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Land governance as an avenue for local state building in eastern DRC

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Land governance as an avenue for local state building in eastern DRC *

This research project explores the link between programmes and policy initiatives on land governance and the broader question of state building in the DR Congo's eastern Kivu Provinces. Our starting point was that land governance programmes do not only impact tenure security and land conflict on the ground, but can also contribute to the establishment of more legitimate and effective forms of public authority and local-level state building. The report is based on interviews with representatives of development organizations in the Kivus. It shows that many see actual and potential linkages between land governance and institutional strengthening, even when this aspect is not a central feature in many of the intervention programmes at this moment. Land governance interventions influence state and customary institutions in a variety of ways: they impact the relative strength and the roles of different types of authorities, state and customary; they shape the nature of rules and property arrangements valid on the ground; and they transform local notions of the state and citizenship. The report also shows what ideas about the make-up of the state and the role for customary and community-level institutions underpin current land governance programmes.

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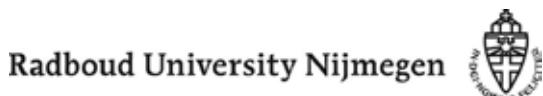
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Introduction

DRC is often taken as a textbook case of state failure. Academics and practitioners alike see dim prospects for the establishment of a well-functioning and legitimate state bureaucracy in the near future. The pressing question is, how, under the current conditions, legitimate and effective local state authority may evolve and what type of state building strategies might be effective. This research proposes land governance could be one, potentially powerful, avenue for the transformation or re-establishment of public authority and of state building at the local level. The current concerns around land conflict and land tenure insecurity in DRC afford – at least in theory – an opening for state authorities to claim a presence at the local level as provider of land related services and to regain legitimacy as the upholder of order and security.

This project explored how current land governance programmes in DRC feed into this potential for state building. In this, we follow the theoretical propositions of Unruh (2003), who suggests that land governance in post-conflict settings can contribute to a gradual process of state building; and Sikor and Lund (2009), who argue that land governance and state authority in Africa are closely linked and co-evolve. This theoretical starting point resonated with observations of key stakeholders in the Kivus, notably of our partner in the research project, UN-Habitat, who noticed potential connections between land governance reform and state building objectives, and expressed a concern that the ongoing stabilization programme in eastern DRC while dedicated to land dispute and reconciliation issues, fails to connect to institution-building.

Currently, the debate on land policy and land governance in DRC seems to gain momentum, and there is increasing political will to interlink interventions in the land sector. This is exemplified by the creation of a Land Reform Steering Committee, and the adoption by the Congolese government of a road map for land reform deriving from a nationwide stakeholder workshop in July 2012. With this exploratory research we hope to feed into these ongoing debates.

This research report is based on two weeks of interviews with representatives of international and Congolese development organizations, and some representatives from local government and academic institutions in North and South Kivu.¹ The aim of the interviews was to map intended and perceived effects of interventions on public authority and the establishment of state authority in particular. The main question guiding the interviews was: How can

¹ Interviews took place in the period of 18-29 November 2013 in Goma, Bukavu and Masisi. On 29 November, we organized a restitution workshop in Goma, to which about 30 representatives of intervening organizations participated.

interventions in the field of land governance contribute to the legitimacy and capacity of public institutions and to a strengthening of the state at the local level?

The research was exploratory and restricted in time and scope. In total, we interviewed 36 people, representing 24 organizations with substantial programmes in the field of land governance in North and South Kivu. We do not claim to have made a complete inventory of land-related interventions. Rather we aim to outline the diversity of interventions, the assumptions guiding them, and their observed or expected impacts on institution building. This report summarises what interviewees observed on their own interventions and those of other organizations and reflects on the implications for institutional change and the role of the state. With this we hope to further the debate and suggest an agenda for more extensive research on these issues.

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Outline of the report

In section 2 we explain the theoretical debates underpinning the central proposition of our research, i.e. that land governance may be an avenue of post-conflict state building. This is followed by section 3 which outlines the main rationales and strategies of land governance interventions in the Kivus and the governance challenges they identify. Section 4 analyses how these efforts tie in with public authority and state building, in which we examine the presence and roles of different types of institutions in land governance, the changes in laws and rules that apply on the ground, and the meaning of the state. Section 5 addresses what we see as the main challenges for land governance and the ways in which it may feed into state building.

2

Starting point of the research

Starting point for this research is that, in theory, land governance can be a potentially powerful avenue for post-conflict state building. The research was meant to explore to what extent and in what ways this potential is identified in ongoing land governance programmes in DRC and with what (potential) impacts. Through the interviews we mapped out how, through what mechanisms, and on what dimensions, land governance programmes affect public authority and the role of the state, both directly (as a specific target) and indirectly (as a side-effect of intervention).

Land governance ties in with the way the state is ordered, how political authority is negotiated, and with the nature of citizenship and the relations between communities and the state (Boone 2007). If the state has the ambitions to exert its influence at the local level, land governance can be an important point of entry. It is in relation to land issues that ordinary citizens encounter their authorities. Dealing with issues such as land attribution and resolution of land disputes provides local and state institutions with ways of establishing or consolidating their authority, gaining legitimacy, and generating local people's confidence and trust. Consequently, struggles over authority around land tie in directly with processes of everyday state formation (Berry 2002, Sikor & Lund 2009, Van der Haar 2001).

This suggests that, if conducted strategically, interventions in land governance may potentially contribute to the (re-) establishment of public authority and state building. This is highly relevant for post-conflict settings where stabilisation and the (re-)establishment of a functioning and legitimate state are key challenges. As suggested by Unruh (2003) addressing land conflict and land tenure security can play an important role in peace-building and the recreation of order after violent conflict.

In international policy debates, *state building* is defined by three key dimensions: state capacity, state legitimacy and state-society interaction. The OECD-DAC, for example, defines state building as 'purposeful action to develop the capacity, institutions and legitimacy of the state in relation to an effective political process for negotiating the mutual demands between state and societal groups' (OECD-DAC 2008:14). The state building discourse has thus moved beyond a narrow understanding of state building in terms of a technical process of institution building and has fore-grounded the space for dialogue on development problems, the rules and norms applied, and the kind of moral principles those are based on (e.g. DFID 2005, OECD-DAC 2008). In this research, we keep these three dimensions in mind when assessing the way land governance interventions connect to state building.

We also rely on theories of state formation to inform our analysis. Building on Joseph and Nugent's (1994) proposal to understand the everyday processes by which state bureaucracies and political communities are created and penetrate society, and the bottom-up responses to this, we consider three dimensions:

- *Material presence of the state*: The creation or re-enforcement of state institutions and capacities;
- *Rule sets*: The enforcement of laws, rules, and norms designed and enforced by the state system;
- *Symbolic level*: The meaning that is being communicated along with these changes in state presence and the importance of state rules, and that may inform a new 'idea of the state' (Abrams 1977) and of how citizens see themselves in relation to the state.

State formation processes mean a stronger penetration of state presence (materially, institutionally – in terms of rules –, and symbolically) into regions that were wholly or partly outside of the reach of the central state. A key question is, therefore, how, state institutions and rules affect existing rule sets and forms of public authority that perform functions now claimed or re-claimed by the state. This is particularly relevant to land governance in DRC, which historically has been the terrain of customary authorities and consensual arrangements. An important question for this research is thus not only how land governance interventions affect the capacity and legitimacy of *state* institutions, but also what happens to *other types of institutions* that exist, and to the relation between them. In developing our argument on this point, we rely on the insights from the ongoing debates on *hybrid political orders* (Boege et al. 2009) and *institutional multiplicity* (DiJohn 2008, Van der Haar & Heijke 2013).

3

Land governance interventions in DRC: rationales and strategies

The land governance programmes we reviewed were mostly centred on addressing land conflict. In the context of intervention in the Kivus, land conflict and land tenure insecurity were framed as security issues. As the programmes developed, most organizations identified the need to look beyond land dispute mediation and address the wider governance system that allowed conflicts to emerge and grow violent. We first discuss interviewees' observation on the nature of land conflicts, to continue with the governance challenges they identify, and then outline their key strategies.

Land conflicts in DRC

Many of the programmes we reviewed were driven by a concern with land conflict in DRC and centred on mediation of land conflicts and enhancing land tenure with the aim of contributing to stability. Land conflicts were framed as threats to overall stability. Programme officials refer to the high incidence of local level land disputes between neighbours and members of the same family, concerning boundaries of plots, inheritance, and irregular acquisition of land. Also mentioned were conflicts related to competing claims between communities and other claimants, such as that between the administration of the Virunga National Park and the surrounding farmers; and between pastoralists and farmers. A case in point here is the pygmy population whose claims on resources from the forest have been largely ignored and infringed upon.

A key concern discussed in our interviews was disputes between large land-owners (*concessionnaires*) and local communities. Originally, those concessions were given out by colonial authorities, irrespective of the fact that they were already occupied. During the 'Zairisation' of land under Mobutu, they changed hands in non-transparent ways, often as appreciation for political support. More recently, new elites have also acquired such concessions from customary authorities, often in disputed ways, and to the detriment of the customary owners. The concessions are seen as a severe threat to farmers' tenure security. The state only acknowledges claims to those concessions if they are used for agricultural production. For this, local farmers are offered contracts of '*météage*' (including stipulations for share-cropping and labour on the owners' land) which are often highly unfavourable and provide little security for the occupants. Interviewees pointed out that tenants may be kicked off their land when it is sold to a new owner, thereby becoming landless. And while for some of the concessions the lease has expired, occupants are still forced to pay part

of their harvest. In some regions, the presence of minerals in the subsoil has increased competition over land and has fuelled speculation. According to our respondents, in some cases, disputes around concessions have turned violent and are considered to pose a threat to security at large.



Site for displaced people.

In the view of our respondents, the current conflictiveness of land is strongly related to the dynamics of civil war. The years of conflict have reduced the presence and capacities of the state judiciary system at the local level, but have also weakened customary institutions. Land conflict is thus partly framed as a problem of governance. During the war, land has turned into a source of speculation. Community members and representatives from the military have irregularly occupied plots of displaced people and refugees, which causes problems when the original owners return. In some cases, local power-holders have recruited militia or armed individuals to grab land or chase away tenants on concessions (see also Stearns 2013). In other instances, customary authorities have incited youngsters to take up arms to protect community land. With the expected increase in the return of refugees, land problems might increase, and even turn violent, as happened in Lubero, where local communities opposed the return of Hutu that fled the territory in 1994 (Sylla 2013), who then joined armed groups. Interviewees observed that in some areas, militia have temporarily taken over land administration and given out titles, which are now disputed.

In a number of cases, land conflicts are seen as linked to ethnicity. Historically, land rights of Kinyarwanda speakers (so-called 'Banyamulenge' in South Kivu and 'Banyarwanda' in North Kivu) have been disputed, as they were considered non-indigenous to the region and their citizenship was contested. This issue got heavily politicized over the years, and played a major role in the outburst of ethnic violence in Masisi in March 1993 (see on this Vlassenroot & Huggins 2005; Mamdani 2001; and ICG 2003). Especially after the Rwanda-masterminded rebellion of the *Rassemblement Congolais pour la Démocratie* (RCD) in 1998, Kinyarwanda speakers were perceived as affiliates of Rwanda, and as outsiders trying to appropriate land from indigenous communities. With the ongoing return of Congolese Tutsi from Rwanda, who had fled the violence in the 1990s, the land issue becomes politically important again. In Masisi (North Kivu) and Kalehe (South Kivu), claims are made that among those people returning from Rwanda and reclaiming land are also many people that do not originate from those areas at all, but that are Rwandese citizens.

We found highly diverse views on the severity of the identity issue at the local level. Some interviewees saw it as ‘resolved’ by the new 2006 Constitution, which grants citizenship rights to the Kinyarwanda speakers and thus possibilities to legally acquire land. Others pointed out that identity issues are often exaggerated by politicians, and are less experienced at local level, or easily solved through local arrangements. On the other hand, referring in particular to regions like Masisi and Kalehe, the identity issue is frequently mentioned as an important dynamic, with Kinyarwanda speakers singled out as ‘land-grabbers’, or ‘disloyal’ Congolese. Others underscore that there are still demands from migrants for their own customary lands, as well as grudges caused by the nullification of Banyarwanda *Territoires* created by the RCD. And while some observe a relative tranquillity regarding such issues at the local level over the last few years, others doubt that local reconciliation has really taken place and that prejudices have been overcome.



Session to mediate a land dispute in Masisi, November 2013.

Land governance challenges

Many intervention programmes held that land conflict was a ‘security’ issue that needed to be addressed to maintain the fragile peace. This resulted in projects for mediating land disputes evolving from the return of refugees and the reshuffle of properties in their absence, and reconciliation between ethnic communities. In the programmes reviewed, land disputes have increasingly become considered as a problem of governance, requiring not just dispute resolution interventions, but institutional changes.

Interviewees point to the weaknesses of land governing institutions, contradictions in the legal framework governing land, confusion about the attributes of different land governing institutions, and lack of a consistent land policy. On the ground, development organizations observe a situation of confusion. Community members do not know whom to approach with their disputes and go to the military, the police, the local administration, or engage in forum shopping: they approach those institutions most likely to acknowledge their claims. This contributes to general feelings of tenure insecurity. In this connection it is also emphasised how political and elite manipulation of land governance, e.g. the insecure status of tenants on the concessions, feed instability. Ambiguity derives, furthermore, from the co-existence of

different notions of property: some people claim for instance that they did not *sell* their land – which would be culturally unacceptable- but rather *conceded* it for a limited period of time, and now claim it back.

Many interveners highlighted the ambiguities in the division of land governing roles between customary and statutory institutions. In the past, customary chiefs played an important role in administering land in their communities, protecting local land ownership and resolving land disputes. However, in the 1973 land law, land formally became the property of the Congolese state.² All land was to be managed by the state, except *terres communautaires*, which would still be partly governed by customary authorities. The precise attributes of customary authorities would be set out in an *Ordonnance Présidentielle*,³ but this never materialised. This ‘gap’ in legislation on the precise roles of customary authorities is seen as a major cause of tenure insecurity. For instance, what about land attributions by customary authorities since that time? And what about customary land that has been sold, does it still fall under custom? This lack of clarity might even stimulate the sale of land by customary authorities, who try to profit from the land now that they still can.

Notwithstanding this lack of clarity, in practice, customary authorities in practice, continue to play a considerable role in local level land governance. Customarily, a *Mwami* would attribute land to the people of his community, often without documentary evidence, on the understanding that ‘*ubutaka bwa nwami*’ (‘land belongs to the customary chief’). Such attributions were considered indeterminate, and through the payment of yearly *redevances* this ‘contract’ was renewed. Such undetermined access agreements have been formally nullified by to the 1973 legislation. Yet, many chiefs continue to collect *redevances coutumières*. Also, at times they do not acknowledge titles given out by the state. Moreover, the new legislation is not known at the local level, which enables chiefs to continue operating as before. A complication is that since the Mobutu Presidency the chiefs have become integrated into the state administration. They now carry two responsibilities: as *chiefs* they guard the identity of their community and continue to operate as default land administrators; while as *administrators* they represent the state. The question is now, what should happen to the revenues they generate from land? While the state considers them responsible for generating revenues for the decentralized government, chiefs still claim their attributes regarding land, collect taxes and pocket the money from sales of land.

Among interveners, there is no agreement on the roles customary authorities and state authorities, respectively, should play in land governance, and different visions prevail about the need for strengthening them. A challenge is that both statutory and customary institutions suffer from a lack of local legitimacy and authority. Interviewees point out that when it comes to service provision (administration, development, and dispute resolution) the Congolese state is largely absent. Nonetheless, regarding land governance, the state plays an important role. Yet, the image of the state often presented is that of a predator, who can take and give land without accepting the responsibility for the consequences. Even then, various interviewees emphasise that stability requires the strengthening of state authority, including in land governance.

2 Article 53 of land law of 20 July 1973 states that : “la terre est la propriété exclusive, inaliénable et imprescriptible de l’État”.

3 Article 387 of the above land law.

Likewise, some interviewees call the local legitimacy and authority of customary authorities into question. While their traditional power was based on the amount of land they availed of, as many of them have sold large parts of their community land, they have no land anymore to give out. Others point to a loss of their traditional authority, due to increasing access to education, or the participation of youth in militia, outside the reach of their traditional authorities. In addition, the sale of land by customary authorities has contributed to a loss of their legitimacy, as has their involvement in irregular transactions of land, like the sale of family land without one party knowing, or double attribution. Stories abound about customary authorities inciting to violence during the conflict, and about abuse or despotic behaviour towards fellow community members. For instance, in Kalehe, a newly installed chief tried to establish himself among the power-holders in his community by selling land of Congolese Tutsi that had fled to Rwanda. Some *Mwami*'s are perceived equally predatory as the state. For instance, a *Mwami* would move to town and sell the land of his community in complicity with the state land administration services. Interviewees observe that while in the past the *Mwami* was seen as a protector and conflict resolver, now he is often perceived as mainly interested in money, while some *Bwami* are not even residing in their communities any more. In practice, *redevances* are often no longer paid, while in many examples, people have started selling customary land.

In contrast, other interviewees point out how in some places customary authorities certainly still have local standing, with the identity of the community embodied in the land and the chief. And while some interviewees consider their legitimacy simply too damaged to serve as a building block for effective land governance, others underscore the need to strengthen them. They point to the constitution that implicitly acknowledges them. More importantly, they see customary authorities fulfilling important land governing roles at the local level. "They fill a hiatus in the law and procedure of land acquisition: they know what land is 'empty'. They could prevent that even if you have received the necessary documents from the state local authorities do not recognize your claims".⁴ It is also pointed out that customary tenure is more secure, as the attribution by a customary chief is still considered perpetual while the state can always retake land given out.

The question is finally whether local authorities, customary or state are able to handle imminent, new tensions around land, related to refugee return and commercial pressures on land. UNHCR estimates that there are still half a million Congolese refugees in neighbouring countries, as well as 2.5 million internally displaced.⁵ Their return to their communities will certainly pose new challenges in terms of contestation on land and its governance. A question posed is for instance whether resettlement might be necessary. Another challenge is the increasing interest of investors in land and the possible resources under it. Further, while in the Economic Community of the Great Lakes Countries (CEPGL) agreement has been reached about free movement in the region, some individuals in the Congolese government continue to resist such possibilities.

⁴ Déogratias Buuma Namira, APC, 24 November 2013.

⁵ UNHCR website, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e45c366&submit=GO> (visited 17 March 2014).

Political reforms and their implications

Interviewees also addressed the impact of the broader political framework on local problems of land conflict and tenure insecurity. Their assessment of contemporary political initiatives to deal with land problems is highly varied. Recently, political debate on land governance reform in DRC gained momentum, with the President calling for a comprehensive land reform in his inaugural address in December 2011. This was followed by the creation of a Land Reform Steering Committee, and the adoption of a road map for land reform deriving from a nationwide stakeholder workshop in July 2012. The key messages were: to deal with land disputes and set up transitional measures to improve land governance, reconcile customary with statutory land management and to develop a new legal framework based on a comprehensive and consultative land policy process (for more details, see Sylla 2013). Apparently there is a certain level of political will. One of the most concrete outcomes of the process so far is the acceptance of a new ‘*Loi du Code Agricole*’ in 2010, which gives local land committees in the communities a role in land allocation and recognition of claims, and foresees the creation of a cadastre.

An important strategy to improve state service delivery, decentralization, is also relevant with regard to land. Provisions in the 2006-Constitution provide the provinces with competences in granting and administrating titles, and acknowledges customary authority. The Ministry of Land Affairs has promoted the creation of sub-offices at the community level (*Brigades Foncières*) to facilitate local communities’ access to land administration services. Worth mentioning is the establishment of a Stabilization and Reconstruction Plan for War-Affected Areas (STAREC) in 2009, which should contribute to national peace and reconciliation, notably: Security and Restoration of State Authority, Humanitarian and Social Assistance, and Economic Recovery. It has resulted in the establishment of structures at the level of the ‘groupement’, the so-called ‘*Comités Locales Permanentes de Conciliation*’ (CLPC), which deal with conflict at this level, and in practice thus often deal with land issues. If this local body fails, STAREC may take over and refer cases to the province.

As yet, assessments of the outcomes of those reforms are varied. Though some consider it promising that there is now a certain level of political will, other interviewees comment that government prioritization is changing continuously and there have been several delays in the establishment of the Steering Committee. Moreover, questions are raised about the actual effectiveness and unintended impacts of the reforms.

For instance, to some, the *Loi Agricole* seems to legitimize large landownership and may make it difficult for small-holders to officially acquire lease-hold. Others point out, however, that the stipulations create a level of security of tenure for 5 years as well as in case of sale of the concession. Moreover, they consider it as a reasonably good compromise, and maybe the highest attainable, considering the firm representation of concession holders in government, who would surely not have accepted more radical proposals like land redistribution. Some interviewees observed that so far, STAREC receives little support from the central government, and with its limited funds finds it very difficult to be actually present in the field. Some interviewees worried further that the CLPC are often politicized and dominated by the customary chiefs.



A poster explaining decentralization.

Interviewees observe that little progress has been made in actually realizing decentralization of land services provision. An obstacle is financial decentralization, as no agreement about the division of revenues is in place yet. Some organizations observe that political will for decentralization remains limited, as it will definitely affect existing patronage relationships. Yet, some difficulties to overcome have to do with the organizational set-up proposed, for instance regarding the lines of responsibility, and for instance the extent to which provincial authorities may be able to fulfil responsibilities attributed to them. The introduction of a decentralized cadastre, in the form of *Brigades Foncières*, lags behind. They lack equipment and means, are technically weak because of lack of training, while their staff is not paid.

Decentralization nonetheless has an impact on authority and legitimacy of different institutions at the local level. Customary authorities resist decentralization, as they fear it might result in new administrative entities that fall outside their responsibilities (like urban neighbourhoods, and immigrant *secteurs*). This fear also plays a role in the introduction of the *Brigades Foncières*, which are often seen as competitors by the customary authorities. Moreover, the outcomes of decentralization are difficult to predict. The decentralization of the juridical system through the establishment of *Tribunaux de Paix* in the territories may contribute to a loss of legitimacy of customary authorities in managing land disputes, as their judgements are considered of limited value by the *Tribunaux*. Yet, the latter remain less accessible than the customary authorities. On the other hand, complementariness between institutions may come about, like in Masisi, where a *Juge de Paix* was willing to ratify the results of a mediation effort by customary authorities.⁶

Unfortunately, as interviewees observed, decentralization does little to clarify the ambiguity about land governing attributes of state and customary authorities. Formally, decentralization would make the customary chief part of the executive body in the local administration, responding to elected local *conseils de chefferie/secteur*. Yet, such a more subordinate position does not necessarily go well with the traditional respect the customary chiefs enjoy

⁶ Journée d'Analyse des Conflits entre les Agriculteurs, Concessionnaires et les Eleveurs, Masisi, 21 November 2013, facilité par UN-Habitat.

in the communities. As one interviewee expressed it, “the legislation of 2006 may result in the establishment of an ensemble of micro-monarchies”,⁷ It may imply that customary authorities may take on significant roles in land governance with few mechanisms in place to ensure accountable. Moreover, traditional respect may result in that customary chiefs may promote the election of *conseilleurs* that still follow his ruling. In practice, if traditional chiefs do not function well in the executive, they can hardly be replaced. Exemplary is the fact that Tribunals hardly ever convict a *Mwami*, or implemented a conviction. “As a consequence, traditional tenure insecurity continues”.⁸ In addition, customary chiefs still tend to consider that revenues collected at the local level are for them rather than for the state administration. Various interviewees thus point to the need to delink the local administration from the customary authorities, or promote a more symbolic role for them.

A key question is to what extent the reforms will be locally accepted and implemented. As one interviewee pointed out: “land is too much *étatisée*”, meaning that proposals for land governance in DRC are too state-centred. Much of legislation is based on imported ideas, and the debate on reform remains an issue of a few intellectuals in Kinshasa. The population cannot identify itself with the outcomes. To some interviewees, this is the core of the problem: “how to make the procedures more participatory and how to assure that the population appropriates the reforms?”.⁹

Concerns about the current policy reforms urge some organisations to continue lobbying for reforms and pressing the government for keeping land issues on the agenda, while others opt for strengthening the search for solutions at the local level.

Intervention strategies in land governance

Based on their assessments of land conflict, tenure insecurity and governance challenges, organisations intervening in land and land governance have developed different types of intervention. In a simplifying manner, the following categories can be identified:¹⁰

- **Mediation and land conflict resolution at the local level.** Such interventions are based on the assumption that land disputes are a key challenge to local stability and security.
 - Examples include the land dispute mediation work of UN-Habitat and the Life and Peace Institute, and their Congolese partners. Some of this work also includes involving politicians at higher levels.
- **Training and facilitation of local dispute mediation institutions.** Such a strategy starts from an observed lack of conflict resolving capacity at the local level. The ambition is generally to assure inclusiveness, inviting different institutions (local associations, churches, elders, state administration, police) present in the community, rather than focussing on one particular type of authorities.
Examples include:

7 Loochi Muzaliwa, LPI, 26 November 2013.

8 Severin Mugangu Matabono, 26 November 2013.

9 Loochi Muzaliwa, LPI, 26 November 2013.

10 Descriptions of intervention strategies are partially taken from an inventory of land-related interventions by le groupe de travail Habitat, Terre, et Propriété de ONU-Habitat.



Announcement for a training on prevention and resolution of land disputes.

- the activities of APC, which has a programme to enhance the involvement of the *Cadres de Dialogue et de Médiation* (CDM) in the prevention and mediation of land disputes;
 - ADEPAE, which has a project to strengthen community capacities in conflict management and promotion of peace in Fizi and Uvira territories;
 - UN-Habitat, which also strengthens the CDM in land dispute mediation, context analysis, and lobbying, and gives support to the provincial government to initiate community land dialogue with traditional authorities and community leaders in North Kivu to facilitate return of refugees from Rwanda;
 - LPI, which facilitates inter-communal dialogue.
- **Monitoring and research of land disputes**, to inform interventions in this field and facilitate lobbying.
- For instance:
- AAP has a programme to monitor land disputes and violations of children's rights.
 - LPI conducts participatory action research on inter-ethnic conflicts related to land management;
 - International Alert trains local organisations in doing research and publishes reports on land issues in eastern DRC.
- **Training on legislation**, considering that local lack of knowledge about actual state legislation enables manipulation by opportunistic outsiders, while knowledge about state legislation may contribute to the protection of women.
- Examples include:
- the programme of AAP, which tries to create awareness of the *l'Edit provincial* on the division of responsibilities between customary chiefs, land chiefs and small producers, and conducts sensitisation in the communities on how to get land locally registered;
 - APC works on the promotion of women rights through training on the Family Code and Resolution 1325;
 - NRC has information campaigns on housing, land and property rights with the aim of preventing conflicts, as well as training on state legislation;
 - ADEPAE trains state officials and humanitarian organizations on regional legal frameworks regarding displaced people.

- **Provision of resources and capacity building to local land governing institutions**, on the assumption that those lack means and that their accessibility is limited. This includes for example physical infrastructure and means of transport.

Examples include:

- the support of UN-Habitat to the land administration, consisting of: training in ADR, topography and mapping system, facilitating dialogue with key stakeholders (traditional chiefs, local leaders), provision of topography equipment, raising awareness through radio broadcasts. Support is given to the Provincial Ministry of Land Affairs to deal with complex land disputes (Kitchanga) and to coordinate interventions.

- **Promoting and facilitating local registration of land**, on the assumption that a lack of tenure security threatens livelihoods, or may contribute to land disputes.

Examples include:

- the work of the Cooperation Suisse to introduce written documents for land administration, through a decentralized acknowledgement of customary claims;
- APC tries to strengthen tenure security by strengthening customary land contracts, and assisting people to acquire titles;
- LPI, that assists its local partners APC, RIO & Adepa in getting in place certificates of customary land occupation.

- **Lobbying at the level of national and provincial authorities on land legislation and reform.**

Emphasis in this is on the ambiguity of regulations and the attributions of different land governing institutions, such as the division of responsibilities between state and customary institutions, or irregularities in the attributions of land, such as the concessions.

Examples include:

- the work of Forum des Amis de la Terre (FAT) and Fédération des Organisations de Producteurs du Congo (FOPAC), who played an active role in lobbying and bringing together other actors from civil society for the 'Loi de Code Agricole' and facilitated the agreement of a Code of Conduct for customary chiefs in North Kivu;
- NRC lobbies for temporary or permanent land access for IDPs and returnees.

- **Facilitating policy debate on land reform.** Creating venues in which different stakeholders discuss key issues in land policy, but also facilitating access of stakeholders to debates elsewhere.

- An important role in this has for instance been played by UN-Habitat, who supported the nation-wide consultation workshop on land reform in 2012, and provides technical assistance to the Ministry of Land Affairs since 2011.

- **Coordinating interventions on land issues**, as it is observed that organizations sometimes have contradictory strategies, to increase impact and leverage on policy making, and to prevent forum-shopping by contestants in land disputes.

For instance:

- UN-Habitat gives support to the Provincial Ministry of Land Affairs to coordinate interventions, and facilitate exchanges amongst interveners at both provincial and national levels

4

The potential linkages between land-related programmes and state building

In this section we explore in which ways interviewees see potential linkages between land governance and institutional strengthening or state building. After providing a general assessment of how they perceive those links, we analyse interventions in terms of how they link specifically to the creation of public authority, rule systems, and the symbolic understanding of public authority.

Land, governance and state building: recognising the links

As discussed above, many interviewees consider that land disputes are a matter of governance. Consequently, they emphasised the need to explicitly work on land governance, rather than on the mediation of individual land dispute only. As interviewees observed: “You can’t sustainably solve land issues if you only work on dispute resolution”.¹¹ Mediation and other mechanisms are seen to offer temporary solutions, to diffuse tension and bring together contending parties, but in addition a long term approach is seen as necessary: improving land governance systems.

However, our impression was that this awareness has not yet been fully reflected in intervention practices, as is also acknowledged by the interviewees: “Our interventions in this by themselves are not sufficient: there is a need to strengthen authorities and responsibilize them for the matter”¹²; “the mediation in land conflicts is band aid, not a durable solution. That would require long-term institutional support”.¹³

The assumption that intervention programmes on land might have effects on local governance and local state building more in general – from which we started our research – resonated strongly with the interviewees. For instance, all participants to the verification workshop agreed that: “Land governance is the ideal avenue for (re-) establishing a social contract between the Congolese state and its citizens”.¹⁴ As one interviewee remarked, “If the state would work in a positive way on land governance, this might have an enormous

11 Déogratias Bashibirhana, Cooperation Suisse, 25 November 2013.

12 George Bwema, ICLA Sud Kivu, 25 November 2013.

13 Oumar Sylla, UN-Habitat, 28 November 2013.

14 “La gouvernance foncière est une avenue idéale pour (ré-)établir le contrat social entre l’état congolaise et ses citoyens”, Atelier de restitution, Goma, 29 November 2013.



Final validation workshop.

impact on the confidence in the state".¹⁵ Another speculated that re-legitimizing the state is even one of the actual objectives of the reforms in land governance currently discussed by the government. Others see the problems of land governance – e.g. the continuing ambiguity and contradictions in legislation and attributes of authorities – as exemplary for how governance in DRC operates.

Some interveners saw direct links between land programmes and state building. As one interviewee pointed out, “by strengthening land governance, you strengthen governance in general, as well as the image people have of their state. Land is the moment where people are in contact with their state. And if 80% of the population lives off the land, if you work in this field, your interventions on governance have an impact”.¹⁶ An effect on state building could be reached by different means, as demonstrated by the following quotes: “If you specify clearly to whom land belongs in rural areas, and when it becomes under the authority of the state, this means reestablishment of state”¹⁷; “Establishing conflict resolution through better regulation and strengthening the judicial system is state building by itself (...) Standardizing the fiches used for administration makes it possibility for the state to control and survey: this is state building”.¹⁸ In these quotes we see reflected the different dimensions of state formation that we distinguish: state capacity of control, state law, as well as – in the first quote – the image of the state. It should be added that interviewees did not embrace the idea of state building without hesitation. There was a strong concern with the risk of strengthening a predatory, self-interested regime.

Though the potential for land governance programmes to feed into state building was recognised, state building was not an explicit ambition of most programmes. An exception is the pilot programme of the Swiss Cooperation, which – according to the representative we interviewed – has the explicit ambition to contribute to new, positive images of the Congolese state, by working on the behaviour and reputation of state representatives at the local level, for instance by discussing moral and corrupt behaviour in their trainings. Other examples are FAT's initiative to arrive at the Provincial Edict for regulating customary authorities and land management, involving parliamentarians and provincial authorities; or the work of UN-

15 Tobias Petrelius, LPI, 19 November 2013.

16 George Bwema, ICLA Sud Kivu, 25 November 2013.

17 Tharcisse Kayera, ADEPAE, 25 November 2013.

18 Tharcisse Kayera, ADEPAE, 25 November 2013.

Habitat to facilitate dialogue between the land administration and traditional authorities on their respective attributes, for instance, on the need for the land administration to involve traditional authorities when carrying out a land vacancy inquiry. The wider ambition of the programme is to put in place an integrated land administration system, reconciling statutory with customary laws.

In most programmes, state building was not specifically targeted, but believed to be an almost natural outcome of the efforts in the field of land governance, which requires no special efforts. Representatives of various programmes for instance assumed that in practice, public administration and land governance are so closely connected due to the fact that customary chiefs have become part of the state administration, and thus that strengthening of customary authorities and institutions means strengthening the state. State building was then seen in terms of changes in the performance of public authorities in general, rather than in re-establishing the Congolese state.

I. Public authority and institutions: Who is in charge of land governance?

Land governance is clearly a field in which multiple institutions play a role: the re-emerging state, customary institutions, and – increasingly – interveners and the institutions they create to deal with land governance challenges. The interventions analyzed both act upon the existing customary institutions and on the re-emerging state institutions, and create new bodies to deal with land disputes. Our findings suggest that:

- many interventions include the creation of new bodies or committees to fill gaps in land governance, especially in land dispute resolution, and representing all segments of local society;
- in some cases customary authorities are targeted with a view to making their role in land governance more effective as well as more inclusive and accountable;
- direct investment in state authorities at the local level is limited, but not absent.

Though all of these actions aim to strengthen institutions at the local level, the impact on state building is not always considered explicitly. There is some concern that the strong presence of NGOs might undermine the re-establishment of the state (known as ‘crowding-out’ effect). Others propose that strengthening institutionalisation in itself contributes to state building, provided that the role of customary or community-based institutions (whether newly created or rooted in tradition) is eventually recognized and embedded in the state structure.

One of the most visible ways of supporting the re-establishment of the state is through the creation of physical infrastructure. This makes the state visible at the local level and underpins a strengthening of its capacity. This approach was clearly reflected in the programme *‘Restauration de l’autorité de l’état’* of the governmental programme STAREC. Other programmes entailed support for the construction of offices, materials, and means of transport. Many interviewees saw this focus on physical infrastructure as limited. They suggested that this infrastructure does not by itself ensure that institutions become more

effective, and may do little to strengthen the legitimacy of authorities. Others considered that lack of good working conditions fosters abuse and corruption; hence, support to infrastructure is part of strengthening legitimacy. Overall, investments in physical infrastructure were defended as *part of* institution-building which also included other components, mostly on the level of capacities.

Increasingly, domestic and international NGOs and interveners in DRC step into land governance to compensate for the absence of the state. Their interventions affect the roles and presence of the largely absent but re-emerging state institutions as well as the customary authorities and community-based arrangements, which have roots in history but are questioned and changing.

In those efforts, there has been a change in strategy, in that international intervening organisations increasingly shift responsibilities to local partners. Interviewees mention that international agencies initially implemented land conflict resolutions programs themselves. With a view to enhancing local capacity, they have handed over responsibilities to local organisations, while the international organizations provide assistance, help to refer cases to appropriate institutions, or play a role in more complex disputes.

For instance, UN-Habitat formerly had 10 mediators travelling to different communities, but now supports local bodies in doing this work. The role of UN-Habitat itself has shifted towards complementing such efforts of local organizations, for instance by drawing on its connections in Kinshasa and abroad, when local disputes have turned too complex to be addressed locally because of the involvement stakeholders from outside the communities.

Various organisations established local committees to implement their programmes. This has resulted in the establishment of a wide variety of local committees, to mention a few: des Noyaux de Resolution de Conflits Fonciers (AAP), Commission d'Accueil et de Reinsertion (NRC-



Signpost for a local dispute mediation committee established by a development organization.

ICLA), *Cadre de dialogue et de mediation* (LPI), *Committees de Mediation et de Defense des Droits Humaines* (Heritiers de la Justice). These newly established bodies primarily take up a role in conflict resolution. To this end, they are trained on mediation of land disputes and on legislation. Increasingly, participatory and action research appears to become a strategy.

Intervenors created these bodies because they perceived an ‘institutional gap’ in land dispute resolution which needed to be addressed urgently. The *Conseils Inter-communautaires pour la Transformation des Conflicts*, a structure promoted by LPI, were introduced because of the limited presence of the juridical system at community level. Likewise, when NRC-ICLA in 2004-2006 started to assist returning refugees to re-establish in their home communities in some cases there were no local authorities in place, and so-called *Commissions de Protection de Déplacées* (CPD), were established to register the population, deal with disputes, and take care of those whose land was occupied. Later, when the police and local administrators returned, the structure transformed into *Commissions d'Accueil et de Reinsertion* (CAR) which focussed specifically on land issues.

In many instances, however, functioning institutions were present. Intervening organizations were aware of that, but considered their capacities and legitimacy limited and felt the need to introduce a new organisational form. New committees are promoted in order to include a broader representation of the population. The idea is that women and youth, but also IDPs, may have limited representation at the community level, and the committees ensure they have a platform. Most of these committees aim to include existing authorities as well: the influential people in the village, customary chiefs, schoolteachers, representatives of the churches, the police, and the military. One reason to include this diversity of local power-holders is to avoid institutional competition and forum-shopping. In some programmes, the ambition is to strengthen locally existing institutions, rather than introducing new bodies, while still seeking to achieve broader participation. IFDP for instance works to re-establish the former *conseils de village*, however, this time with women and youth participating.

One concern expressed in the interviews is that interventions might be de-linked from the wider efforts of state building. There was a general concern with the lack of coordination amongst organizations and the failure to link them to the state, with for instance provincial authorities not being informed about programmes. Some were concerned about the lack of formal recognition and incorporation of newly established bodies. Ideally, new institutions would become part of a decentralized (land) governance structure. Lack of recognition and incorporation would be a threat to the sustainability of the committees, who so far have relied on external funding. Some organisations already seek for formal recognition. APC is exploring how their *Cadres de Dialogue et de Médiation* may become recognized as an official mechanism by the state. The same counts for IFDP in Kabare and ASOP in Walumbu. Intervenors are however sometimes worried about the extent to which such insertion will change the voluntary and non-political character of the established structures.

Some organisations explicitly aim at strengthening the legitimacy of customary authorities Examples are the initiatives of IFDP and Cooperation Suisse. As a representative of AAP explains: “the customary chiefs can't be circumvented. At the same time, there is a need to fight injustices from the past”.¹⁹ Others consider that by training them in state legislation

¹⁹ Eddy Byamungu, AAP, 19 November 2013.

their local authority can be strengthened. In the *Groups de Réflexion sur les Conflits Fonciers*, promoted by IFDP, the chef de village is appointed as the moderator, which contributes to his local authority. In most cases, however, customary authorities are involved as just one group among other community representatives (e.g. in the different councils established and the trainings given), and there is no specific ambition to strengthen their authority and legitimacy. Yet, the expectation is that through their participation, and through the fact that training workshops provide a forum for expressing discontent about abuse of power, their behaviour nonetheless may change.

Next to customary chieftaincies, in some communities the so-called *Baraza inter-communautaire* is mentioned as a potential player in land governance. This structure was created in 1998 as a provincial branch of a governmental peace commission, gathering leaders from nine major ethnic groups in North Kivu, to resolve local conflicts before they would turn violent. Though government-initiated, it considers itself independent. Until 2004, the Baraza resolved various ethnic disputes and convinced combatants to lay down their weapons. Since then, their importance has diminished. Nonetheless, in some communities the Baraza is said to be still effective and filling the gap in mediating issues across communities. Other interviewees doubt their representativeness, local legitimacy, and their independence from politicians.

Few organizations aim directly at strengthening the institutions of the state, for instance, through support to decentralization. Though some acknowledge the presence of capable people in the judiciary sector, there seems to be a lack of confidence in the state in general. Consequently, strengthening state authorities at the local level seems to be mainly the work of the provincial government. A challenge identified here is that rather than strengthening state authority, interventions such as the establishment of new land governing bodies may even be detrimental to state building. By taking over responsibilities from the state, notably in the resolution of land conflicts, they might undermine rather than rebuild the capacities of the state.

Some organisations propose to strengthen the role of customary authorities in land governance, as a way to contribute to state building. They do not see a stark distinction between state and non-state authority. Rather, they consider for instance that the integration of customary authorities into state administration at the local level is a *de facto* given, but argue that it needs to be made effective in the field of land governance. More concretely, the *chefferie* and *secteur* should be trained in land governance, and their roles in land governance should be legally recognised. As one interviewee observed, “if chiefs become part of the decentralized administration, strengthening their roles regarding land implies a strengthening of the state by the very fact of acknowledging customary authorities”.²⁰ Various other interviewees pointed out how better collaboration between cadastre and customary chiefs would secure tenure and strengthen the reputation of the state.

An example of a strategy working from such a notion is the (pilot) land securitisation programme of the Swiss Cooperation that works together with the cadastral services and the customary authorities at the level of the chefferie.

20 Déogratias Bashibirhana, Cooperation Suisse, 25 November 2013.

"Our aim is not to strengthen custom, but to contribute to a new image of the state. This requires supporting all authorities. But also their behaviour as they lose legitimacy as a result of that. Through raising the moral standards of the officers of land services their reputation has to be strengthened".²¹

Contemporary literature on state building and governance emphasises the roles non-state armed actors (like militia and rebel leaders) may play in services-provision (Vlassenroot & Raeymakers 2008, see also: Raeymakers et al. 2008). We did, however, not encounter examples of this in our interviews. We were told, however, that there has been cooperation between community members and armed groups to avoid land dispossession in South Kivu. Interviewees also mentioned temporal arrangements in which insurgents took over land administration and started re-allocating land; yet, such arrangements were reversed? as the insurgency demised.

We have stressed here the interventions aimed at local-level institutions. However, interventions also target higher levels of governance. For instance, they facilitate or support platforms at the provincial or national level. Amongst others, AAP convenes the *Sous-Coordination Foncier* in Masisi *Territoire*, which is a coming together of different bodies, associations, and local NGOs working on land in the *Territoire*; while UN-Habitat supports government-NGO encounters at District level, facilitates land coordination groups in North Kivu, assists the Ministry of Land Affairs, and facilitated a national consultation on land reform in 2012.

II. Laws, rules, norms: Which rules apply in land governance?

We suggested above that land governance interventions act on the rules, norms and conventions that govern land access, land acquisition, and transfer on the ground. We found the interventions reviewed to touch directly on the legitimacy of customary arrangements and notions of property vis-à-vis state laws and regulations. On the one hand, interventions showed a bias towards formal legislation and attributes, emphasising the need for more knowledge on these issues. On the other hand, there were efforts to strengthen the recognition and effectiveness of customary arrangements.

The interviews show that many interventions aim to contribute to tenure security and conflict prevention through training on legislation and the formal attributes of different institutions. This is based on the assumption that the lack of knowledge of state legislation at the local level feeds dispute and abuse. Moreover, such interventions hope to contribute to the protection of segments of the population with weaker rights to land, notably women. Various interveners train community representatives, often through the diverse committees established, on the legal rights of daughters to a part of the family inheritance or of widows to get a part of the land of their deceased husband.

Key problems were identified, however, with the implementation of the existing legislation. State legislation is seen to work mostly for the interests of politicians rather than the

21 Déogratias Bashibirhana, Cooperation Suisse, 25 November 2013.

interests of the communities. It is also observed that state authorities themselves neglect state law that is in place to protect smallholders: “Authorities act like bandits: they may destroy the houses on land for which they have handed out titles themselves!”²²

Some organizations do lobby work, at national and provincial level, to change state legislation and promote the protection of smallholders. The way the new *Loi de Code Agricole* took shape, is considered a relative success, influenced by the lobbying efforts of organizations like FOPAC and FAT. One of their proposals was to agree on a *Code de Travail* for concessions (including a maximum percentage of the harvest to be paid to the concession owner) as well as an *acte de reconnaissance* given out by the customary authorities to certify tenancy status on land in the concessions. To avoid the problem that state legislation may undermine customary regulation a number of organisations lobby for the acknowledgement of the roles of customary institutions in administrating land.

In North Kivu, such efforts have resulted in an Edit Provincial, a provincial bylaw that clarifies the attributes of different types of institutions in land governance.

AAP and FAT engaged the provincial authorities on this issue, taking along customary authorities in the process. The Edit grants customary authorities prime responsibility for land administration, until an Ordinance Présidentielle settles the issue more permanently. It is hoped that this will strengthen the juridical value of land grants given out by customary authorities, even if it is not a formal title. The Edit also stipulates the procedures which customary authorities are to follow when attributing land-, and sets conditions for the payment of redevances coutumières. This is a means to make customary authority more accountable and counter some of its current loss of legitimacy in some places. Opinions on the Edit are mixed, however, with some organisations seeing it as potentially reinforcing feudal relationships, or as pushed forward by local, autochthonous communities to reassert their hold on the land to the disadvantage of the Rwandophone population and migrants.

A number of initiatives focus on strengthening what is there locally in terms of norms, rules and conventions, seeking the backing of state recognition. The cooperation Suisse is starting a pilot in Walungu and Kabare with the introduction of written documents for land administration, through a decentralized acknowledgement of customary claims. This is done by giving the *Chef de Foncier* (who is not a customary authority, but a government appointee) a role in agreeing customary *kalinzi* contracts, through which subjects may access customary land by paying tribute to the chief. While such a customary contract may secure tenure by giving perpetual rights and creating a relationship between giver and taker, the involvement of a state authority enables control and so may prevent exploitation between giver and taker.

Codification of existing customary norms and rules is another strategy to strengthen the effectiveness of local arrangements. In many places, community-level arrangements exist – referred to as ‘consensual’ – that are backed by the customary authorities. As a representative of ICLA Sud Kivu explained: “for instance, Babembe custom may explicitly say that land belongs to the community; the *Mwami* is the manager, and he doesn’t have the rights to sell

the land. Another example is that in Babembe culture a widow has a right on the land of her deceased husband, and the *Mwami* and his captains have to protect this right".²³ Recognising these consensual agreements may be an avenue to better protect the rights of communities and within communities. At the same time, organizations are aware of the risk that writing down 'custom' might fixate the rules and limit the capacity of the local system to adapt to new situations. During the codification process, custom is not only recorded but also, or primarily, discussed and criticized. Reportedly, this has led to adaptations, like the installation of a female chief in a community in Masisi, or the acceptance in some communities that immigrant ('allochtones') populations are allowed to access land of the community. State recognition of customary arrangements remains a challenge, however. In Fizi, APC and LPI made an attempt at codification, but worried about the lack of judicial value of customary regulations.

Another strategy, promoted by diverse organizations like RIO, Adepa, Arche d'Alliance, APC, POLE institute, and LPI, is to facilitate space for reflection among local state and non-state authorities to consider how to deal with (land-related) challenges. In Kalehe, local authorities arrived at agreements on how to assure access of land to everybody, including immigrants to the region. These initiatives aim to establish and promote local norms on land governance, inspired by a broader concern with 'good governance'. The challenge, however, again is how to assure that such proposals may be acknowledged in state legislation.

Interveners see a couple of challenges regarding their contributions to the reformulation of rules, norms and conventions. A first problem is that it is very hard to come up with proposals that are relevant and effective everywhere, given the diversity of local settings. Customary norms and arrangements vary quite strongly across eastern DRC, and on top of that the situation is in flux. We mentioned already the diversity regarding the role of the customary chiefs. In some places, the case is still that the '*Chef de village dirige le village*' (the village chief runs the village), and the *Mwami* is still in charge of land, while in others land governing responsibility is decentralized to the chefs de *groupement*/family. In some *groupements* and villages, the *chef coutumier* has a broad role, including the distribution of land, conflict resolution and local administration, while in others, his responsibility is limited to land matters only.

As some of the above examples show, there is thus capacity and interest among interveners to maintain local arrangements around land. While the emphasis of most intervention programmes is on training on state legislation, there is a number of efforts to strengthen existing norms, as well as local capacities for arriving at certain norms and conventions. The question remains what introducing state law in the communities implies for the legitimacy of local norms, institutions, and decision making, and to what extent these are harnessed or instead undercut: a question which is seldom asked by the interveners. A good example here is the Edit, which aims to strengthen customary institutions, but risks to prescribe from outside how they should behave.

²³ Beyond shaping institutions and rule sets, land-related interventions act on the idea of the

III. Symbolic meaning: How do people relate to the state?

state and on the relationship between the state and its citizens. The image of the state is addressed explicitly in some programmes under the header of 'state legitimacy' but is rarely an objective in itself. Some interviewees see this topic as outside their scope and interest. Others, however, recognised the possible effects of their work on how local citizens relate to the state.

Various representatives of organizations pointed to the problem that state officials tend to consider the state as the supreme ruler rather than as serving the people. Many state officials do not consider that the state should be there for its citizens and do not work from a sense of public responsibility. Such notions of the state are mostly traced to the colonial period, when individuals that collaborated with the state were given positions of authority, which continued under Mobutu's Zairinisation. Consequently, people tend to have negative assessments of the state, as a predatory force, whose actions and legislation is there to serve power-holders. Such general distrust of the state is fuelled by experiences with corrupt individual state officials. In a similar way, the army is not seen as part of the state, protecting the citizens, but as a diffuse group of individual units representing their own interests.

The experience is that similar notions of sovereignty are also present among some customary authorities, who have come to regard themselves as supreme owners of the lands in their territory, rather than as the protector of community land. This was for instance illustrated by representatives of Heritiers de la Justice, who referred to a customary chief who was unwilling to accept mediation from them, as he claimed "*ici c'est moi qui dirige*" ("here, it's me who is in charge"). Such a notion of customary authority may have historical roots, but might also have been copied from state authorities.

Various organizations aim to transform perceptions about leadership and public responsibility, for instance promoting the idea that authority should be based on performance rather than descent. In land issues, state and traditional authorities should take up the responsibility to protect people's rights. "The state should not see itself as power only (like in Mobutu times) but realise that people should have land while the state regulates. If the state needs land for development, it needs to buy land and compensate people – not so much the *Mwami*".²⁴ Many organizations also consider the need to facilitate structures of participation, that allow citizens to enter into debate with their political representatives. However, the question is how this might be done.

A few organizations also mentioned the need to transform prevailing notions about what defines a community. Redefining the role of customary authorities may play a central role in this. Communities in eastern DRC now often define themselves on basis of ethnicity and presumed autochthony, and access to land often remains based on allegiance to customary authorities to which *redevances* are being paid. By introducing the notion of taxes, which people pay to contribute to the development of their community, communities may be re-imagined. As a representative from ADEPAE observed, decentralization of land governance could contribute to this, as it would transfer land governing responsibilities to the level of

²⁴ George Bwema, ICLA Sud Kivu, 25 November 2013.

the *secteur*, at which representatives are elected. However, this is politically sensitive issue. Efforts in the past to acknowledge Kitchange as a town were seen as promoting the land governing authority of one ethnic community.

We noted striking differences among organizations in their expectations about the possibilities to re-legitimize the Congolese state. In the experience of some representatives, even if state institutions fail to serve their citizens in many respects, local people ask for formal authorities, and the notion that some form of 'state' is needed is widely shared. This is exemplified by the fact that, for instance, there is a lot of respect for elected representatives, or by the ways in which non-state actors copy state-like structures, like Koen Vlassenroot has argued for rebel groups in the Kivus.²⁵ However, the 'idea of the state' as a desirable overarching structure, stands in stark contrast to the idea of the actual state, which, as many interviewees expressed, has lost any legitimacy. Some organisations hold that the Congolese state is beyond redemption. "All authorities, the land administration, the customary chiefs, the state, they are seen as oppressors, levying taxes and doing nothing", one interviewee remarked, "and even if there is political will, how can citizens trust state justice system if staff of the tribunals do not receive salaries?"²⁶ Other organisations simply consider not having a role in good governance and state-citizen relations.

Finally, several interviewees stressed the need to strengthen civil society. Civil society has important roles to play in representing the population and proposing changes in legislation or suggestions for policy. Interviewees pointed out that civil society in the Kivus has limited visibility and influence at the political level. They state that civil society was weakened with the 2006 elections when key representatives from civil society moved to parliament and their organisations remained beheaded. Regaining political leverage is a slow process. Moreover, civil society is divided politically and ethnically, and more focussed on humanitarian services provision than on voicing alternative political standpoints. As one Congolese interviewee observed: "their recommendations regarding the *Reforme Foncière* are very general".²⁷

A problem here is also that a real common platform for exchange within civil society is lacking. In some provinces, the provincial authorities provide space for civil society representation (for instance in the form of the *Sous Coordination Foncier* at provincial level). In other provinces, however, civil society representation at provincial level is orchestrated from above. UN-Habitat is currently making efforts to bring Civil Society together. There is some level of collaboration in the provincial *Groupe Sectorielle* on land. Even so, the question poses itself to what extent strategies for institution building should give more attention to the development of a platform for civil society.

25 Presentation at the "World Conference on Humanitarian Studies" Istanbul, 24-27 October 2013. See also: <http://www.youtube.com/watch?v=GmoqtST2pkA>

26 Christian Kambaza, Faustin Kamwendo, Serge Sangala, ICLA, 20 November 2013.

27 Loochi Muzaliwa, LPI, 26 November 2013.

5

Conclusion

This research explored how land governance interventions – centred on land conflicts and securing land tenure – tie in with broader processes of institution building and state building in the Kivu Provinces. From the interviews it is clear that interveners recognised the potential of interventions on land tenure to contribute to more effective and legitimate forms of public authority and, eventually, state building. So far, however, such aspects do not feature centrally in intervention programmes. Land governance, at the moment, is not a well laid-out ‘avenue’ for state building – as we suggest in the title-, though some footpaths have already emerged and have the potential to grow into more transited roads. In this concluding section we argue for a more systematic reflection on, and tracing of, the effects of land governance interventions on public authority and state building. If the ambition is to contribute to local state building, what are the implications of our findings for future interventions in land governance? And what are the challenges that need to be addressed?

We structure our review of the main ways in which land governance may feed into state building around the three main dimensions of state building as suggested by the OECD-DAC (2008). This is followed by a review of the main challenges we identified.

Land governance programmes and state building in eastern DRC

State Capacity

We identified a strong focus on strengthening institutional capacity at the local level, with some room, in some programmes, for explicitly strengthening local state authorities. Overall, the concern was with creating or strengthening effective institutions, rather than with strengthening the state per se. In some cases, customary authorities (chiefs) were supported, in other cases the emphasis was on creating effective community-level bodies for representation and organisation (committees). In these interventions, capacity was targeted through: clarification or affirmation of roles (of customary authorities vis-à-vis the state); knowledge-building (e.g. on relevant legislation); and introducing good governance measures. Given the limited confidence in and expectations of the state, the concern with governance in practice often implied a focus on institution building at the local level more in general, rather than on local state building. Yet, there was some focus on strengthening state capacity at provincial and national level. We argue that more explicit consideration needs to be given to the effects of these investments in local level institutional capacity for state authority, and the potential risks of missing opportunities to support the re-emerging state.

State legitimacy

As regards the legitimacy of state institutions at the local level, we found that interventions linked legitimacy to the issue of capacity: affirmation/clarification of roles, knowledge-building and the introduction of good governance principles were introduced to solve both capacity problems and legitimacy problems. Accountability, transparency and broad representation were proposed with a view to durable solutions to land conflicts and tenure insecurity but also as a way to enhance the legitimacy of those authorities implementing these solutions. We argue that more explicit consideration needs to be given to the question how performance feeds into legitimacy and how efforts influence the relative legitimacies of state and non-state authorities (customary or newly created bodies).

As regards the legitimacy of state legislation, we found that overall, programmes tended to affirm state legislation vis-à-vis local arrangements, though there was some attention for recognition of local property arrangements. We argue that more reflection is needed on the implications of this bias in favour of state legislation and the way it might interact (and potentially undermine/delegitimize) local property arrangements.

State-society relations

The creation of local committees as a means to introduce more inclusive forms of representation around land governance may create broader or better spaces for dialogue at the local level. So far, it is unclear to what extent these spaces will work towards better dialogue with the state. When state authorities become more strongly affirmed at the local level, the committees may provide an interesting and effective interface to settle land governance issues. Similarly, these committees might, eventually, act as bodies representing local concerns to higher level state authorities. At the provincial and sometimes national levels the interventions we reviewed worked to enlarge the space for dialogue between state and society through the creation of platforms or enhancing the participation of state officials in provincial, national and even international discussions. We encourage a more explicit focus on spaces for dialogue in which relations between local public authority and citizens can be renegotiated. This implies acting on the *process* of institutional change rather than focussing only on its intended *outcomes*.

Challenges and implications

The strategies we describe in this report are still relatively new and it is still early to gauge their impact. It would need careful tracing, in the coming years, what the investments in local level institutional capacity mean for state authority, for the relative legitimacies of different institutions, and for the eventual implications for governance in practice.

The participation of customary authorities in the emerging dispute resolution structures enabled local people to criticize their actions and so demand for accountability. Yet, to what extent this indeed results in changes of behaviour and more local legitimacy remains to be explored. We found limited discussion on the unpredictable and possibly adverse effects of interventions on local governance processes. A point of concern is the proliferation of newly

established institutions (committees), and the risk that they might actually undermine the re-establishment of the state, or add to competition between different institutions. It remains to be explored whether community-level committees created by NGOs become platforms that effectively facilitate local reflection and strategizing on land-related challenges. Another question is about the impact of training on state legislation and the emphasis on women's rights in trainings: does it lead to greater acceptance of women's rights to land or, in contrast – as some evidence suggests – , does it lead to resistance even amongst women?

We argue that, if the impact of land governance programs on state building processes is to be maximized – a goal which organisations might embrace to varying degrees-, this would require more systematic reflection on, and tracing of, the effects of interventions in land governance on public authority and the role of the state. More concretely we suggest that:

- Interveners should continue to explore strategic linkages between land governance, institutional strengthening and state building, and whether and how this could feature more centrally in intervention programmes.
- In these efforts, more specific attention should be given to how to contribute to local state building, rather than institutional strengthening *per se*.
- Considering that the linkages between those issues are not yet fully understood, interveners should carefully record the impact of their interventions on different local institutions and their relations, as regards their relative authority and legitimacy, and monitor the governance, outcomes of these changes.
- More extensive fieldwork would be required to assess the actual (intended and unintended) impacts of land governance-related interventions on institutional strengthening and state building, and on how specific contradictions might be solved.

In our view, a more effective engagement with state building would need to address the following core issues:

To what extent and in what ways can customary authorities serve as anchor points for legitimate and authoritative land governance? We noted already that there is a certain controversy around the role of customary chiefs. For instance, in our restitution workshop, participants strongly differed on the proposition “The authority of customary chiefs is too damaged to serve as a building block for effective land governance”.²⁸ Some interveners see them as too damaged to serve as a building block for effective land governance, whereas others are more optimistic, but point out that strengthening them requires better identifying

²⁸ “L'autorité des chefs coutumiers est trop fragilisée pour en y construire une gouvernance foncière effective”, Atelier de restitution, Goma, 29 November 2013.

what their roles should look like: should they have substantial administrative responsibility or rather get a symbolic function? How to deal with their tendencies of seeing themselves as sovereign powers, their past involvement in manipulation of land ownership, and – in some localities – their loss of legitimacy? Or as one interviewee put it, “How to arrive at strong institutions, rather than at strong men?”²⁹ How to improve checks and balances and strengthen the position of the *conseils de chefferie* vis-a-vis the *chef coutumier*? And more in general: if the role of customary authorities is reduced, should this imply also the end of more customary forms of land governance? Can individualising land access be a viable alternative, or will that harm tenure insecurity of customary right holders? And what will this imply for the ongoing decentralization process? For instance, to what extent may empowerment of local land management increase customary tenure security?

To what extent and in what ways could local conventions, norms and practices serve as a solution for land problems experienced at the local level, and what is needed to protect and promote those? The interviews suggested that in many local settings local norms, rules and conventions still have considerable legitimacy, and play a role in protecting certain land-insecure groups like widows and orphans or settling land disputes involving returnees. Even if particular arrangements are weakened or criticized, land governance might build on this local potential for consensual arrangements. There is a risk that interventions to strengthen local conventions rather contribute to their erosion. Codification, for instance, may change the flexible and adaptive character of such conventions. Above, we noticed the paradox of recognizing local arrangements, but at the same time trying to conform them to state legislation. This might undo local conventions, norms and practices of their unique, context-specific, attributes.

Do locally experienced land problems require intervention, like legislative reform, at higher levels? We argue that there is a need to re-consider how perspectives, best practices, and solutions from the local level can be taken up more effectively in policy making at higher levels, or at the least be acknowledged as legitimate. At the same time, while inclusive local dialogue and decision taking may be the solution to some problems, there remains an important role for strategic policy decisions at the national level.

Underlying those questions is the fundamental question: What type of state is imagined for DRC? In most of the programmes reviewed, ideas about the imagined or desired nature of the state were not made explicit. What kind of state is achievable at the central, provincial and local state levels, considering current weaknesses of state services provision as well as (predatory) state practices regarding land? Is a state-centred model suitable to DRC or is, as the current programmes implicitly seem to head for, a ‘hybrid’ model more feasible, in which institutionality is built on customary and community-based as well as on state structures? But what kind of ‘hybrid’ model would work, what would it look like? And what is the leverage that external interveners can hope to have on shaping the character of the state in DRC? They can insist on its form perhaps, but cannot control its functioning. Rules may be set, for example to place limits on the amount of land to be given out in concessions, but these could be avoided in practice.

²⁹ Professeur Kennedy Bindu, 28 November 2013.

- Intervenors in land governance should be more explicit about their assumptions, positions and ambitions in state building, particularly about the envisioned role of customary authorities and local arrangements in local land governance. If assumptions about the ‘imagined’ state are put up for debate this would enhance reflection between domestic actors and intervenors.

In formulating visions of what local land governance could look like, and what character the state could have, the involvement of common citizens is crucial. We observed that many organizations emphasise the need to promote active citizenship and train people to address their leaders. In the validation session we conducted at the end of fieldwork, the proposition “The central challenge for intervenors is to support the capacity of citizens to advance demands to their authorities”³⁰ received unanimous support. In this connection it was observed that more could be done to strengthen civil society alliances, and to assure that debate at this level fuels policy debate but also that outcomes are brought back to the local level. Some interviewees even observed that the main role of international intervenors should be to facilitate the input of civil society in policy making.

At the same time, we noticed a contradiction around local ownership in land governance. While many organizations emphasise that solutions to specific land governance problems may be found at the local level and argue that the space for local arrangement should be strengthened, at the same time there is lingering distrust in such local solutions. We noticed that intervenors were concerned about the eventual outcomes – for instance, whether local arrangements would conform to state legislation or human rights standards (e.g. gender equality). Intervenors expressed a need not only to *recognise and harness*, but also to *monitor and transform* local arrangements. The question is to what extent such a legalist and transformative focus risks complicating rather than stimulating local processes of dialogue and discussion. For instance, too much concern with developing norms and rules that comply with national legislation might be at the expense of local legitimacy of procedures and norms.

- Congolese and international development organizations should facilitate societal debate regarding the role of customary authorities and community-level institutions in local land governance, and what type of state may be realistically built. A proposal for land governance in post-conflict settings, like that of Unruh (2003), suggests to follow an iterative process, gradually moving forward building on both local arrangements (traditional or emerged during the war) and state solutions. We see a distinct risk of local dispossession and weakening of protection if local arrangements are not recognised and, where necessary, harnessed.

³⁰ “Le défi principal pour les intervenants est de faciliter et appuyer la capacité des citoyens de promouvoir ses demandes chez leurs autorités”, Atelier de restitution, Goma, 29 November 2013.

- More effort should be put in strengthening the capacities of civil society organizations to enable their contribution to debates about key policy questions, and to facilitate their role of channelling the voices of local citizens.
- In this, interveners need to be careful to impose their own images of legitimate governance. They should be wary of applying legalist and transformative approaches regarding local land governance arrangements, and primarily be concerned about how local ownership and legitimacy of rules and norms may be guaranteed.

Various organizations observe that the policy debate on land governance reform is not informed enough by the realities of land problems on the ground. “We need legislation that is aware of local context and social organization, and the regional diversity in this”³¹ Among organizations there is awareness of regional differences, but knowledge is scattered and perspectives are divergent (e.g. on the pertinence of identity issues). While some claim that there is a lack of attention for land problems in towns, others consider there is too much emphasis on urban land problems. Some areas are in the focus of attention of interveners (Masisi, Kalehe) others seem overlooked (Fizi). In interviews, the need was emphasised for more research on regional diversity, with Congolese universities playing a larger role. Some interviewees also pointed to the need for perspectives from other disciplines (agronomy, economy, sociology) as the debate on land reform seems to be dominated by legal specialists.

Some interviewees pointed to the risks involved in building solutions too much on best practices from abroad and experiences from international partners. In this connection, the current emphasis on modernizing the documentation of titles needs to be mentioned. Some interveners and policy makers have high hopes that formal titling is the most effective strategy to increase tenure security and reduce land disputes. However, various Congolese organisations pointed out that official titles often have limited legitimacy, while the experience from other countries shows that uncritical promotion of titling is risky and might even damage existing mechanisms for securing tenure (see e.g. Musembi 2007; Sjaastad & Cousins 2008). There is a need to explore into more detail what tenure security is about in different locations and how this can be strengthened, looking beyond the issue of titling. Some interviewees pointed out that international expertise should rather focus on helping identifying the questions and pointing out critical questions – like: how to fit land law into decentralization? – rather than in providing solutions. Rather than taking charge, international interveners might best try to practice humility and facilitate processes of exploration of alternative solutions.

³¹ Severin Mugangu Matabano, 26 November 2013.

- More extensive fieldwork should be done to assess how diverse strategies for land governance reform work out and contribute to securing tenure and more effective resolution of land disputes. In this, it is important to take account of the substantial diversity in local realities on the ground.

Finally, it should be noticed that the Congolese government itself displays an interest in strengthening the state at the local level. Though implementation of policies for decentralization is erratic, it should be noticed that – notably at the provincial level- efforts are being made, including the convening of land commissions, the organization of land dispute resolution councils in the territories, and the installation of decentralized juridical and land administrative services. These efforts may serve the goal of improving service provision, or of increasing state presence at the local level. The question then is: what kind of state? Within the framework of this research it was not possible to explore in any depth how the Congolese government itself looks at state building or the opportunities provided by land governance interventions to feed into state-building, This is certainly a question that deserves more research.

This study registered a limited confidence in the state's ability to improve land governance. At the same time, interviewees mentioned a range of examples of state representatives who try to foster stability in their areas and make substantial contributions to more effective land governance. It was emphasised that political elites are heterogeneous and that there are also upcoming new elites with a stronger sense of public responsibility. This motivates our final recommendation:

- Intervenors should put more effort in identifying key actors in the state apparatus with the political will to improve land governance in DRC, both at the local and the national level.

People interviewed

19 November

- Tobias Petrelius, Life & Peace Institute (LPI).
- Vyosivyase Caviste, Chef d'Antenne, & Erick Murairi, Forum des Amis de la Terre (FAT).
- Eddy Byamungu, Chargé Programme, Aide et Action pour la Paix (AAP).

20 November

- Chantalle Kambibi, STAREC.
- Gaëlle Cornuz, Stabilization Officer, MONUSCO.
- Francesco Mascini, Premier Secrétaire. Ambassade du Royaume des Pays-Bas.
- Christian Kambaza, Coordinateur; Faustin Kamwendo, Coordinateur Programmes; Serge Sangala, Conseiller Juridique, NRC-ICLA.
- Honore Banyene, UN-Habitat Goma.

21 November

- Représentants du Sous Coordination Foncière de Masisi.
- Tussi Alexis, *Chef coutumier*, administrateur collectivité de Osso Banyungu.

22 November

- Administrateur de Territoire de Masisi.
- Martin Luther I Lentuni, President du Tribunal de la Paix, Masisi.
- Mwami Biizi Ngulu, Delon Muisha, représentante du CLPC Masisi.
- Christol Paluku Mastaki, Chef de Projet, Rights and Resources.

24 November

- Déogratias Buuma Namira, Secrétaire Exécutif, Action pour la Paix et la Concorde (APC).

25 November

- George Bwema, Senior Programme Officer, NRC-ICLA Sud Kivu.
- Jean-Baptiste Safari Bagula, Coordinateur, Innovation & Formation pour le Développement et la Paix (IFDP).
- Tharcisse Kayera, ADEPAE.
- Déogratias Bashibirhana, Chargé Programme Foncière, Coopération Suisse.
- Jean-Jacques Nganya, Pax Christi Uvira.
- Innocent Utshudi Ona, Université Catholique de Bukavu.

26 November

- Frank Reziki, Charles Mukamba, Jean Paul Tiarazire, Christien Mwanza, Téléphore Mwanza, Gérard Kwywaza, Héritiers de la Justice.
- Prof. Severin Mugangu Matabaro, Directeur de Cabinet du Gouverneur de Province Sud-Kivu.
- Loochi Muzaliwa, Coordinateur de Programme Institut Vie et Paix (LPI).
- Emmanuel Ziulu, Coordinateur, Fédération des Organisations de Producteurs Agricoles du Congo (FOPAC).

27 November

- Maria Lange, Directrice Nationale, International Alert.
- Pasteur Kitunda Senforien et collegues, Baraza Intercommunautaire.

28 November

- Pierre Gusira, Chargé de Programme PNUD BT-Goma.
- Prof. Dr Kennedy Kihangi Bindu, Université Libre des Pays des Grands Lacs, ULPGL/
Goma. Oumar Sylla, UN-Habitat.

29 November

- Restitution workshop in Goma, in which about 30 people participated.

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