

Land & Conflict

THEMATIC GUIDANCE NOTE 03

**PROTECTING AND STRENGTHENING
THE LAND TENURE OF
VULNERABLE GROUPS**



Thematic Guidance Note on Land & Conflict

Disputes over land access and control often escalate into violence and conflict leading to dispossession and forced displacement within and across borders. Estimates indicate that 56 percent of conflicts are related to land and that most conflicts take place in developing countries. At the end of 2015, 95 percent of the 65 million refugees and internally displaced people were living in developing countries.

The central role of land to livelihood, identity and power, most notably in rural-based economies explains why disputes over access and control of land frequently escalate into armed conflict and mass displacement.

This Note is part of a series of World Bank Thematic Guidance Notes on land and conflict that present key issues, challenges and guiding principles to address land tenure issues in conflict and post-conflict environments. The three Notes in the series are:

- 01.** Restitution, Compensation and Durable Solutions to Displacement and Dispossession
- 02.** Integrating Customary Tenure into Formal Systems
- 03.** Protecting and Strengthening the Land Tenure of Vulnerable Groups

The audience for these Notes is both laymen and practitioners who are preparing a project or program in a conflict or post-conflict setting, including multi-lateral and bi-lateral institutions, governments, NGOs and others. These Guidance Notes seek to provide guidance on where to start and what questions to ask, not to be an exhaustive 'how to' for land and conflict issues.

While these Notes are meant to stand alone, they are inter-related and may cross-reference relevant material from other Notes.

Issue and Why It is Important

According to the Sustainable Development Goals, secure and equal access to land of vulnerable groups is one of the elements contributing to ending hunger, achieving food security and promoting sustainable agriculture. This section focuses on tenure but acknowledges that while secure tenure is a necessary first step, it should be complemented by a range of other development measures (access to markets, farm inputs, credit, capacity-building) to reduce poverty.

Tenure systems reflect the distribution of power within society. As a result, dominant groups and individuals tend to benefit from the strongest form of tenure with access to valuable land and natural resources, while vulnerable groups receive weaker forms of tenure.

Weak tenure arrangements can take various forms:

- Customary or informal tenure with no legal recognition and protection
- No rights to sell or transfer land
- Limited inheritance rights
- User rights limited to less profitable activities and subsidiary land rights such as food-producing cultures, gathering of wild food and wood, hunting or fishing
- Access to land is based on short-term renewable arrangements

Weak access rights to land and natural resources reflect the socio-economic discrimination affecting certain groups and individuals. It compounds their pre-existing vulnerability and limits their opportunities to improve their living conditions. Groups suffering from social-economic marginalization can include: women, indigenous people, pastoralists, minorities, displaced people or migrants. Access rights depend on socio-economic status but also on whether individuals or groups are outsiders to the community.

In customary systems, land is not only closely tied to subsistence, but also to the identity, religion and cultural values of the community. Land is not considered a commodity that can be sold outside of the community. What is often sold is the right to use the land but not the ownership that remains tied to the community. Thus, outsiders to the community (migrants or displaced people) will usually be granted only limited land rights.

Vulnerable groups face many similar challenges, which can be addressed with similar responses. This section looks first at the common aspects and later examines those aspects that are more specific to women, indigenous people and pastoralists. Conflict-induced displacement exacerbates the difficulties already faced by vulnerable groups. Their socio-economic marginalization or the weak nature of their land or housing tenure rights makes it particularly difficult for them to protect or repossess their land or home and to strengthen their tenure rights after a conflict. They may also be confronted with discrimination or targeted as members of a vulnerable group (women, cultural or religious minority) during their displacement, endangering their lives and limiting their livelihood opportunities. This discrimination represents a challenge to their socio-economic recovery. This Guidance Note focuses on specific measures that can be taken for members of vulnerable groups and on the specific rights and relation to land that certain groups have, as well as references to key international standards protecting women and indigenous groups. This Guidance Note complements the Thematic Guidance Notes on “Restitution, compensation and durable solutions to displacement and dispossession” and on “Integrating customary tenure into formal systems”.





Challenges

Durable solutions¹ for displaced persons² are achieved through sustainable integration in people's place of origin (return); in their area of displacement, (local integration); or in a third location (settlement elsewhere in the country for internally displaced people, or resettlement to a third country) as a result of their marginalization, vulnerable groups tend to be less educated, informed about their rights, and able to mobilize resources to defend them or to seek justice in cases where these rights are violated.

Limited access to justice:

- Customary systems provide weak tenure to vulnerable groups and may be biased against them in cases of disputes, since they do not represent the dominant group.
- Their tenure is not recognized by the statutory system, so it is unlikely to defend against encroachment on their customary rights.
- In cases where vulnerable groups possess legally recognized land rights, defending those rights through statutory courts is usually inaccessible to them (cost, language, and process)

The limited capacity for vulnerable groups to defend their rights creates a feeling of impunity, which encourages further land rights violations by individuals or by the state, granting concessions on the land used by vulnerable groups.

In conflict contexts, there is a risk that their restitution claims are not eligible (if the types of rights they enjoyed are not included in the process).

There is a similar risk that their land rights are not recorded and recognized as part of processes aimed at formalizing customary land rights.

Guiding Principles

Identify and document social and legal restrictions to land access of vulnerable groups: This documentation enables identifying areas of intervention in the customary and the statutory (political, legal and institutional) systems.

Identify and record land rights of vulnerable groups through consultative and participatory methods.

Ensure inclusion of vulnerable groups' land rights into restitution and formalization processes.

Check if legitimate land rights exist over state land prior to granting land concessions: An impact assessment should be carried out to ensure adequate compensation of affected populations, and envisage measures to mitigate this impact (preserving access rights to certain areas or resources, preserving migratory corridors for pastoralists).

Awareness-raising at different levels of society: Authorities implementing restitution or formalization programs or judges should be sensitized to difficulties faced by vulnerable groups in accessing land. Customary leaders and the community should also be sensitized and trained in the same way, notably on national legal standards to limit further discrimination and contribute to

improved tenure security. The participation of members or representative of vulnerable groups to processes such as transitional justice can also be a way to raise awareness by a post-conflict society of the discrimination faced by some of its members.

Empowerment of vulnerable groups: Projects disseminating information on land rights and ways to defend them should be supported. Services and capacity-building can take different forms:

- Legal: Provide legal assistance and train paralegals within the community to raise rights awareness and monitor and denounce violations.
- Advocacy and political campaigning: To encourage mobilization in defense of their rights and needs; lobby authorities and customary leaders.
- Technical: Capacity-building on agricultural techniques and the use of land markets

Representation in institutions and forums involved in decision-making on land issues, implementation of land tenure programs, and land-dispute resolution mechanisms: Positive measures should be taken to ensure the

recruitment of individuals belonging to vulnerable groups. This contributes to a better integration of their needs by officials designing or implementing policies and promotes trust. In relation to dispute resolution mechanisms, the post-conflict period often opens new opportunities to question pre-existing customary or statutory institutions and evolve towards more democratic structures representing the interests of vulnerable groups. In Côte d'Ivoire, the rural land law established village committees to decide on land disputes and recognize customary land rights. The village committees are composed of traditional leaders, local officials and representatives of the various groups present in the community. This arrangement was particularly important, as one source of tension was the land rights of "outsiders".

Civil society organizations: They can play a great role in training and empowering vulnerable groups. They can contribute to structure expectations and demands, and relay these to relevant target groups (national or local authorities, customary leaders, private interests). They can also facilitate access to land in various ways (see following).

- Engage with the customary system to strengthen rights: Customary systems are the main source of access to dispute resolution mechanisms in rural areas. In case of recurrent discrimination by customary authorities, state authorities can make arrangements for local authorities to work jointly with traditional dispute resolution mechanisms to prevent or remedy abuses.

Land allocation and lease: Securing land rights of vulnerable groups can be a long-term process as it requires social behavioral changes in addition to adjustments to policies, laws and institutions. In the meantime, vulnerable groups need immediate solutions to improve their tenure and living conditions. Donors and authorities should therefore facilitate programs providing secure access to land for vulnerable groups. These programs can include the following:

- Allocation of land with ownership or long-term lease: In Mozambique, the legislation recognizes rights acquired in good faith and squatter rights to protect the rights of internally displaced person who chose to locally integrate.

Lease agreements: Written lease agreements can significantly contribute to tenure security provided they respect an adequate notice period and are sufficiently clear on the rights and obligations of both parties. In Somalia, the Norwegian Refugee Council (NRC) and UN HABITAT have promoted the use of standard written lease agreements to protect tenants from forced evictions.

- When vulnerable groups do not have the means to rent land, civil society organizations can lease the land on their behalf. In India, an NGO leased private land for use by Dalit women, which improved their food security.

Cooperative or collective action: In the Democratic Republic of Congo, the NGO Lofepaco leased land for vulnerable women (widow, displaced, single heads of household, single women) without access to land. Lofepaco also provided technical capacity-building to improve production and storage. With the profits from sales, a warehouse was built to store goods when prices were low. Credit could then be provided based on the amount of stored goods, therefore facilitating further investment. As the women belonging to the scheme made sufficient profit, the organization is envisaging the creation of a cooperative held by its members.

- Cooperatives and associations of producers can significantly contribute to food security. As they develop, they can provide increased services improving the productivity, profit and the living conditions of their members: transformation of products for improved selling prices, transport agreements, negotiating prices for seeds and agricultural input, capacity-building in terms of management, agricultural techniques, and defense of their interest with authorities.

Proclamation of moratorium on evictions in urban informal settlements: In the Philippines, President Arroyo made a land proclamation against evictions and promised to connect informal settlements on public land to services. This proclamation resulted in the improvement of tenure and living conditions of informal settlers.

Temporary occupation certificates: In Kenya, the Municipality of Nairobi granted temporary occupation licenses to promote efficient use of idle public land while retaining long-term control. In Colombia, the only condition for any citizen to obtain access to services is to live in their homes and be able to pay for the services. Several intermediate tenure documents confirming possession and residence exist and can then be used to request connection to services even without formal tenancy agreements.

Development of social housing schemes for vulnerable groups in urban areas: In Serbia and Georgia, authorities provided housing to vulnerable groups (displaced people, urban poor, refugees) according to a program called "social housing in supportive environment". Housing was provided for free or at very low cost with an open-ended rental contract. Each building hosts a "foster family" whose role is to facilitate access of the residents with social welfare services.





Protecting Women's Tenure Rights

Issue and why it is important

According to FAO statistics (2011), women produce between 60 and 80 percent of subsistence crops in developing countries. This production and the benefits drawn from market sales contribute to family welfare and food security. Despite this crucial role, women have little control over the land they use and the resources and food they produce.

Land tenure mirrors the distribution of power within society and men tend to dominate society, particularly the traditional ones. As a result, many statutory and customary systems, as well as social practices, favor men over women. In customary settings, most women access land through their male relatives (father, husband, son). These rights can be summarily revoked by men subsequent to divorce or revert to other male relatives (husband's brother) in case of death. In cases where a dowry was paid, a woman might not even be able to return to her family's land if her family cannot pay the dowry back as some customs impose. Single women, especially if they do not have children, have even more difficulties to access secure tenure over land as they do not have the "protection" from a man.

In situations of armed conflict and displacement, the proportion of women single heads of household and widows increases significantly. It is also frequent for their husbands to be missing for several years until they can be confirmed dead and can then initiate a succession process. In cases where widows are denied the right to own property or inherit, this denial can affect their capacity to access land, or may force them to accept arrangements such as marrying the brother of the deceased to be able to return to or remain on the land. If their land or home has been occupied, they may face significant difficulties when they try to repossess them due to their lower status in society and to the weakness of their land rights. Formalization of customary land rights may also worsen their situation if their subsidiary land rights are not legally recognized or if the common lands they use for their subsistence are individualized as part of a land titling process.

Women's insecure tenure represents a threat to food security and to the wellbeing of their families. Conversely, secure access to land provides an opportunity to recover from the shock of conflict, reduces poverty, and limits their social marginalization. Women who own assets, enhance their status within the household. They are also less likely to remain in an abusive relationship and studies have shown a link between secure tenure and the reduction of gender-based violence.

International standards

Many international standards proclaim the right to equal rights between men and women and prohibit discrimination based on sex, notably in relation to property ownership, and the right to adequate housing. The 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) explicitly protects women from discrimination with respect to housing, land and property. It obliges states to grant "a legal capacity identical to that of men" including "equal rights to conclude contracts and to administer property". It further states that spouses should have the same rights in respect to "ownership, acquisition, management, administration, enjoyment and disposition of property". Discrimination based on marital status is also prohibited.

Standards related to situations of displacement and conflict also reaffirm the principles of non-discrimination and the right to equality between men and women in relation to legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property. The Pinheiro principles further call for a gender-sensitive approach to restitution programs, with the adoption of positive measures to ensure women's participation. The Pinheiro principles recommend the recognition of joint ownership rights of male and female heads of households.

The achievement of gender equality and empowerment of all women and girls is one of the Sustainable Development Goals adopted in 2015. It calls on states to "Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws."

Challenges

There are enormous gaps between international standards and the reality of women's tenure to land.

Customary practices

- Denial of ownership (transfer rights).
- Eviction of widows and divorced women from their land.
- Exclusion from inheritance.
- Disputes over land rights further to divorce or in case of polygamy when several women claim the rights over the same land.
- Women have access to customary justice but little chance of positive outcomes due to social norms and the fact that customary justice is male dominated. As a result, they tend not to try to defend their rights.
- Women are excluded from decision-making processes related to land use, management and transfer

Statutory issues

Discriminatory legal framework: In some legal systems women are not entitled to own property alone, or to take decisions on property without someone else's authorization.

Perpetuation of discriminatory attitude to women's rights despite a national legal framework compliant with

international standards: This discrimination may be due to the absence of positive measures, policy and strategies to ensure that women can actually enjoy equal rights to tenure.

- Access to statutory justice is limited by:
- Lack of women's awareness about their rights.
- Illiteracy of women who tend to be less educated than men and do not feel comfortable participating in statutory justice because they do not understand its procedures and sometimes its language.
- Lack of formal identity and tenure documents (ID cards, ownership contract, lease agreement) necessary to claim land rights. Moreover, in conflict situations it is likely that those who had such documents no longer have them. Issuance of such documents may be complex, lengthy and too costly for conflict-affected populations.
- Non-recognition of traditional marriages, which can limit inheritance, restitution, and rights to formalization of customary land rights.
- Fear of social exclusion if women return to their community with a statutory decision going against customary rules.

Guiding principles

Conflicts can sometimes create windows of opportunity to improve women's social status. During the conflict and the absence of their husbands, they often demonstrate that they can take decisions and assume men's responsibilities notably in relation to land. This gives them legitimacy to participate in discussions related to land. The policies and institutional changes that tend to follow conflict should be used as opportunities to integrate measures favorable to women's land and tenure rights.

In parallel, international attention for the establishment of land dispute resolution mechanisms in the post-conflict phase can provide enough leverage to influence the composition of dispute resolution mechanisms in a way that supports women's interest, in particular by ensuring their representation within these forums.

Key aspects to consider to protect women's tenure rights:

Assessment, data collection and monitoring:

- Review the social and legal context affecting women's tenure rights.
- Mainstream the collection and use of gender-disaggregated data on land access for purposes of assessment, program and policy design, monitoring and evaluation.
- Develop gender-sensitive procedures, formats and questionnaires that facilitate the recognition of women's land rights and the collection of gender disaggregated data.

Legal and institutional framework:

Reform relevant national legislation (land-related laws, family law or civil code) where necessary, to ensure conformity with international standards on equity between men and women

Establish gender-responsive measures in relation to land mechanisms (restitution, formalization, dispute resolution) to address cultural, educational and financial barriers, notably:

- Accepting oral evidence.
- Instructions translated in local languages.
- Provision of legal assistance.
- Organization of women information forums on land-related rights.
- Exemption from procedural fees related to land rights claims.
- Accessibility of offices (distance, opening hours) dealing with restitution, formalization of land rights and dispute resolution.
- Ensure presence of women staff within implementing officials.

In Odisha (India), authorities took proactive measures to recruit female officers among those implementing the land registration process. These officers worked with women village committees to enumerate women's land rights. This initiative resulted in a higher demand for women staff as women title-holders as they felt more comfortable explaining their problems to women officials.

Recognize traditional, customary and religious marriages for purposes of establishing legitimate land rights and rights to inheritance. In Mozambique, authorities enacted legislation recognizing such marriages and inheritance rights of women. Such measures contribute to strengthening women's tenure rights in case of divorce or death.

Register joint ownership of men and women upon transfer and sale or as part of restitution and formalization processes. In Rwanda, both women and children are registered on ownership documents. In Ethiopia, the land certificates were adapted to include the name and photo of the spouse. The photo was key in ensuring that illiterate women could have visual confirmation that their interest in the land was included in the certificate.

As a result of this increased perception of tenure security, some women felt more confident to rent out their land for farming as they felt they could defend their rights in cases where tenants would not comply with their obligations.

Engaging customary actors:

While customary systems do not usually allow women to own and transfer land, they usually facilitate access to land for food subsistence. Since statutory courts remain largely inaccessible to most women, it is worth exploring how women could improve their tenure security in customary settings.

Encourage NGO and government-led programs engaging with customary or religious dispute resolution bodies. The tenure rights of women can be strengthened by increasing the capacity of traditional authorities on:

- Mediation and arbitration techniques
- National standards in relation to women's land rights (when such legislation is in compliance with international standards)

Highlight the provisions within customary or religious law (Sharia law) complying with international standards in relation to women's land rights. Islamic tenure systems include provisions such as the waqf (Islamic endowment) facilitating access of the most vulnerable to land.

Develop mediation committees where women can defend their land rights in person (instead of being represented by a man) before customary or religious leaders, or before local authorities.

Women's empowerment

In addition to the measures mentioned under the "vulnerable group" section:

Organize information meetings and booklets specifically dedicated to women to facilitate their participation and understanding.

- Support the creation of women's associations to inform, train and facilitate exchange on women's land tenure issues. The stimulation offered by collective action can encourage women to take more initiative.
- Encourage civil society projects supporting gender equality through:
 - Legal assistance.
 - Capacity-building activities on tenure and professional skills to improve economic independence.
- Encourage the participation of women in formal and informal decision-making structures.
- Develop community awareness and training campaigns on land rights and transactions to avoid women being excluded from the administration, use and transactions of land and properties



Protecting Tenure Rights of Indigenous People

Issue and why it is important

Indigenous people tend to be politically, socially and economically marginalized. Their management of natural resources is sometimes perceived as backward and unsustainable while it is actually often well adapted to their environment and its preservation. As a result of the strong cultural, spiritual and economic attachment they have to their land, their identity and subsistence can be put at risk in cases where their land rights are violated. These rights can be threatened by displacement resulting from conflict, environmental conservation laws or state concessions granted to investors on indigenous people's land for exploitation of natural resources. Some of these displacement factors can co-exist with investment projects resulting in tensions that escalate into conflict between indigenous people, authorities, and the army or the security services companies.

The socio-economic marginalization of indigenous people makes it difficult for them to reclaim their rights or protect their land from unscrupulous investors, even when those are protected by law (see general section on vulnerable groups preceding). It is therefore important to highlight the specific land rights of indigenous people that apply in the context of displacement, formalization, restitution or development projects.

The two key international standards on indigenous people's rights are the 1989 ILO Convention 169, and the 2007 UN Declaration on the rights of indigenous peoples. These international standards recognize and protect the special attachment of indigenous people (IP) to the land and territories they occupy or use. They acknowledge the collective, cultural and spiritual dimension of their relationship to land notably their traditional tenure systems.

Key principles:

- The state should provide legal recognition and protection to IP's land, territories and resources according to a process that includes their participation. The resulting mechanism should serve to recognize and adjudicate IP's land rights in case of dispute. This provision should be considered when implementing formalization or restitution processes in areas where IP live.
- IP have the right to own, use develop and control the land, territories and resources they possess through traditional ownership or use and to establish their priorities in terms of exploitation of mineral, water or resources on their land and territories.

- The free, prior and informed consent of IP should be ensured prior to any approval of projects affecting their land, particularly with regard to the development or utilization of mineral or natural resources.
- Studies should be carried out assessing and mitigating the adverse environmental, economic, social, cultural and spiritual impact of projects taking place in IP's land and territories.
- Recognition of IP's role in the protection and conservation of their environment and the productive capacity of their land, and responsibility of the state to ensure that no storage or disposal of hazardous material takes place on IP's land and territories.
- IP are entitled to redress, restitution and compensation in cases where their land, territories or natural resources are confiscated, used or damaged without their free, prior and informed consent or if damage results from a project on their land.
- In case of projects on their territories, IP shall be able to participate in the benefits of the projects.
- IP should be protected from displacement
- IP can only be relocated further to obtaining their free, prior and informed consent, and after an agreement on just and fair compensation.
- They have a right to return to their ancestral land.⁴⁹

The Guiding Principles on Internal displacement, and regional conventions such as the Great Lakes Protocol on Property Rights of Returning Persons, and the Kampala Convention on Internal Displacement also protects the right of indigenous peoples along with other groups with special attachment to land such as minorities, peasants, and pastoralists. These regional conventions also reaffirm the right of these groups to be protected from displacement, the right to return, restitution and to fair compensation.

Moreover, regional human rights courts in Africa and America "have interpreted the right to property in a way that assimilates property to possessory rights, regardless of whether the property is owned formally or customarily." The jurisprudence of the African Court for Human Rights and the Inter-American Court for Human Rights consider that the right to property includes the collective rights of indigenous people.

Additional guidance in relation to investments on indigenous people land and related displacement include:

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007): The document provides procedural and substantive guidance and safeguards to prevent or remedy displacement for reasons of development.

The FAO Voluntary Guidelines on Responsible Governance of Tenure : These guidelines call for the respect of legitimate tenure rights of farmers and indigenous people with the aim to support the right to food and development.

The Guiding Principles on Business and Human rights (2011): These principles provide a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations. Online tools are available to help companies evaluate their level of due diligence, and to track companies perpetrating land grabs.

World Bank Operational Policy (O.P) 4.10 on indigenous people (2005 revised in 2013): In recognition of the risks that development projects can have on the strong cultural, spiritual and identity links that indigenous people have with their land, O.P 4.10 requires investors to ensure free, prior and informed consultation with indigenous people and establishes that the World Bank will finance a project only if it benefits from the large support of the community. The operational directive presents a set of measures to avoid or, where impossible, mitigate adverse effects of a development project on indigenous people (social and environmental assessments, arrangement to ensure that the community benefits from the exploitation of their natural resources).

Challenges

The legal framework protecting the land rights of indigenous people may not be in line with international standards.

Even when a specific law in accordance with international standards protects indigenous peoples' land rights, there are often contradictions between its provisions and the ones included in other legislation related to exploitation of natural resources such as extractive industries and mining.

The post-conflict period often creates a high risk of dispossession through state concessions due to an improvement of security and access.

The lack of measures adapted to the situation of indigenous people can result in the denial of their land rights.

Guiding principles*

Ensure that the national legal framework is compliant with international standards or adjust accordingly.

Review laws that may have an impact on the land rights of indigenous people (laws related to forestry, mining, extractive industries) and ensure consistency with international standards. The procedures in such laws should respect the right to free, prior and informed consent.

Support information, capacity-building and participation of indigenous people in decision-making forums and institutions by drawing on resources of international and national civil society groups specialized in indigenous people's rights.

** In addition to measures mentioned in the general vulnerable group section*





Protecting Tenure Rights of Pastoralists

Issue and Why is it Important

“Pastoralism is a livelihoods system based on livestock rearing, mobility and the extensive use of communal land.” This sentence epitomizes the nature of the pastoralist’s relation to land. Their livelihoods do not depend on a particular plot of land but rather on group access to vast territories for livestock pasture. Their access rights to land and natural resources are selective, seasonal and not exclusive. The modalities of access rights tend to be negotiated periodically with other user communities.

The land needs of pastoralists depend on the type of pastoralism they practice:

- Nomadic pastoralism depends exclusively on their livestock.
- Agro-pastoralists complement cultivation with livestock rearing.
- Transhumance pastoralists undertake seasonal migration between wet and dry seasons, or between highlands and lowlands to ensure adequate pasture for their livestock.

Pastoralism is particularly widespread in Africa. In South Sudan, more than 70 percent of the population participates in the pastoral economy. Livestock being the main source of income and food security, disputes related to access to natural resources such as land and water are frequent and often degenerate into violence. Livestock is also a source of political and social power. It is therefore targeted during power struggles between different fighting factions. The use of armed men to protect livestock or carry out cattle-raids contributes to violence.

Challenges

The key challenge for pastoralists is their increasing difficulty to access land at a time when climate change and recurring drought or floods require increased mobility and extensive access to land for livestock.

Challenges include:

The lack of understanding or neglect of pastoralists’ special relation to land: As a result, the implementation of laws and policies on restitution, formalization of customary land rights and titling can have a prejudicial effect on pastoralists.

The tendency to link the legal recognition of land rights to agricultural use may result in ignoring the rights of pastoralists by considering the land as vacant and using it for other purposes.

Displacement often results in loss of cattle for smaller groups of pastoralists and a disruption of their access to markets. Upon their return or in the post-conflict phase, the incentive to restock their herd may reignite tensions and violence when the restocking is done through cattle raids. The length of the displacement may also require renegotiating pre-conflict arrangements related to grazing rights and water access with the same or new communities. Depending on the new power relation, this may put pastoralists at risk of not having enough pasture for their livestock and endanger their livelihoods and way of life.

International legal standards

The protection of pastoralists land rights appears in the Guiding Principles on Internal Displacement although the protection provided extends to other groups: “States are under a particular obligation to protect against the displacement of indigenous people, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands” The Kampala Convention on Internal Displacement protects from displacement “communities with special attachment to and dependency on land” and affirms their right to restitution and return.

Reduced access to land results in a disruption of traditional migratory routes and creates conflict with pastoralist or agriculturalist communities affected by the change. In addition to factors already mentioned such as growing population this reduced access is mainly due to:

- Individualization of common lands through titling.
- Granting of state concessions on common lands.
- Measures of environmental conservation.

Guiding principles:

The policy and legal framework should protect the land rights of pastoralists based on an analysis and understanding of their specific needs such as mobility rights and seasonal access to resources. In Niger, the legislation regulating tenure of agricultural and pastoral lands provides pastoralists free access to natural resources. A “territoire d’attache” (home territory) where pastoralists spend most of their time or return between migrations is determined. Pastoralists have priority access to their “home territory” although access remains open to other users. In Mali, a charter on pastoralism guarantees the right to mobility across agricultural and pastoral areas of the country as well as access to natural resources. In Mauritania, where production from pastoral activities contributes to 80 percent of the country’s gross domestic product, the legislation regulating land tenure represents an interesting example of codification of nomadic pastoralist tenure granting strong tenure rights. The legislation provides that overlapping, collective seasonal use rights to pastoral resources (land, water, forage, salt licks) prevail over individual cultivation rights. Rights to pastoral resources are exclusive to those who practice nomadic herding. Mobility is preferred over a sedentary lifestyle. Collective or private interests seeking to establish land rights must first obtain the permission of customary land users. Moreover, areas identified as “pastoral areas” are excluded from private ownership.

Protect the right to mobility:

- Establish migratory corridors.
- Protect common lands as common resource pools with open access to water, grazing, fishing, and hunting.

Formalization and individual titling: In cases where an individual title deed is given over land also used by pastoralists, access rights of pastoralists should be integrated into tenure registration policies and laws and easement reflected in documents confirming ownership.

Protect the access rights and right to mobility of pastoralists in the context of state concessions (prior consultation, mitigation measures such as easement and compensation)

Encourage dialogue between communities and negotiation of decentralized agreements regulating access rights between pastoralists and agriculturalists. These can be an effective way to protect the tenure and livelihood of pastoralists and agriculturalists by establishing reciprocal and sequential access to resources such as water and grass. Depending on the localization and the specificities of the issues, such agreements can be regional or local, and involve local authorities and customary leaders.

Strengthen traditional dispute resolution and governance institutions: Although their functioning may have been disrupted by the conflict, these bodies bring institutional memory and knowledge of sustainable natural resource management.

Ensure that the rights of elite pastoralists do not encroach on those of small pastoralists or other vulnerable groups: Elite pastoralists benefit from easy access to political and economic decision-making circles, which can result in arrangements detrimental to small pastoralists.





Endnotes

1. SDG 2.3 : “By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.”
2. For more information on this see thematic guidance notes on the « Restitution, compensation and durable solutions to displacement and dispossession » ; and on the « Integration of customary land rights into formal systems. »
3. IDMC, Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire, November 2009
4. Although the rural land law was adopted in 1998, before the conflict started, the mixed composition of the Village Committees is well suited to the tensions between different groups that preceded and resulted from the conflict.
5. UN HABITAT, Land and conflict, guidance note for practitioners, 2012, p. 54
6. UN HABITAT, GLTN, Secure rights for all, 2008, p. 25
7. A cooperative is a farm, business, or other organization which is owned and run jointly by its members, who share the profits or benefits.
8. FAO, Les coopératives agricoles nourrissent le monde. Journée mondiale de l'alimentation, 16 October 2012
9. UN HABITAT, GLTN, 2008, p. 21
10. UN HABITAT, GLTN, 2008, p. 21
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Guidance Note on Land and Conflict:

III. Protecting and Strengthening the Land Tenure of Vulnerable Groups

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