	<p>✓ Where evictions are necessary, appropriate compensation is provided and relocation plans developed in consultation with those affected.</p> <p>X Lack of due process results in injury to those being evicted.</p>

* ✓ indicates legitimate action; X indicates illegitimate action

4.5. Other Sources of International Standards

With regard to the protection of rights in land and property of citizens of one State holding property in another, more specific requirements than those in international law often exist in **bilateral agreements** among the countries. The standards in these bilateral agreements can, if consistent, be referenced as evidence of international practice possibly giving rise to new rules of customary international law.

Other norms that may come into play come from the ‘safeguard’ (in the sense of the principle of ‘do no harm’) **policies of major international development organisations**, including multilaterals such as the World Bank and bilaterals such as the Millennium Challenge Corporation (USA). Such organisations are sensitive to reputational risk resulting from weak protections in national law of the land and other property rights of intended project beneficiaries and project-affected people. They address this by requiring in their project agreements a higher standard of protection than that in national law.

Examples:

The World Bank’s Involuntary Resettlement Policy requires support for those who are displaced by a Bank project even where they had no right to occupy the land concerned, and its Indigenous Peoples Policy aims to protect indigenous land rights in the context of Bank-funded projects.

4.6. International Standards and National Law

For their effective enjoyment, international norms and standards depend on their implementation within national (or ‘domestic’) constitutional and legal systems. The rights of persons ‘in’ or ‘to’ housing, land and other property under international law are all too often of limited effectiveness, because they are ignored by many regimes. While the means to hold States accountable for their international obligations remain limited, governments can nevertheless be persuaded to respect their obligations as matters of integrity and reliability in their international relations and of good governance in their own interest.



Broad statements exist in international instruments, but for a sense of what rights a particular State may in fact recognise, it is important to consult the specific conventions that government has ratified, including regional treaties such as the African Charter on Human and People’s Rights, along with provisions in its constitution.

International instruments provide basic minimum standards, and States typically enjoy broad discretion in determining how best to meet them in their own laws and practice. ‘Soft law’ standards (i.e. documents which are not treaties, such as the Pinheiro Principles, in the case of restitution rights) guide this discretion by setting out effective practices based on existing rules rather than creating new rules. States should be encouraged progressively to incorporate international standards into their domestic law and practice.

While many countries fail to meet the international standards regarding rights to and in housing and land, reference to these standards can nevertheless often be used as footholds by CP actors in discussions of needed reforms. International law can gain

leverage particularly in post-conflict situations when international agencies are present on the ground and disposed to follow international law.

Positive example:

Women's advocacy groups have utilised their countries' ratification of UN instruments such as the Convention on the Elimination of All Forms of Discrimination against Women to press for reform. In the last few decades, many countries have been persuaded to enact legal reforms to prohibit discrimination based on gender, and have modified land laws and regulations to recognise explicitly equal property rights for women.

In seeking to promote reform, the challenge for CP actors is to assist States in the translation of human rights 'to' and 'in' housing, land and property into workable rights that fit within prevailing or reforming tenure systems. As an important first step in this process, Section 6.2. sets out guidance for assessing a country's national legislative and institutional framework that governs access to and security in those resources.

5. Scoping (Step 1)

Detecting potential land-related conflict involves in the first instance a ‘scoping’ exercise which refers here to the identification of situations in which tensions and conflict may exist or emerge, their initial characterisation, and an initial assessment of their seriousness. More in-depth diagnostic processes by which such situations can be analysed and assessed—including in terms of future prospects—are elaborated in Section 5.2.

General tips on scoping:

- It is important not to focus only on obvious conflicts, or obvious connections to land resources.
- Rhetoric and conventional knowledge about land resources and conflict can be misleading.
- Scoping will often need to be undertaken with great care in insecure environments.
- Care should be taken to avoid creating false expectations.

5.1. Identifying the Sources and Nature of (Potential) Conflict

Scoping involves the identification of vulnerabilities—the underlying root and structural causes of conflict—as well as proximate causes contributing to the escalation of tensions in the near term and potential triggers present that threaten to transform them into violent conflict. CP actors undertaking scoping should be aware of the persistence of land conflicts and the existence of different stages, with land playing a role before, during and after conflict.

5.1.1. ROOT CAUSES OF CONFLICT

There are certain fundamental factors that create vulnerability to land conflict and a potential for violence. The root causes of conflict, the factors that generate the potential for conflict, may not be easily addressed in the short term, but their ultimate contribution to conflict must be recognised and taken into account in any prevention-focused discussion of land-related conflict.

Be aware:

An understanding of the causes and nature of land-related conflict must be informed by a broad knowledge of its historical and cultural dimensions. Too narrow a focus can result in treatment of symptoms rather than underlying causes.

Four key factors can create vulnerability to conflict over land:

- **Land scarcity**, due either to an absolute shortage of land or skewed distribution of land among users, leaving many with little or no land.

Assessing land scarcity:

Land scarcity is not an absolute, and should be treated with caution. Land access situations are not static and CP actors should be alert to common trends. Climate change can crowd populations into increasingly smaller areas for viable agriculture. Land appropriations by the powerful and the State can exclude rural populations from once ample land resources. In systems of extensive land use, the loss of very modest amounts of land with key point resources such as water access, can disrupt those systems and create effective land scarcity. At the same time, new technologies and practices which permit intensification of land use and greater yields per hectare can relieve scarcity. Industrialisation and the growth of urban centres can result in the virtual depopulation of some rural areas.

- **Insecurity of tenure**, whereby land users fear they will not be able to keep the land upon which they depend. This reflects a vulnerability to displacement and a felt need to respond to the threat of displacement.

Security of tenure:

Security of tenure has been described as the overriding objective of land policy. Such security exists objectively where the landholder has a low risk of losing his or her land, but it also has a more subjective sense: the confident expectation by the landholder of continued use of land for a long period of time. A sense of insecurity may be generated by political or other events that raise awareness of the threat of loss, even where actual risk of loss of land has not increased.

- **Normative dissonance**, in which a number of bodies of law relating to land co-exist (legal pluralism) without an accepted legal framework regarding their relative coverage and applicability, allowing them to be mobilised by those competing for land to justify their claims.
- **A sense of grievance** over land derived from (perceived) inequality or injustice, most often rooted in earlier displacements and land takings, and generating tensions that can fuel conflict.

Guidance in identifying manifestations of such vulnerabilities is elaborated in Table 3.

Table 3: Root Causes of Land Conflict

Root causes	Associations/ manifestations
<p>1. Land scarcity exists where available land is insufficient to meet the demand for land.</p>	<p>Land scarcity is associated with:</p> <ul style="list-style-type: none"> • Rapidly increasing population resulting in very high person to land ratios, and unsatisfied demand for land, in countries such as Rwanda or regions such as the Ethiopian highlands. • Environmental degradation or other factors such as extensive urbanisation which take land out of use, decreasing the supply of farmland, as in China's now heavily industrialised coastal areas. • Concentration of land in the hands of a few, increasing land scarcity and creating a sense of unfairness, as in many Latin American countries, Cambodia, and <i>apartheid</i> South Africa. • Global pressures for protected areas, large-scale commercial farming and the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD), taking land out of farming or eliminating expansion areas for farming communities. These pressures are particularly acute in Africa, e.g. where public outrage over the concession of vast areas of Madagascar to a Korean commercial farming enterprise resulted in the overthrow of the government. • Growing landlessness, through loss of access to one's own land. For example, in coastal Yemen, traditional smallholders are being forced out of agriculture as new water management systems give large commercial operations effective control of the land.
<p>2. Insecurity of land tenure exists where land users and land-using communities are in danger of losing their land.</p>	<p>Insecurity of land tenure is associated with:</p> <ul style="list-style-type: none"> • Weak property rights, easily overridden by government or other private claimants, as in Sudan (see Box 4). • Confusion in property rights caused by dissonant normative systems for land, as in rural Kenya (see Box 12). • Danger of appropriation of land associated with weak and/or corrupt public land management, as in Guatemala and Mozambique. • The inability to prove and protect rights due to weak land administration and failures of the rule of law, as in China.

	<ul style="list-style-type: none"> • Extensive claims to land by the State and failure to recognise customary or other <i>de facto</i> tenure regimes on such land, as in much of Africa, for example in Lesotho. • Failures and lack of confidence in the fairness or effectiveness of judicial and other mechanisms for resolving land disputes and conflicts, as in post-conflict Liberia.
<p>3. Normative dissonance exists where alternative bodies of land law exist in competition, providing support for competing claims to land.</p>	<p>Normative dissonance can be seen where:</p> <ul style="list-style-type: none"> • Members of different communities assert rights under their particular land laws to justify preferred outcomes of disputes, as in the Amazon. • Comparable competing claims to land are made under different bodies of law between a community and the State, as around resettlement areas in Kenya. • Claimants attempt to have land disputes resolved in a forum that is more likely to accept their law, as happens in Kenya.
<p>4. Land grievance exists where a community or class feels, toward government or another community or class, a deep resentment over real or perceived unfairness regarding land.</p>	<p>Land grievances are associated with:</p> <ul style="list-style-type: none"> • Major historic dispossessions, in conquest or conflict situations, that still rankle and for which the dispossessed still seek rectification, as in southern and eastern Africa and in Latin America. • Cases in which one community has taken land from another, resulting in communal tensions and previous communal conflict, as in Rwanda or Guatemala. • Cases in which one class has taken land from another, resulting in class grievances and potential class conflict, as in Malawi, Kenya, and much of Latin America. • Common conflation of communal and class grievances, difficult to disentangle, as in Kenya.

Each of these factors, with a sufficient level of intensity, can lead to violent conflict. They are more likely to do so if they interact.

Example:

In southern Ethiopia before the 1974 revolution, a people with a long-standing grievance over loss of land found their security in what land remained to them threatened by a situation of acute land scarcity.

Yet even where these factors are changing for the worse, sufficiently gradual change may allow adjustments and the development of alternatives which make the escalation of tensions less likely.

BOX 4. Environmental Change and Land Conflict: The Case of Darfur

Environmental change can disrupt long-standing patterns of land use and contribute to displacement and land scarcity for those affected. While usually portrayed in ethnic terms, the fault lines of the conflict in Darfur originate in the differences between African settled farmers and Arab nomadic herders, which have been exacerbated by climate change.

Increases in the length of drought cycles in the region altered previously relatively amicable relationships. African farmers began to fear their land was endangered by the passing herds that they had traditionally accommodated, while Arab herders struggled to maintain their livelihoods, their economic survival and cultural identity. Drought and consequent famine created new migration trends and related displacement, as the largely Arab pastoralists of North Darfur moved southward in search of healthier pastures, making rivalry with farmers there unavoidable.

Other factors contributed to the conflict:

- Systematic government bias towards the pastoral communities;
- The overriding of well-recognised territories of tribes (*dar*) and long-operative conventions for seasonal use by one group of grazing within another's *dar*;
- Armed mobilisation of marginal groups which had not had *dar* of their own; and
- A vacuum in local authority caused by government in 1971 stripping customary institutions (the Native Authorities) of their authority to negotiate grazing patterns.

Lasting solutions to the crisis in Darfur must begin with recognition of the role of climate change and the need to redefine land use patterns and re-establish systems of rights to land access which address the current needs of all groups, rather than simply restoring a legal status quo that has limited relevance to today's ecology.

5.1.2. PROXIMATE CAUSES AND TRIGGER EVENTS

PROXIMATE CAUSES

The onset of violent conflict over land resources in countries with the vulnerabilities identified above usually involves proximate factors or events which serve to escalate tensions and create an enabling environment for violence. Proximate causes—such as government policies, social organisation, or economic reform programmes—are not static, but can change over time to create an immediately enabling environment for the outbreak of violence.

TRIGGER EVENTS

The most immediate and direct causes of violent conflict, trigger events, are often relatively minor developments, actions or incidents which in the absence of root and proximate causes might not lead to violence. However, they can tip the balance from tension into violence when those vulnerabilities and some level of conflict exist.

Both proximate causes and trigger events are critical in assessing conflict potential because their presence increases the likelihood that overt and violent conflict will take place in the near future and suggests the urgency of remedial action. Mitigating their impact can give more time to deal with underlying causes of conflict over land.

Table 4: Proximate Causes and Trigger Events

Proximate causes	Examples of trigger events
1. Intensifying competition	Events that suddenly intensify competition for land resources increase the likelihood of conflict
Environmental change	While usually gradual, some such change can suddenly reduce access to land resources, as when gradual desertification in western Sudan is accelerated by drought.
Changes in land use technology	Mechanisation can result in expulsion of tenants and increasing landlessness, as in pre-1974 Ethiopia, bringing the Derg to power.
Changes in commodity markets	High-value export opportunities can increase competition for land near outlets, as in Ghana, undermining customary land rights.
New land claimants (e.g. migrants)	In-migration from other areas can increase competition for land and lead to communal violence, as in Ivory Coast.
2. Displacement events	Events that displace existing users are perhaps the most common trigger event
Land disputes	Land disputes between individuals and families are sometimes symptoms of broader, underlying conflict, and can signal to others fearing loss of their land that it is time for them to defend it.
Armed conflict	War and insurgencies can cause major displacements of population, as in Liberia.
Ethnic cleansing	New landlessness and homelessness and resultant resentment can fuel conflict, as in the Balkans.
Development projects	Some developments, in particular dams and other massive infrastructure, can displace large numbers of occupants, who seek land elsewhere, as in India and China.

Protected areas	The creation of protected areas often deprives local communities of access to resources upon which they have depended for their livelihoods, as in Cameroon and Cambodia.
Concessions	Concessions granted by governments to investors can often displace customary land users and can even trigger the overthrow of a government, as in Madagascar.
Slum clearance	Clearance of urban slums often leaves the displaced informal occupants without land or shelter, as in Zimbabwe, contributing to political conflict.
Land reforms	Land reforms, while intended to ameliorate distributional problems, can be displacement events, as in Zimbabwe when immigrant labourers from Mozambique and elsewhere on commercial farms have been expelled to make room for others.
3. Political events	Events of a political nature that can result in dormant or new claims being pressed more forcefully
Political emergence of subjugated groups	Organising tenants or the landless may provide voice and trigger their appropriation of lands, as in Zimbabwe.
Emergence of conflict entrepreneurs	Displacement may be facilitated by actors who seek personally to benefit either politically or by acquiring land resources, as in Kenya.
Political struggles over land issues	Embrace by a political party of a constituency with a land-related grievance can trigger conflict, as in Kenya.
Political collapse, weakened governance	Where the rule of law collapses, opportunities arise for the appropriation of land resources, as in Rwanda.

As with root causes, several proximate causes may be in play at the same time and may interact. Having identified which factors are present in a given case, it is necessary to assess their relative impact, how they interact, and underlying vulnerabilities that may give them greater force. Box 5 presents an example of how a minor land dispute triggered a war, which was grounded in increasing competition for land between ethnic groups as well as much larger issues of political and cultural identity.

BOX 5. A Land Dispute Triggers the Mauritanian-Senegalese War (1989-1991)

Trigger: In April 1989, a conflict erupted along the Senegal River Valley, which forms the border between Senegal and Mauritania. A dispute over grazing rights between Mauritanian herders and Senegalese farmers on the small island of Dundu Khoré in the Senegal River turned violent when Mauritanian border guards shot and killed two of the Senegalese.

Root causes of the conflict: Technological change and project activities along the river had disturbed old patterns of land use, leading to increased contestations over land between ethnic groups, and land appropriations by the politically dominant group.

Consequences: The killings on Dundu Khoré ignited decades of ethnic antagonism resulting in a wave of violence that spread as far as the two capital cities, Dakar and Nouakchott, leading to selective killings, expropriations and mass expulsions on both sides of the border. In addition to thousands of dead and wounded, over a quarter of a million people were affected, fleeing their homes as both sides engaged in cross-border raids.

A More General Problem: River boundaries tend to be unclear, particularly regarding islands in a river which may change over time, and so constitute a common basis of disputes. The cultivation of land along the Senegal River also depended upon water rights, an example of the nexus of land and water claims which is common in dryland areas. It is often difficult to separate claims to land from claims to water.

5.1.3. STAGES OF LAND CONFLICT

Conflict over land can be surprisingly persistent, often bridging decades of war and peace, transforming and being transformed by events. Efforts to prevent and mitigate conflict are relevant at all stages of a conflict. CP actors should be aware of particular factors to watch for in the scoping process depending on the stage of the situation in question.

Tip:

Conflicts rarely follow a strict phase-by-phase continuum, but cycle back and forth between phases. Many issues arise both pre- and post-conflict, albeit with the typically added complexity and volume of post-conflict challenges.

While definitions and stages often mix and overlap in reality, the following points provide useful distinctions.

- **The pre-conflict stage** is the point at which the potential for successful prevention and the avoidance of violence are greatest. In this stage, competition for land resources and failures to address them effectively can contribute to the development and escalation of conflict. Substantive reforms and conciliation can still avoid the outbreak of violence.

- **During conflict** parties struggle for control of land resources, as much for control of populations as for the land itself. Lands and towns are sources of spoils, and can be distributed to militia commanders to ensure their loyalty. Combatants may particularly contest control of high-value point resources (such as ‘conflict diamonds’) which can help finance their operations. Options for engagement are limited at the height of violence. Peace processes provide important opportunities to address the potential for continuing or future conflict over land.
- **In the post-conflict period** old conflicts over land may remain, and new conflicts arise as a result of mass displacements and/or land occupations due to the conflict. Implementation of restitution and other requirements of international law and peace agreements take priority. Governments struggle to rebuild their capacity to deal with land, both to resume day-to-day land administration tasks and to address flaws and gaps in the policy and legal framework for land, and their success or failure will have important implications for future land conflict.

BOX 6. A Land Conflict Persists and Transforms

The Iraqi Government during the Baathist regime took large Turkoman, Kurdish and other landholdings in the city and province of Kirkuk under the Land Reform Law, and registered the land in the name of the government. After the fall of the regime in 2003, the previous owners filed claims for restitution, arguing that the taking had been part of the regime’s Arabisation campaign. But the fall of the regime also triggered a return of Kurdish refugees to the area and widespread construction of informal settlements on disputed lands. This was done with support of the Kurdish-dominated authorities, and was viewed as a programme of Kurdification in the province. The claimants await decisions on their restitution claims by the Property Claims Commission. An amendment to the Commission Law allows the Commission to ‘overrule’ a restitution request of previous owners and award compensation instead—an outcome which would not be satisfying to many claimants. Events appear to be running ahead of resolution efforts.

5.2. Preliminary Characterisation and Assessment

The tentative identification of potential for land-related conflict is not difficult. The challenge is how to make a reasonably sound preliminary characterisation of the level of risk and the potential for violence and damage. This can be difficult where violent conflict is on-going, or immediately after a conflict when access is limited, but the Eritrean-Ethiopian border war in 1998-2000 illustrates the need for caution (see Box 7).

5.2.1. PROCESS

The process can proceed along the following lines:

- **Identification of claimants and other stakeholders, and the nature of their claims and interests:** This involves identifying the groups involved, moving beyond vague statements about ethnicity or ideology to understand the nature, for example, of their ‘communities’. Do they share descent and culture, do they have spatial and political dimensions, what is the extent of their common economic interest, and is the ‘community’ itself divided in ways that may indicate the potential for conflict? Where government or ‘elites’ are claimants,

the same need exists to distinguish exactly those involved, their interests, constituencies and connections. It is necessary to consider carefully the history of land claims to see how they have changed over time, and to identify trends. Even those without land claims may nonetheless have important interests requiring accommodation.

Claimants have a direct and immediate interest in a dispute or conflict over land resources and make a claim to those resources as an individual or part of a community.

- **Defining interests reflected in and identified by claims:** A tentative identification of stakeholders (those with a property, political or other interest in how claims are resolved) must be made, together with a preliminary assessment of what each wants out of the claim. The actual interests of a stakeholder group will often be different from the stated interest or claim and considerable probing may be required to ascertain what would satisfy the stakeholder.

Example:

In the run-up to black majority rule in South Africa, land claims on both sides were broad and dramatic, intended to mobilise constituencies. Neither side was prepared for the nature or dimensions of the compromises that might be necessitated by power and political realities in the new South Africa.

- **Assessing perceptions of claims, including symbolic and identity issues:** Sources of information will have their own perspectives on potential and actual conflicts, which are often cast to fit their worldview (e.g. some will see an ethnic conflict; others will see class conflict, etc.). The CP actor must understand which issues are involved and how they interact. But it is equally important to understand how the different groups of claimants perceive their claims and the threats to them. A community involved in conflict over land convinced that its cultural survival is in jeopardy will react differently than a community which sees a threat to an economic resource.
- **Clarifying claims:** The CP actor must determine what is being claimed in each case by each party. There may be a number of versions of that claim, and it is crucial to understand nuances and to know by whom different versions are put forward. Once there is clarity on the claims, conflicting claims must be compared carefully to determine the level of inconsistency. Are they indeed incompatible, or is the overlap limited and perhaps manageable, so that both/all claims can be accommodated to a reasonable degree? Are the claims made under the same legal system (which will improve prospects for resolution), or are they based on alternative normative systems, as with statutory and customary land law, and therefore reflect different values?
- **Assessing on-going disputes:** Disputes over land resources are problematic in themselves for the parties concerned, and what seem small disputes can in the right circumstances trigger larger, more violent conflicts. But land disputes are also symptoms of potential conflict. Study of recent and on-going land disputes can be a useful tool in understanding the basis and potential for broader conflict.

- **Gauging risk of escalation:** This involves looking at the above information in terms of root causes, determining the extent to which scarcity, insecurity and grievance are involved, and what triggering events may be present or may appear imminent. This will assist in assessing the likelihood of overt and violent conflict, and can guide choices of where to focus efforts and resources.

BOX 7. The Eritrean-Ethiopian Border War (1998-2000): About Land?

Trigger: In May 1998 there was an incident in the tiny town of Badme, in Ethiopia's northernmost region of Tigray, just on the Ethiopian side of its border with Eritrea. Gunfire was exchanged between Ethiopian policemen and a group of armed intruders from Eritrea. In spite of international mediation, the conflict escalated into full-scale war.

Root causes of conflict: While national rhetoric on both sides of the ensuing conflict invoked defence of their territory against invasion as the cause and driver of the conflict, it had little to do with disputed land as an economic resource, which was extremely modest. Instead the defence of the territorial integrity of the countries involved arose from tensions rooted in the Eritrean people's vote for independence from Ethiopia in 1993 which not only seriously damaged Ethiopia's economic prospects (as the country was cut off from its main port and left landlocked), but also left the Tigray People's Liberation Front (TPLF), which dominates the regime in Ethiopia, feeling betrayed. The TPLF had previously enjoyed a strong partnership with the Eritrean People's Liberation Front (RPLF) as regions with strong ethnic affinities acting against the Derg regime in Ethiopia in the 1980s. While the TPLF stood by its commitment to support Eritrean independence if a referendum so decided, Tigreans reacted with a mixture of genuine regret and angry resentment.

Relations between the two governments grew increasingly hostile and bitter due to tensions over trade. Eritrea's visions for itself as the doorway for trade to and from the much larger Ethiopia, and as a more advanced, industrialised economy providing manufactured goods to a more agrarian Ethiopia were frustrated as the Tigreans introduced Chinese-style rural industrialisation in their home province, on the border with Eritrea. Tensions escalated further when Eritrea introduced its own currency in November 1997 anticipating trade and other advantages from this. Hopes were again frustrated when Ethiopia promptly insisted that all transactions between the two countries be carried out in a hard currency.

In this case, tensions over these broader issues led governments to build a quite manageable land incident into a cause worth war.

5.2.2. INFORMATION SOURCES

The information for such a preliminary and necessarily informal assessment will come from a variety of sources, from politicians to casual observers, from involved stakeholders to independent experts and commentators.

- **Key informant interviews** may be possible with important players, or even focus groups from communities, but while the information they will yield may be valuable, the interviews will not be systematic. Information gained should be treated accordingly.

Tip:

It is not uncommon to find different stakeholders describing events so differently that it seems impossible that they are the same events. It may be difficult to determine the 'truth', and it is more important to understand how the parties view the facts. The information provided will be anecdotal and will often reflect personal experiences, interests and inclinations. They will need to be balanced one against the other. Perspectives genuinely held are nonetheless real and important.

- **Studies** may provide valuable information, perhaps less influenced by current tensions. These may include earlier land tenure studies of a socio-economic nature, studies of the legal framework for land resources, or histories which consider the evolution of the land tenure system.
- **Data on land disputes**, where available, can help in assessing the potential for broader conflict. A visit to local courts and discussions with clerks and judges can be very useful to get an idea of the extent to which the conflict being explored is reflected in disputes before courts or tribunals.

6. Assessment (Step 2)

The CP actor will encounter diverse situations, different types of conflict at different stages, and different kinds and levels of risk. These include obviously dangerous situations, in which conflict is overt and the potential for it to spin out of control is clear. In other cases, the possibility of conflict may be evident but it may be difficult to judge the seriousness or urgency of the situation. In still other cases, violence may be present or even past, but it may be unclear whether land-related causal factors still pose a threat to peace-building. An informed judgement is essential to set the right priorities. The tools that can help observers understand nascent or on-going conflict are similar. The approach suggested here is stakeholder analysis accompanied by a review of the normative framework for land resources, informed by a political economy perspective.

6.1. Stakeholder Analysis

At a second stage of inquiry into the nature of a conflict and response options, it may be possible to undertake a more substantial field assessment of nascent or on-going conflicts. Stakeholder analysis is a well-established and relatively economical tool to understand such cases: the actors, their interests, and the power and other relationships involved.

A stakeholder in this context is someone with an interest in the conflict. It may be a property or economic interest, or a political, social or even a religious interest. Stakeholders are not limited to those vocally involved in competition and conflict over land resources, and care should be taken to look at all groups with interests in or dependence on those resources.

6.1.1. DATA GATHERING

Data gathering for such an assessment can add more ambitious tools to those mentioned in the previous section. Longer-term studies of a more in-depth nature (such as anthropological observation) or which offer more quantifiable information (such as household surveys) can be undertaken where time and resources allow, but the assessment approach will often need to be closer to a rapid appraisal model. This is an approach which has been used successfully for studying land tenure and other land-related phenomena, and some useful models are available. Key tools used to gather information in rapid appraisals include:

- **Key informant interviews:** Interviews with official and unofficial leaders and those who are locally recognised as knowledgeable, such as local oral historians. This type of interview can produce considerable information rapidly, but may be coloured by the interests or biases of the interviewees, which may not be readily apparent. It is preferable that these not be individual interviews but involve two or three key informants together, as they will often correct one another.
- **Large group meetings:** Convening a large group from a community can produce informative interactions from different viewpoints. Such meetings require considerable effort to arrange, and depending on the local culture, discussion may be dominated by ‘important’ individuals. Large meetings should be used

carefully, as they provide parties with an opportunity to express grievances, and arguments may ensue. The convener should consider with care whether sides in a conflict should be consulted together or in separate meetings.

- Focus groups:** Focus groups of 10-15 participants are more easily arranged than large group meetings. They can be convened at relatively short notice in popular public places such as near the local court, temple, tea house or bar; where neighbours are found engaged in communal work, or where women gather to wash clothes in the river. They are most useful for hearing the ideas of those who may be quiet or not even present in large group meetings, such as minorities, tenants, or women. It is usually preferable to use a female interviewer to speak with other women. Focus groups can also provide a forum for groups who speak languages other than the primary or dominant language of an area.
- Community assessments:** Rapid appraisals at community level are more time intensive than the above methods (typically three to four days in a community) and are only possible in a sample of communities, but they can provide greater depth, including a sense of intra-community interactions over specific issues. This is particularly important when conflicts are intra-community in nature. Participatory mapping of community land use and rights by different groups in the community can reveal different perceptions of space and significance. Walking community boundaries with local informants may reveal conflicts or disputes that do not emerge in meetings. Methods of gauging priorities and preferences of community members can produce results that are useful in framing possible solutions. Simple tools can provide rough quantification. For example, the matrix in Figure 2 was used with villagers in Madagascar to quantify land disputes affecting their community by placing seeds in the boxes.

Figure 2: Rapid Rural Appraisal of Land Disputes: A Land Conflict Matrix

<i>Disputants</i> <i>Nature of Conflict</i>	<i>Between villagers</i>	<i>With neighboring villages</i>	<i>With strangers</i>	<i>With the State</i>
<i>Trees</i>	• 1	—	••••• 6	—
<i>Land</i>	• 1	—	••• 4	—
<i>Grass/pastures</i>	•••• 6	•••••• 8	—	—
<i>Water</i>	—	—	—	—
<i>Animals</i>	•••••••••• 60	•••••••••• 90	•••••••••• 75	—

Source: Karen Schoonmaker Freudenberger. *Tree and Land Tenure Rapid Appraisal Tools*. Rome: FAO, 1998. Available at: www.fao.org/docrep/t1700e/t1700e00.htm.

- **Dispute studies:** Studies of recent and on-going land disputes can be valuable because they often reveal symptoms of underlying conflicts. There are models of such studies that follow disputes for years, but it is also possible through interviews with participants and others to assess disputes at a moment in time. Those disputes may reflect in microcosm a broader land conflict, but the motivations of disputants may be different from those anticipated on the basis of the community or national level dialogues.

Example:

In Liberia, the new national Land Commission is engaged in a study of land disputes before the courts and informal institutions, to better understand their underlying causes and assess their frequency.

- **Household case studies:** Case studies of a variety of households (landowning, landless, livestock-owning, female-headed, etc.) can be used effectively in the rapid appraisal context to understand interests in land and housing, and are especially useful in the context of inter-communal conflict. They may provide access to women for interviews where it has not been possible to consult them outside the household. It is preferable to use female interviewers in such household case studies.

Several, if not all, of these methods should be employed in a given situation. They will almost certainly produce different versions of events or situations, which may be a matter of nuance or reflect fundamentally different experiences and visions. Multiple sources of information allow those analysing the data to ‘triangulate’, reaching a balanced understanding by taking several viewpoints into account. The versions presented by those without an immediate personal stake in the dispute, even if less well-informed, may be more balanced and deserve extra weight.

6.1.2. ANALYSIS

Useful tools have been developed for use in stakeholder analysis. Based on the information gathered, it is useful to prepare:

- **Stakeholder group profiles:** The groups making claims to land resources, and involved or potentially involved in the conflict, will need to be profiled succinctly, but in some depth. Groups must be defined, their histories and cultural identities explained, their governance and decision-making systems described, their land tenure systems examined, and the extent and terms of their current and past access to land resources described.
- **Stakeholder group interest analysis:** The interest of each stakeholder group in the resource(s) that are the subject of the conflict must be explored. What is the nature of the interest? To what extent is it a legal (as opposed to a moral) claim? If so, under what law is the claim made? How and by whom is it articulated? Is the claim expressed in disputes, or in other ways? Are the interests of all in the group the same with regard to a claim, or are there divergences?
- **Mapping groups and relationships:** Preparing graphic expressions (such as Venn diagrams) of local, State and global interests in a conflict can facilitate thinking about interactions and power and other relationships among the conflicting parties and others at local, national and international levels.

- **Assessing the data through a political economy lens:** Analysis of the data should draw upon insights from a variety of disciplines (such as economics, law, sociology and political science) to understand how conflict over land resources is conditioned by the economic system, social relations, political institutions, the political environment, and the legal system. The roles played by communal and class interests must be explored, and the different interests of stakeholder groups at national and local levels examined carefully. An adequate strategy for addressing a nascent or on-going conflict should be both national and local, and may need to engage international institutions as well.

6.2. Assessing Legal and Institutional Frameworks

The way in which land-related conflict arises and evolves depends to a large extent upon the legal and institutional framework for land. That framework can complicate or facilitate the management and resolution of conflict, and affect how readily it transforms into violence. It can also provide tools that may be valuable in managing and mitigating conflict. This section provides guidance to the CP actor in assessing existing frameworks within a State which should inform the choice of options for legal and institutional reform set out in Section 7.

6.2.1. WHERE TO LOOK: SOURCES OF NATIONAL LAW ON LAND RESOURCES

In assessing a national legal framework on land resources, the sources of policy and law to be consulted include constitutional law, statutes and regulations, and jurisprudence, as well as peace agreements in post-conflict situations.

CONSTITUTIONAL LAW

The key provisions, present in most constitutions, are:

- Those specifying the State's interest in land and land-based resources, generally and in relation to particular resources (such as minerals);
- Those specifying the kinds of private or community property rights which are recognised; and
- The terms and conditions under which the State can acquire land under private rights for public purposes or in the public interest.

STATUTES AND REGULATIONS

The laws passed by legislatures, or more detailed rules authorised by those laws and promulgated by officials (regulations). The most important topics covered by statutes and regulations are:

- The law on property rights in land and transactions involving land (real or immoveable property, in the common law and civil law traditions respectively);
- The law creating rights in land-based natural resources such as forests or minerals;
- The law on land administration, including survey, cadastre and registration of land;
- The law on compulsory acquisition of land by government (nationalisations or, more technically, exercises of the State's power of compulsory acquisition for public purposes);
- The law on land use planning and physical planning, including building standards;

- The laws conferring management or regulatory authority over different kinds of land on various government agencies and governing matters such as the extent to which public land may be allocated to private uses or even alienated; and
- The law governing taxation of land.

These laws are usually of general application but some have more important implications for some part(s) of the country than others, for instance a law on regulation of residential tenancies. For urban areas, there may also be local rules and regulations governing land use, and covering areas such as control of land uses (zoning). These are less common for rural lands. There are likely to be some enactments that embody recent innovations in land law, for example a law on condominiums.

JURISPRUDENCE

The decisions of national courts, in particular the appellate courts, which interpret or even fill gaps in law. In recognition of the fact that justice requires a degree of consistency (i.e. similar cases are treated similarly), such decisions are treated with respect and tend to be followed in deciding new cases. While this is stronger in the legal philosophy and practice of common law systems (the doctrine of precedent), the same tendency is evident in the handling of prior decisions in the jurisprudence of civil law courts. These legal decisions are available in official reports and consulted by judges resolving cases.

Be aware:

While judges are trained in the consultation and use of this source of norms, it is one which ordinary people and other actors, including those involved in conflict prevention, may find difficult to access and assess.

LEGAL TRADITIONS

The balance among these sources of law varies in the different legal traditions present in different countries. The legal topics noted above are covered under each system, but arrayed differently. The three major traditions are:

- **Common Law** (English origins): Much of the law on private property rights may not be in statutes but in the decisions of the courts, reaching back into early English legal history for precedents.
- **Civil Law** (French origins): Most of the basic provisions concerning rights in land resources are statutory, presented as a chapter or two within a substantial Civil Code which contains the fundamental civil (as opposed to criminal) law of the country. Legal systems of socialist origin fall within the Civil Law family.
- **Islamic Law** (Koranic and Arabian origins): Primary reliance is on provisions of the Koran and Hadith (traditions). This is Shari'ah, as interpreted by the locally dominant school of Islamic jurisprudence, named after the jurist on whose writings it relies. It is often supplemented by statutes on topics undeveloped in Shari'ah, or statutes which attempt to integrate norms of Islamic and non-Islamic origin (for example the Turkish Civil Code).

PEACE AGREEMENTS

In post-conflict situations, national law may include provisions agreed upon as part of the peace process. The provisions of peace agreements, including provisions on land, are sometimes included in a new constitution, as in the case of Sudan at the end of its civil war.

Trends: Although not all recent peace agreements include explicit reference to land or treat land-related issues in a comprehensive manner, the clear trend is towards their inclusion in varying degrees of specificity. In many cases their treatment is *ad hoc*, but some agreements place these issues at the centre of broader peace constructions.

Common issues appearing with relative frequency in peace agreements relate to:

- Refugee and IDP rights to return;
- Rights to the restitution of property and mechanisms required to process claims;
- Reform of pertinent legislation;
- Land reform (including redistributive) measures;
- Land tenure issues;
- The rights of women to equality of treatment with respect to land rights;
- Customary law arrangements; and
- Compensation questions.

Challenges and dilemmas: Peace agreements can pose difficult questions in terms of promoting compliance and implementation of provisions—relating both to conformity of content with international standards and the degree of specificity with regard to land:

- **International standards:** Land provisions in peace agreements can ensure that international standards are observed, but they may also deviate from those standards which poses a dilemma for the international community. International standards and the terms of peace accords each have their own legitimacy and it is not possible to dismiss the claims of either; sometimes compromises must be struck and maintained in the interests of peace. Restitution, in particular, will not always be possible or even wise—especially, e.g., where more than one returnee may have the right to restitution to the same parcel of land, based on competing awards from different regimes.

Example:

In the interest of compromise and peace-building, the victorious Tutsi faction in the Rwandan civil war agreed in the 1993 Arusha Peace Accords to less than is required by international law in terms of restitution for its returnees, many of whom had long been in exile. Recognising that displacing Hutu occupants from what was Tutsi land would lead to further conflict, it was provided that those returning after more than ten years should be accommodated on State-owned lands. The new government stood by the commitment, in spite of concerns in the human rights community that restitution to its own constituency had not met the standards of the Pinheiro Principles. The ten-year rule has resulted in differential treatment for Tutsi returnees—some have had lands restored to them, some received alternative land and some none at all—but the government's adherence to the agreement does seem to have played a positive role in re-establishing civil order and public trust.

- **Specificity:** While detailed provisions in peace agreements may prove difficult to comply with in the aftermath of conflict, in part because they are based on assumptions that may not have developed as expected, more general provisions may lack the necessary specificity to ‘call’ a party on failure to observe them. Overly vague provisions can also be difficult to implement and may lead to different expectations that are hard to manage in the post-agreement phase.

Examples of the extent to and manner in which peace agreements have addressed land issues, and subsequent successes and shortcomings in implementation, are set out in Table 5.

Table 5: Land Issues in Peace Agreements.

Characteristics	Examples
Absence of provisions addressing land issues	In Cambodia, failure to address a wide range of land issues in the 1991 peace settlement is often seen to have created conditions for the severe abuses of land and property rights which have occurred since, involving large-scale seizures by the powerful against the poor.
Provision for a process to address land issues, but no implementation	In Sudan, although the 2004 Comprehensive Peace Agreement (CPA) recognises the importance of land issues, the problem of land ownership was deferred to the post-agreement phase through the establishment of a National Land Commission (NLC) and a Southern Sudan Land Commission. However, the NLC was never established, creating further problems in the post-conflict period. In particular, failure to define customary tenure in the CPA (and since) has meant many returnees have not been able to recover and access their lands.
Vague provisions contributing to slow or partial implementation	In Burundi, while the Arusha Agreement on Peace and Reconciliation is comparatively comprehensive in its recognition of various land issues, including a clause on women’s rights to land and inheritance, the vagueness of many provisions has weakened their effect. Slow progress in implementation has also been attributed to factors including lack of ‘ownership’ by signatory parties and limited technical and management capacity of the commission established to deal with land and property issues caused by political appointments of staff—which in turn have hindered donor support and limited impact.
Rights recognised and provisions for implementation lacking, but nevertheless achieved	In Bosnia-Herzegovina, the 1995 Dayton Accords enshrined the rights of refugees and IDPs to return home and to compensation where property cannot be restored. Although the principles in Annex 7 fall far short of a comprehensive implementation plan, subsequent bodies and plans put into effect after 1995 have had the cumulative effect of facilitating return home for thousands of refugees/IDPs not foreseen in the agreement.

Comprehensive provisions and implementation measures, but failure to implement	<p>In Guatemala, the 1995 Peace Accords included provisions concerning refugees, IDPs, the indigenous, and those whose lands had been unfairly taken in the past. However, such provisions have not been followed by government, with the result that fundamental structural issues remain unresolved. Land ownership in Guatemala remains among the most unequally distributed in Latin America, and conflict is still simmering.</p>
	<p>The 1992 El Salvador peace agreement was exceptionally detailed in addressing a wide range of land-related issues with provisions relating to i.a. land reform measures, new legislation and institutional mechanisms for dispute resolution. Vagueness with regard to local land tenure, however, contributed to different expectations, which in turn created serious obstacles to implementation. Implementation of an extensive land transfer programme (PTT) also proved slow due to logistical and bureaucratic obstacles, magnified by an absence of political will, particularly evident among officials in government implementing agencies. Poor donor coordination and insufficient UN attention to financing implementation also contributed to a weakening of the peace process.</p>

Guidance for mediators in negotiating peace agreements: In addition to consulting previously concluded peace agreements as part of the assessment process, CP actors may lead or support conflict resolution processes and the negotiation of peace agreements specifically. Guidance for doing so in a way that helps prevent the re-eruption of violence and supports sustainable peace is provided below.

Be aware: Resistance to addressing land issues at the negotiating table—and the extent and manner in which they are consequently addressed in subsequent peace agreements—may derive from/be influenced by:

- Parties' vested interests, e.g. where local political players have acquired land unlawfully during conflict.
- Lack of donor support (real or perceived) for addressing land issues.
- Perceptions that issues such as land mine clearance or outlining future forms of governance are more immediate and should take precedence over land issues.
- Misapprehension that land issues are by nature discretionary and political, and can therefore be negotiated away to allow compromises to take shape.

Guidance points:

- Although potentially difficult and time-consuming, good practice calls for dealing with restitution and other land issues, at least in terms of general commitments. Failure to address outstanding issues—whether created by recent violent conflict (e.g. refugee and IDP return) or long-standing pre-conflict grievances (e.g. confiscation of land and resources)—risks a re-eruption of tensions into violence in future.
- Resistance may need to be broken down before these issues can be addressed; securing genuine political 'buy-in' from all parties is essential for subsequent implementation.

- Solutions should be in accordance with international standards, including the Pinheiro Principles. The principle of non-discrimination in terms of the treatment of different groups is fundamental in this regard. For example, according to the right to return home to one refugee group, but denying it to another—or endorsing allocation of land to ‘war heroes’, while millions of rural and urban poor live without land or housing rights—will likely generate future grievances.
- Provision should be made for establishment of effective institutions and mechanisms, including monitoring mechanisms, to ensure implementation.
- There is a risk that too thorough and detailed treatment of land and property issues can jeopardise a peace agreement.

Example:

Treatment of restitution rights of those displaced by the conflict in the Comprehensive Settlement of the Cyprus Problem (‘Annan Plan’) is considered by some to be a key factor in the outcome of a referendum that led to the Plan’s rejection by the Greek Cypriot side.

- On the other hand, disguising contentious issues and disagreements with general formulations will cause problems later unless provision is made for effective mechanisms to address them post-agreement.

The ultimate goal: CP actors should strive for a reasonable balance between the advantages of a comprehensive approach with specificity in the elaboration of provisions and the political reality of the need to stop the fighting and secure a peace agreement in the first instance. Ideally, agreements will provide space for pragmatic implementation by all relevant institutions and agencies on the ground, while being sufficiently precise so as to avoid confusion and potential conflicts over interpretation.

CUSTOMARY LAW

CP actors may find it hard to ascertain customary rules in order to understand land claims under custom and the relationship with other bodies of law, but potentially useful sources of information include:

- Scholarly works, if they exist (although they may be out-of-date, as custom evolves over time).
- Holdings of courts regarding the nature of the customary rule may also be helpful, but may not be consistent with community understandings.
- Respected elders in the community recognised as their ‘experts’.

All these sources are part of the normative context and should be consulted in the course of identifying and assessing land-related conflict, including the extent to which the normative framework is itself part of the problem, or can provide tools to address the causes of conflict. Their compatibility with international norms should also be assessed according to the framework set out in Section 4.

6.2.2. ASSESSING THE LEGAL FRAMEWORK: SOLUTION OF PROBLEM?

In undertaking a conflict assessment, a fundamental question is whether the legal framework for land resources is itself contributing to or failing to mitigate conflict. A crucial first step is to ascertain whether identified conflicts are:

- Conflicts arising within an **accepted and agreed normative framework**; or
- Conflicts arising (partly) due to **disagreements over law** and dispute resolution mechanisms.

COMMONLY ACCEPTED NORMATIVE FRAMEWORKS

Conflicts over land often take place where the parties are in complete agreement as to the norms that govern access to and use of land. They come about through disagreements over the facts (for example where a boundary was marked, or the identity of someone who signed a contract) or the correct interpretation of the terms of an agreement or a law. These are more likely to be disputes than conflicts. They usually do not involve fundamental conflicts in values or cultural understandings of land, and because there is a legal framework and dispute resolution mechanisms whose legitimacy is accepted by all, there is the prospect for resolution of such disputes.

COMPETING LEGAL FRAMEWORKS

The pluralistic nature of the normative framework for land resources becomes part of the problem when different bodies of law are used by disputants to support conflicting claims. National law may not even recognise the legitimacy of the competing system. A common conflict pattern, especially in countries with colonial histories, exists when imported property rights adopted as national law are expanded geographically at the cost of customary rights in land, shifting control of land from local communities who had held it under custom to commercial and governmental elites backed by national law.

Example:

In mid-19th century Liberia, most of the land along the coast was purchased from local inhabitants and then granted in ownership to the ‘settlers’ who were former slaves emigrating from the US. Indigenous peoples holding land in the interior continued to hold their land under customary tenure, unrecognised by national law, which considers the whole of the interior to be property of the State by virtue of conquest. Conflict often ensued when a claimant for land (frequently an outsider) presented a deed of grant from the national government, which was valid under national law, for an area of land held by locals under custom.

Such conflicts are difficult to resolve, as parties do not agree on the applicable law, or do not have access to dispute settlement mechanisms which both sides consider legitimate. Both parties feel their claims are justified under the tenure system which they believe applies, which tends to harden positions and limit flexibility. Approaches and measures for addressing such conflicts are set out in Section 7.1.2.

FORMAL LAW AND CUSTOMARY LAND TENURE SYSTEMS

Customary land tenure, and its interaction with national law, structure most dialogue about land law in many developing countries. National law has often in the past, and continues to, either:

- Ignore customary land tenure and its institutions or seek to replace them; or
- Seek to incorporate customary norms.

Pitfalls of replacement: Given that authority over land is the core of power of traditional institutions, new national elites have sometimes seen customary systems as threatening or, because they are diverse and aligned with ethnicity, as an impediment to national unity. Yet programmes which have aimed to replace or ‘individualise’ these communal systems (which are culturally embedded and have institutions that defend them), have fared badly; programmes have not changed cultural and social values concerning land, and so transitions have been incomplete.

Example:

In Africa, post-independence governments have often dismissed chiefs and custom only to discover they must find ways to use them. This has sown normative confusion and conflict over land.

Pitfalls of incorporation: The courts, where they have countenanced customary land tenure have often ‘developed’ customary law through their decisions in a way that supports government policy, sometimes in ways detrimental to customary landholders. Definitions of ‘customary land tenure’ originating in the colonial courts persist today in Africa.

Negative example:

In the ‘settler’ colonies of eastern and southern Africa, where governments were anxious to be able easily to appropriate land for settlers, land was often considered government property, with customary rights recognised not as full property rights but as a mere casual use right which can be appropriated without compensation. In West Africa, courts tended to emphasise the communal nature of land rights to reinforce the power of chiefly institutions upon which the colonial policy of ‘indirect rule’ depended. In the post-independence period, court decisions reflecting national policy have often created a gap between the reality of customs on the ground and the ‘customary land law’ applied in the national courts.



Effective practice today emphasises the adaptation of customary tenure systems and their coordination with statutory law in a **harmonised system** of land law. Both the advantages and potential downsides of customary systems should inform this process.

Advantages of customary systems:

- There is a growing appreciation that many developing countries lack the ability to institute effective local land administration. As countries pursue the principle of subsidiarity—the notion that most government functions should be performed at the most local level possible—customary systems and their institutions are a potential resource for decentralisation of authority over land.
- Access to justice is provided where access to national systems is impeded by: cultural factors (e.g. language barriers or the gap between local customs and Western legal traditions); lack of trust in the system; and/or practical impediments (e.g. under-funded court systems, lack of infrastructure, poverty, geographical isolation etc.).
- Community-based justice which is rooted in the culture and history of the people who are using it and represents their values and beliefs, can be more effective in resolving certain kinds of disputes or regulating conflicts.

Potential challenges:

- The institutions which govern customary land tenure systems are sometimes authoritarian in nature and may incorporate cultural elements—for instance discrimination against women—which are inequitable and conflict with fundamental principles in the national constitution.



Reforms of customary systems may be necessary if they are to be incorporated into national systems of land administration.

6.2.3. IDENTIFYING NORMATIVE FAILURES

It is important in assessing land-related conflict to identify normative failures that may contribute to conflict. These may be:

- **Substantive failures** to mitigate conflict, or laws that require behaviours which are counter-productive from a conflict prevention or mitigation standpoint; or
- **Failures in the legal system.** Even where the law relating to land is reasonable, legal systems may be weak or incomplete in ways that make it difficult for governments to guarantee the rule of law and enforcement of laws.

Both sets of problems must be addressed to effectively mitigate conflict, and avoid violence, around land resources.

SUBSTANTIVE INADEQUACIES

It is not unusual to find substantive inadequacies in the legal framework applicable to land which contribute to the vulnerabilities to land-related conflict identified earlier. Common examples are:

Scarcity of land: Land scarcity due to high person to land ratios or unfair distribution of land may need to be addressed through redistributive reforms, intensification of land use or voluntary migration. It is necessary to identify or ascertain whether there are:

- Legal mechanisms that allow highly concentrated ownership by a few and need to be addressed to achieve more equitable allocation of land resources;
- Legal barriers to intensification that sometimes exist in the form of minimum holding or parcel sizes or restrictions on subdivisions. These may be intended to enforce an often arbitrary estimation of a 'viable holding', or to preserve large commercial holdings held by political elites;
- Restrictions on relocation, which can seriously limit migration, as existed in China for many years;
- In the case of migration, mechanisms in the legal system for land acquisition in the receiving area, either through land transactions or grants by government.

While it is not possible to create new land, housing can be created—in which case the CP actor must look at the legal frameworks for: a) institutions that provide public housing; b) provision of housing by real estate developers; c) the creation and upgrading of informal housing; and d) mortgaging and other financial options for those seeking to construct or acquire residences.

Insecurity of tenure in land: To assess the extent to which the legal framework applicable to land resources adequately addresses land tenure security (i.e. a low level of risk of loss of land), it must be established whether:

- The rights in the resource are themselves sufficiently robust and long-term;
- All groups are entitled to such rights;
- The rights are recorded in such a manner that the land involved and the right-holder can be readily proven if challenged;
- The rights are adequately protected, through purpose and compensation requirements, against compulsory acquisitions by the State.

Be aware:

- Assessing insecurity in formal legal terms is not sufficient. Since security has a subjective, attitudinal dimension, rights-holders' perceptions of their security are almost as important as (and in some cases more than) their objective security.
- It is important to consider these questions in relation to key groups. For example, tenure security may be generally good, but may be entirely inadequate for women, who in many countries perform most farming activities.

Normative dissonance: In countries with plural legal systems, CP actors must assess whether the existence of competing legal frameworks is contributing to conflict. In doing so they should consider:

- How the operation of the different bodies of law interact and whether they are competitive or harmonised;

Be aware:

- Rules can become complex as illustrated by this hypothetical scenario: In Nigeria, a Christian Ibo woman marries a Muslim Yoruba man in a ceremony before a Muslim kadi but also enters into a civil marriage. The couple later acquires land in an area governed by Ibo customary law. This raises questions: What law governs the marital property regime for the couple? Is it the same law that governs transactions and other matters with regard to the land?
- Rules to manage such situations are known as 'internal or interpersonal conflict of law rules', and are clearer in some countries than in others.

- Whether the areas of application of the different laws are clearly prescribed; and
- How relationships might potentially be better clarified and/or systems harmonised.

Tip:

Rules coordinating different bodies of law may be in place. For example, it may be provided that:

- Land surveyed and registered is covered by statutory law, while all other land is covered by custom.
- Religious law applies to inheritance of land, but not other areas.
- Land will move between the different systems of law according to specific rules.

Land Grievances: These often have their origins in the past, and the legal framework may not favour those who regard themselves or their ancestors as having been unfairly dispossessed. Here the CP actor confronts the conflict between two concepts of the right to land as a human right. The right to have one’s right protected will be cited by the current right-holders, who may have acquired the land in an historically unjust or legally questionable manner, but whose possession has been ratified by law. The right of access to land for livelihoods will be cited by the landless and dispossessed. CP actors should ascertain:

- How claims are being articulated, under which body of law and on what grounds;
- Whether, and how, national law (as is often the case) favours the security of tenure of current rights-holders, so presenting an obstacle to land access for other claimants; and
- Whether the legal framework provides potential opportunities for compromise or alternatives to a zero-sum solution.

LEGAL SYSTEM FAILURES

These are deficiencies in the legal systems and approaches that can make it difficult for government to address effectively land-related issues with conflict potential. They are outlined in Table 6.

Table 6: System Failures in the Legal Framework Applicable to Land

Failures	Implications and consequences
Overconfident and/or authoritarian law-making	Laws are less likely to be complied with if they simply command, rather than effectively use either incentives or sanctions to encourage compliance. Many land laws have no tangible existence beyond the pages of government gazettes. Where government capacity is limited, as is often the case, it is important to enact laws that create incentives for compliance rather than relying too heavily on sanctions and their enforcement (which is likely to be uneven at best).
Failure to cost legislation	Laws dealing with land resources and especially land administration and management are often enacted without sufficient consideration of the costs of implementation. A well-intentioned Ugandan land law called for an ambitious set of land administration authorities down to community level, but remained unimplemented and needed to be amended because government could not afford do so.

Poorly integrated systems	Legal confusion regarding land and tenure insecurity occurs where the legal framework does not provide for coordination among relevant bodies of law or the authorities that implement them.
Undue complexity	Legal frameworks of a complexity which does not allow their basics to be understood by ordinary people are difficult to implement effectively. Tanzania's land laws are models of precision and are sound from a policy standpoint, but their implementation has been hindered by their length and complexity.
Lack of legitimacy	Laws and regulations may be ignored when enacted by an authority considered to lack legitimacy. In southern Sudan during the 1980s and 1990s, national laws applying Shari'ah in lieu of local custom went largely unheeded. The South's non-Muslim majority did not recognise the authority of the national government and rejected these laws which it found objectionable.
Discrimination	The legal framework and particular laws may be discriminatory. Discrimination contrary to fundamental human rights standards can result in disrespect for the law and destabilise the legal framework. In Latin America, violations of the rights of indigenous peoples continue to undermine security and legality.
Lack of enforcement	Failures to enforce rights and contracts undermine security of tenure and invite resort to extra-legal options. In post-conflict Liberia, landholders whose lands have been occupied by those displaced by conflict have in the absence of effective legal enforcement in some cases resorted to use of thugs to clear informal occupants.
Lack of capacity to resolve disputes	In the absence of effective adjudication or mediation, security of tenure is undermined and the danger increases that parties will resort to extra-legal options.
Legal rigidity and unresponsiveness	Legal frameworks for land that are difficult to change (e.g., key legal provisions entrenched constitutionally, or in religious law) and prevent government from responding to public demands for change reduce the likelihood of needed legal reforms being made.

6.2.4. ASSESSING LAND SECTOR INSTITUTIONS

In addition to assessing the normative framework, CP actors must determine whether effective institutions for land administration and management are in place. Important considerations include:

- The extent (and legitimacy) of the powers of the executive.
- Capacity of and coordination between relevant ministries.
- Capacity and functioning of land commissions where they exist.
- The relationship between national legal and customary institutions.

It is exceptional, if very positive, to have the various competences connected with land in one government agency. The institutions involved in land administration and management can be diverse and include:

THE EXECUTIVE

In some countries (such as Kenya) the Prime Minister or other leaders of the executive branch of government enjoy sweeping powers to allocate public land.

MINISTRIES

Typically there is a ministry with overall responsibility for land, and another with responsibility for housing. The ministry responsible for land usually has other functions as well.

Examples include:

The Ministry of Lands, Mines and Energy in Liberia; the Ministry of Land Management, Urban Planning and Public Construction in Cambodia; and the Ministry of Lands, Local Government and Chieftainship in Lesotho. In Latin America, the Ministry of Agriculture is often responsible for rural land while the Ministry of Justice is responsible for urban land, though in Bolivia there is a Ministry of Rural Development and Land.

Important technical land administration functions such as survey and registration usually lie with the 'land ministry', often in a Department of Lands and Surveys.

Be aware:

The 'land ministry' is often a relatively recent creation, and is usually politically weak compared to the sectoral ministries. It may actually control a minor residue of public lands (those not with sectoral ministries) and have only a weak and unclear mandate to coordinate the management of public land.

Important categories of land resources commonly fall within the responsibility of other ministries, e.g. forests with the Ministry of Forests, natural resources with the Ministry of Environment and Natural Resources, pasture with the Animal Husbandry section of the Ministry of Agriculture, or fisheries with a Ministry of Water Affairs.

Be aware:

These sectoral agencies often treat the land resource under their control as endowments of their agency, and derive considerable revenue from it, either through allocating it to private users or controlling access to the extractable resources upon/within it. The result can be competition between government agencies for control of land, and rife corruption in land allocations.

LAND COMMISSIONS

Land commissions focused on resolution of fundamental flaws in land policy and law have played an important role in a number of post-conflict countries, such as Mozambique. The desperation of governments to escape the problems which have in the past led to conflict, and the disorganisation of vested interests sometimes provide important windows of opportunity for fundamental reform. If these opportunities are not seized within the first few years after peace returns, they may close, as in the case of Kosovo. Common types of commissions include:

- **National land commissions** consolidating control of land in a single institution. This avoids competition among ministries and if properly designed can provide insulation against political influence and corruption. Such commissions can act as custodians of the national ‘land fund’, which deserves to be managed and spent as carefully as any other fund.
- **Other land commissions** may be temporary and have particular roles, such as reform of law and policy, or land **dispute resolution**. They may also design the rules for dispute resolution, rather than actually implement it.
- **Courts and other institutions** involved in enforcement of the law and adjudication of disputes are also a vital part of the government machinery of land management and administration.
- **Commissions for restitution** may be established to deal with restitution cases through administrative procedures, rather than through legal decision-making—for example, where legal precedent is clear, administrative measures can be put in place.

Table 7 provides an overview of the potential advantages and disadvantages of different types of land commissions with different functions in post-conflict contexts.

Table 7: Land Commissions in Post-conflict Contexts

Role/advantages	Conditions/disadvantages	Examples
National land commissions to review land policy and law		
<ul style="list-style-type: none">• Created with a time-bound mandate to consult on and recommend measures to deal with key land sector issues that have contributed to conflict in the past and may threaten future conflict if left unresolved.• Can take advantage of opportunities which exist in post-conflict situations for fundamental reforms in policy and law.	<ul style="list-style-type: none">• Must be appointed on a non-partisan basis and insulated from pressures from vested interests.• Should be given clear and time-bounded tasks, or may experience ‘mission creep’ and begin to duplicate work of sector agencies, resulting in turf battles with those agencies.	<ul style="list-style-type: none">• In post-conflict Mozambique, a national land commission provided a useful forum for analysis and problem-solving, and developed an innovative land law which has proven a solid basis for implementation programmes.

<ul style="list-style-type: none"> • Can fill the gap often left by national land administration agencies with substantially deteriorated capabilities, vested interests and too narrow and technical approaches to the issues. 		
Land commissions focused on public land management and land administration		
<ul style="list-style-type: none"> • Created as part of the permanent land administration machinery to insulate key tasks, in particular management and allocation of public lands, from political and corrupt influences. 	<ul style="list-style-type: none"> • The commissioners must be appointed on a non-partisan basis and insulated from pressures from vested interests, including those within the national land administration agency. • The independence conferred also creates a lack of political accountability on policy issues, so must be carefully framed. 	<ul style="list-style-type: none"> • In Ghana, the Land Commission is enshrined in the constitution and has recently been strengthened by legislation bringing a number of other areas of land administration under its control.
Land commissions focused on dispute resolution		
<i>Commissions created to deal with disputes generally</i>		
<ul style="list-style-type: none"> • Can be useful in filling the gap left by a damaged or compromised judicial system. • Their mandate is usually mediation and arbitration rather than the winner-take-all solutions associated with court judgments and decisions. These approaches are particularly effective in confused post-conflict situations, where compliance with formal law may necessarily be secondary to solutions with which all the parties can live. 	<ul style="list-style-type: none"> • While such commissions can play a useful role, both in the short term and, by providing mediation and arbitration options, in the longer term, they can distract attention from the need to rebuild the State's adjudicatory capacity: its court system. 	<ul style="list-style-type: none"> • In Cambodia, a National Cadastral Commission with a mediation mandate, with offices at provincial, district and national levels, was created to deal with endemic land disputes. It has performed well on some levels, and because its work has been thoroughly documented, it provides a strong case study for such commissions.

<i>Commissions created to deal with a particularly explosive dispute or conflict over land that needs to be resolved urgently</i>		
<ul style="list-style-type: none"> • Useful for fact-finding and negotiating resolutions. 	<ul style="list-style-type: none"> • Given their often short-lived nature, it is important that their resolutions are taken up and implemented by a more powerful (and permanent) authority. 	<ul style="list-style-type: none"> • Such a commission was appointed in Liberia to address the ethnic tensions created by land restitution issues in and around the town of Ganta. While the commission provided useful factual findings, which are being used in follow-on efforts, it did not achieve a local consensus on these issues and negotiations continued.
Multi-purpose land commissions		
<ul style="list-style-type: none"> • Combining the functions of the above more specialised types of commissions, multi-purpose commissions that are engaged directly in field activities can also inform policy processes. 	<ul style="list-style-type: none"> • Easily overwhelmed by too great a variety of tasks, such as dispute resolution and policy-making, which call for different structures and competences. • Experience suggests that more specialised commissions are more productive. 	<ul style="list-style-type: none"> • National and regional land commissions were envisaged in the Sudan Peace Accords and incorporated in the post-conflict constitution. While the Southern Sudan Land Commission is operative, the Sudan National Land Commission has never been created and those that exist at provincial level (in only a few provinces) appear not to be effective.

CUSTOMARY INSTITUTIONS

Customary and religious systems of land tenure also have their institutions which are typically entrusted with the functions of land allocation and land dispute resolution. These may or may not be recognised by national law, but they may in fact be the most effective land administration institutions in many rural areas where custom prevails.

Tip:

Customary institutions may range from relatively weak, as in Tanzania, to very powerful, as in Ghana. This will depend in part upon the natural resources to which they control access.

These authorities have vested interests in the customary system and need to be considered and dealt with in any planning of reforms. They often exist in parallel with local government institutions that have authority over land in law, but lack the capacity or local legitimacy to be effective. In some situations, struggles for effective control of land between these institutions may be acute, as in struggles between traditional and civil authorities in parts of rural South Africa. In other cases, as in the creation of Botswana's Tribal Land Boards, creative ways have been found to coordinate traditional and civil authority.

6.3. Assessing Prospects for Change

Adequately assessing the role of the normative framework in creating or sustaining conflict involves assessing the political-administrative environment in which the conflict occurs, to gauge the parameters for possible legal reforms. Several factors should be considered:

- **Political stability:** Governments that have a weak or brief hold on authority find it difficult to undertake ambitious reforms, as do governments which lack popular legitimacy.
- **Awareness and engagement:** Governments which are out of touch with their peoples' needs and concerns are often unaware of potentials for conflict. Even if they are aware of the difficulties, they often lack the mechanisms and presence to engage with the parties concerned to search for solutions.
- **Class and identity politics:** The regime may be opposed to proposed reforms based on the communal and class composition of its constituency. Even the most authoritarian governments have such constituencies to which they must attend, though their identity is not as transparent as under democratic regimes.
- **Corruption and vested interests:** Corruption in land administration agencies is common, most dramatically where the State and its agents can allocate land at little or no cost to the recipient. This creates opportunities for major rent-seeking by officials, and gives rise to strong vested interests in those opportunities. Such vested interests also exist as the result of communal or class loyalties of officials.
- **Political will:** The government may either fail to focus on the need for reforms or, even if they accept the need, may believe that the political cost will be too high.
- **Capacity:** Proposed reforms may be too ambitious, and the human, technical and/or other capacities of implementation agencies may be inadequate. In that case, reforms may not be able to go forward until the resources to build capacity have been made available and have had effect.

An assessment of this nature informs the next step considered here: the identification of response options and their promotion.

7. Proposing Response Options (Step 3)

This section sets out options for managing, mitigating or resolving land-related conflicts and disputes before they erupt or re-erupt into violence. The advantages and benefits of the various options, as well as related drawbacks and potential risks, are explored and examples provided of where they have been implemented in different contexts to good or bad effect. The measures presented below fall into two categories:

- **Process** measures, aimed at enhancing the function of land tenure systems, including via more effective land administration and land dispute resolution; and
- **Substantive** measures to address issues such as land access, land rights, and land distribution.

In practice, effective prevention of land-related conflict will often require combining and integrating measures from both categories, or planning a succession of activities that involves measures from both sets.

7.1. Process Measures

Many of the measures outlined in this section do not address the underlying causes of conflict but can be critical to managing conflict and buying the time needed to avoid conflict escalating into violence.

7.1.1. REFORMS IN LAND GOVERNANCE

Given the substantial role played by the State in the management and administration of land in most developing countries, many disputes and conflicts over land originate in administrative actions regarding land, including allocations of land, enforcement of rules regarding land use, or administrative adjudications of land rights. Administrative bodies play a major role in enforcement of rights, and people come to them with requests for services and action. Many claims concerning land resources are handled administratively, by officials in local government or the land administration agency.

PROBLEMS

Many administrative institutions are highly inefficient. Service requests may be backlogged for years before official decisions are taken. Those delays constitute, *per se*, a denial of rights. Corruption, often rampant in land administration institutions, can affect the result of claims. It can also delay decisions, as each administrative requirement that must be negotiated is an opportunity for the extraction of bribes. Services for which official fees are modest can cost applicants many times those amounts once they have accommodated officials' requests for use of vehicles, petrol, per diems and 'facilitation' payments.

INSTITUTIONAL STRENGTHENING

The institutions responsible for creating and maintaining records of rights in land may require strengthening. Needs may include:

- **Enhancing institutional capacity** through management and technical training, provision of equipment, simplifying and rendering procedures more transparent, and reorganisation.
- **Ensuring adequate salaries** and realistic fees for services to reduce rent-seeking by staff of land administration agencies.
- **Decentralisation** to bring land administration facilities and services closer to local communities. Local offices may need to be strengthened to improve service delivery and access by local residents.
- **Transfer of decision-making over land** to more local levels in observance of the principle of subsidiarity, i.e. that a task can usually be done best at the lowest level of administration which is capable of carrying it out.
- **Systematic mapping and recording of land rights** to settle endemic conflict over land matters, perhaps most urgently needed in post-conflict countries; this is being implemented in Rwanda and Cambodia. This can be a technologically advanced exercise, but is preferably more basic, as with community-implemented certification of household land parcels being implemented in some regions of Ethiopia. See further Section 7.2.2. on documenting and recording land rights.

METHODS AND APPROACHES

A serious challenge to land administration capacity-building has been finding the right mix of technology and participation. Donors have in their projects sometimes introduced technologies, including surveying equipment such as TOTAL stations, which are of a sophistication that often cannot be maintained, let alone replicated, after a project ends. On the other hand, other modern technologies such as hand-held Global Positioning System (GPS) units are remarkably simple to use and can enhance participation of local communities and governments in land administration.



Simplicity and decentralisation seem to be the guiding principles in strengthening land administration, and simple, cost-effective models are available.

COMBATING DEFICIENCIES AND ABUSES

Simplification of procedures and decentralisation of services can help combat deficiencies and abuses by allowing locals to interact with public service staff from their own communities. For example:

- **Clear timelines** for delivery of services can help where delay is a key tool in extracting bribes. An international effective practice that is becoming popular in many countries is the device of 'affirmative silence,' in which administrative procedures must be decided within a specified time period. If the relevant officer has not made a decision by that time, the request is considered to be approved.
- **Group-based action strategies** can assist in enforcing rights and include: petitioning to demand services or rights enforcement; toll-free hotlines that provide immediate information on rights enforcement options and procedures; and access to officials such as ombudsmen dedicated to honest and effective public administration.

INSTITUTIONAL INNOVATION

There is an important tension between the creation of sophisticated systems, often favoured by land administration professionals, and the desirability of decentralisation of services and decision-making.

District level example:

In Uganda and Ghana, efforts are underway to effectively decentralise fairly sophisticated models of land administration down to the district level. Staffing is an important challenge.

Decentralisation to **community level** is more difficult than at higher levels. An important determinant of the potential for that level of decentralisation is the existence of viable local institutions. These may be multi-purpose, as in Tanzania and Ethiopia, and it may be relatively easy to engage them in land administration.

The same applies to **traditional institutions**, as in the case of Ghana, where customary institutions are being strengthened for better integration into the national system through the creation of customary land secretariats. Creation of new institutions is, however, expensive, and difficult to take down to local level.

Example:

Botswana's district and sub-district tribal land boards are a model that gradually replaced traditional authorities with civil authorities, as regards the control of both land under custom and statutory forms of land allocation. The system nonetheless relies heavily on the local knowledge of the most local level of chiefs, the ward chiefs.

For many years the debate about institutions and reform was focused around two alternatives: acceptance of traditional institutions and custom on one hand, versus individualisation and formalisation of tenure on the other hand.



Hybrids such as those discussed in this section may offer the most realistic approach for many countries, and deserve to be explored further.

Consider:

Is it ever appropriate to leave an institutional vacuum, at least for a time? In post-conflict Timor Leste, those addressing land issues decided it might be better to avoid creating the needed new institutions initially, anticipating difficulty in reaching a consensus. Now, some years later, the directions to be pursued are clearer and work is proceeding on the creation of a hybrid institution.

7.1.2. TOWARDS EFFECTIVE LAND DISPUTE RESOLUTION

Conflicts of interest sometimes result in disputes which, as outlined in Section 6, are events which can trigger conflict and symptoms of more fundamental vulnerabilities and deficiencies in the land tenure system. Dealing with the underlying inadequacies and vulnerabilities is the most effective way to prevent future disputes and the conflicts they may trigger. But in the short and intermediate term, effective and

legitimate ways must be found to settle disputes and reduce their capacity to trigger broader, violent conflict. The variety of such disputes is considerable, and elaborate systems of classification exist, some emphasising the nature of the parties (e.g., private-private disputes, public-private disputes, etc.), and others the nature of the legal issue at hand (e.g., inheritance disputes, boundary disputes, disputes over transactions, etc.).

DEFENDING LAND RIGHTS

The first line of defence of land rights will often be community institutions, especially if the dispute is between community members.

- **Customary dispute resolution institutions** are diverse. They may be similar to courts, but more often involve a process similar to arbitration and seek solutions concerned less with strict rule enforcement than compromises that allow the parties to have continued social interaction. They may rely on magical or spiritual sanctions, and can be quite effective among community members. Often conflicts which have not yet resulted in dispossession or other illegal acts can be dealt with in such fora. However, these institutions will not be effective when one of the disputants is not a community member and so does not recognise the authority of community institutions.

→ It is important that civil law recognise the validity of their resolutions, at least among members of the community.

- **Civil institutions:** The first resort of someone threatened with dispossession is often to the police or local officials they know. Their effectiveness will depend a great deal on whether the person threatening dispossession has already secured their support for his or her side. The courts may also be approached, but in practice all these civil institutions usually only react effectively, if at all, after a dispossession has taken place. This is an important limitation on their effectiveness.

→ Legal or regulatory reforms can improve this, and sometimes special, more expeditious 'land courts' are created, which in some cases can themselves use alternative dispute resolution (ADR) rather than adjudication.

- **Religious institutions:** It may also be possible to take a dispute before a religious authority, such as a *kadi*, if the parties are of the same faith.

Adjudication of disputes by application of national law is usually reserved for State actors, but mediation is more flexible. Especially in post-conflict situations, where formal dispute resolution has been badly disrupted or simply overwhelmed by the number of land disputes, it is increasingly common for non-governmental organisations (NGOs) and other civil society actors to be asked to take an active role in mediating land disputes.

METHODS FOR FACILITATING DISPUTE RESOLUTION

These include:

- **Improving the substantive rules** that govern the resolution of land disputes; and
- **Providing efficient procedural mechanisms** for dispute resolution.

Improving substantive rules: For example, in post-conflict situations where displaced populations in decades-long conflicts have settled on the lands of others, or on public lands, the rules governing the impact of long-standing occupation on prior rights are critical to dispute resolution. If those rules are simple and clear, and the proofs required are not too difficult, such disputes may be relatively quickly and expeditiously resolved. If those rules and their effectiveness are public knowledge, disputes may not arise.

→ The fairness of a rule that confers rights on long-standing occupants of land originally owned by others is open to debate, but its practicality is clear. It brings the legal position into line with long-standing reality. It does not usually come into conflict with the right of restitution, because the owner can argue successfully that during a conflict he was in no position to assert his rights to his land.

Adverse possession (also 'prescription'): The right under the law of someone who has occupied a piece of land for a prescribed, extended period of time, behaving like an owner and not recognising another's ownership, to become the owner of the land. This is regardless of the fact that the land was owned by another when the occupant entered into occupation. Certain conditions, which vary from country to country, must be met. The occupation must be for a long period, typically 10-15 years, but as many as 30 years in some legal systems. The right does not exist in all countries, and in many countries does not apply to public land.

Efficient mechanisms for dispute resolution: There are two fundamentally different approaches to dispute resolution. The first is adjudication, or judging, and the second is mediation or other forms of alternative dispute resolution.

- **Adjudication, or judging,** relies upon an authoritative decision-maker to prescribe the resolution of a dispute **through the application of law**. This is typically implemented by the courts maintained by the State. One party can file a claim in the appropriate court, and that effectively compels the other party to submit their claim to this adjudication process. In concept, the court acts as a leveller, applying the law without favour to the parties regardless of their power relationship. However, the cost of litigation and the varied capacities of the parties renders this 'levelling' illusory in many situations.
- **Alternative Dispute Resolution (ADR)**, a range of possible approaches that rely upon consent of the parties. They have in common that they do not require that the resolution be the result of application of the law to the facts of the dispute. They allow and encourage compromise, which often produces different results than the application of the rules. Also, both parties must voluntarily submit themselves to ADR processes. Their participation is not typically compelled by law, though a court may sometimes order the parties to attempt to arrive at a mediated solution before proceeding to adjudication.

Options and considerations for selecting an approach:

- ADR approaches are typically less expensive and more expeditious than adjudication. Parties resort to them in part out of fear of extended litigation.
- In arbitration, the parties agree to an arbitrator whom they ask to reach a decision fair in all the circumstances. It may or may not accord with the law. The parties may agree to binding arbitration, or may only agree to the process, and decide whether to agree to the result once they see it.

- In mediation, the parties request a mediator to help them agree to a compromise. The mediator has no authority to 'decide' the dispute, binding or non-binding. It must be resolved through the negotiated agreement of the parties. The law remains in the background in such discussions, but can affect the outcome because it is the default solution if these processes fail.
- Both arbitrated and mediated results, if properly documented, can be enforced by a court of law.
- ADR, like adjudication, works best where there are not large power disparities between the parties.
- ADR, unlike adjudication, does not claim to 'level the playing field'; when the parties bargain, they bargain from their positions of strength or weakness.

BOX 8. Land Dispute Resolution in Post-Conflict Cambodia

In post-conflict Cambodia, the government decided to pursue systematic registration of land use rights, including adjudication of rights to be registered, to deal with the destruction of land rights that had prevailed under the Khmer Rouge. The initial small scale of the process meant decades would pass before all land in Cambodia could be covered. The Cambodia Cadastral Commission (CC) was consequently created as a mechanism to deal with the land disputes which were endemic throughout the country.

Competences and function of the CC: The CC operates at national, provincial and district levels as an administrative court to resolve by conciliation or decision the ownership of disputed land that has not yet been issued a possession or ownership certificate. Originally only the national CC was empowered to decide cases; the other two levels could only attempt conciliation. Recently the power to decide was granted to the provincial level as well.

Assessment of the CC:

- The CC started accepting cases in December 2002 and has shown a more or less steady improvement in terms of professionalism and effectiveness.
- The CC has not, however, been effective in dealing with cases brought by large groups of the poor against the rich and powerful who are displacing them.
- An on-going CC pilot project initiated in 2007 and funded by GTZ aims to address this problem by hiring retired chiefs of district land offices to head mobile CC teams at district level. These teams have been fairly successful in terms of quantity of cases resolved and, in particular, in resolving some of the multi-party cases involving impoverished groups against individual companies, government officials or agencies, etc.
- Important areas of land conflict remain outside of the authority of the CC because the registration programme has been selectively implemented, allowing appropriation of indigenous lands and valuable urban lands. One such case in Phnom Penh led the World Bank to terminate support for the land registration programme.

Tip:

Dispute resolution in many customary societies is through mediation or other means intended to achieve agreement, because the parties must continue to interact with others in small communities.

FINDING VIABLE COMPROMISE:

In seeking to resolve disputes it may be preferable to seek compromises with which all parties can live. Where enforcement processes are weak, without some balance in the disposition or some basis for consensus, enforcement may not be possible. It may also be the case that none of the interests asserted is frivolous or entirely without basis, but are instead held with conviction and have some basis in events that have transpired, including inconsistent actions of successive governments.

Examples of conflicting claims:

- Those with customary rights assert them against rights claimed by others under national law.
- Two claimants appear with grant documents to the same parcel of land from different government offices.
- Returnees after a civil war lasting decades find their lands or homes have been allocated by government to someone else.



It is challenging to resolve such conflicting claims without creating grievances and resentments with repercussions in the future. A by-the-book, winner-takes-all solution may create exactly such a result. Compromises are less likely to do so. Common models of compromises include:

- **Compensation and/or resettlement:** In the traditional models for resolving conflict over land, only one party (the one with the stronger right) gets the land. The 'losing' party gets nothing. But this is often unfair and inappropriate. Even where one party gets the land, the resolution need not be a zero-sum game. For example, the settlement may require the party who gets the land to provide compensation in some form, for instance alternative land or resettlement assistance. Where the other interest holder cannot do this, government may be willing to put other resources, such as nearby State land, on the table, which can facilitate agreement.

Example:

In the South African restitution programme, where return of land itself is not a possibility, the government often assumes part or all of the burden of compensating the claimant.

- **Land-sharing (partitioning):** When two reasonable claims are made on the same resource, one form of compromise is to divide the resource. This is easiest when the resource is extensive. There may be opportunities for intensification of land use that will reduce damage to income streams from the land for users. Partition is also possible, even if painful, for smallholdings. Because household landholdings often consist of several small plots, such partition may involve dividing those plots among two households, rather than the partition of each plot.

Example:

In Rwanda, returnees after the civil war often found others occupying their homes and farms. Rather than disappoint either group entirely, the government implemented ‘land-sharing’ i.e. division of the plots among old and new holders. Mutual disappointment was considered less likely to spark renewed conflict between the claimants than a resolution to the strong advantage of one side. While the approach taken in Rwanda has eased difficulties in the short term, it remains to be seen how well it will ultimately be accepted by those who have been required to share the land. An underlying sense of injustice remains—constituting a potential source of conflict.

- **Land-sharing (overlapping use):** Where land users need the land for quite different uses, some basis for compromise may exist. For example, seasonal access to relatively limited point resources, such as water holes, along pastoralist migration routes, may be reserved for pastoralists to meet their needs while allowing farmers to cultivate much of the area simultaneously. Such land-sharing arrangements are common in customary contexts. In the same manner, projects to conserve natural resources can often allow continued gathering of non-timber forest products, or even hunting for the pot by local people without undermining conservation objectives.

REACHING AND DOCUMENTING AGREEMENT

CP actors can play a role in negotiating such agreements, though officials should document them and officially declare the results. If government tries to impose a compromise, it may be challenged as not reflecting the legal position and officials could be accused of not enforcing the law. This can be avoided, however, if a third-party actor such as an inter-governmental organisation (IGO) or NGO, for example, arranges a compromise. This constitutes facilitation or mediation rather than adjudication. The agreement should be set out in writing and signed by representatives of the contending parties (the more the better), witnessed by the mediating actor/organisation, and conserved through deposit of copies in multiple official repositories.

WHEN ARE SUCH AGREEMENTS MOST APPROPRIATE?

Such agreements are appropriate when there are fundamental differences between the parties as to the applicable law and the legitimacy of the rules urged by the opposing party. While different legal systems often have different rules about land and other land resources, they exhibit remarkably similar understandings of the concept of contract. It is usually common ground that if an agreement is reached, with the appropriate formalities, it must be honoured. Because even parties with rights at law are allowed by their contracts to compromise those rights, the settlement cannot be challenged on the grounds that it does not reflect the result that would have been reached by a strict application of law.

7.1.3. THE ROLES OF LEGAL AWARENESS BUILDING AND LEGAL ENABLING

Failure to adequately address land claims through legal means can lead to extra-legal action and violence. Especially for the poor and disadvantaged, good rules and solid dispute resolution arrangements are not enough to assure access to those mechanisms, or even due process. In order for poor communities to realise the rights

given them in law, those communities and the CP actors working with them need a more robust understanding of what they need to effectively press their claims. The figure below may be helpful in explaining those needs.

Figure 3: Legal Empowerment



Source: Bruce et al. *Legal Empowerment of the Poor: From Concept to Measurement*. Washington DC: ARD for USAID, 2007, p. 12.

‘RIGHTS ENHANCEMENT’ AND ‘RIGHTS ENFORCEMENT’

These involve, respectively, changes in the substantive rules of land law and the procedural rules governing resolution of land disputes, and the need for claimant-friendly mechanisms that enforce land rights. They are discussed further in Section 7.2., but rights awareness and enablement deserve discussion at this point, tied closely as they are to the development of social movements that may provide the impetus for structural reforms and the subsequent enforcement of those reforms. Recent work on legal empowerment of the poor highlights these approaches.

‘RIGHTS AWARENESS’

Such awareness means more than simple knowledge of a land right. It requires both comprehension of the right and concrete understanding of how to assert and protect it. Lack of adequate health care, education, economic resources, and social experience—coupled with the pressure to perform daily labour to meet basic needs—places poorer claimants at a disadvantage. For individuals not trained in the legal profession, laws are often hard to access and understand. The isolation attendant to poverty in developing countries dictates the need for intentional and well-considered efforts to build awareness around land issues. Potential measures include:

- **Land law literacy campaigns**, which can reach the poor where they live. E.g., radio campaigns, NGO-managed advisory services, and distribution of cartoon sheets highlighting issues can all be effective.
- **Community-based land law literacy efforts** are less visible at a national level but potentially highly effective. Operating at the local level, planners can tailor a campaign to the needs of a particular population, which in turn can suggest and generate the content for the campaign. Information can be particularly effectively conveyed when integrated into activities such as training programmes for farmers and union-organising efforts.

‘RIGHTS ENABLING’

Rights enabling refers to measures and mechanisms that assist those who have land rights to use the law and its processes to realise their rights.

- **Procedural assistance** is one important form of legal enablement. Legal aid, which provides low or no-cost legal assistance to the disadvantaged, plays a central role in providing procedural assistance. Individuals and entities offering legal aid services are highly diverse and can include activities ranging from completing forms and deconstructing regulations to representing the poor in legal and administrative proceedings. Training of locals as paralegals to assist with land claims can make a lasting contribution. They serve not only as efficient providers of assistance, but their presence in the community creates a local base of land law knowledge and experience with legal matters concerning land that can be easily expanded within those communities.

Tip:

Legal aid clinics that train local traditional leaders and elders to serve as advocates for their constituents can create a powerful presence in their communities. Such support is essential for women, who in many cultures cannot appear or speak on their own behalf in traditional fora.

- **Giving a voice to landholders** is equally important to enabling, especially for the poor and disadvantaged. Projects and political processes can intentionally include the poor or their representatives in decision-making processes. Legal requirements of notices and hearings can facilitate this. In some contexts, it may be feasible to create guaranteed space for the poor on decision-making bodies.

Tip:

Community organising around land issues, and building the capacity of community institutions are powerful tools that can have significant knock-on effects. Capacity-building in NGOs and CSOs that undertake such activities can also be a valuable contribution to helping such right-holders realise their rights.

These are important tools in the arsenal for managing and mitigating conflict over land. However, in the end, effective conflict prevention and resolution depends upon substantive measures that address injustices including the denial of rights.

7.2. Substantive Reforms

This section introduces measures that directly address structural deficiencies and other sources of inequality or injustice which can give rise to conflict over land. Conflict and the risk of violence can ultimately only be addressed through such measures, which CP actors can support and promote.

7.2.1. NORMATIVE CHANGE AS THE BASIS FOR REFORM

Because this handbook deals with land resources that are the subject of private and public rights, many reform options—while not limited to normative reform—will require a change in the rules as a basis for implementation. Given that some urgency may exist, the most expeditious form of possible normative change should be used, but choice of form will be determined in large part by the government's perspective and position in the process of recognition of and addressing the perceived threat of conflict. Some major reform options are outlined below.

POLICY REFORM

This is an appropriate way to proceed when government has not yet recognised nor clearly defined the land-related threats of conflict.

Policy is best addressed in a comprehensive fashion, and countries commonly will develop a **land policy paper**. This is typically prepared by a high-level commission appointed for the purpose, with expertise drawn from across sectors with land concerns. It informs the population of the government's thinking and intentions, and serves as a guide to officials, if of a fairly general nature. But it is not binding even on the government of the day; the same government may issue another policy after some time, and the next government may have quite a different land policy.

Be aware:

In exceptional cases, land policies have been sent to parliament for approval, which gives them a life beyond the government of the day. This is the case for the recent National Land Policy adopted by the Parliament of Kenya.

In some countries, for better or for worse, policy may have the same force as law. There is no universal constitutional or other legal criteria regarding how a policy is made and promulgated, let alone implemented.



A land policy is a valuable but relatively 'soft' instrument.

REFORMING PRACTICE

Where government behaviour needs to be changed, then CP actors should consider whether this can be accomplished within existing law by a simple **instruction from the Minister of Lands** to his staff. That instruction may tell the staff to cease doing something that they are not required by law to do, or perhaps not even authorised by law to do. In many developing countries, the legislation and regulations under which land administrators operate are fairly general. Much specificity is provided and considerable gaps filled with instructions from land administrators.

- Such instructions can be a very useful tool, and require only the approval of the administrator.

LEGAL REFORM

- **Reforming regulations:** It may be that the problem can be ameliorated by changing the behaviour of officials, which can be accomplished by changing a regulation of the ministry concerned. One should not of course seek to amend the underlying law in this way, because a regulation that overreached in that fashion should be held invalid by the courts as a usurpation of the authority of the legislature. However, some legal systems give greater rule-making authority to the executive than others, and even where that authority is quite limited in law, courts may in practice rarely discipline the executive in this regard.

Be aware:

In exceptional cases regulations may need to be approved by the Council of Ministers (e.g. Palestine and Cambodia) or submitted to the legislature for comment before final promulgation (e.g. Lesotho).

- It may be possible to do a good deal through reforms in regulations, which typically only require the approval of the minister concerned.

- **Law Reform:** If amendment to an existing law or a new law is needed, this will typically take some years to accomplish. Where only a modest amendment is required, it may be feasible for the relevant ministry to process it and send it through cabinet to parliament. But if the amendments are extensive and fundamental, or a new law is needed, it is best to consider a commission that draws on expertise across sectors with land concerns. It is important that women and minorities be represented on such a commission.

- A commission can provide direction, and in some countries a standing commission exists for this purpose, such as a Law Reform Commission.

Tips on process:

- Drafting should be informed by the commission via clear directions regarding basic policy choices, and work should be approved by the commission.
 - Drafting of the amendments or law is best done for the commission by a local legal draftsman thoroughly familiar with local legal drafting conventions and the many bodies of law that are likely to interact with a new law.
 - Regular inputs by legal experts knowledgeable about international effective practices are equally important.
- **Constitutional reform:** Most constitutions contain a property clause. It typically declares a general right to be secure in property, but qualifies it with an affirmation of the State's right to compulsorily acquire land for public purposes or, a broader test, in the public interest. Such takings are usually made subject to payment of compensation. Constitutional reform may be required to clarify that land reform is a constitutionally acceptable public purpose and provide for levels of compensation which are lower than those for other takings and more compatible with the public resource available for such a broad taking.



Exceptions to normal protections of property rights should be framed narrowly to address the particular injustice calling for the reform, and not undermine general standards for such protection.

- **Institutional reform:** Institutional reform is often necessary in the interest of effective implementation of needed programmes. In pre-conflict situations, dysfunction in land sector institutions may undermine efforts to avoid or manage conflict. In post-conflict situations, national land institutions need to be recapacitated to resume their responsibilities (see Box 9). It may not be appropriate to re-establish these exactly as they existed before conflict.

Be aware:

Internationally, the land sector is notorious for fragmented and overlapping mandates of multiple ministries and agencies. Attempts to coordinate implementation of reform programmes among these many agencies, each often relatively ineffective, is unlikely to succeed.

Unification or coordination of control of the land sector typically requires amendment of the law creating these agencies and establishing their competences. Where this is not feasible, an option is a law to create a new purpose-specific authority, such as a **‘land reform authority’** empowered to acquire and distribute land. It may also be feasible to create an **administrative ‘land commission’** (different from the policy and law reform commissions discussed in Section 6.2.4.) which at least consolidates key land administration functions (such as survey, titling, and registration of land, and management of public land).

Example:

Ghana has consolidated these functions under such a commission, which has constitutional status to ensure its autonomy.

BOX 9. Land Institutions: The Post-Conflict Challenge

In post-conflict situations, rebuilding the peace often proceeds in its early stages in the virtual absence of local institutional actors. Humanitarian organisations frequently mobilise international NGOs to perform many of the relief and rehabilitation activities, as well as dispute resolution, normally undertaken by public institutions.

In some cases, it may be possible to build a local NGO with specific competences in the land sector, such as alternative dispute resolution for land disputes, or to provide the poor a voice in early policy discussions.

BOX 9. Continued

Often, however, humanitarian agencies, driven by the urgent need to address immediate problems on the ground, wait too long to begin working with and rebuilding national institutions. After long conflict, these may be substantially disabled, their buildings destroyed or sacked, stripped of trained staff and equipment, and lacking even the vehicles and petrol to move outside the capital. Land sector agencies may find their land records burned or otherwise destroyed. Basic management training and assistance in prioritising and planning for gradual resumption of their legal mandates may be needed. Consolidating the peace requires the development of institutional capacity.

Rebuilding institutions is a long-term task, but it should begin as soon as possible. Engaging the staff of land institutions in the tasks undertaken by humanitarian organisations that relate to the mandate of their institutions can accelerate capacity-building. At the same time, CP actors, humanitarian agencies and others should press for the earlier involvement of development agencies, which have greater competence to rebuild land sector agencies and begin to identify needed changes in structures and programmes.

7.2.2. BUILDING SECURITY OF TENURE TO AVOID DISPLACEMENT

For effective prevention of future conflict, few measures are more important than those which build security of tenure. Much land conflict originates in displacement of existing land users, either immediately or when grievances are left unaddressed for too long. Measures that build tenure security include:

- The strengthening of rights of land users in land resources;
- Measures that better document those rights and, if threatened, facilitate their proof and defence; and
- Strengthening of institutions that enforce and defend those rights.

STRENGTHENING THE CONTENT OF EXISTING RIGHTS

One source of insecurity is the relatively weak nature of the tenure of land users. The risk of loss of land is greater if:

- The tenure is too brief in duration, or is not inheritable;
- The tenure does not empower the holder to transfer the use of the land temporarily to deal with labour or capital constraints of the household; or
- The user is subject to restrictions on use that do not allow profitable management and response to market opportunities.

Land tenure reform (or land law reform): Reform of the law relating to property rights in land, clarifying and adjusting the rights and duties of property-holding individuals, communities or entities in relation to each other and to the State.

A key policy choice in this area is whether the fundamental tenure available to private land users should be:

- Full private ownership;
- A long-term use right (usufruct);
- A long-term lease from the government; or
- A right within some form of community title.

→ While security of tenure is typically stronger in private ownership systems, basic security of tenure can be achieved under any of the four choices.

(A full discussion of these options is beyond the scope of this handbook, and the choice is often affected by ideological preferences.)

Tip:

More important than the name of the tenure is the detail of rights and responsibilities conferred. A lease, for example, is a flexible legal instrument which can be framed to provide either very strong or extremely weak tenure security.

LEGAL RECOGNITION OF PREVIOUSLY UNRECOGNISED LAND CLAIMS

It has been noted earlier that much of the land in developing countries (notably most land in Africa and extensive areas of Latin America, Southeast Asia and the Pacific Islands) is held under customary rights whose existence is in many countries not recognised by the State. In fact, land held informally or under custom unrecognised by national law can be and is often taken by the State without paying occupants compensation.

Customary systems left to themselves may be quite capable of providing security of tenure to members of their communities, but without State recognition they cannot provide security against challenges based upon rights conferred under national law. Customary rights are often challenged by State land grants, leases or concessions, or declarations of protected or other conservation areas. Similarly, occupants of urban areas of informal settlement often lack any legal recognition of a right to the land they use. Such informal settlements—insecure, poor and neglected—are often reservoirs of frustration and anger that can boil over into violent conflict.

→ Formalisation or regularisation of these holdings has an important conflict-mitigation potential that has not often been recognised.

There are two main approaches to the recognition of customary rights:

- **Provide recognition** to the rights as a customary right (as in Ghana and Mozambique); or
- **Transform the right** into a right under statutory law (as in Kenya and Tanzania).

Such recognition can on the legal plane be achieved by a simple amendment of law, but an effective change process will involve more proactive activities, including mapping, documenting and recording the rights and the land to which they apply, and public education to increase land law literacy (both discussed below).

Be aware:

Where customary rights are to be recognised, negative elements in the system will need to be considered and strategies for dealing with them developed in the context of recognition. These may include discrimination against women in access to land rights, or highly authoritarian or exclusionary decision-making structures in traditional institutions.

DOCUMENTING AND RECORDING LAND RIGHTS

In most situations, it is often possible to establish who holds which land rights in which land through mobilising community knowledge on these matters. Especially in rural communities, there is significant and widely distributed knowledge which can be gathered through participatory approaches, as is often done for project or restitution purposes. This is frequently the most reliable evidence of land rights, but is unfortunately often ignored because the law requires written documents as proof.

While this information can be accessed fairly readily, the challenge is to produce a written record of such rights and keep it up to date, reflecting changes in land rights as the result of inheritance and transactions. This has led to widespread calls for registration of rights in land, known as **'formalisation'**.

'Titling' is the most common form of documenting a right. This involves the conferring of a documented right to a surveyed, and thus clearly identified, parcel of land by the government. In addition, that title may be officially recorded, or registered. Titling and **registration** can be done on the application of the landholder ('sporadic') or for all landholders in an area in which the process is mandated by government ('systematic'). Donors have supported systematic efforts on a large scale, especially in East Asia and Latin America. The experience in Africa is more diverse (see Box. 10).

BOX 10. Titling and Registration in Africa

In Africa systematic titling and registration has been associated historically with post-conflict settlement of land claims, as with mailo (a customary form of freehold) land registration in Uganda after the colonial war with Buganda, after the Mahdist rebellion in Sudan, or in Kenya in connection with resettlement after Mau-Mau. Landholdings, often confused by conflict and displacements, were re-established in line with new power relations. Today most registration is carried out based on more economic rationales, and with considerable variety.

- In Ghana, the law provides for systematic survey and registration of customary lands, with rights registered as they exist at custom rather than being converted to statutory rights. This process is now being piloted.
- There is a much more ambitious systematic process at national level underway in post-conflict Rwanda, but in this case it ends with the replacement of the customary right with a statutory use right.

Under most legal systems, registration of a land parcel includes registration of the structures on the parcel, even where these are not specified, but others require specification of those structures in the parcel registration or even separate registration of the structures.

Land Administration Terms

Land administration: The process and institutions by which the State performs its land-related functions, such as survey, registration or taxation.

Land formalisation: The process by which landholding held ‘outside the law’ (informally, without a right to do so recognised by the State) is given such legal recognition by the State, a process that begins with legal recognition and is then often implemented through land titling and registration.

Land titling and registration: The processes by which the State confers land rights upon, or recognises claims to, land rights by occupants or other claimants (titling) and then makes an official record of such rights to facilitate their proof (registration).

Land registry: The office and books or files in which records of property rights and maps are maintained, usually by a government agency.

Cadastre: A map-based record of rights in parcels of land, used to prove rights and/or as a basis for land taxation.

Tip:

There may be potentially valuable opportunities to involve both civil and customary local authorities with strong knowledge of the existing landscape of land rights in the creation, updating and maintenance of documentation of land rights.

Downsides of systematic formalisation: The enthusiasm in the donor community for relatively costly models of systematic formalisation has come under criticism as ineffective in a number of respects:

- As sometimes failing to respond to felt needs of landholders, perhaps because they lack market or credit access;
- As disadvantaging some individuals, in that it has often involved the registration of the male head of household as the owner and neglected the rights of wives and other community members; and
- As inequitable to the extent that it has provided legal validation of lands appropriated illegally or through corrupt practices.

Example:

Kenya has in development of its national land policy recently re-evaluated its nearly fifty years of commitment to systematic land registration. That re-evaluation was motivated in part by concerns that under the land registration law, land transfers once registered are given conclusive legal effect, even where those transfers involved corrupt practices and abuse of authority.



Less costly and more sustainable models of records of rights in land should therefore be considered (see Box 11).

7.2.3. LIMITING DISPOSSESSION: RESTRAINING STATE ACTION

The actions of governments are a major—perhaps the major—source of insecurity of tenure in most developing countries. They include the allocation to others of land claimed by the State but long occupied by local people, or takings of private land for development projects, or even the miscarriage of land programmes which were intended to relieve land problems but prove poorly conceived or are badly implemented.

BOX 11. Community-based Protection of Land Rights

While systematic land titling and registration was long the donor-preferred approach to formalisation, as more efficient than registering holdings on an on-demand basis, it is expensive and time-consuming. Driven by national government, it exhibits many of the problems of top-down programmes, and policy thinking in this area increasingly treats it as one particular tool, appropriate in specific circumstances, rather than the universal solution. More attention is being given to community-based participatory approaches to securing land tenure, with the following providing interesting options.

- In Ethiopia, well-established community institutions have enabled a strongly participatory process of demarcating parcels and registering them to households, at a much lower cost than programs implemented with heavy involvement of national land administration agencies.
- In Ghana, where customary rights can be registered on their own terms but most rural land remains under custom and administered by chiefs, customary land secretariats have been established to ensure a written record of land dispositions by traditional authorities, strengthening procedural fairness and accountability in traditional land administration.
- In Mozambique, the government and donors have used national NGOs to educate and mobilise local communities to apply to have their land demarcated and certified by the government. In this case the title being certified is a group title, based on a sense that the primary threat to security of tenure in these communities comes from outside sources and can be addressed effectively by a group title.

LIMITING STATE LAND REALLOCATIONS

State reallocations are probably the greatest source of insecurity of tenure in most developing countries. They are more common in situations where the State owns or claims to own all or most land including that occupied by informal and customary occupants, and allocates that land to private users for free or for fees frequently much lower than market value. Lack of recognition of locals' rights makes it relatively easy for the State to allocate the land they use to others. Such 'cheap land' policies encourage speculation, i.e. the taking of more land than one can use and holding it idle in the hope of later disposing of it for a profit. They also create an opportunity for rent-seeking; the difference between the fee charged and the actual value of the land is the measure of a potential bribe. This encourages corruption. Responses include:

- Attempts **to eliminate such malpractices**, which may bring some relief, but they are likely to be effective only in combination with

- Measures that **reduce opportunities for rent-seeking**, requiring the State to recognise the value of land to existing users and requiring the State to pay adequate compensation for the land taken. In most circumstances, the preferable form of compensation will be provision of alternative, comparable land. Faced with stronger compensation requirements, takings will tend to become less frequent, and will claim more modest areas of land.

MINIMISING / MITIGATING EXCLUSION IN CONCESSIONS, RESERVES, ETC.

Allocation of some State-owned land to purposes such as concessions, or conservation reserves, and development projects risks displacing existing users. Such displacement and its effects should be minimised by rigorous screening of proposals and careful planning including:

- A **socio-economic impact assessment** and an **environmental impact assessment** should be legally required for every major planned investment or development project. On the basis of that information, the change process can be managed in ways that significantly minimise or mitigate exclusion of existing users.
- A **‘social responsibility’ agreement** required by government between the managing entity (which may be the government or a private entity) and the community or communities, and based on consultation with the communities.

A social responsibility agreement should:

- Govern compensation to communities for any loss of land use;
- Set out land to be retained by users such as residential lands and associated garden plots;
- Provide for new economic benefit streams through opportunities such as out-grower arrangements or community-based eco-tourism; and
- Specify the community services (e.g., roads, schools, clinics) to be supported by the managing entity.

RESTRAINING FORMAL ‘TAKINGS’

Most countries, in addition to the constitutional provision on expropriation, have laws governing expropriation that provide fuller specification on the allowable purposes for public takings. The international trend has been to expand these purposes, moving beyond land for public uses (e.g., roads, schools, government offices) to land for projects in the public interest (e.g., urban redevelopment, land reform). This broadening has important advantages but with it comes the risk that land will be taken by the State to give to private actors whose activities officials consider to be in the ‘public interest’; the potential for abuse is evident. Measures to mitigate risks include:

- **Clear specification in law of the meaning of ‘public interest’**. In the case of a particular taking from which private developers will benefit, the anticipated nature, magnitude, and timing of that benefit should be specified, with provision for the retaking of the land where and when the public benefit does not materialise.
- **Compensation** is also an important variable. Common standards are: market value; productive value in its current use; a value deemed ‘fair’ in the historical circumstances; or a value obtained by weighing a list of several relevant factors.

Some constitutions require compensation to be ‘prior’ or at least ‘prompt’, while others give the State greater latitude to compensate with bonds or other negotiable instruments promising future payment.

→ Some reforms, in particular redistributive land reforms, may require constitutional amendments either to clarify that land reform is in the public interest or to alter compensation requirements. Such amendments are best focused tightly to meet the urgent need at hand, rather than weakening the constitutional protection of property rights generally.

STRENGTHENING PUBLIC LAND MANAGEMENT

Public land is often thought of as a free good at the disposal of the government of the day and has often been used to reward government supporters. Where this view prevails, it is essential that perceptions change so that public land is seen as a limited and valuable State asset.

- This will require a **Public Lands Law**, which does not exist in many jurisdictions. The law should include provisions clearly stating and limiting the purposes for which such land can be allocated, as well as requirements that competitive prices (rents or purchase prices) be paid, providing for instance for public auction of such property (with exceptions for allocations to poor households). Such a law should require an inventory of public land, a planning process and business plan for public land, and more effective control of encroachment upon public land.
- A **civil law distinction**, worth adopting in common law countries, distinguishes between the public and private domains of the State. The former is State-owned land in essential public use, which may include roads, pastures, parks, defence bases, coastal islands, etc. The latter is land owned by the State but considered non-essential and so available for allocation and even sale to private users. Dispositions of the public domain are strictly limited, often requiring parliamentary or cabinet approval, while the private domain can be dealt with expeditiously by the agency to which administration of the land is entrusted.

→ Major investments may be required to develop an inventory for such land and for protection activities.

AVOIDING UNANTICIPATED NEGATIVE IMPACTS OF LAND REFORMS

Not surprisingly, some programmes designed as reforms in the land sector either miscarry in a general way, or affect some subsets of intended beneficiaries in an unanticipated negative manner. Some common cases, worth noting here for special care in planning, are:

- **Formalisation programmes:** These have often resulted in the titling of land to the male household head with an exclusive right that fails to take into account the ‘secondary’ interests which family members and neighbours may have had in the land under customary law. The process described as ‘privatisation’, in the sense of cutting off public or community rights, in fact often eliminates rights of other individuals. Women and children have been especially disadvantaged, in particular where a marketable title allows the husband to sell the land ‘out from under’ his family.

Example:

In Sri Lanka and Kenya, the registration of male household heads as full owners of family land reduced the tenure security of their wives, who often do most of the farming. Once the land was individualised and could be sold, the husband could sell the land without the family's consent.

Solutions: More recent projects have stressed separate titling for distinct rights held by women or joint titling of land to husband and wife.

Example:

Work done in registration projects such as those in Cambodia and Vietnam suggests that with proper encouragement many households are willing to register their land to the husband and wife as co-owners.

→ Where the new title will be a more marketable right, the law should require the consent of the spouse and adult children before a valid sale can occur. Alternatively, as with Land Control Boards in Kenya, an administrative process can be put in place requiring that families are consulted before sales are approved.

- **Rent control programmes:** Rental is a valuable tool in providing access to land to land-poor households. Within communities it allows households to adjust holdings to take account of illness, loss of draft animals, and other temporary imbalances between land, labour and capital. But sometimes a tenant is little better than a serf, tied to the land at rents prescribed by tradition, and with little or no bargaining power. The alternative, tenancy reform, has had mixed results. Reforms have in some cases sought to provide redress by limiting rents, which is effective in the short-term but undermines incentives for investment in urban rental housing stock in the longer-term. In the agricultural sector, tenancy reforms have prescribed longer minimum terms and limited the reasons for expulsion from the tenanted holding. Such measures, often poorly enforced, can increase landlords' incentives to mechanise and eliminate tenancies. Attempts to force conversion of share rents to fixed rents, which work well for tenants in good harvest years, work very badly for them in drought years.

→ Land to the tenant programmes can effectively address such problems.

- **Resettlement programmes:** Resettlement of farmers to 'new lands' is a strategy adopted by governments to deal with land scarcity. Often, it does not resolve the scarcity problem in the long run, and may be used to avoid facing up to needs for land reform. Resettlements are typically voluntary, but may be coerced, and are sometimes motivated by a government's desire to occupy border areas, to establish colonies of 'loyal' citizens among less trusted peoples on the national margin, or even to move people out of areas affected by insurgencies and thereby deprive insurgents of the 'water in which they swim'. The beneficiaries of such programmes have often suffered isolation, disease, the resentment of local peoples, and the failure of government to deliver on promised facilities and services in the settlement scheme.



It is particularly important to be sure that ‘new lands’ are not already claimed by local people.

Be aware:

Resettlement is a common element in post-conflict humanitarian programming, where in the urgency to provide shelter for returnees, adequate attention is not paid to who owns the land (*de jure* and *de facto*) on which returnees are settled, or to negotiation with those communities. The UNHCR-supported villagisation programme in post-conflict Rwanda suffered from this error, with later difficulties in the access to farmland of people resettled in new villages.

The displacement of local users by resettlement schemes can become a grievance and lead to violence and the expulsion of settlers in later years, when political dynamics have shifted or government is weakened or distracted. The Kenyan case (see Box12) highlights the weakness of resettlement as a solution to displacement: the areas resettled, which are often part of the historical territory of other communities, tend to become new focuses of resentment and potential conflict.

BOX 12. The Dilemma of Resettlement in Kenya

Internal displacement and resettlement of those displaced has been part of the Kenyan historical experience since British land policy sanctioned forceful removal of indigenous land users to make way for white settlers. It has attracted new attention as a proposed solution to displacement in the wake of growing inter-communal conflicts over land that intensified around multi-party elections during the 1990s and continued with growing intensity, culminating in widespread violence during the 2008 elections. Internally displaced Kenyans could number as many as 600,000 although data and patterns are not always stable. As many as half of the farmers and landowners in the Rift Valley are not in camps, but are with host families in their ‘ancestral homelands’.

Key sources of conflict and exacerbating factors include:

- **Previous resettlement:** Displaced persons from prior conflict in the 1990s have been at the forefront of attempted evictions from their settlements in the Rift Valley and Western Kenya, where resultant clashes had led to the displacement of over 350,000.
- **Displacement through land transactions:** For example, land traditionally held by the Kalenjin community was purchased by members of Kikuyu, Kamba, Luo and other communities, who were later attacked and forced to flee by Kalenjin.
- **Weak institutional frameworks:** This fragility is seen in overlapping land rights and claims, as well as increased land pressure.

BOX 12. Continued

The challenge: Issues of historical and current rights are nearly impossible to define clearly, and difficult to negotiate. Policy at both the international and national levels may rightly favour returning populations to their pre-conflict locations, but the issue remains that displaced people who have no land to return to may have no alternative than to occupy land that does not belong to them. They may be in direct competition for land with other groups. Communities have begun to resist the relocation of displaced groups to their ancestral lands for fear of future claims. Areas from which the displaced originally came tend themselves to be areas of high population pressure on land.

In addressing these displacement issues, it is particularly important that Kenya not repeat the pattern of resettlements which in time create new conflict.

7.2.4. LIMITING DISPOSSESSION: RESTRAINING THE MARKET

Markets in theory move land to the most productive users (who can afford to pay more because they make more). Also in theory, this should benefit smallholders, because the family farm is a remarkably efficient production unit, contrary to common misconceptions about economies of scale in production. Scale economies may exist in processing and marketing of crops, but they do not exist in farm production in most developing countries, where labour costs are low and there are few economic efficiency gains from replacing labour with capital through mechanisation.

PROBLEMS:

In practice, buyers need access to credit and credit markets are substantially imperfect in most developing countries, with lenders preferring commercial elites or officials with influence and regular salaries rather than smallholders. They argue, with some justification, that the costs of lending to smallholders are quite high and that they have little to offer by way of collateral. Buyers can often take unfair advantage of rural landholders, and in particular community representatives, to purchase large tracts of land for very modest amounts. Sometimes the permanent nature of the transaction is poorly understood by the sellers. Purchasers are often speculators who hold the land largely idle to sell later for a windfall profit. Land distribution becomes more concentrated, and landlessness increases.

Markets in developing countries thus often work to the disadvantage of the poor and move land to the advantaged. The growth of landlessness in particular can increase class tensions. When purchasers come largely from an ethnic group which is politically and economically dominant, the extensive land acquisitions of these 'market-dominant communities' can come to be seen—as in Kenya—as part of a strategy to dispossess and marginalise other ethnic groups.

HOW CAN THESE TENDENCIES BE MANAGED?

- **Public education in ‘land market literacy’:** Lack of knowledge of developing land values and the nature of formal land markets is perhaps the greatest disadvantage of the poor in this arena. Informal markets in land rights develop naturally in market economies, but transactions are often of questionable legality under custom and carried out secretly, so information available about them, even from local people, is limited. There is a pressing need in most countries for programmes that make the poor more aware of both the positive and negative implications of informal and formal land markets for them, and the caution they should bring to participation in them.

Be aware:

Given that wives and children are often the most seriously affected by ill-considered sales, they should be a particular target of concern for education efforts. The NGO community can be especially effective in communicating these concerns.

- **Gradual transitions to marketability:** Where tenure reforms that increase the marketability of land in the hands of smallholders are taking place, land market literacy should be an important part of these programmes. Where markets are to be legalised relatively suddenly, it is possible to phase in marketability, providing at law that right-holders can first engage in leasing locally, then with outsiders, and later in sales, initially with locals and then with outsiders, over a number of years. This will allow landholders to become gradually aware of the value of their land, and to think through their options more carefully.
- **Creating consent requirements:** In a number of countries where land transactions have become legally permissible as a result of tenure reforms, checks on the market have been established. These may take the form of requirements that certain family members consent to transactions, or that the transaction receive the prior consent of a public body, such as a local land board, which must consider whether the sale will leave the family without a livelihood, and, if this is the case, may deny or delay permission for the sale.
- **Imposing costs on extensive landholding:** The speculation that characterises much of the land market activity in developing countries reflects the fact that it is possible to hold land long-term without cost. Land taxation is rare in these countries, but can play a useful role in both limiting speculation and perhaps in forcing the partition and sale of large holdings. A progressive tax on land, where the rate increases as the size grows, can have this effect, and even a flat tax per hectare can limit speculation if the rate is significant. Smallholders must be excluded from such a tax, because they cannot afford it and because what they would be able to pay is simply not worth the cost of collection. An alternative approach, a tax just on ‘unutilised land’, has proven less effective because of the difficulty of defining ‘unutilised’ and the inventiveness of landholders in establishing low-cost uses such as cattle herding and nominal private wildlife reserves.

Be aware:

It is politically difficult to enact new or increased land taxes, and many governments have difficulty administering them.

7.2.5. IMPROVING ACCESS

In circumstances of land scarcity, one option is to make more land available to the landless and land-poor. This can be done in a number of ways. While it is difficult to do so on a scale that provides much relief against the pressure of population growth, making land available can change perceptions of government's intentions and buy time, for instance for development of other labour opportunities in the economy. These can be important effects from a conflict prevention perspective.

MAKING PUBLIC LAND AVAILABLE

Resettling the landless and land-poor on public land can help relieve pressure on land to some degree. These programmes have historically been characterised as 'resettlement', but are also sometimes referred to as 'social concessions'. Effective resettlement programmes are more easily developed where the available public land is relatively near the sending area and the land use patterns are similar. Voluntary migration is the most economical approach, but governments often provide social and other services in the receiving area and the costs per settler can become quite high, limiting the use of this approach. Success depends heavily on whether settlers have access to agricultural inputs and markets. Land may be parcelled out and titled upon settlement, but sometimes it is initially provided to a group, which later partitions the land among its members, or provided to individual households on a short-term permit, to be confirmed by a title based on development of the land. The potential pitfalls involved in resettlement, such as the presence of pre-existing occupants and claimants, have been discussed earlier (Section 7.2.3).

Be aware:

This approach should be used with considerable care, especially as regards understanding and respecting the existing use of the targeted public land, whatever the legal status of the existing users.

LAND REFORM THROUGH EXPROPRIATION

Where pressure on land has become intense, trigger events that threaten conflict may lead governments to launch redistributive land reforms. Alternatively, such reforms may be launched as the resolution of an on-going conflict over land. Such reforms in general involve the redistribution of large farms by the State, which often compulsorily acquires large private farms for this purpose. These reforms have important equity objectives, but also seek productivity gains associated with changes in scales of production. Reform models are controversial, and have ideological associations. Discussions of their merits or demerits tend to be heated and coloured by ideology.

Be aware:

Such reforms require clarity of purpose and determination on the part of implementing governments and should not be undertaken where these do not exist.

Land reform: This term originally referred to reforms that redistribute land from large private holdings or the holdings of State enterprises to the landless or land-poor, individually or in association, in the interest of greater productivity and/or greater equity. Where private land is concerned, such reform may take place through State action to acquire and subdivide the land for beneficiaries or through subsidisation of market acquisitions of land by beneficiary groups. The term is today sometimes used more broadly for any normative reform in the land sector. For clarity, redistributive reforms may need to be specifically characterised as ‘redistributive land reforms’.

Most land reforms fall within three categories:

- **Land to the tiller reforms:** These distribute the landlord’s land to the tenants who are already farming it. This is the simplest land reform model to implement because reforms involve little change in scale of production or technology, and involve no resettlement. However, input supply and marketing chains may need to be reconstructed where the landlords performed these roles, as is often the case.



Such reforms have generally been quite successful—the classic cases being the post-WW II reforms in Japan, Taiwan, and South Korea, which exhibited positive productivity and social impacts. These reforms involved compulsory transfers of land at the initiative of the State, with market-value compensation to former landowners.

- **Reform of large integrated farms:** In this case, the large holding to be reformed is not operated under tenancy, but has been mechanised to a degree and is operated as a large unit in an integrated fashion using wage labour. The model is most commonly associated with the reforms of ‘latifundia’ (very large landholdings) in Latin America during the 1960s and 70s. Labour unions organising farm laborers have played an important role in pressing for these reforms. Post-reform agriculture has followed two fundamental models.
 - In Cuba and some other countries with socialist ideologies, reformers preserved the large scale in order to take full advantage of technologies and processing facilities in place, turning the latifundia into State or collective farms. These have experienced the difficulties in productivity that have led to the privatisation reforms discussed below.
 - In other cases, the farms were broken up among the labour force of the farm. In some cases, such as the cotton haciendas on the Peruvian coast, reform went through stages, with land initially given to a workers’ farm management as a large unit, and later broken up among members. The change of scale of operations and technologies, coupled with the need to build new input supply and marketing linkages have made the transition difficult.



The Latin American reforms compare unfavourably to the Asian reforms noted above, both in terms of productivity impacts and social impacts, partly due to the scale of operations which the transition involved and partly because of lack of consistent government land policies in more democratic contexts.

- **Privatisation reforms:** In this case, the land of large State or collective agricultural enterprises is either privatised to create large private commercial operations (e.g., Kazakhstan) which are often managed by former State/collective farm officials, or in some cases, broken up and distributed to former employees of those enterprises to be operated as small commercial or

family farms (e.g. Kyrgyzstan). Both models have produced viable but lacklustre farming sectors. Under the first model, while former employees are often given shares in the new commercial enterprise, those shares are typically of very modest value and are often lost through manipulations by the enterprise management. The new farms tend to continue to show some of the management problems of the earlier production organisation. Under the second model, households have benefited more directly, but carrying out agriculture on a small scale, without farm machinery or well-developed private input and marketing chains, is challenging. Beneficiaries experience problems similar to those affecting beneficiaries of the breakup of large integrated private farms.



The most successful example of this model is the Chinese de-collectivisation of 1978-1984, which featured de-collectivisation followed by a gradual and carefully calibrated withdrawal of State support for the new family farms, rather than suddenly abandoning smallholders to poorly developed input and output markets.

Be aware:

While land reform programmes have often neglected gender equity by titling land in the name of only the male head of household, government is well-positioned to ensure appropriate qualifications for beneficiaries, and should do so in an inclusive fashion. In particular, female-headed households should not be excluded, as has happened in land reforms in the past.

MARKET-MECHANISM LAND REFORM:

Land markets, as noted above, typically do not make land available to small agricultural producers even where they are potentially the most efficient and productive users of the land, principally because of their lack of access to credit, inputs and markets. Under the market-mechanism reform model, sometimes referred to as 'community-based land reform', the State makes credit available to groups of landless or land-poor, and subsidises and supervises their purchase of land on the market. The purchasers divide the land among themselves for cultivation as family farms. Later, when the credit has been repaid, the land will be titled to the beneficiary households.

This is a relatively new approach, developed since 2000 in a number of World Bank pilot programmes. It has a private sector analog in 'land-buying companies' (e.g., Kenya), composed of shareholders who want smallholdings but cannot enter the market effectively on their own. Those land-buying companies have been plagued by fraud by the organisers. The 'public' model is currently being implemented on a significant scale in South Africa and Brazil, and in Malawi on a smaller scale (soon to be replicated more broadly). Because the approach relies on willing sellers, it has important limitations, but where willing sellers exist (perhaps, as in Brazil, because of the threat of expropriation, or because of progressive taxation which make it hard to hold land idle), it may be less costly to acquire land in this way than through expropriation with market-value compensation. The latter often results in long and expensive litigation over the taking, and is often rolled back after the reformers suffer political reversals.



A good deal of controversy currently surrounds the relative merits of the use of market-mechanism or compulsory takings to accomplish land redistribution.

BOX 13. Defusing Conflict through Market Land Acquisitions in Malawi

In 2004, the Government of Malawi launched a 'Community-based Rural Land Development Project' to redistribute portions of large estates, many of them from the colonial period, around Blantyre in southern Malawi. Much of the land on these estates was unutilised, and they faced growing encroachment pressures involving some forceful reoccupations from the crowded neighbouring communities. Malawi sought an approach consistent with its strongly market economic system and a strong constitutional guarantee of property rights, to redistribute estate land to local farmers and defuse growing political tensions in the region.

Project aims and content: Funded by the World Bank, the project aimed to benefit about 15,000 poor rural families in 4 pilot districts, transferring to them land from the estates purchased in what were essentially project-subsidised land transactions. In addition, the project has provided on-farm development, including the establishment of shelter, and the purchase of basic inputs and necessary advisory services. It has also provided for titling and registration of beneficiaries' new land. The communities decide whether they want to hold their new properties under their customary law or register them in private ownership, either as a group holding or, if requested by the community, as individual plots.

Problems and challenges:

- In early stages of the project, land was not always offered for sale near the existing farming areas of beneficiary groups, necessitating resettlement where land was available.
- Estate owners initially doubted the Government's credibility to honour payments for the purchase of land, and perceived the project as a ploy to repossess land. But after the initial four beneficiary groups had relocated in November 2005, this negative perception changed and more estate owners came forward and offered their land for sale.

Evaluation: Enhanced land accessibility, together with some post-settlement assistance, significantly improved the overall livelihoods of the beneficiaries.

The project has been the subject of controversy, especially by those who consider that the land, much of it acquired in colonial and post-colonial land grabs, should be restituted without compensation. But in light of the relatively smooth progress and lack of conflict, the Government has decided to replicate the project in other areas of Malawi, and appears convinced that it has significant potential for mitigating conflict in areas where unequal land distribution is stressing social relations.

RESTITUTION REFORMS

A new category of land reform appears to be emerging: restitution reform, in which government returns land to original landholders from whom it has been taken through processes viewed as illegitimate. Those processes may have been illegal under national law or contravened standards of international law, or may simply be seen as having been substantially unfair.

Tip:

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests proposed in 2011 by FAO recognises restitution as a distinct land governance initiative and distinguishes it from redistributive reforms.

Examples:

- The privatisation reforms of recent decades in Eastern Europe restituted land to those who had owned the land before its taking in nationalisations by Communist regimes.
- In South Africa, the land restitution programme restores land to communities displaced by *apartheid* era land acquisitions and forced removals.
- Kenya's new National Land Policy, looking at both colonial era displacements and more recent land-grabbing by political elites, uses restitution language.



The juridical and practical parameters of this form of land reform are still emerging, but restitution is of particular interest for CP actors because it directly addresses the long-standing resentments about earlier land takings that fuel much conflict over land.

Restitution offers a new moral and legal rationale for land reform, one compatible with property rights priorities. However, the assertion of a right of restitution may not in every case necessarily involve a call for the full market-value compensation required by most constitutions in expropriation reforms. Restitution becomes more difficult as time passes and the land taken moves into the hands of those who did not take the land, who may not have benefited directly from the illegitimate taking and who may have acquired the land for market value. Compensation issues then clearly arise.



The post-conflict context presents the best opportunity for restitution, because the takings are relatively 'fresh'. Restitution is most common in that context and it is there that the international normative basis for the practice is strongest, based on the Pinheiro Principles (see Section 4.3.5. above).

Be aware:

In post-conflict situations, where housing has often been appropriated by others in the course of the conflict, the return of housing to original owners assumes a high profile, and an integrated HLP (Housing, Land and Property) approach to restitution is

BUILDING AND LIBERALISING RENTAL MARKETS

Countries with concerns about landlordism have sometimes sought to make rentals of land or housing illegal, or regulate them heavily, as through rent control. Tenancy is an economically appropriate means by which those who lack access to land can obtain such access. If there is an underlying structural problem involving radically skewed distribution of land ownership, an appropriate solution is land reform rather than tenancy regulation.

Be aware:

- Restrictions on tenancies are in practice difficult to enforce. For example, South Africa's attempt to regulate its labour tenancies led to expulsions of large numbers of tenants from their holdings.
- Such restrictions tend to be ultimately self-defeating, because they undermine incentives for landlords to make land or housing available on tenancy and, in the case of housing, they undermine the incentives for private construction of new housing.



A robust supply of housing is the best solution, and government can, if it wishes more affordable rental housing to be available, subsidise the private construction of new housing, subsidise access to private housing, or construct and manage public housing.

8. Ensuring Effective Roles (Step 4)

Numerous strategies and measures have been suggested above for the prevention, management and resolution of conflicts over land resources. Many are focused on the systems of State administration of property rights and land, including due attention to access to land and rights in that land for the poor and disadvantaged. The administration and management of land, as well as application of law and adjudication of disputes, are ultimately the responsibility of the State.

8.1. Nature and Potential Roles of Conflict Prevention Actors

CP actors accordingly have a potentially important role in promoting conflict prevention in the land sector by helping States assess and select appropriate procedural and substantive options for change and by supporting their entrenchment and effective long-term implementation. A range of potential strategies and approaches are available to encourage and influence such changes through engagement with governmental and other national actors, including civil society. This section examines the roles CP actors can usefully play—what they can do directly, where they can effectively influence and which national actors they can most usefully support.

Potential entry points and the nature of engagement will depend on the mandates, missions and approaches of the organisations involved: ROIGOs, international humanitarian organisations, NGOs with human rights and equity concerns, or multilateral or bilateral development agencies. Existing and potential ability of these organisations—and the private firms hired to implement projects under contract to those agencies—to influence policy in the land sector and fund and implement projects that affect these issues are important considerations in developing a strategy for engagement.

Key areas for engagement include:

- Promoting needed responses by (a) raising awareness of the threat of land-related conflict and potential options for addressing it, and (b) encouraging appropriate policy and legal reforms;
- Encouraging and supporting local community empowerment; and
- Ensuring appropriate M & E mechanisms are in place, and participating in M&E processes, as appropriate.

Where multiple external actors are engaged in a situation, effective coordination is essential to ensure complementary activity. Common obstacles, as well as coordination mechanisms, are therefore presented briefly at the end of this section.

8.2. Promoting Needed Responses

Governments typically inherit land policies and laws. For every government that comes to power on a land platform and launches reforms, there are many others that have different priorities or may not appreciate the danger of conflict over land. Often, land tenure systems are treated as a given or are low government priorities. In such circumstances, a variety of possible tasks present themselves.

Preliminary assessment: The choice of which process and substantive reforms CP actors should advise in a given situation will depend upon the diagnostic processes discussed in Sections 5 and 6. There is no one-size-fits-all solution, and CP actors should beware of scenarios that neglect the limited implementation capacity of governments or the lack of political will as discussed in Section 6.3.

Prioritisation and sequencing: As suggested in the previous section, tensions may exist between urgent, immediate needs and long-term, more fundamental reforms. Addressing fundamental vulnerabilities to conflict is a long-term process, but problems such as frequent land disputes, which can act as triggers for conflict, require urgent attention. An immediate task is often to mitigate and manage conflict to buy time, and then to seek sustainable resolution of key issues by addressing substantive injustices and structural problems. As societies and economies are in a constant process of change, this task is a continuing challenge, with new events transforming conflict situations and new land-related threats to peace emerging.

Tip:

The concept of ‘ripeness’ refers to the belief that parties to a conflict will be open to negotiation processes when they arrive at a ‘mutually hurting stalemate’, i.e. a mutually costly impasse in a conflict from which neither party can easily exit. In many cases, however, there will be no clearly ‘ripe’ moments, and external actors may need to create opportunities and entry points (i.e. actively ‘ripening’ a situation).

Some possible approaches and entry points for CP actors are discussed below.

8.2.1. FACT-FINDING AND AWARENESS-RAISING

It may be possible through any number of activities to make governments and their people more aware of threats of land-related conflict and options for addressing them. Possible initiatives include:

- Sponsoring studies and other diagnostic exercises that assess potential causes of conflict and options for preventing it;
- Publicising news and public discussions of disputes and other indicators of conflicts;
- Supporting local NGOs which seek to draw attention to these issues and are willing to raise them and press for their resolution;
- Providing voice to local communities to make known their concerns about conflicting claims and impending conflicts; and
- Creating M & E mechanisms that allow anticipation and prevention of conflict events.

BOX 14. Women, Land and Peace-Building

Sources of discrimination and exclusion:

Land rights: Women are often discriminated against by patrilineal systems of inheritance and marital property regimes that disadvantage them or deny them access to land after divorce or the death of their husbands. Migration of male labor to urban areas and the HIV/AIDS epidemic have increased the number of abandoned and divorced women and widows, and raised their landlessness to crisis proportions in many countries. This is often not in itself an immediate cause of broader conflict, because it happens at the family and household level. However, an increase in women-headed households—combined with the ‘youth bulge’—can help create a pool of youth from such households who, denied access to land, may challenge traditional authorities and create long-term competitions for authority in rural communities. They may also constitute a recruitment pool for militias in future conflict, as highlighted by the role of disaffected rural youth in Sierra Leone’s violent conflict.

Participation: Women’s exclusion from land rights is tied directly to their exclusion from community fora that make key decisions about land and conflict over land. Women are usually the greatest losers in conflict, through loss of husbands and sons, loss of access to resources from which they support their families, and violence to their persons. Their voices are badly needed in those fora both as a matter of principle and from a conflict prevention and mitigation perspective.

Modes of participation:

It is important not only to include women in community consultations, but to ensure their effective and equal participation to ensure they do not play a subordinate role—as is typically the case. Women’s focus groups can be an effective means, as they enable women to speak on matters men consider ‘not women’s business’. In post-conflict situations, women can find and often do seize opportunities for greater voice conferred by the disruption of normal community governance. The fact that they are not formally involved in decision-making about land and conflict does not mean that they are without influence. This is true of village women, and even more so of women who enjoy wealth and influence generally, such as prosperous market women in some West African societies. Women can also exercise considerable influence through CSOs to which they belong and in which they have voice, such as some churches or women’s NGOs. Careful inquiry may well find that there are already models in the local or national culture of women who have acted in leadership roles and exercised a moderating influence in conflict; such models can be built upon to good effect.

BOX 14. Continued

Supporting women's participation:

CP actors can seek to increase women's voice on matters of land and peace in a number of ways including:

- By sponsoring community education and training projects to increase women's capacity to participate in formal decision-making. Women will only be able to influence decisions if they are well informed about the issues and are enabled to articulate effectively arguments for conciliation rather than escalating conflict.
- In pre-conflict situations, by consulting women in their capacity to provide 'early warning' as they observe steps taken to prepare for conflict such as arms being stockpiled, or the circulation of conflict entrepreneurs in their communities.
- Where peace negotiations are pending or on-going, by urging parties to include women in their delegations, and sensitising the negotiating teams to the special privations women suffer during conflict and the role they can play in rebuilding the peace.

For a range of concrete options to support women's participation in peace processes, see further IQd's '*SCR 1325 and Women's Participation: Operational Guidelines for Conflict Resolution and Peace Processes*'. Available at: www.iqdiplomacy.org

8.2.2. ENCOURAGING POLICY AND LEGAL REFORM

ENCOURAGING POLICY REFORM

Land agencies are often technically competent but lack sophistication regarding land policy, due in part to their domination by departments of land survey and registration. They may be largely ignorant of the political and institutional economics of land and property rights, or at least lack organised visions of these and how they relate to their circumstances. The CP actor can think in terms of:

- **An invitation to develop a broad vision** of what government wants to accomplish with regard to land can be welcome. A good initial land policy paper is not a major undertaking in most cases. It should be put together by a team of experts and politicians, with input from other stakeholders, be fairly short (i.e. no more than ten pages in length), and should read like a letter addressed to the population, sharing information and intentions. Such statements can confer political advantages to the government of the day because they can be used to make promises that may be welcomed.
- **A National land commission** has been used in a number of post-conflict and other situations as the mechanism for addressing complex issues with conflict potential facing a government. Such commissions should be composed of diverse but respected members who can contribute a breadth of concerns and insights. These commissions should be kept focused on land policy-making and determining directions for reforms of the legal framework for land. They can perform a considerable range of functions.

- **Focus on an issue:** While a comprehensive approach to land policy can be of great value, concerns in a given situation may be focused on a particular area. For example, in many Eastern European countries emerging from a socialist period, privatisation was a likely proposition, but basic related policy decisions (for example, about privatisation to whom?) were unresolved. A thoughtful policy-making exercise is called for and can be supported in ways that foster transparency in decision-making and result in decisions that are less likely to result in future conflict.
- **Advice on the creation of the group working on policy,** and its work on the policy issues, including support for issues studies and study tours to expose those involved to various practices from other countries.
- **Support for participatory and consultative processes** including support for: public consultations and participatory rural appraisal work which helps ensure that the issues explored are grounded in real concerns of land users; activities of NGOs or other organisations representing the interests of poor land users and disadvantaged groups; and events, such as regional or national conferences, which give such groups voice.

ENCOURAGING LEGAL REFORM

Legal reforms require a much higher level of commitment than policy statements. They have a life beyond the government of the day and as such are more durable advances.



Perhaps the single most valuable contribution that can be made in terms of legal reform is to press for an appropriate process for development of a law, involving clarification of policy before moving on to law reform.

Law reform efforts are sometimes entered upon directly, with some sense of urgency, driven by political events or external pressures, such as a law reform condition precedent imposed by a donor agency in respect of funding. Experience shows such conditions are of limited utility, and CP actors and others with a concern for land law reform will likely have greater impact working with the government concerned to heighten awareness of the need for legal reform and then supporting government in a more consultative and transparent law reform process.

Land law reforms should come out of a considered, transparent and public policy process, rather than being drafted entirely within a ministry or by a government committee. Laws drafted in the latter fashion tend to suffer from limited perspectives and lack of thoughtful criticism. Key elements of an inclusive and considered law reform process where fundamental and wide-reaching reforms of the law relating to land are contemplated are presented in Box 15.

Such an elaborate process is not needed for every legal reform, but is important if a fundamental or wide-reaching reform of the law relating to land, impacting broad interests, is contemplated.

BOX 15. Elements of an Inclusive Land Policy and Law Reform Process

1. Tentative problem identification.
2. Studies to better understand problems and their parameters.
3. Preparation of a draft policy/strategy document for addressing the problem.
4. Public information campaign on that document.
5. Public discussion of that document.
6. Finalisation and acceptance by government of the policy document.
7. Assessment of existing law in relation to the policy and identification of needs for law reform.
8. Drafting of a new law or amendments to existing law by a drafting committee working with a qualified legal draftsman.
9. Tentative approval of draft by government.
10. Publication and public discussion of draft law.
11. Finalisation of draft and submission to legislature.
12. Enactment by legislature and other measures required for entry into force.

RISKS AND CHALLENGES

CP actors and others seeking to promote reform of land policy and the law relating to land often struggle with strategy. These reforms are made at the highest decision-making levels of national governments. Reforms compelled by donors, for instance through conditionalities on development assistance programmes, are often poorly designed because they may focus narrowly on the donor's concerns, and implementation can be inconsistent. Many proposals for policy or legal change are driven by some subset of concerns, legitimate but also narrowly focused, and with potential for distorting the system in problematic ways.

→ CP actors can make an important contribution by providing opportunities for discussion of reform proposals in broader stakeholder fora.

Be aware:

The ministry which has a particular responsibility for reforms may be unenthusiastic in their support, because of vested interests. Most major initiatives for land policy and law reforms originate outside the ministry entrusted with land affairs.

POTENTIAL ENTRY POINTS:

It may be possible to:

- Find footing for reform efforts within a ministry with an overarching mandate, running across sectors, such as a ministry of planning or local government.
- Create a special institution to lead the process, such as a national land commission.
- Provide training opportunities as an incentive for promising actors to become committed.
- Find an important national figure or group to ‘champion’ the reforms, though too heavy reliance on a champion can doom a reform should the champion lose prestige or favour.

Tip:

Governments are not monolithic. The vested interests and rent-seeking that may discourage one institution from pursuing reform may not exist for another, which may be more receptive to reform overtures.



In the end, however, the land agency should not be bypassed. Its staff will have important roles to play in implementation, and they will need to understand the objectives of the reforms, how they will be implemented, and the new roles they can play in the reformed system.

MODELLING CHANGE

Where governments hesitate to undertake steps that are needed to prevent conflict, out of lack of confidence, ability, ideas, or political will, CP actors and others seeking to encourage them can develop action studies or small projects to model change. These could involve, for example:

- NGO-managed public information campaigns that fight stereotypes and misinformation concerning conflictual land issues;
- Local conciliation exercises resulting in agreements among communities as to how resources are to be managed;
- Use of ADR methods by NGOs to resolve endemic land disputes; or
- Promotion of community compacts to alter customary rules that contribute to conflict and so model legal changes for uptake by government on a larger scale.

LAW REFORM IMPLEMENTATION

When government is ready to implement conflict-mitigating law reforms on a national scale, there will be substantial opportunities to support and develop that process. While the main thrust of the programme will require support, it is important to remember that inclusiveness should be built into the implementation process as well. Local committees and existing local institutions should play significant roles, and their involvement at an early stage can help ensure that the programme, which may touch sensitive issues, is not implemented in a manner which itself sparks controversy and conflict.



Local NGOs can be supported to assist in implementation or monitor implementation and impacts.

LAND REDISTRIBUTION

Where land redistribution is undertaken, it may be difficult for the CP actor to find the right balance in its activities. In this case, the best approach is to act with caution. Such reform rarely takes place except in the context of conflict, and often violent conflict. Redistribution may deal with long-standing injustices and reduce dangers of future conflict over land. But such reforms, if implemented in a discriminatory or otherwise unjust fashion, can engender new grievances that in time become new sources of conflict and violence. In addition, land redistribution efforts have sometimes stumbled in the face of opposition, or been reversed after the political sponsors suffered political reversals. The result is simmering conflict for many years.

→ Land redistributions should be supported only: insofar as they respect the principles of non-discrimination and equality; when there is clear and strong political will; and when those proposing the reforms have the capacity to follow through on their implementation.

CREATING NEW ASSETS

In the post-conflict context, CP actors must focus on the tendency of new conflicts to develop around land from which occupants were displaced and which are now occupied by others. Those displaced have a right of restitution, but it may not be easy to realise. Land records may have been lost, and not all returnees can easily prove their rights. It may also simply not be feasible politically, and would itself threaten the peace, to expel those in occupation to make room for the returnees. In the case discussed in Box 16 below, the dispute resolution commission seeking to deal with the market in the town of Ganta in Liberia raises an interesting possibility: in effect increasing the 'pie' to be divided (in this case the market land) through investment in a new market and housing. While new agricultural land is increasingly difficult to create, this is a possibility when dealing with residential and commercial properties in towns, one which can allow the parties to set aside differences as to their relative legal rights.

→ In such situations, there are important roles for CP actors in mediation and the mobilisation of resources.

BOX 16. Post-Conflict Disputing over Land: Ganta Market, Liberia

Ganta Market in Ganta city, Nimba County, is a historic commercial centre on the boundary with Guinea. It used to be occupied by hundreds of small trade stalls selling a variety of goods, many of which were owned by Mandingos. During the civil war most Mandingos aligned themselves with the Liberians United for Reconciliation and Democracy (LURD), while the National Patriotic Front of Liberia (NPFL) was comprised of Mano and Gio. At one point in the war, LURD held the town and many Mano and Gio were killed and their property destroyed. Later in the war, following a series of battles in Ganta between the two forces, LURD was expelled. The NPFL remained in the city and began to rebuild and resettle on land including the market.

Claims: Mandingo claim they have been shut out of the resettlement. The Ganta Market is being contested by various landowners, only some of whom have valid deeds to back their claims. Because the Mandingo maintain strong ties with their fellow-tribesmen in Guinea, the dispute threatens to generate cross-border (i.e. international) tensions.

BOX 16. Continued

Responses: Recognising the seriousness of the dispute, the President established the Nimba County Land Dispute Commission in 2008 to address the abundance of land disputes surfacing throughout the county following the end of war. The Commission has investigated the Ganta Market dispute, along with many other cases within Ganta city, but has yet to finalise its recommendations. Reports from county level officials indicate that several recommendations for addressing the Ganta Market case are currently being considered. These range from Government appropriation of the land for public purposes and paying out compensation to creation of alternative commercial spaces in the city through construction of roads and other infrastructure. In the meantime, these officials have said that disputes over land in the Ganta Market involving valid land deeds have already been resolved while those remaining lack formal documentation and remain pending.

When conflict is over residential or commercial space, it is possible through reconstruction and densification to 'increase the size of the pie' to be divided among claimants, making it possible to accommodate more claims.

8.3. Local Community Empowerment

Sustainable conflict prevention ultimately requires that unfairness and discrimination be addressed; justice is often a condition for peace. Because most land conflicts are local, as is land itself, those most intimately interested in them are the affected local communities. There are needs within those communities for opportunities to discuss grievances and trigger events in fora insulated from political pressures, but then to participate in dialogue on these issues in ways that politically empower them. Where the matter endangers the peace of the community, community members with no direct personal interest in outcomes of the land conflict need to be involved in the framing of community positions. In order for grievances—real or perceived—to be addressed, they must first be recognised in the broader society.

→ Conflict is natural and potentially positive, generating pressure to solve issues that if neglected will pose an ever-growing threat to peace. CP actors need to find ways to help legitimate local leaders express their concerns in a constructive fashion. Solid community-based organisations, in particular, need support to engage on these issues.

8.3.1. RISKS AND CHALLENGES

CP actors must exercise considerable care and political sensitivity when engaging with communities. Common risks and challenges include:

- Identifying 'conflict entrepreneurs' who do not in fact speak for many in the community, but may seek to drive the process, and who should be circumvented or side-lined;
- Support for even legitimate local voices will be easily misunderstood as 'taking a side' in a conflict over land, and so it is important to provide structured opportunities for both/all 'sides' to express their concerns and positions, while seeking at the same time to give voice to those who have had less opportunity

to be heard. Support should include those on both ‘sides’ with a broader perspective than those immediately interested in the land resource at issue.

- It can be difficult to distinguish between issues (often with deep historic roots) which in spite of the possible injustice(s) involved can and should be set aside so that the society can move on, and those that need to be addressed before moving on because they will persist and so increasingly threaten the peace.

8.3.2. POTENTIAL OPPORTUNITIES

BUILDING LOCAL VOICE

CP actors may find opportunities to contribute to the **building of community organisations**, including those of historically disadvantaged groups, such as indigenous peoples’ or women’s organisations.

Tip:

It is useful to focus on organisations with a breadth of interests that may contribute to a balanced approach to a land issue involving conflict, rather than those focused entirely on land issues, which easily slip into the control of conflict entrepreneurs.



The ultimate objective in such local capacity-building should be to give voice to the community, but to ensure that it is a balanced voice, representing the community as a whole and not one subset with an interest.

Support for local NGOs can be a useful contribution. Organisations such as farmers’ organisations can be a particularly valuable investment in voice, because they have a strong and practical interest in land matters, typically strive to be non-political, and, as membership organisations, are both better-grounded locally and more sustainable than organisations that rely on donor funding. It is important to ascertain whether the farmers’ organisation is inclusive. In some countries, large commercial farmers have one organisation and smallholders another.

Tip:

CP actors who have engaged with local organisations should be prepared to disengage quickly when leadership changes move the organisation into a less constructive track.

IMPROVING COMMUNITY INFORMATION ACCESS

A major factor limiting the effectiveness of local communities’ participation in discussions of land issues is their poor access to information. They often have a concern, but do not know their rights and are not sure how to articulate their concern or what to ask for. These communities need better access to information about land policies, the legal framework for land, and new factors affecting them, such as concession practices and increasingly active land markets.



NGOs can play a major role in increasing knowledge about land policy and legal literacy within local communities.

Tips:

- Experience suggests that such activities can usefully include local officials, who may be equally uninformed on these matters.
- Good legal literacy work can help establish a shared understanding.
- The training of paralegals based in the communities and their networking after training can give such efforts more sustainable impacts.

LEGAL AID TO COMMUNITIES IN LITIGATION

There may be a case for direct support for communities engaged in land disputes, especially where these disputes reflect underlying broader conflicts and there is a significant disparity in wealth and power between the communities and those with whom they are engaged in disputes, such as elite interests and government agencies. Resolving such disputes in a reasonable fashion can reduce the chances that the conflict becomes increasingly overt and eventually violent.



Legal aid can help in a modest way to level the playing field, and can best be extended through support provided by specialised legal NGOs.

Tip:

In some cases, such as during systematic formalisation of land rights in post-conflict Cambodia, CP actors and funders have found government willing to countenance support for legal aid in land disputes even where these pit communities against government entities. Involvement of such actors with lines of communication to national government and media can induce caution in local actors and itself tends to curb abuses.

PROVIDING ALTERNATIVE DISPUTE RESOLUTION MODELS:

Sometimes official adjudicatory mechanisms such as the courts may be inoperative (as in many post-conflict situations), corrupt or very costly in money and time. In addition, the formal legal position may work to the disadvantage of the communities concerned.



In such cases, CP actors may better support mediated and other consensual solutions. This may work best when one is dealing with endemic smaller disputes, as often exist in post-conflict situations as the result of displacements during war.

Tips:

- Where powerful outside interests are involved on one side of a dispute, even the more powerful party may out of fear of extended involvement in formal litigation be willing to give more ground in a mediation process than in litigation, where parties tend to 'stand on their rights'.
- Some international NGOs working on protection of returnee issues in post-conflict contexts (such as the Norwegian Refugee Council) have developed significant capabilities to train for and support local mediation of land disputes.

8.4. Monitoring and Evaluation

8.4.1. WHO SHOULD DO IT?

Monitoring and evaluation of indicators of conflict potentials or progress under programmes that seek to affect them is an activity that can best be carried out by non-State actors. This is an area where government attempts to monitor and assess change are very likely to be coloured by hopes and the need to show progress.

CP actors, especially donors, interested in this area can very usefully provide scopes of work and funding to local institutions, such as NGOs, research firms, or university-based research institutes, to carry out independent M&E studies

8.4.2. METHODOLOGIES

Such studies may be directed at the factors affecting conflict generally, or targeted at the impact of particular government policies or projects. As in all M&E, the creation of a baseline is essential. This is the situation at a moment in time, at the beginning of the M&E activity, against which progress or lack of progress is measured. It is the first major study task of the monitoring effort. It is essential that the indicators to be used in measuring progress, success—or the lack thereof—be clearly identified at this time, as they will determine the data collected for the baseline.

These indicators are crucial, and will differ from one context to another, but some options can be highlighted. Ideally, the M&E should measure both implementation and results indicators.

- **Implementation indicators** measure the extent to which activities planned to prevent or mitigate conflict are actually being carried out. For example, if a legal aid programme is assisting disadvantaged groups with their land claims, how many offices have been established, how many lawyers are engaged, how many clients have they seen, and how many have they represented in proceedings? These can be compared with benchmarks set out in implementation plans for programmes or projects.
- **Results indicators** measure the factors considered to contribute to or otherwise affect prospects for conflict, or they measure actual levels of conflict. They might, for example, measure attitudes toward land and conflict (including levels of land tenure security, or levels of antagonism towards others and the extent to which these are attributed to land). Or they might measure harder data such as displacements of households from their land, or trends regarding the incidence of land disputes in the courts, or the levels of incidents involving land dealt with by the police.

Tips:

- Results indicators should measure outcomes (i.e. the actual impacts of programmes on stakeholders) and not just implementation targets such as number of parcels registered. Perceptions and degrees of success are important.
- There is no set of perfect indicators, and often the choice of indicators must reflect constraints on the manner and extent to which data can be gathered.



It is often necessary to presume (on a rational basis, of course) connections between changes in indicators and the events affecting them, and to determine whether activities being monitored, or other events, are responsible for the changes. M&E rarely rises to the level of methodological sophistication that allows confident attributions of causality.

8.5. Funding and Coordination

8.5.1. OBSTACLES TO COORDINATION

Even within individual large donor organisations, donor policies on development, conflict management, and post-conflict rebuilding have developed separately, reinforced by vertical communications and organisation of those agencies. Land matters have been best incorporated into development work, and have more recently begun to be addressed systematically in the conflict and post-conflict contexts. The problem of lack of integration is even greater when examined at the level of the numerous donors, aid agencies, and contractors involved in a given country context.



Greater coordination or even integration of policies, within and across bilateral and multilateral agencies, and especially in conflict-stricken areas, is a priority and should be encouraged by CP actors. However, differences in policy, priorities and approaches, territoriality and jealousies can make coordination difficult.

Be aware:

Donor coordination should ideally be the responsibility of the host government, but often—due to fear of unified donor pressure on policy or due to performance issues—governments seek to deal with donors as separately as possible and may even seek to obstruct the free flow of information among donors.

8.5.2. COORDINATION MECHANISMS

Coordination can occur at a number of levels. It may take place through:

- **A general donor coordination committee** at national level, working across sectors affected by development assistance. In that case, focus on land is likely to be sporadic, but the arrangement may be sufficient where major change is not probable.
- **A donor coordination committee for land matters** may be merited where significant reforms in the land sector are anticipated, with several interested donors involved.

Example:

In post-conflict Liberia, where a National Land Commission has been established to coordinate policy, legal, and other reforms in the land sector, the donor community responded with the creation of a Donor Coordination Committee for Land, involving every donor with on-going or anticipated work in the land sector.

- **A project coordination committee** where several donors contribute funding to a basket of land activities under a single project. Such a committee would normally involve officials of agencies concerned and donor representatives, but it can usefully be expanded to include land NGOs or others with concerns and expertise regarding the land sector.

Example:

The Land Management and Administration Project, organised and funded by the World Bank, also involves the Asia Development Bank and the aid agencies of Germany, Canada and Finland. Each focuses on somewhat different problems within the sector.

- Where a **property commission or similar agency** has been created in post-conflict situations to handle restitution and other property claims it may similarly facilitate more effective organisation of the donor community.

Be aware:

It is in the difficult circumstances of post-conflict States, where relief and development agencies arrive in quick succession, that the need for coordination seems most readily accepted by the donor community and host government alike.



To the extent that national government provides clear focal points for land matters, rather than a multiplicity of sectoral government agencies, it can facilitate donor coordination.

Be aware:

Unfortunately, it is in the situation of fragmentation that donor agencies, working with the various sectoral government agencies, need most to exchange information and ensure they are supporting a coherent approach to land rather than one characterised by fundamental contradictions.

8.5.3. ORGANISATIONAL ROLES AND INITIATIVES

The **UN** as one of the donor agencies most involved in conflict areas, pioneered the broadening of the scope of peace-keeping operations. Since 1995, 'peace-building programmes' have become the norm, although they face important capacity constraints. Other donor agencies have often been involved in the design and implementation of these programmes, and some have started to integrate long-term conflict prevention and 'peace-building' in their own development programmes.

The Human Settlements Programme **UN-HABITAT** has taken a lead role in the development of pro-poor land tools, and the Food and Agriculture Organization (**FAO**) is currently finalising a set of voluntary land policy guidelines. However, there are continuing problems with how well the humanitarian agencies which address urgent land issues in post-conflict situations coordinate with and 'hand-off' to the development agencies when they later become involved. The latter tend to have longer-standing and stronger expertise in land tenure issues, but that expertise is often not mobilised early enough.

The **World Bank** has taken an active approach to developing a coherent land policy framework, publishing in 2003 a policy report called *Land Policies for Growth and Poverty Reduction* based on four regional conferences held in Africa, Asia, Europe and Latin America. In 2005, it published a guide to Land Law Reform. The Bank also sponsors an annual three-day conference of those working on land issues, both for exchange of information and side-meetings which attempt to coordinate donor policies.

Be aware:

While such meetings are useful, it should be noted that those who represent their agencies, including the World Bank, often have limited influence over the project development process, and projects tend to replicate what are recognised in those institutions to be ineffective practices.

Some **bilateral donors**, such as the UK's Department for International Development (DfID) and the German Agency for Technical Cooperation (GTZ), have produced land policy guidelines. The US International Development Agency (USAID), working with Tetra Tech ARD, has developed an elaborate 'toolbox' of resources on land tenure and policy. Unfortunately, so far the largest bilateral donors seem the least disposed to coordinate, while the smaller agencies with more modest budgets seem more clearly to perceive the need and are more willing to work together.

Regional and sub-regional organisations are well-placed to support and guide development and implementation of land policy in their member States and have taken on a strategic and coordination role in this respect to varying degrees, as illustrated by the examples below. These organisations are a growing presence on the international scene, and CP actors should be aware of their potential to play useful roles in conflict prevention.

Africa

- An important initiative is the **African Union (AU)/ African Development Bank (ADB)/ UN Economic Commission for Africa (UNECA) Framework and Guidelines for Land Policy and Land Reform in Africa**. Cognisant of the varied stages and successes in policy and administrative reforms of different countries, the initiative recognises exchange of information and lessons, access to technical expertise and reviews of on-going processes, as key to catalysing reforms across the continent. With the support of UN-HABITAT, benchmarks and indicators of land policy and land reforms are being developed through this initiative to allow for monitoring and evaluation of policy development and implementation processes and their outcomes.
- A programme of the AU, the **New Partnership for Africa's Development (NEPAD)** coordinates a number of projects and programmes aimed at promoting coherent agricultural development in Africa. In addition, the NEPAD peer review mechanism potentially has a greater role to play in evaluating in-country implementation of the AU Framework and Guidelines.

Regional Economic Communities in Africa also have an important role to play with regard to land policy in their member States. For example:

- Within the framework of the implementation of its Regional Agricultural Investment Plan, the **Economic Community of West African States (ECOWAS)** has launched a process to develop a strategy to promote consensus and the convergence of national land policies in the region on the basis of guidance and principles defined in the AU Framework and Guidelines.

- In Southern Africa, the **Southern African Development Community** (SADC) has established a Land Reform Technical Support Facility, intended to provide access to expert advice, training and technical support to its member States on different aspects of land reform.

Asia

- At sub-regional level, development goal on livelihood of the **South Asian Association for Regional Cooperation** (SAARC) includes distribution of State land to landless in the region, although indicators and targets are not elaborated.
- The Land Management and Conflict Minimisation Project (LMCM) is an initiative of the **Pacific Islands Forum Secretariat** (PIFS), endorsed by the Forum Regional Security Committee and the Forum Officials Committee in 2006. It focuses on the inter-linkages between land and conflict in the Pacific region, combining both economic development and conflict prevention perspectives.

Europe

- As part of their attempt to ‘mainstream conflict prevention’, donors in the **Organisation for Economic Co-operation and Development / Development Assistance Committee** (OECD/DAC) are developing new tools to help them promote land policies for peace-building and conflict prevention.
- The **Organization for Security and Cooperation in Europe** (OSCE) through its country missions provides support for member States such as Tajikistan and Kosovo in improving land governance and implementing reforms.

Latin America and the Caribbean

- **The Organization of American States** (OAS) Department of Sustainable Development (DSD) aims to assist member States on key sustainable development issues including land through projects and policy recommendations. In partnership with USAID the Inter-Summit Property systems Initiative was created to support a range of activities designed to encourage consensus and coordination across donors, governments, and civil society with regard to property registration. The portal www.landnetamericas.org is a tool for continual dialogue, sharing experience and accessing information on property rights and land tenure.
- The FAO-supported **Caribbean Forum** (CARIFORUM) Regional Special Programme for Food Security (CRSPFS) incorporates an analytical component aimed at informing member States on the key challenges in ensuring regional food security and means of addressing these in regional and national policies, including in relation to agriculture and social development.

Middle East

- The **Gulf Cooperation Council** is developing food security strategies involving acquisition of arable land in Africa and Asia for export-oriented farming (since most countries in the region import the bulk of their food requirements)—with the attendant legal and political risks involved.

ANNEX I. SELECTED INTERNATIONAL STANDARDS

Table 8: Checklist of International Standards

Subject matter	Category of persons	Rights and Measures	Selected key Sources*
Housing, land, property, and living conditions	All	<p><i>Rights ‘in’ resources</i></p> <ul style="list-style-type: none"> • Right to own property alone and in association with others • Right to inherit • Right to protection against arbitrary deprivation of property • Right to protection against arbitrary or unlawful interference with family or home or private life <p><i>Rights ‘to’ access resources</i></p> <ul style="list-style-type: none"> • Right to liberty of movement and freedom to choose one’s residence • Right to an adequate standard of living including adequate food and housing <p>NB The right to adequate housing encompasses: access to safe, secure, affordable, habitable and culturally adequate housing and freedom from forced evictions</p> <ul style="list-style-type: none"> • Right to the continuous improvement of living conditions 	<p>UDHR, Art. 17</p> <p>CERD, Art. 5 (d) vi</p> <p>African Charter, Art. 14</p> <p>Arab Charter, Art. 31</p> <p>Islamic Decl., Art. 16</p> <p>ECHR Protocol , Art. 1.</p> <p>American Convention, Art. 21</p> <p>ICCPR, Art. 17</p> <p>Deng Principle 21</p> <p>Pinheiro Principles 6 & 7</p> <p>UDHR Art. 13 and ICCPR, Art. 12 on freedom of movement</p> <p>UDHR Art. 25 (1) and ICESCR, Art. 11 (1) on food, housing and living conditions</p> <p>CESCR General Comment 4 on the right to adequate housing</p> <p>CESCR General Comment 7 on forced evictions</p> <p>UN Forced Evictions Guidelines</p> <p>Arab Charter, Art. 38 on living conditions</p>
	Women	<ul style="list-style-type: none"> • Equal right with men to own, acquire, manage, administer, enjoy, dispose of and inherit property 	<p>CEDAW, Art. 16 (1) h</p> <p>CERD Art. 5 (d) v and vi</p>

* Full references to international instruments along with selected extracts are provided in Annex II.

		<ul style="list-style-type: none"> • Right to an equitable sharing of the joint property deriving from marriage in case of divorce, etc. • Equality with men before the law, including the right to administer property and equal treatment in all stages of procedure in courts and tribunals • Equal right with men to adequate housing • Right of rural women to enjoy adequate living conditions, particularly in relation to housing and to equal treatment in land and agrarian reform as well as in land resettlement schemes 	<p>African Charter Protocol on Women's Rights, Arts. 6 (j) & 7 (d)</p> <p>CEDAW, Art. 15 (2)</p> <p>ICESCR, Art. 11 on right to adequate housing in conjunction with Art. 2 (2) on non-discrimination</p> <p>CEDAW, Art. 14 (2) g & h</p> <p>African Charter Protocol on Women's Rights, Art. 19</p>
	Children	<ul style="list-style-type: none"> • Protection of the best interests of the child as a primary consideration • Protection against exploitation • Equal right of girls to inherit, in equitable shares, their parents' properties 	<p>CRC, Art. 3</p> <p>CRC, Art. 19</p> <p>African Charter Protocol on Women's Rights, Arts. 1 & 21 (2)</p>
	Indigenous peoples	<ul style="list-style-type: none"> • Right to maintain and strengthen spiritual relationships with land, territories or other resources traditionally owned or occupied by them, particularly the collective aspects of this relationship • Rights to recognition of ownership and possession of lands and to use of lands not exclusively occupied by them • Right to due recognition of laws, traditions and land tenure systems • Rights to natural resources pertaining to their lands 	<p>ILO No.169, Arts. 13, 14, 15 & 17</p> <p>UN Decl. on IPs, Arts. 20, 25-27, & 29</p>

		<ul style="list-style-type: none"> • Right to maintain and develop political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. • Rights to respect for own procedures for transmission of land rights among themselves • Right to conservation and protection of the environment 	
Displacement, Return and Restitution	Refugees and internally displaced persons	<ul style="list-style-type: none"> • Protection from arbitrary displacement • Right of voluntary return to their homes, lands or places of habitual residences in safety and dignity or to settle in another part of the country • Right to housing, land and/or property restitution or to appropriate compensation or another form of just reparation 	<p>Pinheiro Principle 5; and Deng Principles 6 & 7</p> <p>Pinheiro Principles 2, 10 & 21</p> <p>Deng Principles 28 & 29 (2)</p> <p>CERD Gen Rec. 22</p>
	Indigenous peoples	<ul style="list-style-type: none"> • Right to protection against dispossession of or forcible removal from their lands. • Right to return to traditional lands • Right to redress by means of restitution or fair and equitable compensation in the event of relocation or confiscation, occupation, use or damage to their lands, territories and resources 	<p>ILO No.169, Art. 16</p> <p>UN Decl. on IPs, Arts. 8 (2), 10 & 28</p>
	Minorities, pastoralists, peasants and others	<ul style="list-style-type: none"> • Right to protection against displacement for those with a special dependency on and attachment to their lands 	Deng Principle 9

Discrimination and Equality	All	<ul style="list-style-type: none"> • Prohibition of discrimination and enjoyment of rights free from discrimination • Right to equality before the law and of equal protection of the law 	ICCPR, Art. 2 (1) & (2) ICESCR, Art. 2 (2)
	Indigenous peoples	<ul style="list-style-type: none"> • Right to freedom from discrimination in the exercise of their rights <p>N.B. entails State obligation to adopt special measures to safeguard those rights</p>	ILO No. 169, Arts. 3 (1) & 4 UN Decl. on IPs, Arts. 2 & 9
	Minorities	<ul style="list-style-type: none"> • Right to exercise their rights, individually and in community with others, without discrimination <p>N.B. entails State obligation to adopt measures to promote full and effective equality in all areas of economic, social, political and cultural life</p>	UN Decl. on Minorities, Arts. 3 & 4 (1) C of E Framework Convention, Art. 4 (2) OSCE Copenhagen Doc., Para 31
	Refugees and internally displaced persons	<ul style="list-style-type: none"> • Right to freedom from discrimination and equality of all persons, including refugees and displaced persons, before the law • IDPs' enjoyment in full equality of the same rights as others in the country including the right to participate in economic activities <p>N.B. Some groups (e.g. women, children and the elderly) are entitled to protection and assistance required by their condition and taking into account their needs</p>	Pinheiro Principle 3 Deng Principles 1, 4, & 21 (1) b
Culture	Indigenous peoples	<ul style="list-style-type: none"> • Protection against forced assimilation or destruction of culture (including through dispossession of lands, territories or resources or forced population transfer) 	ILO No. 169, Arts. 2 (2) b, 5, 8, & 23 UN Decl. on IPs, Arts. 7, 8, 11, 12, 31 & 34

		<ul style="list-style-type: none"> • Right to practise, maintain, promote, develop, and revitalise cultural traditions, customs, and institutions, including institutional structures and juridical systems N.B. Includes due regard for customary law • Right to maintain, control, protect and develop intellectual property over cultural heritage, traditional knowledge, and cultural expressions • Right to maintain, protect and have access in privacy to religious sites 	
	Minorities	<ul style="list-style-type: none"> • Right to enjoy, maintain and develop their own culture and to the protection and promotion of their identity • Protection against forced assimilation or destruction of culture • Right to preserve cultural and historical monuments 	ICCPR, Art. 27 CRC, Art. 30 UN Decl. on Minorities, Arts. 1 & 2 (1) Arab Charter, Arts. 25 & 37 C of E Framework Convention, Art. 5 OSCE Copenhagen Doc., Para. 32 OSCE Vienna Doc., Para. 59
Participation	All	<ul style="list-style-type: none"> • Right to take part in public affairs • Right to peaceful assembly • Right to freedom of association 	ICCPR, Art. 25 ICCPR, Art. 21 ICCPR, Art. 22
	Indigenous peoples	<ul style="list-style-type: none"> • Right to freely determine their political status and pursue their economic, social and cultural development • Right to participate in decision-making in matters affecting their rights and to maintain and develop their own decision-making institutions 	ILO No. 169, Arts. 5-7 & 15 (2) UN Decl. on IPs, Arts. 3,10, 18, 19, 23 & 32

		<ul style="list-style-type: none"> • Right to consultation with a view to prior informed consent on matters affecting them, their lands and other resources (especially where the State retains ownership of mineral or sub-surface resources). • Right to determine and develop priorities and strategies for exercising their right to development and for the development or use of their lands or territories and other resources, in particular 	
	Minorities	<ul style="list-style-type: none"> • Right to participate effectively in cultural, religious, social, economic and public affairs, in particular those affecting them <p>N.B. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country</p>	<p>UN Decl. on Minorities, Arts. 2 (2) & (3)</p> <p>C of E Framework Convention, Art. 15</p> <p>OSCE Copenhagen Doc., Para. 35</p> <p>UN Decl. on Minorities, Art. 4 (5)</p>
Due Process	All	<ul style="list-style-type: none"> • Right to a fair and public hearing • Right to an effective remedy 	<p>UDHR, Arts. 8 & 10</p> <p>ICCPR, Art. 14</p> <p>ICCPR, Art. 2 (3)</p> <p>CESCR General Comment 7 on due process in evictions</p>
	Indigenous peoples	<ul style="list-style-type: none"> • Right to due process in the recognition and adjudication of their rights pertaining to their lands, territories and resources 	<p>ILO No. 169, Arts. 6 & 12</p> <p>UN Decl. on IPs, Art. 27</p>

ANNEX II.

SELECTED EXTRACTS FROM INTERNATIONAL INSTRUMENTS

Universal

Universal Declaration of Human Rights (1948) – UDHR

Article 17

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

Article 25

1. *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including (...) housing (...)*

International Covenant on Civil and Political Rights (1966) – ICCPR

Article 17

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home (...)*
2. *Everyone has the right to the protection of the law against such interference (...)*

International Covenant on Economic Social and Cultural Rights (1966) – ICESCR

Article 11

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food (...) and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right (...)*

Committee on Economic Social and Cultural Rights, General Comment 4: The Right to Adequate Housing – CESCR General Comment 4

6. *The right to adequate housing applies to everyone. (...) In particular, enjoyment of this right must (...) not be subject to any form of discrimination.*
8. *While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account (...) in any particular context. They include the following: (a) Legal security of tenure (...) (b) Availability of services, materials, facilities and infrastructure (...) (c) Affordability (...) (d) Habitability (...) (e) Accessibility (...) (f) Location (...) (g) Cultural adequacy.*

Committee on Economic Social and Cultural Rights, General Comment 7: Forced Evictions – CESCR General Comment 7

9. *Legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. (...)*

11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent (...) it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

12. Forced eviction and house demolition as a punitive measure are (...) inconsistent with the norms of the Covenant.

13. States parties shall ensure, prior to carrying out any evictions (...) that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.

16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.

UN Comprehensive Human Rights Guidelines on Development-Based Displacement, (2010) – UN Forced Evictions Guidelines

9. States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons under their jurisdiction. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups.

International Covenant on the Elimination of Racial Discrimination (1969) – ICERD

Article 5

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone (...) to equality before the law, notably in the enjoyment of (...) (d) v. The right to own property alone as well as in association with others; vi. The right to inherit; (...)

Regional

African [Banjul] Charter on Human and Peoples' Rights (1981) – African Charter

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

American Convention on Human Rights (1969) – American Convention

Article 21

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

European Convention on Human Rights and Fundamental Freedoms, Protocol 1 (1952) – ECHR Protocol 1

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

League of Arab States, Arab Charter on Human Rights (2004) – Arab Charter

Article 31

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

Article 38

Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Universal Islamic Declaration of Human Rights (1981) – Islamic Declaration

16. Right to Protection of Property: No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

Women

Convention on the Elimination of All Forms of Discrimination against Women (1981) – CEDAW

Article 14(2)

State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right (...) h. to enjoy adequate living conditions, particularly in relation to housing (...)

Article 15

2. States Parties (...) shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

Article 16

1. States Parties ... shall ensure: (...) h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (...)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005) – African Charter Protocol on Women's Rights

Article 1 (k) 'Women' means persons of female gender, including girls;

Article 6

States Parties (...) shall enact appropriate national legislative measures to guarantee that:

j. during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7

States Parties (...) shall ensure that:

d. in case of separation, divorce or annulment of marriage women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 19

(...) the States Parties shall take all appropriate measures to:

c. promote women's access to and control over productive resources such as land and guarantee their right to property; (...)

Article 21

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

Children

Convention on the Rights of the Child (1989) – CRC

Article 3

1. In all actions concerning children (...) the best interests of the child shall be a primary consideration.

Article 19

States Parties shall take all appropriate (...) measures to protect the child from (...) exploitation (...) while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Indigenous Peoples

Convention concerning Indigenous and Tribal Peoples in Independent Countries – ILO No. 169

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

b. promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, (...);

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

Article 7

1. *The peoples concerned shall have the right to decide their own priorities for the process of development as it affects (...) the lands they occupy or otherwise use, (...)*

Article 8

1. *In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.*

Article 13

1. (...) *governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.*

Article 14

1. *The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*

2. *Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.*

3. *Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.*

Article 15

1. *The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*

2. *In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.*

Article 16

1. *Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.*

2. *Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.*

3. *Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.*

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

Declaration on the Rights of Indigenous Peoples (2007) – UN Decl. on IPs

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, (...)

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites;

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, (...)

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, (...) They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Minorities

International Covenant on Civil and Political Rights (1966) – ICCPR

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1993) – UN Decl. on Minorities

Article 4

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Arab Charter

Article 25

Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law.

Article 37

Minorities shall not be deprived of the right to enjoy their culture or to follow the teachings of their religions.

Council of Europe Framework Convention for the Protection of National Minorities (1995) – C of E Framework Convention

Article 4

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Organization for Security and Cooperation in Europe, Concluding Document of the Vienna Meeting of the CSCE (1986) – OSCE Vienna Doc.

59. (Participating States) will ensure that persons belonging to national minorities or regional cultures on their territories can maintain and develop their own culture in all its aspects ... and that they can preserve their cultural and historical monuments ...

Organization for Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) – OSCE Copenhagen Doc.

31. The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Refugees and Internally Displaced Persons (IDPs)

Guiding Principles on Internal Displacement submitted by Francis Deng, Special Representative of the Secretary-General to the UN Commission on Human Rights (1998) – Deng Principles

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 28

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily in safety and with dignity to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

Principle 29

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or other form of reparation

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) – Pinheiro Principles

Principle 2

1. All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

Principle 5

1. Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

Principle 6

1. Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

2. States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

Principle 7

1. Everyone has the right to the peaceful enjoyment of his or her possessions.

2. States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the 'interest of society' should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

Principle 10

1. All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice.

3. Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence.

Principle 21

All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process.

Protection in Situations of Armed Conflict

Hague Convention (IV) respecting the Laws and Customs of War on Land (1907)

Article 23

(...) it is especially forbidden (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)

Article 33

Reprisals against protected persons and their property are prohibited.

Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross (2005)

Rule 43. The general principles on the conduct of hostilities apply to the natural environment (...)

Rule 50. The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity. [IAC/NIAC]

Rule 52. Pillage is prohibited. [IAC/NIAC]

Rule 129.

A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. [IAC]

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. [NIAC]

Rule 133. The property rights of displaced persons must be respected. [IAC/NIAC]

IAC = International Armed Conflict

NIAC = Non-International Armed Conflict

ANNEX III. USEFUL LINKS AND PUBLICATIONS

I. Useful Links

Centre on Housing Rights and Evictions (COHRE) – www.cohre.org

- Provides a range of useful resources on topics such as: forced evictions, security of tenure, access to land, women & housing rights, litigation, and restitution and return.

International Food Policy Research Institute (IFPRI) – www.ifpri.org/book-43/ourwork/program/capri

- Maintained by the Collective Action and Property Rights Program at IFPRI, this website has land tenure material that touches upon conflict over land, with a focus on commons such as pastures and forests.

International Institute for Environment and Development (IIED) – www.iied.org

- Deals with land tenure issues generally but with a recent strong focus on external commercial demands for land, including the potentials created for conflict.

International Land Coalition – www.commercialpressuresonland.org

- Highlights pressures and conflicts caused by growing commercial demand on land.

Landesa (formerly the Rural Development Institute) – www.landesia.org

- Provides insights on land tenure and property rights across a wide range of issues and countries, usually with an emphasis on agricultural land and on law, legal reform and the regulatory framework.

Oxfam GB – www.oxfam.org.uk/resources/learning/landrights/west.html

- Focuses on land tenure and property rights issues in West Africa.

Pacific Island Forum, Land Management and Conflict Minimisation Project (LMCM) – www.forumsec.org.fj/pages.cfm/political-governance-security/conflict-prevention/land-management-conflict-minimisation.html

- Website of a project of the Pacific Islands Forum Secretariat (PIFS) focused on the linkages between land management and conflict minimisation.

Rights and Resources Initiative – www.rightsandresources.org

- Provides information and analysis of conflict related to forest land and other land-based natural resources.

United States Agency for International Development (USAID) – www.usaidlandtenure.net

- USAID's website on land tenure and development issues includes land and conflict materials.

II. Useful Publications

Amnesty International. *Slums: Human Rights Live Here*, 2009. Available at: www.demanddignity.amnesty.org/en-gb/campaign/slums

McAuslan, Patrick. 'Legal pluralism as a policy option: Is it desirable, is it doable?' In: Esther Mwangi (ed.). *Land Rights for African Development: From Knowledge to Action*. Collective Action and Property Rights, UNDP and International Land Coalition, 2006. Available at: www.capri.cgiar.org/wp/brief_land.asp

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