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How to Create a Public Policy in a Failed State

The Challenge of Securing Land Rights in Eastern Congo

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Introduction

In the Democratic Republic of the Congo (DRC) 32 years of dictatorship and almost ten years of war have bled the country dry and left its administration incapable of providing the population with basic services and the government incapable of applying or even formulating public policy. The land sector has not been spared by the collapse of the State, which started at the beginning of the nineties and is still not over. The land law dates from 1973 and the administration barely functions, yet "the land is the exclusive and inalienable property of the State exempt from prescription"[1].

In the Eastern Congo[2] land problems are regarded as a key element in the socio-political instability in the zone. Analysis of land disputes has been carried out for several years and quite a sizeable literature exists on the subject[3]. These analyses converge, when it comes to the following reported facts:

- the disputes are of a cyclical nature in certain territories, sometimes ever since the colonial era;
- land insecurity, the proletarianisation of a large section of the peasantry and inequalities regarding access to land form a system generating violent conflicts;
- the land question rapidly and frequently acquires ethnic implications;
- customary, administrative and judicial regulations applying to land litigation have limits peculiar to them and, if viewed separately, no longer constitute an adequate response in the light of contemporary problems.

These analyses make clear how the various causes of land disputes are interconnected: population density (North Kivu has a population density of 71.6 people per km², while Masisi has one of 135 people per km²); competition to gain control of high ground (the most fertile) between livestock-breeders and farmers; the urban bourgeoisie's land accumulation strategies; the conflict between

[1] Article 53 of Law No. 73-021 providing the general regulations for property, land and real estate and legal guarantees of July 20, 1973, modified and supplemented by Law No. 80-008 of July 18, 1980.

[2] Given that the DRC is a 'continent' rather than just a country, Eastern Congo designates in this text, in a deliberately restricted way, the provinces of North and South Kivu and the district of Ituri.

[3] See: Bibliography.

customary and modern law principles; the ambiguity of the judicial system as applied to land in rural areas; widespread bad governance regarding land administration, abuses perpetrated by traditional, political and administrative authorities; movements of population in the past and in recent years, and so on. The various shortcomings of customary, administrative and judicial regulations with regard to land litigation (the corruptibility, high cost and slow progress of justice and land administration etc.) have been demonstrated by numerous case studies.

Brief History of the Land Problem

The 1973 law revolutionized custom-based patterns of land management. The traditional chiefs, who had administered land up until then, saw themselves deprived of this function which was duly transferred to the land registry. As S. Mugangu has underlined: "by attributing inalienable ownership of the land and of the subsoil to the State, the legislator has, in effect, removed land ownership from the sphere of civil law […] Moreover, he has, from henceforth, withdrawn from ethnic groups, tribes or clans their sovereignty derived from traditional customary law so as to transfer it to the State[4]". What the law does above all is to bracket together the ethnic groups, tribes or clans under the loose term of "local communities", whose lands can go on being administered according to the traditional system of customary law. This system, however, needed to be laid down by a Presidential Order, which has never been passed[5]. In the absence of a clear definition, these lands which might fall under a new and unique legal system that would take into account local needs and traditions, have not been identified as such. They have neither been defined geographically, nor in legal terms and so it has been left to local players to interpret their status and how they should be administered. These players – politicians, traditional leaders, land-registry agents or judges – all have approaches and above all interests which are different or even divergent. Under cover of an evolution which might appear like a step towards "modernity" or indeed to more judicial security, these legal measures have thus contributed to a huge judicial confusion, while those seeking justice have lost out, as has regulation of access to the DRC's pre-eminent disposable resource – namely land.

As is the case regarding most other norms in the DRC, the administration has never been able to apply the 1973 law or to uphold it throughout this enormous country. For decades, land agents have been in short supply and inadequately trained: they also lack the material and logistical means to carry out their work and, in addition,

[4] S. Mugangu Matabaro, *La Gestion foncière rurale au Zaire: réformes juridiques et pratiques foncières locales. Cas du Bushi*. Paris. L'Harmattan/Academia Bruylant, 1997, p. 144.

[5] This measure, which has been commented on in considerable detail in works interpreting the law, figures in Article 389 of the Land Law of July 20, 1973.

they are corrupt. These failings made it possible for various élites in the East of the country – those who had had close links to Mobutu, who were better off and better educated – to register large amounts of land in their name, while poorer groups, ignorant of the law and unable to pay registration fees and the corrupt agents, continued to occupy their land on a customary basis.

This results in a range of situations with regard to occupation and land ownership (in short: title deeds as against traditional possession) which can differ from one region to another, giving rise to confusion over land ownership, discontent and disagreements, sometimes of a violent nature. Indeed two categories of dispute have been noted in the DRC: individual and collective litigations. Cases in the first category, if solutions are not reached out of court beforehand within a framework of family or community mediation, swamp a weak judicial system characterized by inertia. In certain jurisdictions, cases involving land ownership account for up to 80% of civil cases brought to court and sometimes 30% of the offences or crimes examined by the public prosecutor's office originate in a dispute involving land ownership. On the other hand, numerous disputes over land issues take on a collective dimension, even if they sometimes stem from an individual lawsuit, which then degenerate into a dispute between clans, families or villages. These lawsuits sometimes acquire political overtones, when disputed plots of land exceed ten hectares in size and the managing authority is then no longer the land registry but the governor of the province (up to 200 hectares), the Minister of Land Affairs (from 200 to 1,000 hectares), the President of the Republic (from 1,000 to 20,000 hectares) and even the National Assembly for concessions in excess of 2,000 hectares. The assignment of these competences to an elected authority tends from then on to lend to the dispute, and therefore its solution, a political character. Moreover in certain territories in the Kivus (Masisi, Rutshuru, the high plateaux of Minembwe, etc.) land disputes started to involve the military and the militias, as each camp mobilized armed men to defend its interests and officers who also had landed properties[6].

Regardless of whether the disputes are between individuals or groups, of whether they involve holdings small or large in size, the lack of effective and fully legitimate state regulation adds to the vicious circle of unresolved lawsuits. At every level, land regulation mechanisms fail to gain the involved parties' confidence – even regarding customary matters. In the East, for example, while the traditional authorities are usually regarded as legitimate by the population, they are still criticized – and by ordinary people as well –

[6] See the last report compiled by the United Nations Group of Experts on the Democratic Republic of the Congo on the illicit exploitation of natural resources published on December 2, 2011:
http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/738

because of disputes over inheritance, conflicting interests underlying political affiliations and interference by armed groups[7].

Apart from the very weak administrative cover, which obliges those appearing in court to undertake long and costly journeys to different areas, the corrupt nature of the staff working in land administration impedes land registration: those due to appear in court can regard themselves as fortunate if they 'only' have to pay legal taxes and for the agents' paper, ink and travelling expenses. Usually they have to make a more significant contribution because of the pitiful salaries the agents receive, because of the lack of a global budget allocated for the services provided or simply because the agent wishes to receive an "incentive" for supplying the document so keenly expected by the applicant. The corruption among the staff of the land administration is an endemic phenomenon found in numerous countries[8], but which assumes a systemic dimension in the DRC.

The role of justice, for its part, remains very marginal in the resolution of land disputes despite the over-representation of land litigation in the courts. The problems inherent in the judicial system are similar to those in the land administration offices (lack of funds and staff and proper skills)[9]. To these can be added the extremely inadequate provision of legal services and the population's mistrust of proceedings which are perceived as arbitrary and costly. The first instance courts (competent to examine disputes concerning lands of "local communities"), which were supposed after 1968 to take over from customary justice, are still too few in number, 44 years later, to cover the enormous rural areas of the DRC. It also has to be recognized that the population has not identified "official" justice as a tool that is reliable, legitimate or effective for settling land disputes[10]. Local and negotiated settlements are preferred to judgments which, when they have been pronounced, are very seldom implemented[11].

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[7] In June 2009, already several years after the end of the conflict in Ituri, the commissioner of the Bunia District had not yet been able to visit the whole of that district in order to install new customary authorities and acknowledged that "bogus" traditional chiefs from the armed groups were still in place. On relations between traditional power and armed groups, see: *Au-delà des groupes armés, conflits locaux et connexions sous-régionales, l'exemple de Fizi et d'Uvira (Sud-Kivu), RDC)*, Kalmar, Life & Peace Institute RIO/ARAL/ADEPAE, 2011.

[8] *Corruption in the Land Sector,* Berlin, Transparency International, 2011, "Working Paper", No. 4/2011.

[9] Lacking, as it does, funds for its basic functions, Congolese justice is very slow: at the provincial court of North Kivu in 2007, only 40% of the cases under way ended with a judicial decision. See: *L'implication des communautés locales dans la production du droit et la résolution des conflits fonciers au milieu rural: cas des territoires de Masisi et Rutshuru en RDC,* Éditions Aide et action pour la paix (AAP), April 2008, « Étude juridique », No. 2, p. 49.

[10] See RCN Justice & Démocratie, *Les Conflits fonciers en Ituri, de l'imposition à la consolidation de la paix*, p. 56 and IKV Pax Christi/Haki na Amani, *Conflits fonciers en Ituri, poids du passé et défis pour l'avenir de la paix*, p. 15.

[11] The percentage of sentences actually implemented in the DRC is notoriously low and estimated at under 5 %, according to various audits of the Congolese legal system.

For Local Players – Local Solutions… But National Ambitions

Since the end of the 20th century the resolution of land disputes has been mobilizing Congolese civil society more than the Congolese state authorities. Supported by international partners with various remits (the European Commission, Life & Peace Institute, International Alert, International Land Coalition, Inter-church Co-operation Organization, etc.), civil society has already embarked upon pro-active research in order to analyse the problem and to propose solutions. Making up for the State's inertia, Congolese NGOs are carrying out judicial analyses, disseminating information on land law and popularizing it, while at the same time training paralegals so as to resolve land disputes. The local NGOs have thus *de facto* created a forum for public debate on this social problem and the paths which they are exploring are focused on two main ideas: how best to secure customary and oral rights and mediation (as an alternative method for resolving disputes).

Nevertheless, these organizations do not content themselves with proposing local solutions for local land issues: despite their regional territorial anchorage, those which have the largest capacity for analysis and for defending their cause consider the land problem to be a national issue, which requires the intervention and involvement of the central state authorities. They therefore come round to speaking about land reform as such and to come forward with proposals, faced as they are with the State's inertia.

The wide range of local initiatives has led us to select a sample which we hope clearly represents the efforts to resolve land disputes in Ituri and the Kivus. These efforts range from inter-community dialogue to land reform and also include local mediation, the securing of customary land rights and definition of the role of traditional chiefs in land affairs.

The Fragile Experiment of the Ituri Land Commission: the resolution of land disputes through community dialogue

The Ituri Land Commission (ILC) was created in 2008 by the District Commissioner after various exchanges and discussions between local and international players in the region. The land registrar[12] had even drawn attention to the existence of such a structure "before the conflict"[13]. Supported ever since it was set up by the international community (the Belgian NGO RCN Justice & Démocratie, financed for that purpose by the European Union), the ILC has benefited of training, equipment and supplies. During a second phase it was provided with a vehicle and professional supervision was made available to improve its internal management. The ILC can be credited with putting forward certain interesting solutions for resolving land disputes in the district, even though it would be rash to consider any land dispute as definitively settled.

As land disputes remain a subject of keen interest in Ituri[14], certain lessons can be derived from this experiment.

- unlike the situation in neighbouring Rwanda, where the majority of land disputes are between individuals (returning refugees, wives/widows, heirs[15]), disputes in Ituri concern essentially the demarcation of plots and land-use rights between communities or between livestock-breeders and farmers[16]. This is why the ILC endeavours to prioritize dialogue between disputing communities in this district subject to internal war;

- during mediation on the spot, the ILC is persuading all types of authority to talk to each other and encouraging in particular the involvement of traditional chiefs. It appears that the

[12] The District Commissioner is the state administrator within a district and consequently the highest administrative authority, while the land registrar is the local representatives of the Land Ministry.

[13] The Ituri District has been the theatre of what is referred to locally as the "ethnic war" waged between, essentially, the Lendu and Hema, between 1999 and 2003. See: T. Vircoulon, "Ituri or War in the Plural", *Afrique contemporaine*, Vol. 3, No. 215, 2005, pp. 129-146.

[14] In Ituri a property dispute from which stemmed the inter-ethnic war between the Hema and the Lendu in the territory of Djugu in 1999 has again come to the fore (the Savvo Concession) and, in the territory of Irumu, the dispute still running over the Nombe localities – included or not in the groupings dominated by the political opposition or majority – can be traced back to the colonial era and was the subject of mediation efforts in 2009.

[15] See: *La Justice de proximité du Rwanda. Rapport socio-juridique sur les modes de gestion des conflits fonciers*, Kigali, RCN Justice & Démocratie, December 2009.

[16] See studies by RCN Justice & Démocratie and IKV-Pax Christi/Réseau Haki na Amani, *ibid*.

presence of traditional authority during that phase guarantees some kind of power for the final decision and ensures more respect from the parties involved;

- meanwhile, it also seems that validation of the final decision by an administrative or legal authority re-inforces the decision and lends it relative "durability". When mediation has not been sanctioned by such validation, disputes tend to re-surface a few months later.

On a more global scale, the existence of the ILC has allowed to raise the awareness of players involved in peace-building in Ituri regarding the complex problems connected with land disputes. This increased attention has led to the creation of a local working group bringing together civil servants, civil-society activists, politicians and representatives of the United Nations and NGOs. The UN-Habitat agency now co-ordinates this "land group" and land disputes questions are currently included in reconstruction and community development programmes set up by the United Nations Development Programme (UNDP) in Ituri[17].

Yet the ILC is a fragile structure (lack of strong leadership, inability to raise funds autonomously, competition from the local land affairs administration etc.) and, so much so, that without international support, the future of this Commission would appear to be very much under threat. The far from perfect experiment of the ILC has brought to the surface certain pieces of information useful with regard to the creation of other programmes for managing land disputes and focuses attention on the need to develop a community dialogue in order to guarantee disputes resolutions in the medium and long term[18]. This is what various players (UN-Habitat, Haki na Amani[19]) are currently trying to consolidate in Ituri. What is at stake, through mediation experiments in Ituri and elsewhere, is to nurture and put in place a more global strategy for the settlement of land disputes.

[17] On this point, see: Chapter 3.

[18] Another interesting example of inter-community dialogue is that carried on between three local NGOs supported by the Swedish NGO, Life and Peace Institute, in the Fizi and Uvira territories in South Kivu. This dialogue between the Babembe, Bafuero, Bavira and Banyamulenge tribes is focused primarily on land disputes between livestock-breeders and farmers in the high plateaux and it led to the idea of better regulation for transhumance through the creation of discussion groups involving both livestock-breeders and farmers. *Rapport du dialogue intercommunautaire*, Bukavu, Life & Peace Institute/RIO/ARAL/ADEPAE, 2011.

[19] Cf. <hakinaamani.com/>.

Mediation in all Directions

When it comes to mediation, there has been no shortage of initiatives in the Eastern Congo. These have been set in motion by local NGOs (for several years now), a UN agency (UN-Habitat) and the Ituri Land Commission (ILC). Some mediation initiatives[20] have even been started up by public authorities: some magistrates, keen to unblock the courts and to find rapid and efficient solutions for land disputes, attempt conciliation procedures before becoming involved in the judicial process.

However diverse interventions may be by organizations of the local civil society (Arche d'Alliance, Innovation et formation pour le développement et la paix, Union paysanne pour le développement intégral, Héritiers de la Justice, Aprodeped, Aide et action pour la paix, Haki na Amani, etc.[21]), it is quite clear that they all present similarities and are based on certain shared principles, which have something in common with the ILC experiment:

- mediation is a field intervention, as close as possible to the parties involved in the litigation, and it is the first step towards its resolution: from this it follows that the administrative and judicial management of these disputes must not begin until attempts at conciliation have been exhausted;
- mediation must take into account local traditions and encourage local collective discussion; from this it follows that traditional authorities play an important role, as does collective debate – may it be community *barza*[22] or other traditional forms of debate. The aim is to build a consensual solution, thus one recognized by the largest possible number;
- the results of mediation efforts have to be formalized and validated by an official authority (judicial or administrative): from this it follows that informal mediation and procedures provided for by law are complementary.

International Alert[23] has emphasized the way in which civil society has created for itself a mediation space and has sometimes replaced local traditional mediators, as its methodology has been borrowed from the traditional system: NGOs use methods of

[20] Although the terms "mediation" and "conciliation" imply in practice methodologies and goals that are rather different, they will be used here without differentiation, when it is a question of extra-judicial and peaceful methods for conflict resolution.
[21] This is just a hasty selection of Congolese NGOs active in the field of land mediation in the Eastern DRC.
[22] *Barza* is a local term which derives from the Swahili word *barza*, meaning "meeting" or "assembly".
[23] C. Huggins, *Land, Power and Identity: Roots of Violent Conflict in Eastern DRC*, International Alert, November 2010.

consultation originating from the traditional system of values and they involve the traditional authorities in their process of resolution as final "validators". The action of local NGOs often being inspired directly by traditional custom, mediation is sometimes an old wine in a new bottle. Furthermore, mediation in the context of litigation is also mediation between socio-political forces: civil-society associations position themselves between the old (traditional chiefs) and new forms of power (the legal and administrative State authorities) as an essential intermediary.

The major shortcoming of these local mediations lies in the time it takes to build the local consensus and in their extreme fragility. A consensus of this kind is based on a broad interpretation of the term "stakeholders" in a land dispute and on micro-scale local dynamics. These dynamics depend to a great extent on local power networks which can be challenged by a multitude of factors (departure of an administrator, death of a traditional authority representative, arrival of a new commander at the head of an armed group, etc.). On the other hand, while the local population's sense of ownership is guaranteed by this approach, the cost-benefit balance of such mediation will sometimes be negative, particularly when the land dispute requires an immediate response. Mediation cannot in any circumstances constitute an immediate solution.

In Kivu – Initiatives which Reinvent the Law

In Kivu, social organizations and, among those, peasant structures have taken on the land problem. Their strong commitment is not surprising. Despite the enormous territory they cover and climates sufficiently varied to make possible a large range of different crops, only 10% of the land is used for agriculture[24]. Other figures are equally striking: 65% of the Congolese population is rural and 69% under-nourished[25]. According to the Food and Agriculture Organization (FAO), food imports represent more than 20% of the total and agriculture remains at the level of family holdings or small farms. This is one of the numerous paradoxes in the DRC: a 90% rural country, but one which is among the four most famine-ridden and in which the food situation is described as "extremely alarming" according to the Global Hunger Index published by the International Food Policy Research Institute[26]. The Congo is also the country where the food situation has deteriorated the most over the last 20 years.

[24] Source FAO: http://www.fao.org/countryprofiles/index.asp?lang=fr&ISO3=COD, consulted on October 6, 2011.
[25] Source FAO: http://www.fao.org/countries/55528/fr/cod, consulted on October 6, 2011.
[26] International Food Policy Research Institute (IFPRI) http://www.ifpri.org/node/7150, consulted on October 6, 2011.

The local organizations in the Kivus tried to make up for the shortcomings of Congolese land law and customary practice, so as to make land rights more secure and to regulate land use. So, in the Uvira region of South Kivu, where tensions between livestock-breeders and farmers are serious, civil-society associations have set up joint committees of the two groups, in order to regulate transhumance and resolve problems of cattle wandering off and being lost. Faced with the problem of managing traditional lands, Aide et Action pour la Paix (AAP) in North Kivu has advocated drawing up "rural land plans" which are a kind of simplified operation for land registration[27]. APRODEPED[28] in South Kivu has proposed setting up traditional land registers (very similar to the rural land plans), the Syndicat de défense des intérêts paysans (SYDIP) in North Kivu has proposed a model contract for the use of traditional lands and the Forum des Amis de la Terre (FAT) has elaborated a code of good conduct for traditional chiefs with regard to land issues[29].

The development of simplified land registration (the simplest document possible with witnesses) is the favoured route for securing land rights. This simplified registration, however, only appears to be simple and presupposes that several elements are to be found in the rural communities: knowledge of the local customary rights, ability to build up a strong local consensus (agreement between the traditional authorities and the local administrative authorities) and the presence of people sufficiently well educated to be able to keep a land register (teachers, civil servants, etc.). This means that simplified registration requires a minimal capacity for action in poor rural communities, that is paralegals, who are acquainted with both traditional and modern land law, and a procedure for registering rights which is transparent and accessible for rural citizens.

Apart from recognition within the community, these documents evidently raise the question as to their legal value, which would need to be guaranteed for them to be a factor providing security. Since what they represent is, in effect, the transfer of a task carried out by the land administration to the rural communities, the simplified land registration has the advantage of being adapted to the extremely weak context of the administration, which is that of the Eastern Congo in particular, and of the country's rural areas in general. It remains to be seen, however, whether a transfer of responsibilities of this kind

[27] See: *L'implication des communautés locales dans la production du droit et la résolution des conflits fonciers en milieu rural: cas des territoires de Masisi et Rutshuru en RDCD,*« Étude juridique », No. 2.
[28] Action for the Promotion and Defence of the Underprivileged.
[29] For a more detailed description of certain initiatives for peasant organizations in the Kivus (and Burundi), read: *Afrique des Grands Lacs: droit à la terre, droit à la paix: des clés pour comprendre et agir sur la sécurisation foncière rurale,* CCFD-Terre solidaire/GRET, « Études et travaux », No. 30, January 2012.

will make it possible to secure land rights more effectively or will lead to more land disputes when local interests are at stake[30].

The Peasants Union SYDIP has set in motion research successfully achieving its goal of securing peasant rights. Since the beginning of the century the SYDIP has been engaged in formally recording and codifying (in written form) customs relating to land affairs. This ethnographic research has taken place, first and foremost, in the tribal areas of Lubero and Béni in the northern part of North Kivu (Watalinga, Baswagha, Bamate, Bashu and Batangi) and later in the tribal areas of the South of the province. This encoding facilitated the compilation of the contract for traditional land use and of the good-conduct code for traditional chiefs relating to land management.

The code was drawn up in the context of a FAT initiative[31]. This tool was an attempt to offset the gaps in Article 389 of the Land Law, in other words an attempt to link in the role of the traditional authorities with that of the administrative ones. The traditional chiefs are the focus of traditional mediation, those to whom the rural population turn in the first instance. Yet their action regarding land is far from being irreproachable: they take liberties with land law through ignorance, resistance to modern authorities and greed – often all three at the same time. For example, they allocate lands without making sure they are vacant, demand payment for allocating land or allocate the same plots to several different applicants. It is because of these manipulations regarding land that the *mwami* of the Bafulero – the traditional figure of authority for that tribe – was not voted in at the most recent legislative elections. This code, adopted at the level of the Provincial Assembly, determines the limits of the competences of the traditional chiefs: their right to tax and to consult with the State's technical services in connection with the allocation of land, competence for conciliation in connection with disputes, their ban from ruling on offences of a penal nature and so on. In short, it clarifies the role of the traditional chiefs in connection with land matters and can provide the basis for real collaboration between them and the local state authorities. This text also introduces an important innovation in relation to the rights of women. Its article 22 stipulates that "every traditional chief must refrain from adopting and prohibit any discriminatory measures which prevent women from having access to natural resources and, in particular, to land. He must therefore take proactive measures to ensure that women have access to land". By introducing the principle of equality for men and women, this text combines tradition with the modern idea of access to land for women. These attempts to reinvent or reform the legal framework for land ownership are characterized by a dialectic of compromise and hybridization between customary and modern social concepts.

[30] The failure of the Congolese state in the 1990s led to the *de facto* transfer of state functions to civil society. See: T.Trefon *et al*., « Ordre et désordre à Kinshasa: réponse populaire à la faillite de l'État », *Cahiers africains*, No. 61-62, 2004.

[31] FAT is a coalition which brings together approximately 50 members, including farmers, traders, elected representatives, traditional chiefs etc., and also peasant organizations like the SYDIP and Aide et Action pour la Paix (AAP).

Aide et action pour la paix and the Forum des amis de la terre: from local solutions to national reform

Certain NGOs like AAP go further and propose an agenda of real land reform duly formalized. These NGOs are distinguished by their practice of using a methodology of proactive research carried out by local staff supported by foreign experts and funding. The AAP has analyzed land disputes in two areas of North Kivu (Rutshuru and Masisi) and, on the basis of their analysis, has formulated proposals for reforms, which go further than the simple issue of a new Land Law or Land Code, so as to take into account problems stemming from the dysfunctional nature of the administration and from demographic and economic pressure which underlie and/or influence the land situation.

Starting out from analysis of local land issues, AAP is elaborating local solutions, but considers that land reform is indispensable, if they are to be achieved, and is proposing the methodology and general line which might be followed[32]. The officially acknowledged objective of this NGO is not only to resolve land disputes but also to encourage "a reform of land legislation in the DRC in which the parties affected will be participating and duly taken into account, in particular those who are in a weak position, namely the peasants[33].

In terms of methodology, AAP suggests that the law should be revised on a basis of reason and consensus: it recommends setting about this in a rational way with wide-ranging involvement of the interested parties on the spot, which would entail land studies so as to examine the various land divisions, and then asking the population to examine which solutions they prefer so as to make them "stake-holders in the law". On the basis of this work, a committee of experts would draw up new land legislation, which this time would be "explained" to the population. The declared objective of the AAP is to involve local communities in the compilation of land law and in its application. Its attempt at reform has been based very conscientiously on an analysis of everything that went wrong with the land law of 1973 (no meetings with the various populations involved, no relaying of information to them, insufficient account being taken of tradition, lack of funds for carrying out the work, etc.).

The main thrust of the reform was as follows:

- decentralization of land affairs;

[32] See AAP's *Droit écrit et droit coutumier en RDC: principes d'articulation*, December 2007, final chapter « Perspectives des réformes législatives dans une optique de pacification et de promotion du droit au développement », pp. 51-76.

[33] *L'implication des communautés locales dans la production du droit et la résolution des conflits fonciers en milieu rural : cas des territoires de Masisi et Rutshuru en RDC,* « Étude juridique », No. 2, p.6.

- acknowledgement of local traditions;
- filling the gaps in regulations regarding customary lands;
- improvement and reinforcement of the judicial system: extension of first instance courts and measures to re-establish equality of opportunity for poor and rich in court (free legal aid, representation of peasants by collective entities – NGOs, unions - and a simplified procedure for submission of cases to court).

The AAP thus recommends not just a reform of land law but also of the tools for its application, namely justice and administration relating to land[34]: the numerous aspects of their dysfunctional nature have been analyzed and criticized in detail (slowness, corruption, complexity etc.).

Benefiting from the support of foreign organizations and peasant unions[35], FAT has developed methods for helping farmers secure land rights and is also working to assist them in defending their rights at provincial and national level. Defending such cases at provincial level led to the adoption of the good conduct code for the traditional chiefs in North Kivu and, at national level, to the editing of a project for agricultural law[36]. This project also includes a procedure for managing land disputes. It envisages, in effect, the creation at national and provincial levels of consultative councils, which could open the way for decentralized land management. These consultative councils will not only be "a body for settling disputes over agricultural land"[37], but they would also be a compulsory body to settle land disputes before they reach the court. This has been the first official gesture regarding regulation of land disputes and it indicates that agricultural law directly takes into account these issues. The other side of the coin is that the law remains vague, regarding the discussion procedure, for which the consultative councils will be responsible, as well as regarding their composition (number of members, origins, qualifications, etc.). Furthermore Parliament has not determined the method to be used for managing disputes concerning land that is not dedicated to agriculture and has not clearly defined the concept of "local communities" or specified the nature of their representation at the heart of the consultative councils.

[34] For a wider description of the dysfunctional aspects of justice and administration relating to land, see also: F. Liégeois and T. Vircoulon, *Violences en brousse, le* peacebuilding *international face aux conflits fonciers*, Paris, Ifri, February 2010, "Note de l'Ifri".

[35] In particular, CCFD-Terre solidaire and Alliance AgriCongo (Solidarité socialiste, SOS Faim, Trias, Louvain Développement, Oxfam-Solidarité, etc.). These European organizations support the FAT's networking and management activities.

[36] This law was promulgated by President Kabila immediately after his re-election in December 2011. Section 4 of the law deals with disputes over agricultural land.

[37] Article 9 of the law on the fundamental principles relating to agriculture, December 24, 2011.

While waiting for reform of the land law, this legal step forward constitutes a first victory for the peasant organizations. Indeed, in the Congolese context, international funds have been devoted for nearly ten years to all sorts of sectoral reforms (reforms of the justice system, of the police, of the administration, the mines, forestry management, the health sector etc.), sometimes criticized for the low level of ownership by the Congolese and the recourse to numerous international 'experts'. In the case of agricultural law there has been a process of endogenous reform, which was based on local consultations and direct national advocacy toward the Ministry of Agriculture. For this reform the latter did not refer to the FAO, which is represented in the DRC, but relied largely on the work carried out by Congolese peasant organizations. In keeping with the goal of the AAP with regard to land reform (the law providing bilateral exchanges between the communities and the State), a "return" of the law to its peasant base is planned with a mobilization of local organizations for the pilot phases of this experimentation.

The discussion groups set up by NGOs and engaged in "proactive research" were eventually accepted by the national authorities and won followers, working through the consultative councils provided for by law. While the need for reform of the Land Law was being advocated, co-operation of a quasi institutional variety was established between certain locally based NGOs and the State's national decision-making centre – namely the Ministry of Agriculture, and to a lesser extent the Ministry of Land Affairs. This step constitutes the indispensable basis for the elaboration of a public land policy worthy of the name.

International Players Inspired By Local Practices

The situation in the Eastern Congo demonstrates that international organizations (in this case NGOs and the United Nations) do not provide a ready-made solution for the land question: on the contrary, local perspectives have been incorporated into international programmes. Mediation, community dialogue and land reform are from now on fundamental elements in international attempts to resolve land disputes. Contrary to recurring complaints over international aid and some local criticism of those who work in international organizations, the latter have not emerged as "leaders" in this context: they are neither those who sound the alarm nor those who invent innovatory solutions. They are imitators, amplifiers of action. The land problem has been identified by local NGOs and it is their solutions and vague ideas about national reform which inspire the work of the international organizations, not the other way round.

The history of UN intervention in the Eastern Congo demonstrates that land disputes have been ignored by the UN Mission[38]. The UN Peacekeepers were initially too preoccupied with the armed groups and the security situation in general to pay attention to the land issue[39]. As a result, during the political transition (2003-2006), even if the local NGOs were already working on this problem, it was relegated by international organizations to the second phase of UN intervention: peace-building. The UN doctrine for re-establishing peace – if there is such a thing – draws a distinction between Peacekeeping and Peacebuilding [40]. Most revealing was the renaming in 2010 of the UN Mission in the Congo (MONUC) as MONUSCO (in which 'S' stands for 'stabilization'). The stabilization and reconstruction programmes for the Eastern Congo were conceived in 2009-2010 and they incorporate land disputes among other issues. In Ituri the settling of land disputes has been at the centre of the strategy for consolidating peace designated as the "community empowerment programme" and implemented by UNDP[41]. Ever since, contrary to what was happening over the last few years,

[38] See: S. Autesserre, *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding,* Cambridge, Cambridge University Press, 2010.
[39] For an analysis of this "deliberate blindness", see: T. Vircoulon, "The Ituri Paradox: When Armed Groups Have a Land Policy and Peace-Makers Do Not" in C. Alden and W. Anseeuw (dir.), *The Struggle over Land in Africa*, Pretoria, HSRC Press, 2010.
[40] On this distinction, see the UN Secretary General reports on peace-building after a conflict:: http://www.un.org/en/peacebuilding/pbso/.
[41] For a description of this project, consult: Community Empowerment and PeaceBuilding in Ituri: http://www.cd.undp.org/projet.aspx?titre=Community%20Empowerment%20and%20PeaceBuilding%20in%20Ituri%20&projetid=45&theme=2

the MONUSCO political advisors have been including land disputes in their analysis grid. In the Kivus the STAREC programme (Stabilization and Reconstruction of zones emerging from conflict) supports the creation of "local and permanent conciliation committees", which are charged, among other things, to prevent and resolve land disputes in conjunction with provincial authorities[42].

Yet just as in neighboring Rwanda and Burundi, international organizations' view of the land problem differ appreciably from the Congolese one. Initially UN agencies and foreign NGOs approached the land problem in the light of the resettlement of refugees and displaced persons, not in the light of contradictions between modern law and traditions or that of the lack of land security faced by peasants. Local communities and traditional chiefs have indeed often resisted resettlement projects, pointing to the shortage of available land and the fact that the displaced persons and refugees come from different locations. The UN High Commissionner for Refugees (UNHCR) and international NGOs, like the Norwegian Refugee Council and International Alert, have played a major part in incorporating this question into the peace-building agenda for Eastern Congo[43]. As a result, it is the subject of resettlement which has come to predominate in international organizations' approach to land issues.

Chronologically speaking, however, it was the local players who rang the alarm bells in connection with this problem and the need to take it into consideration. In Ituri, it was in 2006 that this question appeared in international development programmes, after traditional chiefs drew the attention of international organizations to the issue. At that time they had stressed the chronic nature of land disputes in the region and that it was impossible to ensure enduring stability in the zone without seriously tackling this question. While still treating it as a rather marginal issue, the European Union had at that stage developed a support programme for land registration within the framework of reconstruction and the strategy of LRRD (Linking Relief, Rehabilitation and Development)[44]. Since 2009, the programme for the management and prevention of land disputes in Ituri led by the RCN Justice & Démocratie (2006-2010), the UNDP programme for community empowerment and the programme of UN-Habitat for the "management and mediation of land disputes linked with return and reintegration in Eastern Congo", illustrate the same endeavour to take the land factor into consideration in relation to stabilization efforts.

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[42] See: "Bulletin Foncier", No. 2, UNHCR/UN-Habitat, Goma, 2010. The STAREC programme was set up by a presidential decree in June 2009.

[43] It is revealing to note that the land dispute cases mentioned in the HCR and UN publication, "Bulletin Foncier", all concern displaced persons and refugees. In South Kivu, at Baraka – a zone for refugees returning from Burundi and Tanzania – the HCR and NGOs, both international and local, have set up a reception and local re-integration committee charged with managing refugees and their land problems.

[44] For more information on this approach see: Linking relief, rehabilitation and development (LRRD) : http://europa.eu/legislation_summaries/humanitarian_aid/r10002_en.htm.

The UN-Habitat programme does not only envisage mediation on the spot for internal refugees and displaced persons who are coming back for resettlement to Ituri and the Kivus, but also intends contributing to land reform at national level, working directly with the government. It then pursues local mediation initiatives but also aims to contribute to the idea of a national public policy. While there is nothing surprising about the presence of a UN agency of this kind in the context of the Eastern Congo, its co-operation with other initiatives currently underway has not always been evident. Bearing in mind the differences that can exist between local organizations, with regard to levels of funding and overall goals, and sometimes even rivalry between them, international organizations have a far from easy task, be it a question of UN agencies or foreign NGOs. Yet it is precisely at this level of "cohabitation" or collaboration that strategies of a more global nature can be devised.

In particular, one of the major challenges for a real reform movement is to bring together the various players within one and the same discussion forum. The "land groups", co-ordinated UN-Habitat, are supposed to be carrying out this task. The land groups are made up of local players within their sector: services in charge of land affairs, mining or environmental work, Ministry of Agriculture, representatives of the State, the provincial authorities, local organizations, UN agencies and international NGOs. The terms of reference for these groups are, in addition, very wide: they are called upon to provide a system for exchange of information and harmonization, to set in motion synergy between the players and to resolve land disputes effectively[45]. Although the groups are supposed to be an operational body, they bear a close resemblance to brain-storming fora. The groups have been led by the ILC and, in North Kivu, it has been placed under the supervision of the provincial Ministry of Land Affairs. The land groups reflect the institutionalization of the dialogue between NGOs and representatives of the State concerning a social problem under the aegis of or thanks to facilitation by an outside player – the United Nations. The rivalry for the role of co-ordinator in this dialogue between the State and civil society is an important issue, which has a political background (these discussion groups can become bodies for informal policy-making) and a financial one as well (for controlling/steering the funding allocated to projects in this field). The land groups do not, however, exist everywhere (UN-Habitat is currently concentrating its activities in the East – in Ituri and in the Kivus) and they depend to a large extent upon the dynamism and political will of the local authorities. In addition, peasant organizations often feel uncomfortable in this dialogue forum, which sometimes appears to them to be excessively monopolized by the international players. In North Kivu, this uneasiness has led them to come together within a different framework – that of exchanges and discussions for land affairs actors (CECAF), which only caters for Congolese players. This framework

[45] "Bulletin foncier", No. 1, UNHCR/UN-Habitat, Goma, December 2009.

organization facilitates above all an alignment of their points of view and subsequently opportunities for putting forward their ideas with a united voice at the level of the land groups.

The land groups will from now on be a most ambitious venture and could constitute the premise of an institutional framework for dialogue, similar to those to be found in the agricultural law cited above. How might the land groups mesh with the provincial consultative councils or how might the latter draw inspiration from the land groups if these are doomed to disappear? The duplication of the encounter groups is frequently par for the course in the ambiguous institutional landscape of the DRC, but it also indicates a lack of consultation between the Congolese players in this case. A good example of this is the new agricultural law which clearly affect the powers of ministries for Land Affairs and even those for Justice, but which was obviously adopted after only very limited consultation of these throughout the process. This points to inadequate focus on co-operation between sectors at both national and international level and indicates that dialogue has not been active enough between those involved in peace-building on the one hand and rural development on the other.

Conclusion
The Emergence of Local and National Land Policies?

Despite the positive step forward which the adoption of the law on agriculture represents, the actual weight of peasant organizations' propositions remains relatively weak. Two examples make this clear: the law on agriculture has undergone numerous amendments between the initial version suggested by the peasant lobby and the version adopted (no less than seven different versions were drawn up). The FAT reckons that more than half its proposals were dropped during the process. The greatest success for the peasant organizations was that local consultative councils were set up, which represents nothing less than an agreement in principle on decentralization of land management. On the other hand, further sensitive points supported by the peasant organizations were not retained, notably the idea of limiting the total area of land available for each economic player. That principle was side-lined by the government, allegedly so as not to hold back investment, but it did restrict investment opportunities to Congolese nationals. This measure provoked an outcry, notably at the level of the FEC (Federation of Congolese Entrepreneurs), which subsequently voiced strong opposition to the peasant lobby held responsible for the law in question. This is another example of discussion, in which the peasant organizations still need to agree and structure their response in such a way that they will be able to take on another lobby, a far more powerful and influential one.

- The other example is the way in which the organizations have congratulated themselves on having achieved the adoption, in Article 19, of a measure making it possible to obviate Article 389 of the Land Law (which fails to define "lands belonging to local communities" and their framework for land administration). Article 18 acknowledges the "traditional land rights" of local communities "which are exercised collectively or by individuals in accordance with the law". Article 19 goes on to specify that "the exercising of these rights by a group or individual" does not require a registration certificate. This article, however, raises a number of questions. Which rights are involved here (the right of land use, the right of occupation, the right to build, for example)? Is the recognition of these individual and collective rights enough to ensure that deprivation of

property and disputes are avoided? The fact that lands belonging to communities are not subject to land registration does not guarantee that they are made more secure: how can they ensure that their rights are respected if their land is coveted by others? Do not individual rights, which have been duly recognized, risk causing confusion in relations with the system of collective land rights? Many questions that highlight the limits of the peasant movement. The players are aware of this and will try to correct these mistakes through their participation in the group aiming to promote the implementation of the law on agriculture.

- The advocacy practice will, in any case, have been a formative experience for the peasant organizations still committed to the activities described above, both locally and in their appealing to the international organizations to support them. As a result what is more interesting to note than the way in which some of the solutions have been internationalized is the emergence of national solutions (a law) stemming from local practices and considerations and the institutionalization of a debating forum of the policy-making type round the land problem. This institutionalization still has a long way to go, but it is emerging along with the land groups and the future consultative councils. It is the result of an initiative of the local civil society, which has been taken up by the international organizations. The most sought after result has been clearly identified (improved land management) and several solutions have been discussed and implemented on the spot (mediation efforts of NGOs and the Ituri Land Commission). Those practices and considerations are sometimes supported by foreign and international organizations, but well anchored in local reality, particularly regarding the issue of land management by traditional chiefs. As this study demonstrates, two of the principal issues are the consultation and transparency between the numerous players working towards future land reform in the DRC: local players among whom the role of the administration, i.e. the State, is still not prominent enough, national players for whom collaboration between ministries and decentralized services appears too weak and international players whose position in relation to the others tends to be competitive and complex. The size of the country is also a factor making harmonization more difficult and if there is a sector in which decentralization appears not only to be inevitable but also something desirable, it is definitely that of land management.

- For those who are aspiring to democracy in the DRC it is perhaps in initiatives of this type that it manifests itself. Far away from Parliament and the institutions which are supposedly representative, a type of democratization is operating at the lowest level in connection with social problems which concern everyone and which lead civil society and the State to engage

in dialogue, to legislate and, in the future perhaps, to implement a land policy worthy of the name. While attempts to create a democracy from the top are visibly running out of steam, democratization from below is emerging as a highly attractive alternative.