The Dilemma of Local Level Land Tenure in the Peace Process

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The disintegration of land tenure institutions during armed conflict, and yet the importance of property, land, homeland, and territory to the cause and conduct of conflict presents particular dilemmas for a peace process attempting to reconfigure important aspects of social relations. While land issues can be at the center of many civil conflicts, in subsequent peace efforts they are most frequently addressed in a general framework presented in peace accords, or national-level legislative change. However how land tenure issues play out institutionally across the landscape at the level of the community, household, and individual is not part of peace process 'packages' operated by the international community. Important operative aspects of land tenure during a peace process remain unexamined, and there exists a lack of theoretical and applied tools to address local tenurial issues in the context of postwar social relations. This is of particular concern given the general recognition that the character of current instability often comprises low intensity conflict within nations rather than between them, with their origins buried deep within aggravating problems of inequitable access to resources--including, and often particularly, land resources.

An end to armed conflict, especially prolonged civil conflict, creates a situation whereby a significant proportion of the affected population will begin to seek access, re-access, or solidify claim to lands and land resources. Given the size of the rural population pursuing such an endeavor this can come to be one of the primary features of a postwar phase. The result is that local land tenure and property rights issues can be thrust to the fore over large geographic areas in a short period of time for considerable numbers of people. And like the complex histories involving property, land, and territory that lead to conflict scenarios, postwar re-establishment of ownership, use, and access rights will likewise be complicated and problematic. Left unattended, land issues can provide significant potential for renewed confrontation. In El Salvador for example the peace accord was vague with regard to local land tenure, contributing to different expectations, which in turn led to serious stumbling blocks in the implementation of the land question. The land issue ultimately became the final sticking point in the peace process, serving to block complete demobilization. In Nicaragua, the contras re-armed during the peace process over misunderstandings regarding the issue of land access. And subsequent to the end of Mozambique's RENAMO war, there was considerable confusion with regard to land tenure dispute resolution, which significantly aggravated the ongoing peace process.

While a peace accord or victory in civil conflicts can to a certain degree resolve a spatial contest in a macro sense, implementation of accords (or new constructs associated with

victory) for a population constitutes a land - institutional dilemma not easily overcome. Most civil institutions cannot endure the stresses of armed conflict. This is especially the case for land tenure institutions where land issues were a significant component of the cause and maintenance of the conflict. Although a peace process can attempt to reconstitute institutions, the difficulty stems more from issues of legitimacy and capacity of institutions to effectively recognize and resolve important tenure issues than from the ability of the peace process to derive and place institutions within different levels of government. This can mean that in many cases land access or re-access problems at the individual, household, community and commercial levels will operate in a functional institutional vacuum. The overall property rights arrangement then becomes unwieldy, with wider repercussions on agricultural recovery, economic opportunities, food security, and the political problems associated with ideas about 'home area,' ethnicity, and areas gained or lost by different groups.

But the problem is yet more complicated. Attempting to address only preconflict land issues in a peace process misses the very volatile tenurial issues on the ground which developed *during* the conflict, and which are most operative at the close of the war. While such issues can build upon prewar tenure problems, they nonetheless act to thrust the postwar lands situation in new directions. Even conflicts that did not initially have a land component can come to experience tenure problems in a peace process due to the spatial nature of both land tenure and armed combat. Even more fundamental however, is the fact that armed civil conflict profoundly changes relationships among people. Because land tenure is a system of rights and obligations in human relationships regarding land, accepted and established arrangements can be at the forefront of change during conflict. The sociospatial repercussions of violence, dislocation, destruction of property, battlefield victory and loss, and food insecurity, together with the breakdown of administrative, enforcement, and other property-related institutions and norms, significantly alter ongoing relationships between people(s), land uses, production systems, and population patterns. In essence, armed conflict and its repercussions reconfigure the network of social relations upon which all land tenure systems depend. One of the more acute examples in this regard is in the Middle East among Palestinians themselves, with those caught selling land to Israelis now facing a potential death sentence.

The processes by which this reconfiguring happens are several. First, physical separation of people from established home areas and ways of land use and tenure due to wartime dislocation, can be the first and most dramatic step toward the development of a changed approach to land rights. Physical separation changes, terminates, or puts on hold prevailing rights and obligations among people regarding land and property, especially where actual occupation, or social position forms the basis or a significant aspect of claim. In Guatemala dislocation meant a changed approach to land rights for disadvantaged groups within communities, such as women and those of lower socio-economic strata. This occurred particularly in home locations for those who stayed, due to the absence of more advantaged community members. And, as dislocatees attempt to access land in new

locations--with considerable urgency for those whose food security depends on small scale agriculture--competing claims can result in significant confrontation. How such confrontation is managed (or not) then influences approaches to tenure. In Mozambique the war led to concentrations of migrants, largeholders, and local customary groups in agronomically valuable areas, all pursuing very different approaches to land access, claim, and use. Significant incompatibilities in these pursuits created problems for the peace process in these areas. As civil conflict grew in Somalia in the early 1990s, certain areas of the country were claimed by nomadic pastoralists under clan transient-access rights arrangements, by small-scale agriculturalists using historical customary rights of occupation, by large scale-land interests accessing lands through the instruments of the state, and by heavily armed interests seeking access and control over lands by force. With no way to resolve competing claims, the result can be land holders abandoning features of tenure systems because disputes and the lack of legitimate mechanisms to resolve them have made such features unworkable. Or they believe there is little point in adhering to tenurial constructs that others are not following. And because dislocatees often develop or deepen political awareness while forced away from home areas, land problems in a postwar phase can easily be placed within the larger political landscape. Such a situation can challenge postwar authority structures and sources of legitimacy--two of the most problematic aspects of a peace process.

Second, civil conflict necessarily results in a reduction in the power and penetration of state law, with the overall effect spatially variable. Early in a war the state's land administration institutions in affected areas of the country can be rendered crippled or inoperable, and rules unenforceable. This comes about due to general insecurity, areas occupied by opposition groups or populations sympathetic to them, diversion of resources, and the destruction of the physical components of the lands system such as local registries and other records. In Somalia for example land registries for the valuable irrigated areas have been largely destroyed and will lead to significant 'on the ground' land problems once a central government and peace prevail.

Preconflict ideas of the 'unjustness' in the way the state dealt with land rights for portions of the population can constitute an important aggregate force in the reduction of the state prior to and during conflict. Such ideas can range from simple disappointment in, or distrust of the state and its ability, willingness, or bias in handling land issues, to the perception of the state as the enemy. The latter can be especially powerful if there are land-related grievances against the state brought on by land alienation and discrimination, corruption, or state intervention in agricultural production, dislocating agricultural and/or population programs, and heavy-handed approaches to enforcement of state decisions and prescriptions regarding land issues. In El Salvador grievances toward the landed elite and the state were at the core of the country's problems since the colonial era, and a primary cause of the conflict in the 1980s. This was also the case in Zimbabwe's liberation war due to land expropriations by the Rhodesian state, and in Mozambique's RENAMO war and Ethiopia's Derg war as a result of government villagization programs. Variants of such conditions also prevail for problems in southern Mexico, and in the way the land issue has

been handled over the course of the conflict between the Palestinians and the Israelis. In the latter example, land confiscation for Israeli settlement-building and the resulting Palestinian grievances has been a significant feature of the overall problem.

Such perceived injustices can become especially problematic if they merge with other issues not necessarily related to land, serving to further decrease the state's influence. This is a fundamental part of the situation in Somalia, where disputes over access to grazing and water resources quickly merged with a history of perceived wrongs done to clans and subclans on issues not directly about land. Animosities tied to historical events also have played a fundamental role in perceptions about who has legitimate access to what lands in the Balkans. The social fluidity of conflict then allows for the opportunity to act, with outcomes resulting in a very different land tenure situation than what existed prior to a conflict.

Subsequent to the end of a conflict disappointment in a newly reconstructed state can manifest itself in the development of different forms of local alternatives, particularly since the ideology, mobilization, and wartime aspirations are still fresh in the minds of many, and a postconflict state can find that it has less influence than initially thought. In Zimbabwe local distrust of the state was significant even when the insurgency won and went about establishing a government and policies regarding land, because local chiefs were purposefully left out of the new state due to their alliance with the Rhodesian administration. And in instances of ongoing conflict with no accord or clear winner, the complete reduction of state power can lead to a search for order. Such was the case with the eventual emergence of Shari'a courts in Somalia, and, arguably, the emergence of the Taliban in Afghanistan. Both were able to field their own mechanisms of enforcement for a variety of institutions, including land tenure.

Third, for many who find themselves in conflict scenarios, identity can be, or can quickly become, intricately bound up in land occupation, access, or perceived rights to specific lands in very powerful ways. The existence of ethnic, religious, geographic, or other identities to which primary attachments persist, can be based on connections to land, home area, or territory. With armed conflict underway in such a context, some groups will seize the opportunity to advance the goals of substate self determination, especially with regard to land. And as the identities of those involved in armed conflict develop to take on significant enmity with an opposing group or groups, approaches to land issues will reflect this and can become a prominent feature in the conflict and subsequent peace process. In such a scenario approaches to land employed by one group in a conflict can be purposefully rejected by another. In Mozambique, because local rivalries between communities were caught up in the war, the result in some areas of the country was a checkerboard effect of community-level alliances with RENAMO and FRELIMO, with proximate communities' electing to side with the opposite of their neighbors. The two sides employed quite (purposefully) different approaches to local communities and land administration. The difference between Palestinian and Israeli approaches to land and land tenure, are in a number of ways grounded in identity. Identity for Palestinians especially, has developed to

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a significant degree to mean opposition to Israel, Israelis, and Israel's approach to land administration.

Fourth, civil conflict is based on the perception of legitimacy and non-legitimacy in various forms. And because it is legitimacy which is contested during conflict, the emergence or development of different social arrangements emanating from different loci of what is perceived to be legitimate authority is almost inevitable. This is particularly relevant to land, property, and territory, because claims to these are based on notions of legitimacy and authority. And when combined with identity, the result can involve land claim justification based on historical occupation, supported by oral histories, which are traced back through time into mythologies about how various peoples came to exist in an area and in the world. Such justification can gain renewed strength during conflict, and the pursuit of a 'return' to historical lands or territory from which groups were expelled or departed, recently or long ago, can become a priority in a peace process--the Middle East again being a notable example. In some cases, conflict can be seen as a singular opportunity to regain historical lands prior to the solidification of peace.

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

Legislative change in a peace process deserves particular mention in a postwar land tenure context. One of the hallmarks of a peace process, and often compelled by a peace accord and the international community, legal reform is intended to promote social change, and

new laws or modifications to laws are meant to aid in the inclusion and reconstruction of society. Such legislative change however can be profoundly out of step with emerging tenure realities in postconflict scenarios. But the issue is still more problematic. Legislative change is overlaid onto sets of rights and obligations that are already in existence, very binding, and often much stronger than new or revised laws. In a land tenure context this means that during a peace process, relationships that have been created and maintained during a war to facilitate property, land, and territorial needs and aspirations will predate and can be significantly stronger than any new laws attendant on a fragile peace and a war-weakened state. The effect can be particularly pronounced as mechanisms for disseminating and enforcing new laws (especially with agrarian, semi-literate, war-weary populations) will also be weak or nonexistent. Hence the objective of changing social arrangements in certain ways with legislation frequently fails or is deflected in a peace process.

With conventional top-down approaches for a peace process proving ineffective for many of today's conflicts, there is increasing recognition that customary and local ways of interaction in such areas as land tenure need to be identified within the socio-cultural contexts of countries recovering from war, and be incorporated into conventional approaches to peacemaking. In an example from India, local-level state officials in some locations are given the discretion to operate at the interface between formal and customary legal systems and pursue opportunities for adjustments between systems. In this case local-level officials do not seek to impose state law, but instead attempt to convince, co-opt, or realistically use any legal system or combination thereof to attain the state's objectives. While not born out of armed conflict, the example nevertheless provides some potential utility for a peace process. Local-level officials can be charged with facilitating the dialogue, interaction, and adaptation between the state and other normative orders which are in place subsequent to a conflict, especially with regard to land dispute resolution. Ethiopia provides a different, and more formalized example. After several decades of civil conflict, Ethiopia's constitutional article 78 (5) now accords full recognition to customary, religious, and state courts of law and their legal guarantee is ensured. In Ethiopia significant room appears to be allowed for litigants to 'forum shop' where customary and religious courts only hear cases where contesting parties consent to the forum. In the Mozambican peace accord and subsequent legislation regarding land, broad state recognition of multiple approaches to tenure has contributed much to the success of the processes.

What is needed in peace processes attendant on today's conflicts, is recognition of: 1) the role that local tenurial issues have on the process and the need for more focused attention on local, in addition to national tenurial issues; 2) the difference between pre and post conflict tenure problems; and 3) the opportunities that exist for engaging multiple normative orders in approaches to land and property. What is needed in the end is greater recognition of 'process'.