



Babette Wehrmann

LAND CONFLICTS

A practical guide to dealing with land disputes

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PREFACE

Land conflicts often have extensive negative effects on economic, social, spatial and ecological development. This is especially true in developing countries and countries in transition, where land market institutions are weak, opportunities for economic gain by illegal action are widespread and many poor people lack access to land. Land conflicts can have disastrous effects on individuals as well as on groups and even entire nations. Many conflicts that are perceived to be clashes between different cultures are actually conflicts over land and related natural resources.

In the past, Germany has actively supported international declarations and action plans which explicitly demand secured access to land – especially for disadvantaged groups – such as the Habitat II Conference in Istanbul 1996, World Bank Land Research Conferences from 2001 to 2007, EU Second Forum on Sustainable Rural Development in Africa 2007 etc.

This guide has been written for all those working in the land sector, in natural resource management and in urban and rural development. It aims to broaden the understanding of the complexity of causes that lead to land conflicts in order to provide for better-targeted ways of addressing such conflicts. It also provides a number of tools with which to analyse land conflicts. Successful analysis of land conflicts is seen as a vital step towards their eventual settlement. Finally, this guidebook discusses a wide variety of options for settling ongoing land conflicts and for preventing new ones.

In addition, the guide provides useful training material for educators and lecturers in courses in land administration and land management.

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List of acronyms and abbreviations

CBO	Community-Based Organisation
CSO	Civil Society Organisation
FIG	International Federation of Surveyors (Fédération Internationale des Géomètres)
LMA	Land Management Agency
NGO	Non-Governmental Organisation

1. INTRODUCTION

From the ancient Greek myths we know that in the beginning people lived happily together in simple harmony. This Golden Age of peaceful coexistence did not last, however. With the onset of the current Iron Age people divided the land among them and rendered it into private property, for which they have continued to fight one another to this day.

Land conflicts are indeed a widespread phenomenon, and can occur at any time or place. Both need and greed can equally lead to them, and scarcity and increases in land value can make things worse. Land conflicts especially occur when there is a chance to obtain land for free – no matter if this land is state, common or someone’s private property. Inheritance conflicts and disputes between neighbours are most often about land (and other immobile property). In post-conflict situations or during the early phases of economic transition (e. g. privatisation), when regulatory institutions, controls and mechanisms of sanctions are not yet in place, people eagerly grab land if their position allows for it – or forfeit land if they are in a weak position. In those countries where land only now – and slowly – is receiving a material value and increasingly becoming private property (such as all over Africa), people also try to accumulate as much land as possible. During colonial times, dominant European nations tried to occupy all the land outside Europe that seemed useful (fertile or rich in minerals). Today, the powerful are mostly national elites and international (mining) companies. The conflicts though are similar: local people with long-standing *de facto* rights often held for several generations lose their land to the powerful.

This guide addresses the issues related to land conflicts, but will restrict itself to disputes within one nation state. International conflicts involve different approaches to conflict resolution, and would therefore go beyond the scope of this publication and the mandate of most of its users.

Photo 1: Land conflicts in the daily press



1.1 The scope of the problem

Land conflicts occur in many forms. There are conflicts between single parties (as for instance boundary conflicts between neighbours), inheritance conflicts between siblings and disputes over the use of a given piece of land. These conflicts are comparably easy to solve. Those that include several parties though - such as group invasions or evictions of entire settlements - are more difficult to deal with. In Brazil, in the State of Amazonas, it is suspected that fully one third of its land area has been illegally appropriated (Brazilian Ministry of Agrarian Development 2001). But by far the most complex land conflicts are those that include corrupt land administration and state capture.

Box 1: Indians battle Brazilians to keep land

According to official maps, the remote area of Raposa Serra do Sol in the Amazon region is an Indian reservation. However, white newcomers to the land are using the judicial system to try to evict the Indians who have been living there for generations from part of the reservation. Seizing advantage of bureaucratic indifference, these people, led by powerful rice growers and ranchers, have persuaded judges to order Indians to leave the land. "We were here before the Brazilian state was even formed," protested Secundino Raposa, a 61 year old resident of a Macuxi Indian village called Javari.

Source: The New York Times, 25.10.2004

In many countries, indigenous people have been dispossessed or live at risk of being dispossessed due to either failure to recognise their rights to land or invalidation of those rights by the state, or through expropriation or privatisation of their lands by the state (UN-HABITAT/OHCHR 2005). In countries where part of the population – often indigenous people – have historically been deprived of their land rights, more serious conflicts can arise even decades or generations later. Guatemala provides such a case. In 1879, communal lands were *de facto* expropriated by a law giving proprietors three months to register land titles, after which the land would be declared abandoned. Most of the "abandoned" land was then allocated to large coffee growers. Although there were attempts at redistribution in the early 1950s, these were stopped and reversed following a military coup in 1954. Since then, struggle over land has continued, leading to violent conflict time and again (Deininger 2003).

In Kenya, the Ndung'u report from 2004 revealed that former Presidents Kenyatta and Moi, as well as cabinet ministers, former high ranking civil servants and other influential people have been among the major beneficiaries of illegal allocations of public land. Land grabbing in Kenya is such a common phenomenon that it is even reflected in contemporary art. The Kenyan painter Lonaa, who documents the everyday street life of the poor, placed a hoarding with the sign "Land reserved for grabbers" in the centre of one his recent paintings. Corruption – bribery, fraud, nepotism, favouritism and clientelism – in land administration and state land management is a widespread problem, and leads to a high number of land conflicts all over the world.

Box 2: The making of land grabbing millionaires in Kenya

Ngong Road Forest next to Africa's largest informal settlement Kibera with an estimated population of over 700,000 people provides a source of income for the poor from the harvesting of various products including firewood, poles and medical plants. The forest's flora and fauna include over 120 bird species and over 35 mammals. The forest serves as well as water catchment as for recreational use and finally provides oxygenation for Nairobi's air pollution threatened inhabitants. In 1932, an area of 2,926.6 ha had been gazetted as forest reserve. Today, hardly a quarter of it is left. The allocations of Ngong Road Forest provide a sad example of how public resources have been used to unjustly enrich a few and how state corporations were used to perpetuate grand corruption. State corporations did not just lose land entrusted to them but they were also pressurized to purchase illegally acquired public land at exorbitant prices. Many became captive buyers of land from politically connected allottees. In 2001, for example, part of the forest land was illegally excised, subdivided into 32 plots and allocated to 13 companies who sold them to Kenya Pipeline Company for Ksh 262,388,478 (US \$ 3.639.471).

Source: KNCHR/KLA 2006

Traditional chiefs, too, increasingly enter into illicit practises, selling land they are supposed to hold in trust to non-group members or to the state, causing landlessness among their own people. Many other land conflicts result from the multiple sales and double allocation of land, either due to legal pluralism or undocumented customary tenure, or due to competing state agencies all legitimized to do so. In Nicaragua for instance, there are twelve different ways of getting land titles, resulting in ownership conflicts between small and big farmers as well as in progressing *fronteras agricolas*, and the conversion of rain forests into agricultural land and pastures (Ortega 1996, Landes 2000).

Box 3.: Multiple sales of peri-urban land in Accra, Ghana

In Accra, many plots are sold by different people to different clients. While one buyer starts constructing, another buyer appears or sends land-guards to destroy the already built-up structures, sometimes even attacking the caretakers who are supposed to protect the property for the other person. Some years ago, the Katamanso chief gave some of his land temporarily to the Anwahia chief and his people for farming. He, however, sold that land to a real estate agent who recently found out that part of it had also been sold to someone else. He went to court. What had happened was that the Anwahia chief had died and his son had sold the land again, either not knowing that it had already been given away or thinking that it would not be developed by the real estate agent. Both father and son sold the same piece of land, which belongs to the neighbouring clan.

Source: Wehrmann 2002

Due to rural-urban migration as well as natural population growth, most cities in developing countries cannot formally absorb all their citizens. People therefore tend to squat on public land as the chances of being evicted there are slightly lower than on private or common land. The problem remains, however, for the city as well as for the squatters living in uncertainty.

Box 4: Squatter settlements in Turkey and South Africa

Gecekondu means “put up over night” and refers to the shacks, houses and in present days even apartment buildings that have been built “overnight” on public land in the peri-urban areas of Turkish cities. They extend all around Istanbul; they stretch over the hills around Ankara. They can definitely not be ignored. Although the culture and practise of self-accommodation is based on customs from Ottoman times, the massive spread of *gecekondu*s only began in the 1960s after industrialisation and urbanisation started to accelerate in the 1950s. When, in the 1980s, scattered informal buildings turned into major *gecekondu* districts, the Government began evicting many of them, while others were formalised. Even today, evictions occur and often end up in violent conflict between the police and the inhabitants.

This is a typical example of legitimacy versus legality. Throughout history, sovereignty over land (freehold) belonged to the Divinity; mortals only used the land temporarily and therefore could rely on local approval and local legitimacy without requiring adjudication from some form of formal legal status or conditions. In 1926, though, a property rights system based on Roman law was introduced, which required a complete change of attitude towards the relationship between different people in regard to land. For while the *Shari’a* places emphasis upon local testimony, Roman law relies on documented rights.

In Johannesburg in the late 1990s, many people were provided with land by a “land mafia”. Newcomers staying in the backyard dwellings of friends or relatives in townships close to the city were organised by local, informal community leaders. A team of land mafioso then identified a group of landless, already organised people and charged them R 50 (US\$ 10) each to sign up on a list. Once they had brought together about 2000 signatures (which corresponded to R 100.000/\$ 20.000), they would choose a suitable site to occupy. This was planned very precisely and often carried out with professional assistance. They completed deeds searches on the land to determine who owned it and used skilled planners to structure a settlement on paper. They avoided occupying private land because they knew that the Government would treat them better than private owners. Once the squatters were settled, they had to pay a monthly rent of R 50 (\$ 10) and an additional R 20 (\$ 4) protection fee to the land mafia. They also paid another R 10 (\$ 2,50) legal fee every month. The legal fee was paid into a fund so that a legal representative could be called in if action were taken against the squatters. The reason why the land developers were called land mafia is that they not only charged a protection fee but also used their guns in case somebody was unwilling or unable to pay.

Sources: Balamir 2002; Saturday Star 21.2.1998

The most violent conflicts over land are, however, those that involve two groups – often two different ethnic groups – fighting over their property.

Box 5: Inter-clan clashes leading to massive displacement in Ethiopia

In June 2006, more than 23,000 people fled their homes in Southern Ethiopia and have been displaced following clashes triggered by disputes over land ownership between neighbouring ethnic groups in that area. Between 100 and 150 people had been killed in these clashes that started when land formerly belonging to Borenas was awarded to Guhis by the government.

Source: Oxfam, June 2006

However, what is often reported as an ethnic conflict is usually a conflict over (arable/pasture) land.

Box 6: Conflict in Darfur fuelled by environmental degradation

According to a recent study by UNEP, the Darfur conflict is another example of a conflict rooted in a struggle over land. Climate change, population growth and an increase in livestock combined with poor land use practises, overgrazing and deforestation has resulted in the degradation of arable and grazing land leading to pastoralists – traditionally living in the dryer Northern regions – taking their herds farther south while farmers – traditionally occupying the Southern arable lands – are moving farther north, occupying grazing land and watering places as well as obstructing the herders' passage.

Source: D+C 9/2007

The Darfur conflict is a typical example of a land conflict resulting from diverse changes and leading to a much bigger conflict or even war. Many conflicts are due to change, in fact: Climate change, environmental degradation, demographic and economic transition often trigger disputes over land (see 2.2.4). Scarcity of land due to environmental degradation and population growth often leaves hardly any choice to people than fighting for land which might not be theirs. This is different in times of economic transition such as privatization. Privatization does not force people to fight for land, but it offers (illegal) opportunities to make an economic profit.

Box 7: Land conflicts due to privatisation in Georgia and Mongolia

In Mongolia, the privatisation of urban land has resulted in quite a number of multiple allocations of land due to illegitimated claims and ineffective, inefficient land administration agencies whose staff is partly lacking capacity, partly open for inappropriate practises. Resolution of these conflicts lacks transparency and generally favours the well-off applicants possessing informal connections to respective decision-makers. Another irregularity is the allocation of land located in the river bank as well as nearby protected areas of Ulaanbaatar to the rich by corrupted high ranking public officials.

In Georgia, during the second round of privatisation of agricultural land people experienced different illicit practises in regard to auctions such as the manipulation of the system resulting in the exclusion of some groups/individuals and preference of other groups/individuals. This lobbyism, clientelism and corruption during the privatisation process contributed negatively to the already low faith of Georgian citizen in their government.

Sources: Baatar 2007, Bokeria 2006

Box 8: Black land market in China

China is confronted with the contradiction of securing fertile agricultural land and providing construction land for the ever increasing cities. State ownership of urban land and collectively owned agricultural land is seen as a means to control the use of land. However, due to this dual urban land market and the quite complicated procedures required to formally convert collectively owned agricultural land first into urban state land and then into either allocated land use rights or granted land use rights for private use, there are quite a number of options for illicit practises which circumvent state policy. As a shortcut, collectively owned land is often sold by the village leader who, while supposed to act on behalf of the entire village community, is acting on his own. This results in a decrease of agricultural land for the village community, illegal conversion of agricultural land into construction land and the enrichment of the village leader. In the cities, public officials are also tempted by profit to illegally lease and sell land use rights on state land.

Sources: Gar-on Yeh 2005, Ma 2007

The actual number of land related conflicts in any country is barely known, but estimates of these are high. Those which have been dealt with by the courts give an idea of the scope of the problem. In 2001, the Ghanaian courts had to deal with 60,000 land related cases (Daily Graphic, 15.11.2001). For Cambodia, Cooper (2005) estimates that in 2005 about 850,000 people had been affected by land conflicts. This corresponds to 6.5% of the entire population of the country.

All land conflicts, no matter how peaceful or violent they are, produce negative consequences for individual people as well as for the entire society. Many families across the world have seen their shelters – their homes – being bulldozed out of existence. And in Africa, many daily experience the selling of their property by someone else who also claims to be the owner. In post-war Cambodia, an unknown number of families were happy if they only lost their houses to the military but managed to save their lives. In many parts of Latin America, small farmers fear to lose their farms to big farmers. Whenever there is a land conflict, someone suffers economic consequences. In extreme – but not rare – situations, people find themselves landless and/or without shelter. In the case of a farmer, this often includes the loss of his/her production base. But that's not all. Where there are many land conflicts, social stability within society is affected, as land conflicts undermine trust and increase fear and suspicion – often between formerly close people such as neighbours and family members. Violent land conflicts – or simply the fear of becoming a victim of them – can also have a traumatising effect on those who are or feel at risk. In addition, whenever state land is allocated illegally it generally affects the nation's budget negatively and often results in ecological destruction or social exclusion. Still other consequences of land conflicts are unorganised, unstructured land development and the subsequent additional costs for infrastructure provision. The costs of these have to be borne by the entire society.

So, all over the world, people struggle for land. Many of them struggle with land conflicts and some of them struggle to solve them peacefully. This manual aims to facilitate the understanding of people's positions, attitudes and behaviours as well as their underlying interests and motivation. Understanding these things should enable the reader to adequately deal with the many different kinds of land conflicts.

1.2 Defining land conflicts

A conflict, as defined by sociologists, is a social fact in which at least two parties are involved and whose origins are differences either in interests or in the social position of the parties (Imbusch 1999). Consequently, a land conflict can be defined as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land (Wehrmann 2005). Land conflicts defined as such can be aggravated if the social positions of the parties involved differ greatly (see 1.3).

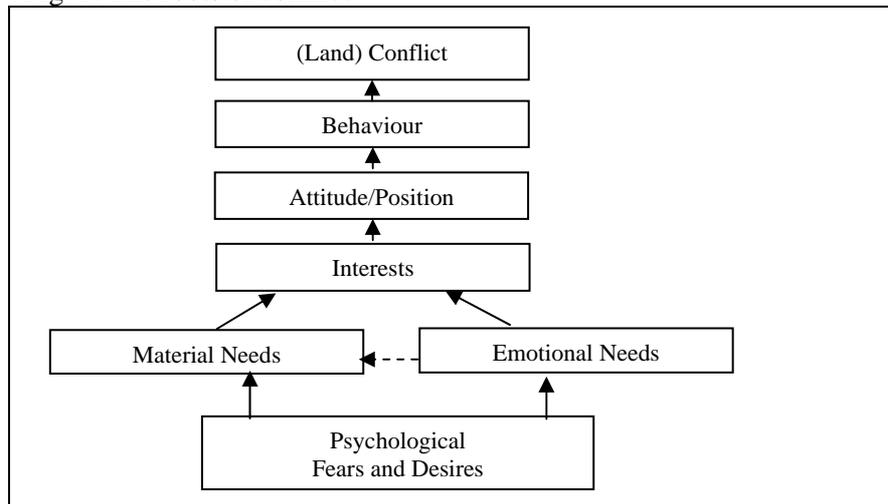
Although we generally experience conflict as something destructive, they nevertheless perform positive functions. Sociological conflict theories underline the importance of social conflict for social change (Bonacker 1996). Land conflicts, too, can become engines of change if they lead to massive protest and consequent changes in policies and their implementation. It is therefore important to deal with land conflicts in a constructive manner, instead of ignoring them or simply trying to stop them. In any event, conflict theorists agree that conflict is unavoidable for any society:

“Conflict is an inevitable aspect of human interaction, an unavoidable concomitant of choices and decisions. [...] Conflict can be prevented on some occasions and managed on others, but resolved only if the term is taken to mean the satisfaction of apparent demands rather than the total eradication of underlying sentiments, memories, and interests. Only time really resolves conflicts, and even the wounds it heals leave their scars for future reference. But short of such ultimate healing, much can be done to reduce conflict and thereby release needed energies for more productive tasks” (ZARTMAN 1991: 299).

A crucial step towards the reduction of conflicts is to better understand the apparent demands and interests and – although they cannot necessarily be healed if previously injured– the underlying feelings and emotions, too. Important information to find an adequate solution for each (land) conflict is gained by increasing this understanding of the positions and attitudes of the conflicting parties.

Drawing from the field of conflict management and using the various tools with which to analyse conflicts, it becomes obvious that at the root of conflicts there are psychological fears and desires (e.g. fear for existence, fear of insecurity, desire to be recognised, cared for and loved) resulting in material and emotional needs (need for shelter, need for a production base, longing for self esteem, or seeking power and wealth). These needs shape people's interests, which then result in their attitudes and positions and finally define their behaviour (see figure 1). Applied to land conflicts the issue becomes quite complex. Here, there are different factors which influence people's fears and desires to be identified, as well as institutional aspects that affect the situation (see 2.2).

Fig. 1: The roots of conflict



Source: Wehrmann 2005

1.3 The problem of asymmetry in land conflicts – the powerful vs. the poor

The most difficult type of land conflict to resolve involves a powerful person against one or more poor people. “Powerful” is shorthand for a group of categories of people that include high-ranking politicians, civil servants, the military, the police, companies and other rich and influential groups or individuals. In many countries or situations, the poor hesitate and often do not dare to resist the powerful, not least in court. If they do, or if the powerful sue them instead, the chances are very low that the poor will win the case. This is particularly obvious when examining the outcomes of court cases. Resolution in these cases tends to favour the powerful. Frequently, cases that involve a powerful actor but which have been brought to court by a poor one are not dealt with at all. In many cases bribery plays a major role. In other cases, the richer party simply can afford the better lawyer.

“Whatever the 1989 Cambodian land law says, the ill-educated poor are usually defeated by the well-connected rich in any legal battle” (The Economist, 10.3.2007).

Box 9: Exclusiveness of the Phnom Penh housing market

Since people began to return to Phnom Penh in 1979, several thousand of them have been evicted. Given that after the fall of the Khmer Rouge everyone simply occupied whichever house they liked, nobody actually can be considered to be a rightful owner. However, status and position – defined by one’s relation to the military and the government – decided access to housing. People without connections – very often female-headed households which had lost their male family head under the Khmer Rouge – were either not at all allowed entering the city or have been chased out of the houses they occupied. Having no other alternative at hand, they settled wherever possible on public land, over lakes or on rooftops. Since then many of them have been targets for eviction. Only in 2003 did the Prime Minister finally agree to provide secure tenure and support the upgrading of 100 urban poor communities each year. Evictions did not totally stop at that point but have decreased tremendously – without a doubt as a result of work by NGOs and the international community, maybe one of the positive effects of globalisation. What nobody looked at, however, is the story of Heng Mom* and her family – and many others. Since 1979 they have had to move to four different places – one smaller than the other: for economic reasons. During the same time Vong

Samreth* and his family moved from one property to the other – each one bigger than the one before: profiting from the market, favoured by the father's position. Without a father, Keov Phan* and his brother and mother had a much more difficult starting position than the other two families in 1979 and never could catch up with Vong Samreth's family. His father died under Pol Pot. His mother almost starved. As she was so weak, they returned late to the capital, only to find their grandmother's house already taken. Chased away from the house they then occupied by the military who gave it to someone working for the government, they finally found a tiny little place which is now worth much less than their former property or the one from which they have been kicked out. In Phnom Penh, housing and thereby people's livelihood in general starts with the right connections to the government and is then favoured by the market. Without connections the market will do the rest to finalize people's misery.
(*All names have been changed to protect people's identity)

Source: Wehrmann 2006

Box 10: Peasants vs. latifundista in Venezuela

In August 2002, in a small town in northern Venezuela, a man wearing a ski mask drove up to Pedro Doria, a respected surgeon and leader of the local land committee, called his name and, as Doria turned, shot him five times. The committee Doria led was in the process of claiming title to idle lands south of Lake Maracaibo which, according to government records, belonged to the state and could thus be legally transferred to the fifty peasant families that had applied for ownership. However, a local latifundista also claimed title to the property and on several occasions had refused to let Doria and government representatives inspect it. It is common knowledge in the region that this landowner is a close friend of former Venezuelan president Carlos Andrés Pérez... Doria was not the first peasant leader to be targeted by professional killers or paramilitaries.

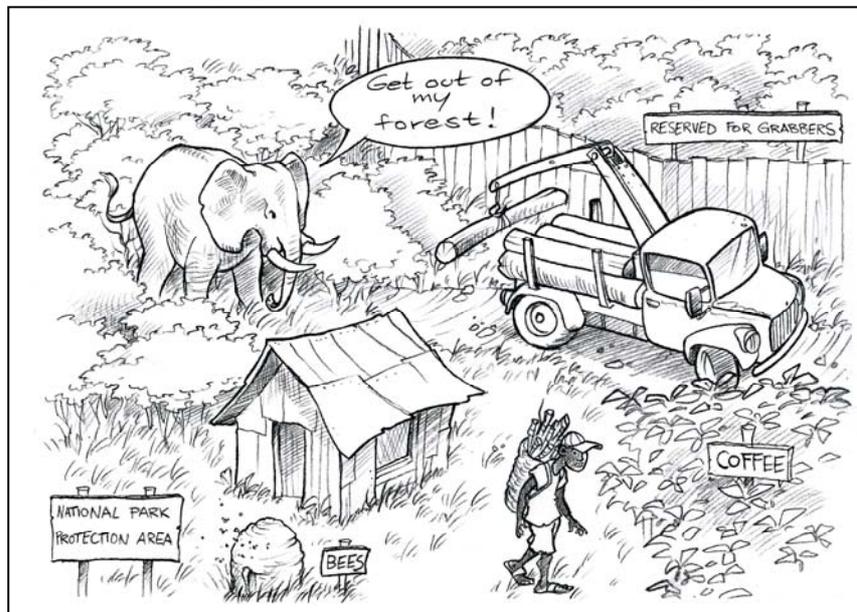
Source: Wilpert 2003

Asymmetry is not exclusively a question of one party being immensely richer or more powerful or having much better connections than the other party. In many (family) situations it happens that the stronger party is only relatively powerful. Examples are grieving widows being disinherited by surviving in-laws or HIV/AIDS orphans who have lost their land to their guardians. This type of thing has certainly been evident in the slums of Nairobi. There, quite a number of orphaned children turned to a relative after their parents died, only to find the relative apparently more interested in their property than in taking care of them (Human Rights Watch 2001).

2. UNDERSTANDING LAND CONFLICTS

In order to successfully resolve land conflicts, it is important to be aware of the many different types of land conflicts that exist. One difference is found in the identity of the actors involved, some of them being legitimated to act in the way they do, others not. Other differences are found in aspects of the land itself, whether the conflicts occur on state, private or commonly owned land. Still other differences result from the complexity of causes of the conflict, as well as how these influence and intensify one another. Finally, the dimension of a land conflict varies significantly which makes a major difference for its resolution. Understanding the specific nature of the land conflict under consideration is a vital step in its eventual resolution.

Fig. 2: Conflicting rights to land within a National Park (by Jan Birck)



2.1 Types of land conflicts

Disputes over land fall into four general categories. Within these categories, conflicts may be separated into 35 different types and over 50 sub-types. This system of classification builds upon the kind of land involved (state, private or common property), the specific object of the conflict as well as the legitimacy of actions and the level of violence used by the parties.

A) Conflicts occurring on all types of property

1. Boundary conflicts
2. Inheritance conflicts
3. Ownership conflicts due to legal pluralism
4. Ownership conflicts due to lack of land registration
5. Ownership conflicts between state and private/common/collective owners
6. Multiple sales/allocations of land
7. Limited access to land due to discrimination by law, custom or practise
8. Peaceful, informal land acquisitions without evictions
9. Violent land acquisitions, incl. clashes and wars over land
10. Evictions by land owners
11. Illegal evictions by state officials acting without mandate
12. Market evictions and distortion of local land market/values
13. Disputes over the payment for using/buying land
14. Disputes over the value of land
15. Conflicts between human/cultural and natural use (flora and fauna)
16. Destruction of property

B) Special conflicts over private property

17. Expropriation by the state without compensation
18. Sales of someone else's private property
19. Leasing/renting of someone else's private property
20. Illegitimate expropriations by banks
21. Conflicts due to land/agrarian reforms
22. Conflicting claims in post-conflict situations
23. Illegal/improper uses of private land
24. Intra-family conflicts, especially in case of polygamy

C) Special conflicts over common and collective property

- 25. Competing uses/rights on common and collective land
- 26. Illegal/improper uses of common property
- 27. Unauthorised sales of common or collectively owned property
- 28. Disputes over the distribution of revenue from customary land

D) Special conflicts over state property

- 29. Illegal/improper uses of state land
- 30. Competing uses/rights on state property
- 31. Land grabbing by high-ranking public officials
- 32. Illegal sales of state land
- 33. Illegal leases of state land (including concession land, forests, mines)
- 34. Disputes over revenues from state land generated through lease, sale or transformation of its use
- 35. Improper land privatisation (e.g. unfair land distribution or titling)

Tab. 1: Types and sub-types of land conflicts

Land conflicts on all types of property	
Boundary conflicts	<ul style="list-style-type: none"> • Between individuals (over private land) • Between clans (over common property) due to oral tradition and physically unfixed boundaries • Between administrative units (villages, communes, municipalities, districts) • Between private individuals and the state (over private or state land)
Ownership conflicts linked to inheritance	<ul style="list-style-type: none"> • Inheritance conflicts within a family • Inheritance conflicts within a clan
Ownership conflicts due to legal pluralism	<ul style="list-style-type: none"> • Overlapping/contradictory rights due to legal pluralism (customary/indigenous rights vs. statutory law)
Ownership conflicts due to lack of land registration	<ul style="list-style-type: none"> • Several people claim the same property because a) no land registration exists, b) it is in bad conditions or c) it has been destroyed • Distribution of intermediate tenure instruments which cannot be registered • Due to unequal knowledge and financial means only the well-off register land – even that of others

Types	Sub-types
Ownership conflicts between state and private, common or collective owners	<ul style="list-style-type: none"> • Unclear and non-transparent demarcation of state land by armchair decision resulting in unintended expropriation of individuals and groups • Special Chinese case of conflicts due to illegitimated conversion of collectively owned agrarian land into state land for construction
Multiple sales/allocations of land	<ul style="list-style-type: none"> • Multiple sale of privately owned land by private individuals • Multiple sale of common property • Allocation of same land parcels by the land registration office due to technical shortcomings or corruption (acceptance of faked titles) • Overlapping/contradictory rights due to double allocation of land titles by different institutions all legitimised to do so • Multiple sale of state land by public officials
Limited access to land due to discrimination by law, custom or practice	<ul style="list-style-type: none"> • Women often only get access to land through a male relative making them vulnerable in case of divorce or widowhood • Ethnic minorities are often discriminated against by law or practise • Orphans are often <i>de facto</i> excluded from inheriting their parents' property
Peaceful, informal land acquisitions without evictions	<ul style="list-style-type: none"> • Illegal occupation of state, private or common land (squatter settlements, <i>gecekondus</i> etc.) • Extensions of property on neighbouring private, public or common land (see above) • Market-driven displacements within which speculators or developers pay less than the real market value due to information asymmetry
Violent land acquisitions	<ul style="list-style-type: none"> • Violent attacks on property owners, including chasing them from their property by criminals - often (former) military, para-military, military police, guerrillas etc. • Illegal occupation of common or collective land by an individual or company for private use (often with support of corrupt public officials)
Evictions by land owners	<ul style="list-style-type: none"> • Evictions of semi-legal settlers (those who violate building regulations) from state, private or common property • Evictions of illegal settlers (those who have no legal rights to the property) from state, private or common property • Unjustified termination of tenancy/lease contract by property owner
Illegal evictions	<ul style="list-style-type: none"> • Illegal evictions by state officials acting without mandate on their own behalf

Types	Sub-types
Market evictions and distortion of local land market/values	<ul style="list-style-type: none"> • Poor people not being able to afford to stay on their property due to increases in its value and correspondingly in tax or rent due to upgrading, formalisation, legalisation or also due to foreign investment, including investment funds
Disputes over the payment for using or buying land	<ul style="list-style-type: none"> • Refusing to pay the state for lease of state land • Refusing to pay rent for renting private property • Disagreement between landlord and tenant over the amount of crops to be paid in case of sharecropping • Refusing to pay (full amount) in case of land purchase, including cheating (e.g. writing invalid checks)
Disputes over the value of land	<ul style="list-style-type: none"> • Between citizen and the state in case of compensation or tax • Between private persons (e.g. to define indemnity for sibling in case of inheritance)
Conflicts between human/cultural and natural use	<ul style="list-style-type: none"> • Misuse and overuse of agricultural land • Salination of irrigated land • Contamination of land • Unsustainable land uses such as conversion of forests into construction land or settlements at risk prone locations • Conflicts between natural protection and farming or mining • Conflicts between wildlife and peasants
Destruction of property	<ul style="list-style-type: none"> • Violent attacks on land (e.g. destruction of farmland) • Destruction of buildings owned by the owner of the property • Destruction of buildings illegally put on a property • See above: evictions
Land conflicts on private property	
Expropriations by the state without compensation	<ul style="list-style-type: none"> • Expropriation of landowners without (adequate) compensation to use the land for public purposes • Expropriation of owners from private or common land without (adequate) compensation to allocate the land to private companies – and new informal occupations by the original (customary) owners to receive the land back • Displacement of land owners without giving them adequate land and/or sufficient rights to it
Sales of somebody else's private property	<ul style="list-style-type: none"> • Private person selling the property of another person
Leasing/renting of somebody else's private property	<ul style="list-style-type: none"> • Private person leasing or renting the property of another person

Types	Sub-types
Illegitimated expropriations by banks	<ul style="list-style-type: none"> • Banks systematically accumulating land in a poor but well located neighbourhood by pushing the poor to take a credit with excessive interest rates which they are unable to afford
Conflicts due to land reforms	<ul style="list-style-type: none"> • Big farmers refusing to give up land • Expropriated farmers asking for compensation or the return of the land or illegally taking it back • Peasants receiving insecure rights only such as provisional titles • Unfairness in the selection of beneficiaries of land reforms
Conflicting claims in post-conflict situations	<ul style="list-style-type: none"> • Claims by returning refugees and internally displaced people against other people occupying their land without authorisation • Claims by owners that returning refugees and internally displaced people are occupying their land without authorisation • Claims by refugees that internally displaced people are occupying their land without authorisation • Conflicts due to the fact that the former lands of refugees have been allocated by the (former) government to other people during their absence
Illegal/improper uses of private land	<ul style="list-style-type: none"> • Use of other people's property (e.g. as a parking lot, playground, waste dump, pasture, or for agriculture etc.) • Private owner ignoring land use regulations on his property (e.g. commercial use of land zoned for residential purposes only) • Illegal subdivisions of parcels • Exceeding the maximum height permitted by building regulations • Leaving land vacant for speculative purposes (only a conflict if forbidden by law) • Trespassing on other people's property • Refusal to honour an existing right of way
Intra-family conflicts	<ul style="list-style-type: none"> • Disfavoured wife and children not receiving access to fertile land
Land conflicts on common and collectively owned property	
Competing uses of and rights to common or collective property	<ul style="list-style-type: none"> • Conflicting interests in common property by farmers and pastoralists, or between different users of a forest such as small-scale farmers doing rotational agriculture, coffee producers, collectors of firewood and others • Unequal distribution of common or collective land

Types	Sub-types
Illegal/improper uses of common property	<ul style="list-style-type: none"> • Parcellation and allocation of common land to be used as construction land (e.g. <i>ejidos</i> in Mexico)
Unauthorized sales or leases of common or collectively owned property	<ul style="list-style-type: none"> • Unauthorised sale of customary land by chief • Unauthorised sale of collectively owned land by head of village • Illegal sale or lease by leaseholder of collective land
Disputes over the distribution of revenue from customary land	<ul style="list-style-type: none"> • Special case of Ghana where the state administration of stool land collects the revenues from customary land
Land conflicts on state property	
Illegal/improper uses of state land	<ul style="list-style-type: none"> • Illegal private use of state land • Illegal subleasing of state land • Illegal public use of state land (e.g. of open space as dump)
Competing uses and rights on state property	<ul style="list-style-type: none"> • Unclear responsibility over state land, different state authorities claiming ownership • Conflicting interests over state land by farmers or pastoralists and leaseholders of (forest, agricultural etc.) concessions • Land allocation in protected areas
Land grabbing	<ul style="list-style-type: none"> • Registration of state land in their own names (or in those of family members and friends) by high ranking public officials
Illegal sales of state land	<ul style="list-style-type: none"> • Illegal sale of unused state land by private person • Illegal sale of unused state land by public official • Illegal sale of publicly used state land by public official (or rarely by private person) • Illegal sale of legally privately used state land by public official (or rarely by private person) • Illegal sale of illegally privately used state land by public official (or rarely by private person)
Illegal leases of state land (including concession land, forests, mining licences etc.)	<ul style="list-style-type: none"> • Illegal lease of unused state land by private person • Illegal lease of unused state land by public official • Illegal lease of publicly used state land by public official (or rarely by private person) • Illegal lease of legally privately used state land by public official (or rarely by private person) • Illegal lease of illegally privately used state land by public official (or rarely by private person)

Types	Sub-types
Disputes over revenues from state land generated through lease, sale or transformation of its use	<ul style="list-style-type: none"> • Between public institutions at the same level • Between public institutions at different levels • Between the state and state officials • Between the state and private sector • Between state official/customary authority and the public
Improper land privatisation	<ul style="list-style-type: none"> • Overlapping claims during restitution (in the case of former multiple expropriations/nationalisations) • Irregularities during (re)distribution or auctions • Illegal applications for land (family/household splitting) • Unfair title distribution during legalisation of informal settlements

Inheritance and boundary conflicts are probably the most common land conflicts. They occur in urban, peri-urban and rural areas alike. Other types of conflicts are more specific and predominantly occur in either urban, peri-urban or rural areas (see table 2).

Tab. 2: Typical land conflicts in urban, peri-urban and rural areas

Urban areas	Peri-urban areas	Rural areas
<ul style="list-style-type: none"> • Informal land acquisition by squatters or pavement dwellers • Evictions • Land use conflicts: not respecting building regulations • Illegal subdivisions resulting in densification and slums • Illegal sale or lease of state land in prime locations • Illegitimate expropriation by banks of the property of the poor • Displacement of settlers by commercially motivated developers or speculators 	<ul style="list-style-type: none"> • Informal land acquisition by squatters, often through organised group squatting • Multiple sales of land • Illegal sale of state land by public officials • Expropriation without compensation by the state of land which is perceived to be customary land by the settlers (Africa) • Land use conflicts: not respecting building regulations 	<ul style="list-style-type: none"> • Illegal lease of state land for logging, mining, agro-industry • Land use conflicts among farmers and pastoralists • Land use conflicts between conservation and private or commercial use of natural resources (forests, lakes etc.) • Land grabbing: public officials taking state land (for themselves or friends) • Land robbery: guerrillas and other violent groups taking private land • Land clashes between different ethnic groups

2.2 Causes of land conflicts

The governments of many developing countries and countries in transition are currently investing in the improvement of their land administration, the primary objective being the development of a transparent and efficient land market. As a by-product of this, there is a goal of decreasing land conflicts through the implementation of a functioning land registration and/or cadastral system. Experience, however, shows that more is needed to avoid severe land conflicts than surveying, demarcation and land registration. The question therefore arises as to the deeper roots of land conflicts and how we can respond to them.

2.2.1 Shortcomings of the land market and its institutions

Economically efficient land markets can cause land conflicts

Not even a perfect, economically efficient land market can prevent land conflicts as land market forces alone do not lead to socially and ecologically optimal land use patterns. This is because they tend to disregard the negative effects of environmental degradation (conversion of forests and agricultural land into construction land) and the impact on the poor of being pushed out of the land market by so-called market evictions. Therefore, in addition to secured property rights, additional requirements for an ecologically and socially sustainable land market are required, including:

- land management (land use planning, land use regulations, land consolidation, land readjustment and land banking), and
- ethical principles.

Usually the institutions regulating the land market do not work properly, but even when they do, land conflicts still regularly occur.

Institutions of the land market do not work properly

Two main types of institutions can be distinguished: constitutive and regulatory institutions. Constitutive institutions are needed to enable an economically efficient land market to work, and include such fundamental elements as land rights, land registration and the rule of law. Regulatory institutions, on the other hand, provide the ingredients necessary to make the land market socially sustainable and environmentally sound such as land management and ethical principles (see figure 3). Supportive and complementary institutions such as land valuation and financial mechanisms are no prerequisites for a sustainable land market, but facilitate land transfers and correspondingly can limit or even provoke land conflicts, as well.

Fig. 3: Institutions of the land market and their role in conflicts

Key institutions of the land market		Indispensable measures		
		Political will	Rules and regulations	Implementation
Constitutive institutions: Provide legal security	Property rights to land			
	Land registration and land information systems			
	Rule of law			
Supportive institutions	Land valuation			
Regulatory institutions: Provide for sustainable land use	Land management			
	Ethical principles			
Complementary institutions	Financial mechanisms (capital markets: credit, mortgage)			

Source: Wehrmann 2005 (modified)

In most developing countries and transitional economies, many constitutive and regulatory institutions have significant functional deficits. Land rights are most often characterized by fragmented or overlapping legislation or legal pluralism. This results in unclear property rights and consequently conflicts over land ownership. Land administration authorities dealing with land registration, land information systems, land use planning and land development often lack trained staff, technical infrastructure and financial resources. Furthermore, administrative services tend to be both over-centralised and underdeveloped, with responsibilities often not clearly assigned or overlapping one another, thus impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is gathered by a variety of non-cooperating institutions, making it difficult or even impossible to use properly. Endless procedures and low levels of implementation are the result. In addition, many land administration authorities are threatened by corruption. Therefore neither institutions constituting nor those regulating the land market make a substantial contribution to preventing land conflicts. Given their low salaries and an openness of the people working within these institutions to “motivation payments” they instead contribute to land conflicts.

Legal security is furthermore limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged.

For all institutions, the lack of implementation is the crucial point. Unclear or non-existent implementation guidelines and contradictory legislation worsen the situation. Political will is also very irregular and unclear. Generally, it can be concluded that imperfect constitutive land market institutions promote land ownership conflicts, while poor regulatory institutions are responsible for land ownership as well as land use conflicts.

2.2.2 The deeper causes of land conflicts

Dysfunctional institutions only act as catalysts for land conflicts – selfish individual interests being the deeper causes

It needs to be stressed that the functional deficits of institutions are not the core reason for land conflicts; they merely facilitate them. Profit maximisation by a multitude of actors is the driving force, manifested either by unjustly grabbing land or by excluding disadvantaged sections of the population from legally using land. Theoretically, these actors include all social gatekeepers. These are people who, because of their job, position and faction can manipulate the land market to their advantage. Notoriously low wages in the public sector contribute to corrupt behaviour by social gatekeepers in the land sector. However, the decisive factor for these irregularities is the “normality of misbehaviour”. Nepotism, corruption, and disregard for regulations are considered normal by the population. Social and religious values are of little relevance to everyday life; self-interest is paramount to public interest. This underlines the importance of ethical values and rule-of-law principles in preventing land conflicts. If individual profit maximisation – in the case of widespread absence of functioning institutions – is the underlying reason for land ownership conflicts, then a capitalistic land market associated with increasing land prices can be seen as a facilitator (for as long as land has no monetary value, land ownership conflicts occur comparably seldom). In this situation, dysfunctional institutions constituting and regulating the land market act merely as catalysts for land conflicts – especially in times of institutional change.

Psychological fears and desires resulting in emotional and material needs are at the root of land conflicts

As with any egoistic behaviour, taking advantage of functional deficits for the sake of reckless individual profit maximisation is based on emotional and material needs, which again are a consequence of psychological fears and desires. Therefore, psychological phenomena

form the basis of land conflicts. A typical psychological fear is the fear for one's existence. This fear can result in extreme emotional and material needs such as the need for shelter, the longing for survival and self-esteem – in some cases resulting in a desire for power – and a strong need for independence – often resulting in the accumulation of wealth. It is primarily this combination of very strong emotional and material needs (seeking power and wealth) that allows people to either break rules (institutions) or profit from institutional shortcomings. Land conflict resolution should therefore look at the psychological fears and desires of those breaking the law or profiting from loopholes – especially in those situations where illegal behaviour is the rule rather than the exception. This is the case in many post-conflict countries where psychological fears and desires and the emotional and material needs these provoke – in addition to those needs directly created by the conflict itself (e.g. loss of property due to forced displacement) – are common phenomena influencing the entire society and its overall development.

2.2.3 Institutional change as catalyst for land conflicts

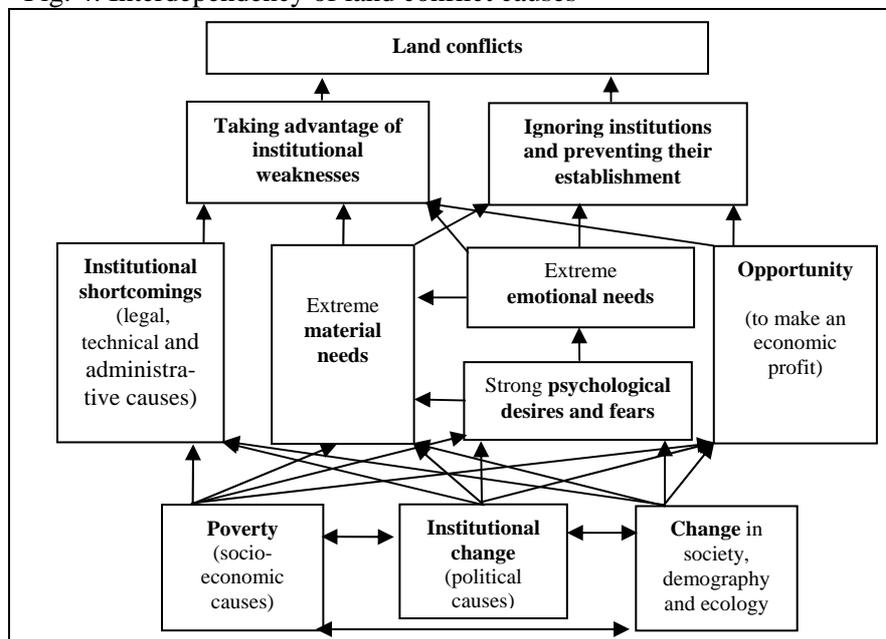
Moments or situations of institutional change are conflict prone and therefore tend to be phases of increased land conflict. While some forms of land conflict can occur under different and even stable institutional frame conditions (such as boundary or inheritance conflicts), others mainly arise during institutional change (for instance, conflicts due to privatisation) or occur much more often and seriously during these times (such as market evictions). Some land conflicts are directly linked to the nature of the institutional change. Multiple sales – due to legal pluralism for instance – are typical for slow institutional changes that lead to the overlapping of two systems. Illegal sales of state land, on the other hand, are quite common in situations of either abrupt institutional change that are marked by a temporary absence of rules (e.g. during the transition from a socialist system to democracy) or of the longer-term absence of a functioning legitimated institutional frame (e.g. due to civil war, dictatorship or institutionalised corruption).

2.2.4 Interdependency of causes

Changing frame conditions often provides the basis for land conflicts:

- Natural disasters can lead to rural-urban migration,
- Natural population growth can result in an increase in the demand for land and consequently of land prices,
- The introduction of a market economy – giving land a monetary value and thereby eradicating traditional ways of land allocation – can increase poverty, making it difficult to acquire land legally, and last but not least,
- An institutional change causing a temporary institutional vacuum on the land market can generate fears, desires, needs, interests, attitudes and opportunities concerning land use and ownership and, because these are no longer controlled, can easily lead to land conflicts (see figure 4).

Fig. 4: Interdependency of land conflict causes



Source: Wehrmann 2005

Poverty, institutional change and other changes in society (including war and peace) influence each other and provoke strong psychological desires and fears (such as the fear for existence or desire to be loved). These result in extreme emotional and material needs such as the need for shelter, feelings of revenge, the longing for survival and self-esteem – in some cases resulting in a need for power – and a strong need for independence – often resulting in the accumulation of wealth. Given the institutional shortcomings resulting from institutional change and/or poverty, these emotional and material needs – sometimes supported by sudden opportunities to reap economic profit – result in either taking advantage of institutional weaknesses, ignoring formal and/or informal institutions or in preventing their (re-)establishment.

Looking at these causes from a different analytical perspective, they can also be distinguished by political, economic, socio-economic, socio-cultural, demographic, legal/juridical, administrative, technical (land management), ecological and psychological causes (see table 3). All of these causes are also included in the model presented in figure 4: Political, economic, socio-economic, socio-cultural, demographic and ecological causes are part of the changing framework. Legal, administrative and technical causes are summarised under the institutional shortcomings.

Tab. 3: Causes of land conflicts

Causes	Examples
Political causes	<ul style="list-style-type: none"> • Change in the political and economic system, including nationalisation or privatisation of land • Lack of political stability and continuity, lack of predictability • Introduction of (foreign, external) institutions that are not popularly accepted • War/post-war situation, including a high number of former (now unemployed) military, para-military, or guerrilla fighters – all accustomed to the use of violence • Political corruption, state capture and land grabbing • Political (and economic) support for big farmers to the disadvantage of poorer peasants
Economic causes	<ul style="list-style-type: none"> • Evolution of land markets • Increasing land prices • Limited capital markets

Causes	Examples
Socio-economic causes	<ul style="list-style-type: none"> • Poverty and poverty-related marginalisation/exclusion • Extremely unequal distribution of power and resources (including land) • Lack of microfinance options for the poor
Socio-cultural causes	<ul style="list-style-type: none"> • Destroyed or deteriorated traditional values and structures • Rejection of formal institutions (new, foreign, external) • Low level of education and lack of information on institutions and mechanisms of land markets • High potential for violence • Abuse of power • Strong mistrust • Helplessness of those disadvantaged • Unregistered land transactions • Fraud by governmental administration and/or individuals • Patronage-system or clientelism • Strong hierarchical structure of society • Heterogeneous society, weak sense of community or lack of identification with society as a whole
Demographic causes	<ul style="list-style-type: none"> • Strong population growth and rural exodus • New and returning refugees
Legal and juridical causes	<ul style="list-style-type: none"> • Legislative loopholes • Contradictory legislation • Legal pluralism • Traditional land law without written records or clearly defined plot and village boundaries • Formal law which is not sufficiently disseminated or known • Limited/no access to law enforcement and jurisdiction by the poor/disadvantaged • Insufficient establishment of rule-of-law-principles (e.g. lack of independent courts) • Insufficient implementation of legislation • Missing or inactive mechanisms for sanctions
Administrative causes	<ul style="list-style-type: none"> • Insufficient implementation of formal regulations • Centralisation (e.g. centralised land use planning) • Administrative corruption • Insufficient control over state land • Lack of communication, co-operation, and co-ordination within and between different government agencies as well as between public and private sector (if existent at all) • Lack of responsibility/accountability

Causes	Examples
	<ul style="list-style-type: none"> • Limited access to land administration, especially for the poor and rural population (distance, illiteracy, costs etc.) • Insufficient information to the public • Limited/nonexistent public participation, especially in land use planning and demarcation of concession land • Insufficient staff and technical/financial equipment at public agencies • Very low wages in the public sector • Low qualifications of public employees • Missing code of conduct • Lack of transparency
Technical causes	<ul style="list-style-type: none"> • Missing or inaccurate surveying • Missing land register (e.g. destroyed) or one that does not meet modern requirements • Missing, outdated or only sporadic land use planning or planning not adapted to local conditions • Insufficient provision of construction land • Missing housing programs
Ecological causes	<ul style="list-style-type: none"> • Erosion/drought/floods leading to urban migration • Floods and storms in squatter settlements
Psychological causes	<ul style="list-style-type: none"> • Fear for one's existence • Lack of self-esteem • Loss of identity • Collective suffering • Desire for revenge • Thirst for power

Source: Wehrmann 2005

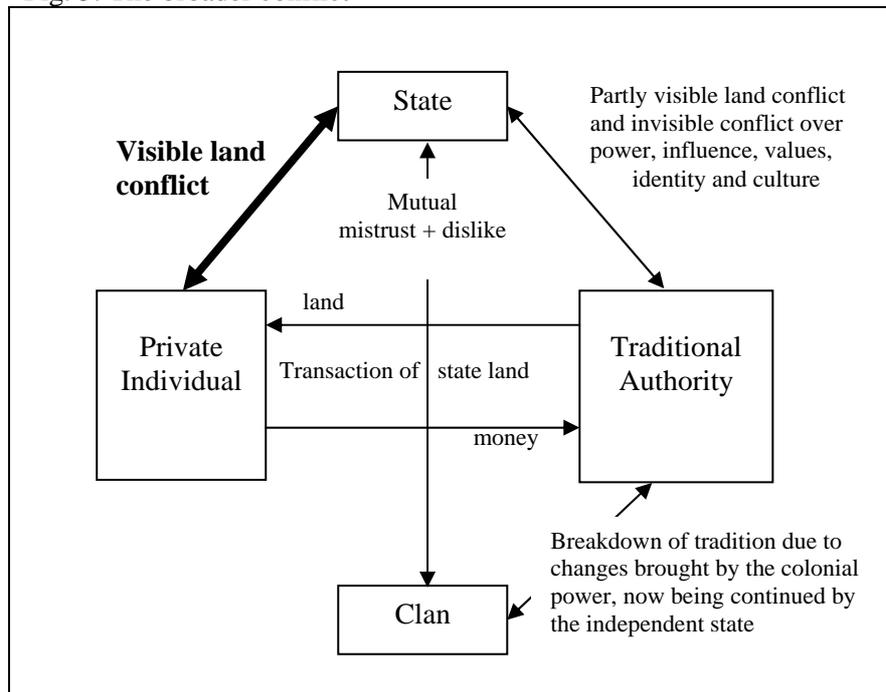
2.3 Additional conflict issues

Although land is always the central and obvious conflict issue, land conflicts often disguise other societal conflicts. They are often just the visible part of a more serious conflict which is rooted much deeper in the society and its history. Very often land conflicts only reflect the general inequality or unfair distribution of wealth, voice and power in a given society and/or the discrimination against certain groups, such as women or ethnic minorities. In these cases, it is of crucial importance to tackle the main problem and not only to solve the land conflict as new

conflicts will arise again and again as long as the bigger conflict continues to exist.

Some very striking examples of this are the land conflicts due to legal pluralism found all over sub-Saharan Africa. A quite common praxis is the sale of state land by customary authorities who claim customary rights over the same land. Although fully aware that they are not entitled to sell the land (though in some cases they are entitled to use it and/or to hold it as a trustee), they do so, thus showing their lack of respect for the state as much as for their clan. The land conflict here is only the visible part of a traditional culture falling apart and a modern state not being accepted by the traditional society (see figure 5).

Fig. 5: The broader conflict



Source: based on Wehrmann 2005

2.4 Consequences of land conflicts

Land ownership conflicts have negative effects on individual households as well as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade/commercial tax) for the state or municipality. The lower the transparency in land markets, the less equal is information being disseminated, and the weaker constitutive and regulatory institutions are, the more likely it is that land conflicts occur. People therefore need to spend a lot of time and money on searching for information and monitoring agreements/contracts. This means that land conflicts are associated with high transaction and agency costs or *vice versa*, that (relatively) high transaction and agency costs indicate a high probability of land conflicts.

Conflicts over the use of land generally have a negative impact on the poor or on the natural or building environment. They either decrease quality of life for parts of society or, if they are addressed and ameliorated, contribute to additional state expenditures and therefore have an impact on the national wealth.

Land conflicts also increase social and political instability. Where ever there occur a lot of multiple sales, evictions, land grabbing etc., people lose confidence in the state and start mistrusting each other. Social and political stability suffers even more when land conflicts are accompanied by violence. Dealing with land conflicts therefore also means to re-establishing trust and confidence in public as well as private institutions.

Box 11: High levels of violence in Guatemala's land conflicts

A study of 35 rural land conflicts in the region Verapaces in Guatemala unveiled that 37% have been accompanied by high levels of violence including murder, personal injury and damage to property. In 28% of the conflicts, violence reached middle level characterized by dispute, hate, assaults and intimidations. Another 18% of cases were marked by low levels of violence such as mistrust, disagreements and lack of patience. Only 17% of all land conflicts profited from co-operative relations that were based on trust and patience.

Source: Mentrup 2004

Land conflicts affect different groups in different ways. Not only do they generally have a stronger impact on the livelihood of the poor than that of the rich, but they also impact differently on men and women, urban and rural populations, farmers and pastoralists etc., with groups such as squatters, ethnic minorities or orphans being extremely marginalised.

Box 12: Impact of land conflicts on women – an example from Kenya

In Nakuru District, thousands of families have been internally displaced as a result of land conflicts within the past ten years. The families settling in urban areas did not only contribute to additional land conflicts there, but also had to find new sources of income as the majority of Kenyan families is *de facto* headed by a woman who mainly depend on farming which was impossible to be continued in the new (peri-urban) setting due to the lack of own land. Although women discovered other means of earning a livelihood, such as hawking, farming on rented land, doing domestic help or prostitution and proved to be more innovative and capable in dealing with the changed circumstances than men, they were not satisfied at all. To them, owning land (even if it is only indirectly through their husband or another male relative) is very important and they would prefer farming on their own land to what they are doing today. Their being displaced from their land has caused them a lot of social problems due to family disintegration. Land is therefore of great importance to family welfare and the women value it, not for the wealth accumulation, but as social commodity. Therefore, despite being more innovative and capable than most men in dealing with the post-conflict situation (many men simply becoming alcoholics), women feel more vulnerable in case of land conflicts as they are less socially or financially independent than they have been before.

Source: Kariuki 2005.

2.5 Classification of land conflicts

Among the many different ways of classifying land conflicts (Wehrmann 2005) the one based on the social dimension of conflicts is the most suitable – especially when it comes to conflict resolution. One possibility of classification that conflict research offers in this regard is the distinction according to the social level at which a conflict takes place: intrapersonal, interpersonal, intrasocietal or intersocietal/international levels. While in the case of land conflicts the intrapersonal level can be ignored the other three levels are very useful for the purpose of

classification. Land conflicts within a country will then occur at either the interpersonal or intrasocietal level (see table 4).

Tab. 4: Classification of land conflicts

Level	Dimension	Types of land conflicts (examples)
Inter-personal level	Micro-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between neighbours • Ownership conflicts due to inheritance conflicts • Occasional multiple sales of private property by individuals without administrative assistance and without harming third parties • Individual occupation of private land • Building extensions on the private land of another • Illegal lease/sale of somebody else's private land
Intra-societal level	Meso-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between tribes or villages • Illegal sale/lease of communal land/tribal land • Illegal allocation of state land by private individual • Group invasion of private land • Land use conflicts between farmers and pastoralists (e.g. animal corridors due to transhumance) • Occasional building extension on state land • Occasional illegal use of state land • Illegal use of one's own land • Violent attacks on property
	Macro-social dimension	<ul style="list-style-type: none"> • Ownership conflicts due to legal pluralism • Land grabbing • Illegal sale/lease of state land • Evictions (by force) by governmental authorities • Improper land privatisation • Land use conflicts between private and public utilisation due to a general disregard of land use regulations by a majority of people • Expropriation without compensation • Illegal acquisition and sale of somebody else's private property by individuals, supported by corrupt public agencies or courts • Multiple allocation of particular plots by officers working at the land registry

Source: Wehrmann 2005

Another, however quite similar, form of conflict classification is based on the social dimension of the conflict, distinguishing between micro-societal, meso-societal and macro-societal dimensions. While the micro-societal dimension is equivalent to the interpersonal level, the other two allow for a more precise classification of intrasocietal conflicts (see table 4).

The classification of land conflicts according to their social dimension illustrates the high number and diversity of intrasocietal land conflicts compared to interpersonal land conflicts (which, however, does not say anything about their absolute numbers). While in most cases interpersonal land conflicts can be addressed by existing formal or informal conflict resolution bodies, intrasocietal conflicts are much more difficult to tackle – mainly because conflict resolution mechanisms at the higher level are part of the problem.

3. ANALYSING LAND CONFLICTS

A first step in land conflict resolution is a thorough analysis of the conflict. It is necessary to have a clear and deep understanding of the special characteristics of the particular conflict, the causes of the conflict and the actors involved (including their positions, attitudes, behaviour, interests, needs and motivations), as well as their relations with each other. Depending on the complexity of the conflict, frame conditions and the historical development of the conflict may have to be identified as well.

This chapter provides a checklist with which to identify a conflict's characteristics, as well as tools to structure and visualise information on the conflict. In addition, it proposes a way to re-enact the case in order to determine the actors' motivations and to better understand the individual parties.

3.1 Identifying the characteristics of conflicts

In order to be able to better understand a (land) conflict, it is useful to first identify the general characteristics of the conflict:

- Is the conflict more about scarce resources or about norms and values? Most land conflicts are about access to or allocation of scarce resources, but many also include a struggle over rights, such as the fight for a universal or human right to adequate shelter.
- Is the conflict divisible or indivisible? Only in the case of divisible conflicts can a win-win solution be achieved. With respect to land conflicts, what needs to be identified is whether the quarrel of the conflicting parties is over the same or indivisible property rights (e.g. both parties wanting to use the land; or one party wanting to

exclude the other – while that party wants to have a right of way) or different or divisible ones (e.g. one party wants to use the land while the other one wants to have control over how the land is used; or two parties want to use the same land at different times).

- What is the social dimension of the conflict? Is it an interpersonal conflict, an intrasocietal one at the meso level or an intrasocietal one at the macro level (see 2.5)? An exact appraisal of the conflict's social dimension helps in identifying a suitable form of resolution (see 4.2).
- Is this a latent or a manifest conflict? Latent conflicts most often need to be dealt with more sensitively, in order to avoid unnecessary escalation. They also often need to be made visible. This applies mainly to countries where conflict-avoidance or conflict-denial strategies are prevalent (see 4.2.5).
- Is the conflict symmetric or asymmetric? That is, do the parties have the same power and influence in society, or is one side (much) more powerful than the other (see 1.3).
- Finally, an honest appraisal of whether the conflict is antagonistic or not must be made. Are the parties irreconcilable and unforgiving or are they willing to find a compromise? Many tools for conflict resolution such as mediation only work if the conflicting parties are open to and co-operative in achieving a trade-off.

3.2 Collecting and structuring information on land conflicts

At first glance, most land conflicts seem to be simple and straightforward. Some really are. Many, however, are not that easy to comprehend. That is, when the second party also tells its side of the story, contradictions between that and the first party's interpretation arise and it quickly becomes difficult to tell who is right and who is wrong. Therefore, analysing a land conflict always requires listening to all parties involved, some of whom are often not easy to identify. To understand who is part of the problem, it can be useful to look at the land conflict from an historical or chronological perspective. This can be done with the help of timelines. These describe the subjective

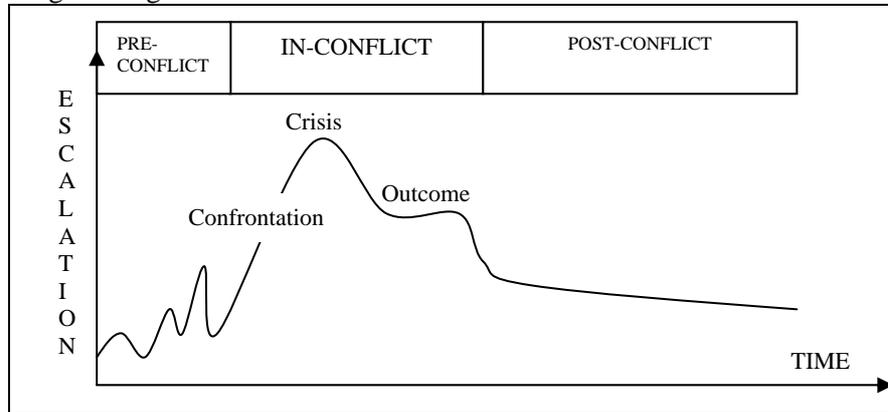
perspectives of the different actors at different times. This is generally done by drawing a table that places the opposing points of view in columns, side by side. Following the idea of learning histories, this can be complemented by another column in which contradictions or turning points can be highlighted. Another category which may be added is the general frame conditions of the conflict, such as changes in the political system, economic crises etc. Table 5 gives an example based on the problem of illegal acquisition of state land in peri-urban areas in Turkey (also see box 4 on *gecekondus*).

Tab. 5: Timeline as learning history – the example of the *gecekondus*

Year	General events	Events as experienced by government	Events as experienced by <i>gecekondus</i> dwellers	Comments
1950s	Turkey experiences industrialisation, mechanisation of agriculture, urbanisation and improved transportation	1928 Municipalities Law	There are fewer jobs in agriculture but new urban jobs. We move to the cities and settle on unused available land as our forefathers did when they needed land.	Nobody considers that the economic changes leading to migration result in a need for additional urban shelter
1960s	Many migrants to the city cannot find formal housing. The government invests in infrastructure. Financial crisis.	Too many inhabitants place unmanageable burdens on our cities. 1966: Gecekondus Law	The government should have provided land or housing – calling us to the cities but not providing this.	Problem: workers are wanted but no land is provided for them. Too many are coming at the same time.
1970s	The government is weak in regard to urban control.	Migrants illegally build on state land. They should buy or lease land.	The government isn't providing our settlements with proper infrastructure.	There are contradictory expectations.
1980s	<i>Gecekondus</i> stretch over entire districts. Some are formalised, while others are dismantled.	Illegal settlements on state land have to be stopped.	We are being illegally evicted without compensation.	Both sides consider the other to be acting illegally.
1990s until today	The situation of the 80s continues, with negative impact on urban structures & living conditions.	We lose too much money in court litigation.	Too many people are being attacked by the police, or even being killed by them.	The conflict has reached the level of violence.

Once the details of a conflict's development over time are known, its different stages can be identified. This allows the current degree of intensity of a conflict to be determined, perhaps showing that it is just before escalation so that urgent actions are needed, for instance. Figure 6 shows the typical stages of a conflict. The conflicts over *gecekondus* are currently at stage 2 (confrontation) and close to crisis.

Fig. 6: Stages of conflict



Source: Fisher et al. 2000 (modified)

The stages of conflict reflect the changes in activity, intensity, tension and violence of conflicts over time, from the first moments of tension to their resolution; resolution can be anything from a win-win solution to the total destruction of the enemy, which often results in self-destruction as well. Although each conflict has its own dynamic, every conflict goes through at least three phases: pre-conflict, in-conflict or crisis, and post-conflict. In conflict management, these three phases are looked at in even more detail. Fisher et al. (2000) in fact identify five phases:

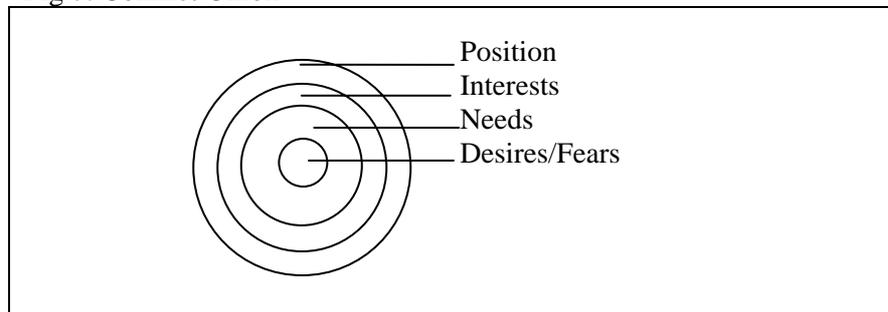
- **Pre-conflict:** A conflict generally starts with an incompatibility between the goals of two or more parties, which has the potential to lead to open conflict. At this stage, the conflict is hidden from general view, although one or more of the parties is probably aware of the potential for confrontation. There may be tension between the parties who often try to avoid each other at this point.

- **Confrontation:** The second phase of a conflict is more open and marked by occasional fighting or other low levels of violence. Each side is looking for resources and supporters. Polarisation between the parties increases.
- **Crisis:** At this level the conflict is at its peak. When the tension and/or violence are most intense a conflict can easily get out of control. There is now rarely any communication between the parties, who are fighting with and publicly accusing each other. In worst case, the different sides are at war.
- **Outcome:** In one way or another, the crisis will end. One party may defeat the other or give in, both parties may agree to negotiate, or a third party may impose a settlement. In any case, tension and violence decrease but the conflict is not yet settled.
- **Post-conflict:** At this stage, relations have become more normal again. However, if the roots of the conflict have not been adequately addressed and if the incompatible goals still prevail, chances are good that the situation will turn again into a pre-conflict.

It is very important to identify the current stage of the conflict in order to be able to choose the appropriate manner of intervention or dispute resolution (see 4.2).

More information about the actors can be found by completing or “peeling” the conflict onion – identifying their positions, interests and needs, as well as their desires and fears (see figure 7)

Fig 7: Conflict Onion



Tab. 6: Actors and their positions, interests, needs, desires and fears – the case of multiple sales of land in Accra, Ghana (see box 3)

Conflict party	Position	Interest	Needs	Desires and fears
Real estate agent (who bought from former Anwahia chief)	It's my land.	To settle the conflict as soon as possible to be able to develop and resell the land.	Material need: to make money/do business.	Fear for existence (if money and land are lost). Desire for wealth.
Home-builder (who bought from current Anwahia chief)	It's my land.	To keep the land to start building his house.	Material need: shelter.	Fear for existence (if money and land are lost).
Anwahia chief (junior)	It's no longer my business.	To not be bothered.	Material need: money.	Desire for wealth and status.
Katamanso chief (who lent the land to the former Anwahia chief)	It's my land.	To get back his land for his people.	Material need: the land of his people. Emotional need: the land of his ancestors.	Fear of loss of the love and respect of his people.

Once the interests, needs, desires, and fears of the parties involved in the conflict have been identified, it becomes easier to find ways out of the conflict. Someone who wants money or status does not necessarily need this particular piece of land, or indeed any land at all. His desires and needs may be met in other ways. However, someone whose existence is in danger because he has nothing other than this piece of land definitely needs land, although not necessarily this exact piece, so long as the alternative is located in an acceptable location (e.g. at an acceptable distance from formal or informal job opportunities). But if emotional needs are involved and people are especially attached to a given piece of land because it has special meaning for them, this must be taken into account.

Now, one could ask why anyone who has clearly acted against the law should be negotiated with or compensated. Well, first because sometimes the law does not really leave people a choice. Second, even if the action as a whole is not legitimate, this illegitimately acting conflict party may be so powerful that the conflict can only be resolved by negotiations in which concessions are made to it, providing the other party or parties with something that is still better than nothing. Sanctions and punishment for those who have done wrong and acted without any legitimacy only work in countries with a functioning judiciary that is completely free from any corruption or undue influence of the powerful.

Another matrix can be prepared to list and structure the additional information on the conflict, and to verify which details are still missing. Categories here are the causes of the conflict, the conflict issue, its manifestation, possible additional risks or dangers, potential, and possible solutions (see table 7).

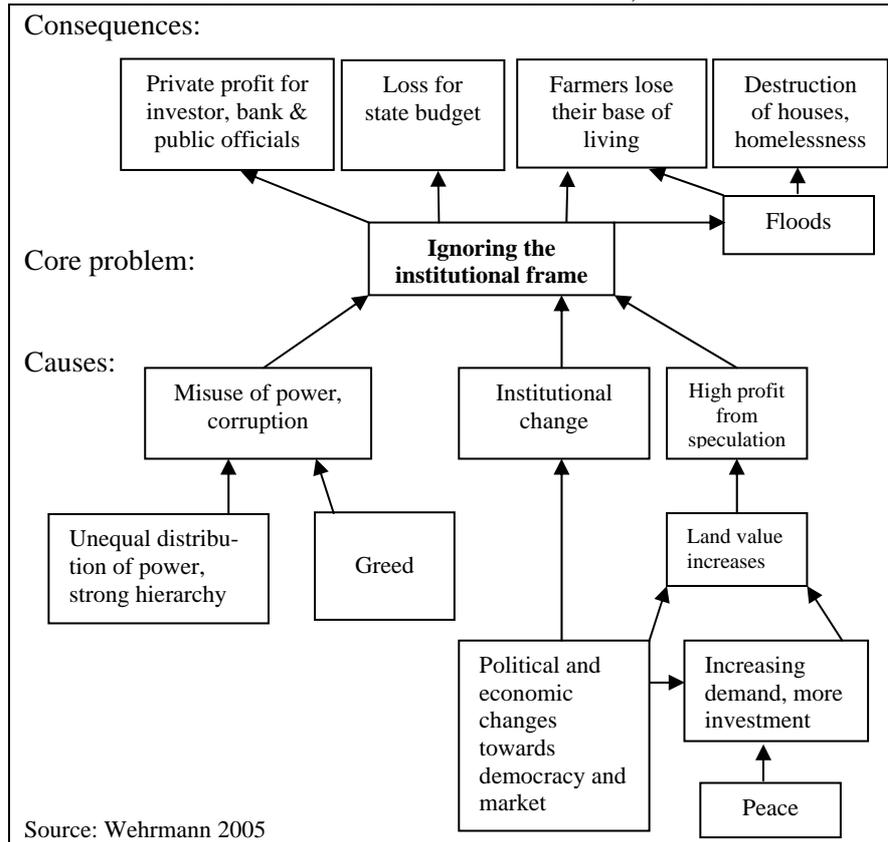
Tab. 7: Conflict matrix – the case of an illegal sale of state land

Type of conflict:	Illegal sale of state land by public official
Conflict issue:	Misuse of position
Manifestation of conflict:	Conflict escalated into violence when new private owner stopped local population from using the land (forest which was used for hunting, gathering, firewood collection, bee keeping etc.) – villagers promised revenge.
Stakeholders:	Public official, new owner, local population, judge, environmental NGO
Causes:	Corruption, lack of demarcation of state land, a lack of recognition and registration of common property by the state (who considers it state property)
Potential:	To introduce/improve good governance
Risks:	Upheaval and violent attacks by the villagers – brutal responses from the investor.
Possible solutions:	Sanctions for corrupt official and retrieval of state land (difficult to achieve) User contract between local population and private investor (could become a win-win solution providing long-term security for the villagers and reducing risks of sabotage for the investor)

3.3 Visualising land conflicts

Visualising a land conflict is especially helpful if the conflict is analysed together with one or even several of the conflict parties. Visualisation facilitates the discussion about the conflict, its causes and possible ways of resolving it. The two most rewarding issues to be visualised in this context are the conflict causes and consequences – using a conflict tree – and the relations between the actors – through creating a conflict map.

Fig. 8: Conflict tree showing core problem, causes and consequences – the case of Diamond Island in Phnom Penh, Cambodia



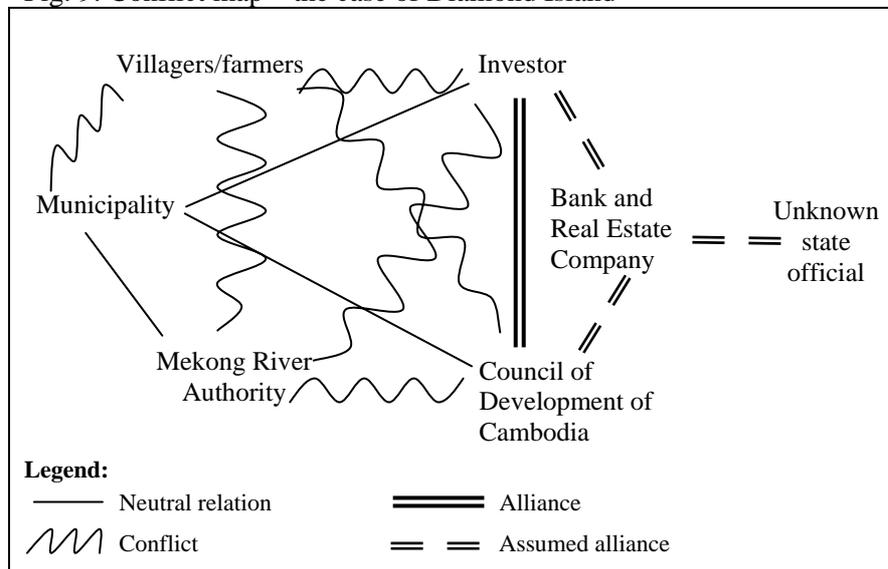
The small island in Basack River along which the Cambodian capital Phnom Penh spreads out has not received a lot of attention during most of its existence. Recently, though, it was renamed Diamond Island (previously Leprosy Island), showing not only its sudden value but also reflecting the many facets of the conflict that surround it. The island is state property that had been given to a group of farmers to collectively cultivate it in 1979 by the chief of one of the districts facing it from one side of the river. The farmers appointed a village chief and have lived and worked there ever since. Lately, several additional actors have appeared on the scene however. An investor wants to develop the island and sell luxury houses, making a good profit. One of the local banks that is also known as real estate company wants to do the same. Rumours suggest that the bank has already “bought” a lease contract for 99 years. The Mekong River Authority, on the other hand, insists that the island has to be removed as it is creating floods upstream that can become dangerous for many people living along the river. The removal of at least part of the island would comply with the need of the Municipality of Phnom Penh to construct a dam along the river, for which the sand of the island could be used. They therefore favour the partial removal of the island, leaving the remaining part to the investor. The Council of Development of Cambodia is prepared to agree to the investor’s plans as soon as the flooding problem is solved. According to the 2001 Land Law, the land belongs to the farmers as they had been living on the land for (much!) longer than 5 years prior to 2001, which is the minimum time someone has to have occupied a piece of land to become the owner of it now that private property has been reintroduced. The conflict tree (figure 8) illustrates the key causes of the conflict: peace and the reintroduction of democracy and a market economy have contributed to an increase in land values. A major political or economic transition always creates institutional change and this means that there are – temporarily – loopholes in the institutional frame. Many issues have not yet been tackled and other rules are not yet known by the majority of people. In addition, while there is greed in any society, here it finds fertile ground to grow in the unequal distribution of power. The combination of openness for illicit practises, a weak institutional frame and the opportunity to make high profits from speculation results in a

large-scale disregard for rules and regulations. The core problem therefore is to be found in this wilful disregard for the institutional frame. Possible consequences of the conflict are economic, socio-economic and ecological ones – depending on how it is solved. [In the end, the local Bank and Real Estate Company developed the island.]

So, a conflict tree raises awareness of the deeper causes of the conflict as well as its current and possible additional consequences. It can therefore be used to support decision-making, by identifying the most urgent or most relevant causes to be addressed. The conflict tree does not provide additional information but it does help to reflect what additional causes might be at the root of the conflict.

In addition to a conflict tree, a conflict map can be used to illustrate the actors' relations to one another. This allows for the identification of alliances as well as of potential blockers of a solution. Figure 9 shows the interrelations of the actors involved in the conflict over Diamond Island.

Fig. 9: Conflict map – the case of Diamond Island



Source: Wehrmann 2005

3.4 Re-enacting land conflicts

Generally, we don't get all the information required to see the whole picture of the conflict just by talking and listening to the parties or by interviewing technical experts, local leaders and other stakeholders and informants. What we most often don't learn from them are the motivations and feelings of the conflict parties, their material and emotional needs or their fears and desires.

Role-play can contribute a lot toward gaining insight into these deeper roots of a land conflict. These are not typical role-plays, however, where the actors have to study their roles in advance and learn their lines by heart. It is more like improvisation. It's called socio-drama. A socio-drama focuses on a social problem or a social conflict. It therefore aims to work out interpersonal relations and the feelings and needs on which they are based. The roles are more like representative characters of a given society than private persons. The idea is that every society disposes of a particular set of roles out of which each person represents a certain combination. Someone playing "the president" or "the farmer" is playing a person characterised by well-known roles; roles which the actor also incorporates in his/her sub-consciousness and which will be addressed and sorted during the improvisation (Moreno 1989, Jüngst/Meder 1991).

What is needed for a socio-drama? The basic requirements are a stage (e.g. a room or free space), actors, spectators and a director who directs the play, questions scenes, intervenes in the play, adds new roles and analyses what is happening. The spectators can assist him and the actors. It is very useful if an additional person can document the different stages or scenes by illustrating them on a board. This visualisation allows for a joint analysis of the play after the performance, to ensure that everybody realises what was happening and to check whether all participants (actors, spectators, director, documenting person) experienced the situation in the same way. In case of disagreement, individual scenes can be played again with other actors. Experience, however, shows that there is high consistency in how people experience the play.

How does a socio-drama work? First, the director explains the initial situation and the roles involved in the conflict. Then actors are chosen to play the characters who participated in the initial situation. These have to choose a place and position on the stage that corresponds or illustrates the situation at the outset. Their physical positions, their gestures and their viewing direction already characterise – often subconsciously – their inner positions. In their roles, the actors talk and react to each other. They can move and act freely. The most important thing is to react spontaneously and by intuition, without reflecting on the consequences, as this shows best the inner position of the characters. The director can stop them at any time and ask them about their feelings. The more spontaneously the actors answer and speak about their feelings, the more authentic their words normally are (Aissen-Crewett 1999).

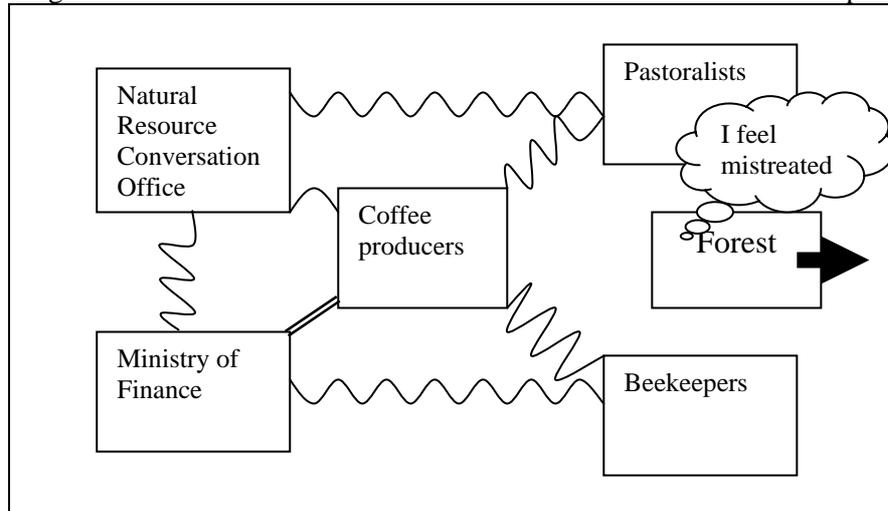
The reactions revealed during the play and the fantasies that develop and are expressed should all be considered part of the collective knowledge of that society and its specific forms of relations and ways of interacting. Correspondingly, the socio-drama allows the participants to experience and to act out typical needs, fears, desires, frustrations and expectations. It can therefore contribute a lot of additional insight to land conflicts.

Socio-drama can equally be used to analyse a land conflict or – if practised together with the involved stakeholders (letting them act out the opponent's part, or letting them watch the play acted out by others who are not involved in the real conflict) – to solve the conflict by increasing the awareness of the other party's feelings and needs and to rectify their perception of the other party's positions and interests.

The documentation of the play should be done in the form of sociograms or conflict maps capturing all key situations and turning points. Figure 10 illustrates how the perception of a land conflict changed during a socio-drama. The conflict in Northern Ethiopia is mainly about the use of a state forest. But is it really only about land? The long-established local population wants to continue using the forest for beekeeping and is angry with the new farmers who are cutting down

the native plants and flowers under the trees to replace them with coffee plants for their coffee production. The coffee producers, on the other hand, want the pastoralists to stay out of the forest but these have long-established rights to seasonal use, much as the beekeepers rely on their customary rights. The coffee producers, however, pay taxes to the Ministry of Finance (who is not even the institution responsible for collecting this kind of tax) and therefore also feel themselves to have legitimate usage rights to the land. The Finance Ministry and the coffee producers are under attack by the District Natural Resources Conservation Office, which wants to protect the forest in order to stabilize the watershed in that area and protect biodiversity, as well as to maintain its influence on the management of the forest.

Fig. 10: Scene from a socio-drama about a forest use conflict in Ethiopia



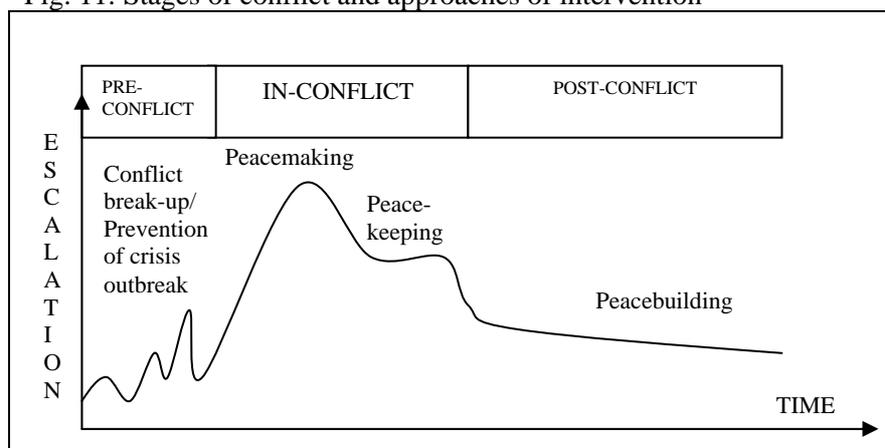
One extremely useful feature of the socio-drama is that things such as the land or forest or culture can also be acted out and express thoughts and feelings reflecting the way they are being treated. A turning point in the socio-drama on the Ethiopian state forest/land use conflict was the scene in which the forest after the king had left the stage, sadly explained that he no longer had an owner, that now he belonged to

everyone (state land resulting in a *de facto* open access situation). He expressed feeling afraid and insecure. He even asked the long-established population to take care of him – without receiving an answer. While the play continued, the forest suddenly claimed that he felt mistreated and left the scene. The interesting point is that the conflict continued. Beekeepers blamed the Ministry of Finance for not respecting their traditional rights and culture. Pastoralists accused the District Natural Resources Conservation Office of offending their dignity by not respecting their tradition(al rights). Beekeepers and coffee producers called each other old-fashioned respectively ignorant towards their culture. Thus, the conflict over land and forest use quickly became a conflict between traditional and modern culture that also touched upon aspects of respect and dignity. This conflict has much deeper roots than the current superficial one over forest use would suggest. The problem is that the cultural issues are part of the forest conflict and that this conflict will only be resolved if an answer to the socio-cultural conflict is found as well. Socio-dramas are immensely useful for revealing additional conflict issues.

4. DEALING WITH LAND CONFLICTS

How to deal with a land conflict depends first of all on the current stage of its process (see 3.2, figures 6 and 11). That is, depending on the stage of the conflict, the emphasis chosen to assist in its resolution may be more on crisis prevention, peacemaking, peacekeeping or peacebuilding, each of which requires different tools and different methods of conflict resolution (see 4.2).

Fig. 11: Stages of conflict and approaches of intervention



In addition to the current stage of the land conflict, its social dimension (see 2.5), general characteristics (see 3.1) and the position of the parties involved are all crucial factors in determining the most suitable form of conflict resolution, such as consensual or non-consensual approaches.

This chapter will discuss different types of conflict resolution, technical measures, as well as special peacebuilding and peacekeeping measures that help to re-establish trust.

4.1 Uncovering hidden land conflicts

People – especially those in a position to improve the situation – often ignore land conflicts until they cannot be overlooked any longer, as tension and violence rise to a level which threatens major parts of society. However, many land conflicts linger for years in a state of pre-conflict or early conflict characterized by tense instability and repeated confrontation which each time raise the average level of tension. Intervention should start here, avoiding the crisis that may come and finding a realistic solution for all parties. Of course, this is only possible so long as no party has totally lost face or been entirely destroyed by the other.

This, however, requires that the latent land conflict first has to be uncovered and intentionally named. While everybody may talk about it in private, the issue might not be publicly addressed or, if it is, it may be ignored by those responsible for it. In all cases, two approaches are necessary: first, proper documentation of as many land conflicts (cases) as possible and second, widespread dissemination of information on them. NGOs as well as land administration can play a major role in this process.

Documentation can be compiled in different ways: National Human Rights Commissions often have detailed accounts of violent land conflicts such as evictions. NGOs sometimes gather information and publish lists of all land conflicts (cases) within a country or a given area, identifying the conflict issue, its parties and the attempts and failures to solve it. Land administrations can create GIS-related databases, not only describing the type of conflict but also indicating the location and size of the property/properties involved.

Documenting land conflicts will only have an effect if the findings are then spread widely through society. In the case of state capture, or evictions and other unjustified land conflicts initiated by the state or its public officials, those responsible need to be identified in the documentation.

In 2003, the Kenyan President Kibaki appointed 20 prominent citizens, lawyers and civil servants drawn from ministries particularly concerned with land to be members of the Ndungu Commission, which was assigned to prepare a report on illegal and irregular allocation of public land. In the “Ndungu Report”, the Commission categorised its findings according to three groups of public land: i) urban, state and ministerial land, ii) settlement schemes and trust land, and iii) forestland, national parks, game reserves, wetlands, riparian reserves and protected areas. The report is not shy about stating what everybody already knew:

“Land was no longer allocated for development purposes but as political reward and for speculation purposes... Land grabbing became part and parcel of official grand corruption through which land meant for public purpose has been acquired by individuals and corporations... Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources... The most pronounced land grabbers in these areas were the councillors themselves... The corruption within the central government has been replicated at the local level through the activities and omissions of county and municipal councils” (Republic of Kenya 2004: 8; 147).

Although the report has been criticised because it does not name the public officials who have been involved in the illegal allocation of state land, and its recommendations lack implementation, the report itself can be considered a milestone in the fight against state capture, because:

- The report officially recognises the existence of extensive land grabbing by public officials;
- It describes the vast spectrum of irregular allocations of public land;
- It identifies the beneficiaries as well as the location and size of the land they received;
- It makes a series of sensible recommendations to be considered and implemented, including the introduction of an inventory of public land, the computerisation of land records, the need for a

comprehensive land policy and the establishment of a Land Titles Tribunal charged with reviewing every case of suspected illegally or irregularly allocated land.

It would probably be overly optimistic or even naïve to assume that all or major parts of these state lands could be regained by the state. But the Ndungu Report achieved one important thing: Today's public officials are much more reluctant to do what their predecessors did. Moral and ethical conduct seems to have improved significantly.

CHECKLIST: What should be included in a national report on the irregular allocation of state land?

1. A critical overview on the legal frame of state land management
2. An overview of all different types of irregular allocation of state land (eventually grouped according to the type of state land)
3. Identification of the extent of irregularly allocated state land over the past 10-20 years (in both hectares and as a percentage)
4. Identification/documentation of the location of those lands
5. A list of all beneficiaries and public officials involved, preferably by name and otherwise by institution, to give at least an overview of the offices/authorities involved
6. An estimation of the value of the irregularly allocated lands and calculation of the total loss (monetary amount) of state property.
7. Recommendations for appropriate measures for the restoration of illegally allocated lands to their proper purpose, as well as for prevention of future illegal allocations and for appropriate criminal prosecutions

The launching of this report should be accompanied by additional supporting measures to establish control of and pressure on the land administration and anti-corruption activities within the land administration and land-related ministries. These might include:

- Media campaigns,
- Introduction and/or application of a code of conduct,
- Introduction and/or application of intra-institutional sanctions for corruption,

- Publicly displaying posters and signs claiming “corruption free zones” and providing reminders of ethics, responsibilities and sanctions,
- Distribution of leaflets to the entire staff warning about corruption.

Not all governments are this open to addressing the issue of their own illegal allocations of state land. Most governments still ignore or even deny such accusations. In this case, there might be few alternatives to a public denunciation by civil society.

Box 13: Sold! Public campaign against illegal allocation of state land in Cambodia



Once land conflicts are identified and brought to the level of discussion, their settlement can be started. This can involve classical or alternative ways of conflict resolution, special land tribunals, land management measures, special local contracts, land conflict resolution by the victims and land governance.

4.2 Choosing a suitable form of conflict resolution

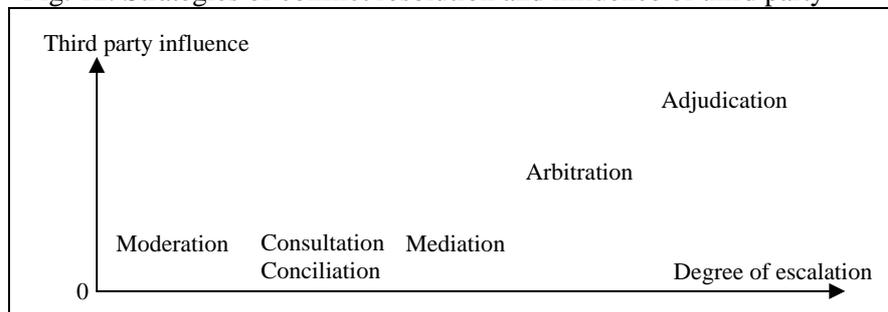
Depending on the degree of escalation present, eight strategies of conflict resolution are recommended (Glasl 1999, modified):

1. **Facilitation:** The facilitator helps the parties come together, the parties still being able to solve the problem by themselves. Facilitation can be applied in a very early stage of pre-conflict to defuse the conflict in time and avoid escalation.
2. **Moderation:** The moderator helps the parties come together to clarify and settle minor differences, the parties still being able to solve the problem by themselves. Moderation can be applied in a pre-conflict situation to defuse the conflict in time and avoid escalation.
3. **Consultation:** The “tutor” accompanies the process, working on the deeply internalised perceptions, attitudes, intentions and behaviours of the parties in order to calm them. Consultation is yet another approach useful during the stage of pre-conflict to stop the conflict progressing toward becoming a full-blown crisis. It is more appropriate than simple moderation in a case where a latent conflict has manifested itself for a longer time and has already created prejudices and hostility.
4. **Socio-therapeutic consultation:** This special form of consultation focuses explicitly on destructive, dysfunctional or neurotic behaviour due to psychological damages caused by former negative experiences in life. Socio-therapeutic consultation is extremely helpful if the parties involved have already lost face during the processes of peacemaking, peacekeeping and peacebuilding, as it helps in the understanding of one own behaviour as well as that of one’s opponent, and therefore creates understanding and a willingness to forgive one another.
5. **Conciliation:** This is a mixture of consultation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Conciliation can be applied in pre-conflict and

early conflict situations as long as the parties are able to talk to each other.

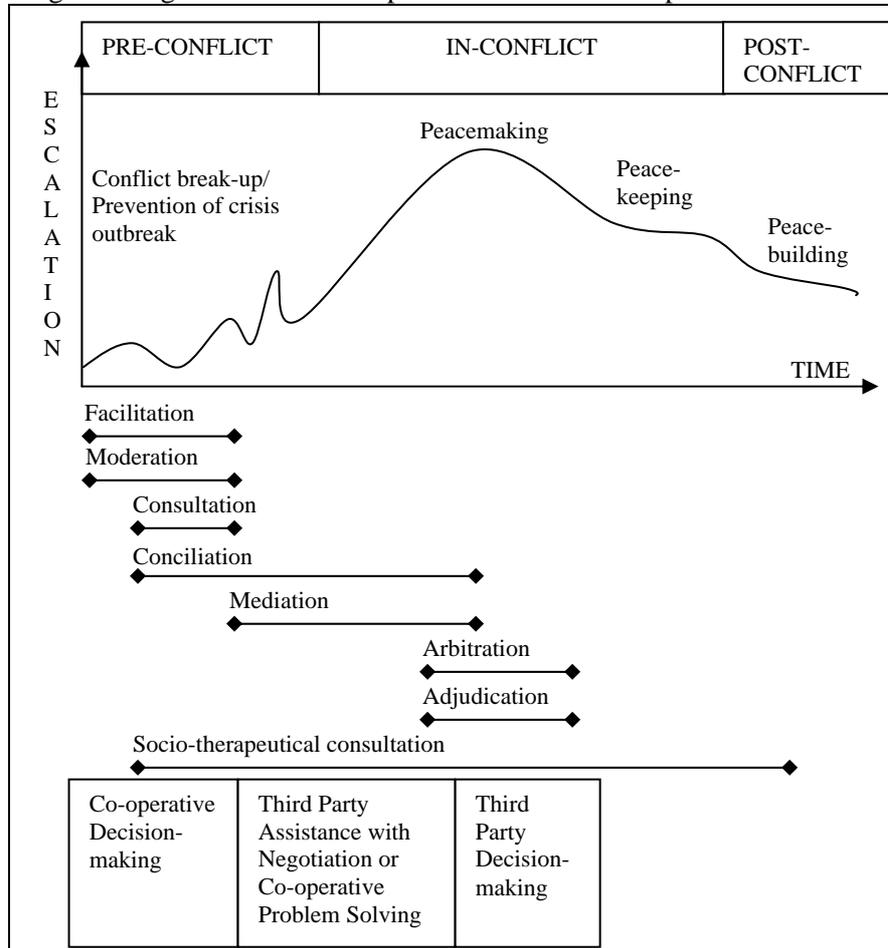
6. **Mediation:** Mediation, too, requires that the parties are willing to face each other and to find a compromise. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen and finally moderating a discussion aimed at finding a solution with which both parties can live. Preferably, the moderator should not propose solutions but may lead the way towards them. At the end, a written contract is signed by all parties and the mediator seals the agreement. Mediation can be done in any situation as long as the parties are willing to find a compromise.
7. **Arbitration:** Arbitration follows strict rules too. Unlike the moderator, however, the arbitrator is expected to make direct suggestions on how to settle the conflict. He is more influential and powerful than moderators, tutors or mediators. He has decision-making authority. Therefore, arbitration can be used even at the peak of a conflict. What makes it different from adjudication is that the arbitrators are accepted and trusted by both parties. The arbitrator may be appointed by all conflicting parties or be a respected person traditionally responsible for dispute settlement.
8. **Decision by a powerful authority (adjudication)** should always remain the last resort.

Fig. 12: Strategies of conflict resolution and influence of third party



In the case of moderation, consultation, conciliation, negotiation and mediation the third party helping to resolve the land conflict only influences the process, not the outcome. These are all consensual approaches where the outcome is exclusively defined by the parties. Only in the non-consensual approaches of arbitration and adjudication is the outcome defined by the third party (figure 12).

Fig. 13: Stages of conflict and possible methods of dispute resolution



While land conflicts taking place at the micro and meso social level can normally be addressed by any of these means of conflict resolution (although this may depend on the stage of conflict, the degree of escalation and the (a)symmetry of the conflict), land conflicts occurring at the macro social level often cannot as they require additional institutional changes before the conflict can be settled.

4.2.1 Consensual approaches

Consensual approaches are those conflict resolution strategies which aim to find a compromise that is acceptable to all parties involved and which can best re-establish peace, respect and even friendship among the parties. Consensual approaches therefore try to find a consensus among the conflict parties through intensive discussions and negotiations, during which all sides learn to understand the other party's/parties' interests, motivations, (hurt) feelings and eventually even their fears and desires. Such dialogues also help to identify earlier conflicts, reasons for mistrust or revenge, as well as additional conflict issues which might even be the primary conflict, or in any event a more important one than the conflict over land. In a way, all consensual approaches are negotiations that aim to re-establish a positively functioning relationship and to agree on terms for future interaction. Generally – but not necessarily – approaches for facilitating the building of consensus require a professional third party.

Consensual approaches are: moderation, consultation, socio-therapeutic consultation, conciliation and mediation. They are generally faster and cheaper than non-consensual approaches and therefore often a preferable alternative to using overloaded courts.

In a very early stage of pre-conflict, when coalitions have not yet formed, it can be helpful to support the disadvantaged parties in organising themselves. Examples include widely scattered small groups of informal settlers facing violent eviction or small groups/villages of ethnic minorities who are forced to leave mountainous regions where

they have been living for generations and to resettle in valleys where there is hardly enough agricultural land for the rapidly growing population already living there. In these early but often chronic situations of pre-conflict a third party can help the disadvantaged individuals affected – who share the same destiny and therefore the same goal in this conflict situation – to organise into a unified group. This can contribute to the empowerment of that group prior to any negotiations with the other party or parties involved.

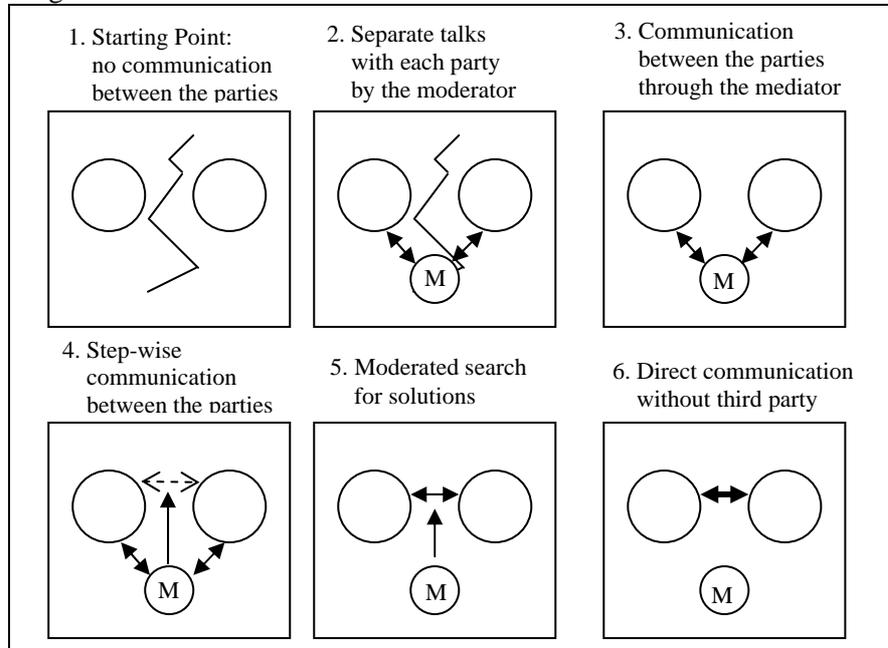
In case of a symmetric conflict, an **unaccompanied negotiation** can be tried. In this case the parties together discuss the issue without the presence of a third party. Many boundary conflicts can be solved in this way. It is often sufficient in such a conflict if one party addresses the other in a friendly way, inviting it to talk and listen with the objective of finding a mutually acceptable solution.

If none of the parties is willing or able to take the first step – quite often because of a lack of courage due to all the insults that have already been exchanged – it can be helpful if a third party simply tries to **facilitate** a meeting without being present at it. In that case, the third party – who can be an elder, a village chief, a religious or neighbourhood leader, a village teacher or any other respected person in the area – individually addresses the conflicting parties and proposes a meeting (time and place). If the parties prefer the third party to be present during their meeting, s/he can **moderate** the discussion or negotiation and thereby assure both parties that they will have the chance to explain their points of view. Moderation can easily become a mediation which, however, demands a little bit more experience by the moderator – or in that case mediator.

Non-violent, rather unemotional micro and meso social conflicts such as boundary conflicts, illegal subdivisions, and the illegal use of land that violates building regulations might be solved this way. If strong emotions (as is generally the case with inheritance conflicts) or violence are involved, an active third party normally becomes necessary, as here the parties have to be conciliated. In such a situation the first step would

be **consultation** with both parties, trying to identify the wounded feelings and discussing the conflict with each party separately, with the aim of creating some understanding of the other side's position. In the case of **conciliation**, the third party becomes a kind of intermediary between the conflicting parties, who attempts to establish the basis for a joint meeting of the parties.

Fig. 14: The role of a mediator



This should then be followed by **mediation**, a sophisticated procedure of guiding the dialogue and negotiations between the parties, assuring that both sides listen to each other, helping the parties to structure the discussion and assuring through active inquiry that all details – especially the interests, motivations and feelings of both sides – are presented without offending the other party. In a way, mediation is a professional way of jointly peeling the conflict onion. While organising the process and improving the communication, the third party is not

supposed to take a decision. The decision-making is entirely the responsibility of the conflicting parties, in order to increase ownership of the outcome. The mediator might be allowed to suggest solutions, but this has to be agreed upon before the mediation starts.

Mediation can be carried out by professional mediators or by land experts who have received a special training in mediation, such as land officers in special departments dealing with land conflicts. The exact nature of the conflict determines whether a higher degree of professionalism in moderation or more detailed insight into land issues is needed. In the USA, mediation is quite commonly used to settle land use conflicts (see box 14).

Box 14: Mediation between the homeless and the business community in the USA

In the late 1980s and early 1990s, homelessness became a major problem in West Chester, Pennsylvania. The charitable community therefore set up the non-profit organisation "Safe Harbor" offering temporary shelter, meals and counselling. They were however heavily handicapped by the lack of permanent facility. In spring 1994, Safe Harbor located an abandoned auto-repair garage in a slightly run-down part of the town. The site was properly zoned for commercial purposes necessary for operation of a homeless shelter in downtown West Chester, where the county's homeless problem was most acute. However, it was near the newly prosperous shopping and restaurant district. Therefore, the business community, the owner of a rental apartment house across the street and even the mayor objected to the plans. What followed were some fruitless attempts of Safe Harbor to garner support (holding breakfast meetings with representatives of the business community). Although from the legal point of view Safe Harbor was allowed to pursue their plan, it was obvious that the antagonistic climate would not stop.

During the summer of 1994, tercentenary celebrations of Pennsylvania's early colonial history were fresh in people's minds. Seizing the opportunity, the County Commissioner referred to the ideals of tolerance, mutual support and peace under which Pennsylvania was founded and proposed to apply similar values to the Safe Harbor dispute. Mediation was started. The objective was not to clear the way for the shelter (as its establishment was a foregone conclusion), but to overcome the general objection to its establishment – much of it based on stereotypes – and perhaps generate support among members of the opposition.

Drawing upon interviews with elected officials, leaders of the business community and members of the Safe Harbor coalition, the mediator devised a mediation process that would consist of four sessions, held from September to December of 1994. The main sessions were supposed to be interspersed with private, one-on-one meetings with key representatives of the two parties, in which more detailed concerns could be discussed and addressed. The Borough of West Chester (responsible for local land use planning as well as security issues) participated in the mediation through a representative of the police department.

1st session:

To cultivate a climate of honesty and openness, the moderators devoted the first session to an expression of concerns, fears and motivations regarding the shelter. Each party had a chance to speak freely without interruption. Everyone began to understand what each other's issues and interests really were. The downtown-business participants expressed concerns regarding increased loitering, begging and crime – all bad for business.

2nd session:

To address these concerns, the next mediated session featured representatives of homeless shelters and their neighbouring business communities from Harrisburg and Philadelphia. Having these representatives of other shelters visit and share their experiences was a milestone; after they explained the way their successful shelters ran; most fears of the business community had been taken away. The active participation of the police officer with his insightful philosophy of both law enforcement and local governance also contributed to a reduction of fears and concerns.

3rd session:

As the leader of the business community, however, remained unsatisfied, the third session started with an individual talk with him where he could talk confidentially and off the record with the mediators who learned that he simply was against the shelter because he believed that it would only offer shelter and food and no other services urgently needed for those people to have a chance of reintegration. The fear was based on the experience of a close friend who became homeless as a result of mental illness triggered by service in the Vietnam War and who now lived in such an inhuman shelter. After he had talked with the moderators he agreed to share his thoughts and feelings with the rest of the group. His comments prompted a discussion of the Safe Harbor counselling and intervention model, including referral to other services and treatment.

4th session:

The final session focussed on the detailed programs and strategies, a work plan and budget. The most important contribution was the “Statement of Commitment to the Community” drafted by Safe Harbor and addressing downtown safety and liveability concerns repeatedly raised by the business community during the mediation. From its preamble: “Safe Harbor strives to provide an adequately staffed homeless shelter which will be a source of pride to the business and residential communities.”

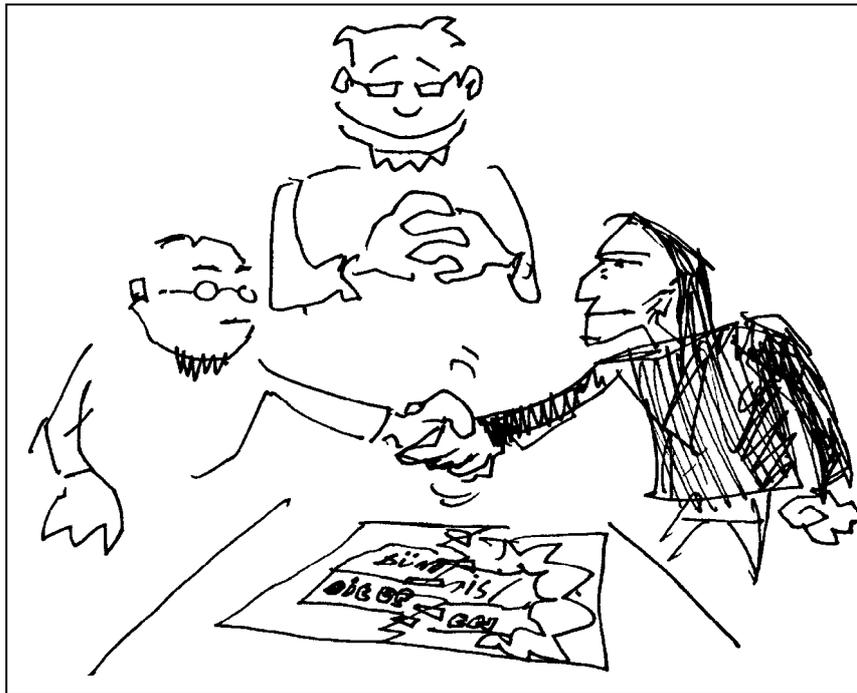
At the initiation of the mediation process, the settlement profited from favourable frame conditions. It was Christmas season. So the parties agreed to a settlement on December 21, 1994 in the seasonal spirit of goodwill and charity.

The costs of this mediation accounted for less than \$ 2,000 and have been paid for by the county. When the case study was prepared in 1999, Safe Harbor Shelter included 24-hour accessibility for people in distress, shelter, feeding, counselling and access to other rehabilitative services necessary to enable clients to re-enter independent and productive life.

Although this mediation looks very one-sided, it offers a lot of insights on the mechanism of mediation and the many psychological aspects involved: Participants are allowed to yell and scream, they are invited to admit their fears and their voices are heard and taken seriously. It’s the mediator’s job to offer a safe place to speak frankly, ensure a climate of uncompromised confidentiality, and operate with complete neutrality. The best start is to ascertain what each stakeholder hopes to gain through a settlement. Thus, the mediated process itself becomes an exercise by which the parties begin to appreciate the benefits of an agreement. Looked at from this perspective, this mediation was much less one-sided. The business community finally accepts the project. In exchange, they were relieved from their fears and received the assurance that none of their concerns would become true. Safe Harbor definitely has more duties to perform than without the mediation, but they can now act in a climate of support instead of hostility. They even gained additional ideas for their project. The case study also underlines that the rules for mediation are flexible. They can include other elements such as the invitation of a peer group if this offers a chance to contribute to the settlement of the land conflict.

Source: Lampe/Kaplan 1999 [The Paper offers 8 detailed case studies on resolving land use conflicts through mediation in the USA and is available at: www.lincolnst.edu]

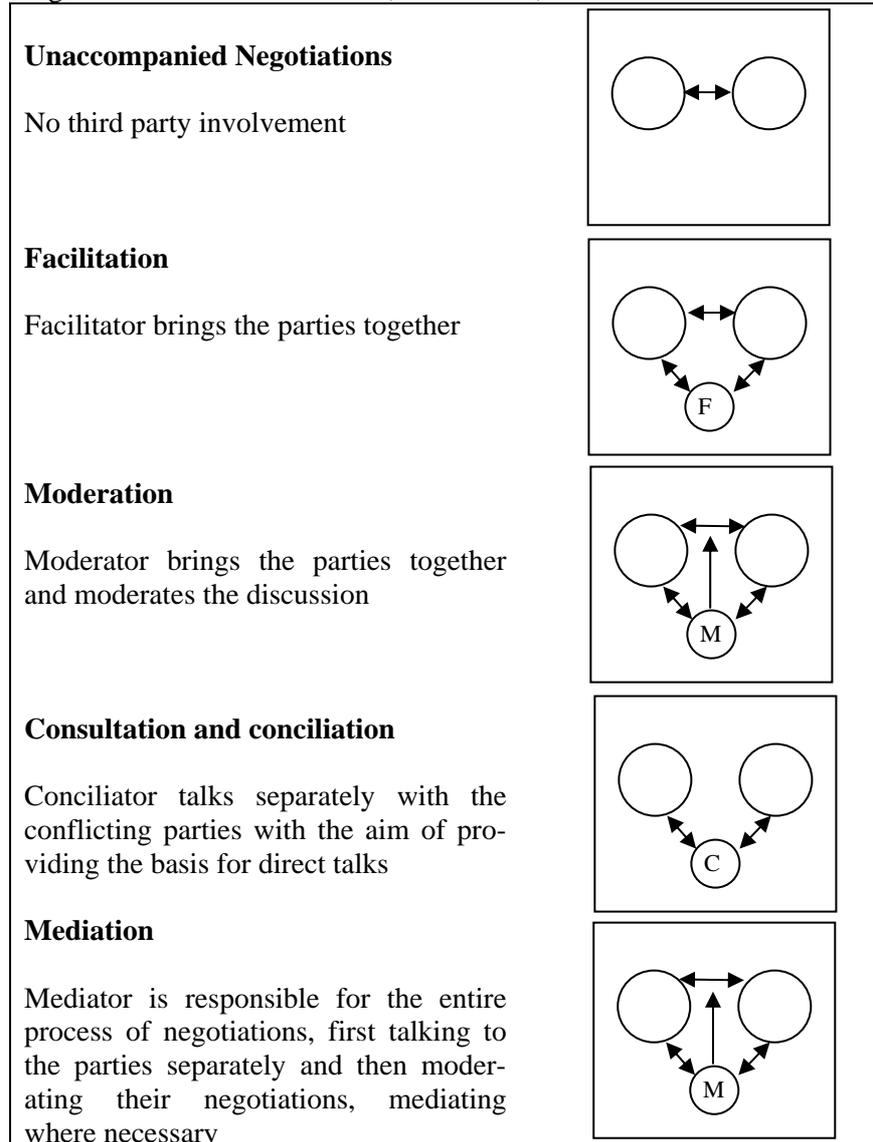
Fig. 15: Successful mediation



Source: Dokumentation und Transfer 2007 (www.informdoku.de)

In practise, consensual approaches are often mixed ones and include elements of the different approaches. In a number of countries, state officials at the land administration are involved in the informal settlement of disputes over land using anything from facilitation to mediation. In some cases there are even specialized committees to deal with certain kinds of land conflicts. In Ghana for instance, the Land Title Adjudication Committee and the Stool Lands Boundary Settlement Committee offer to deal with land conflicts before they get to court or after a court decision has failed to end a conflict. In Cambodia, Cadastral Commissions at the municipal, provincial and national level are charged with the resolution of land conflicts, although they do not seem to be any fairer than the courts.

Fig. 16: The role of facilitators, moderators, conciliators and mediators



Source: based on FAO 2006

Consensual approaches are also known as **Alternative Dispute Resolution** (ADR) as they are an alternative both to litigation in the courts as well as to customary conflict resolution. Even arbitration is considered to be an alternative dispute resolution.

Box 15: Alternative dispute resolution for solving land conflicts in Ghana

In Ghana, not less than eight options of alternative dispute resolution have been identified for dealing with land conflicts:

- Informal arbitration by “respected persons”;
- State-sponsored alternative dispute resolution to encourage out-of-court settlements;
- Court-annexed alternative dispute resolution by judges, explicitly for land related cases;
- Special committees at the land administration to deal with specific types of land conflicts (Land Title Adjudication Committee/Stool Lands Boundary Settlement Committee);
- Informal land conflict settlement by land management experts who are usually members of the Ghana Institution of Surveyors;
- Informal land conflict settlement by state officials such as elected officials;
- Religious (Islamic) courts where land disputes are resolved by religious leaders based on religiously sanctioned codes;
- Settlement by professional mediators and arbitrators at private mediation centres based on international standards.

Source: Odametey 2007

4.2.2 Non-consensual approaches

Non-consensual approaches are characterized by third party decision-making. There is much less diversity in non-consensual approaches than there is in consensual approaches. One distinguishes between arbitration and adjudication.

Adjudication is a formal litigation process. The decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding

decision makes one party win and the other lose the case, which can only be appealed through a higher court. Adjudication will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Adjudication should therefore always be considered the method of last resort.

Adjudication is hindered in many countries by the case overload of the courts. It can easily take several years until a case is finally treated by the court, resulting in a high number of land conflicts pending there. In addition, it is not uncommon that judges are corrupt and allow the richer party win the case. Even if this is not the case, the more affluent will always be able to hire the better lawyers.

CHECKLIST: What can be done to improve adjudication?

1. Promoting the application of the Bangalore principles of judicial conduct – a code of ethics for judges adopted by the Round Table of Chief Justices in 2002 at The Hague (www.ajs.org/ethics/pdfs/Bangalore_principles.pdf)
2. Widespread introduction of legal aid/assistance for the poor and disadvantaged
3. Establishment of a broad range of alternative dispute resolution bodies

An alternative to adjudication is **arbitration**, which is more flexible, much quicker and generally less expensive, especially in smaller cases in which no lawyers are involved. It also allows for much better conciliation, as the arbitrator can also act as a mediator, the only difference being that s/he has the last say in the matter. The arbitrator-as-mediator listens to the facts, perceptions and arguments presented by both parties, who can be represented by lawyers, but don't have to be. Arbitration is therefore a perfect combination of mediation and adjudication, offering a chance of re-establishing trust and respect among the parties while on the other hand providing a third party decision. In some situations or

cultures, this may be more appreciated than a solution decided upon by the parties alone. In the case of high asymmetry and the risk that the more influential party imposes its will on the other, arbitration will probably result in a fairer outcome – provided that the arbitrator really is neutral. Unfortunately, there is a lot of corruption in arbitration, as well. However, as there is more flexibility in the selection of an arbitrator than there is in case of a judge, the chances are higher of finding a qualified person who is suitably trained in legal matters, accepted by both parties and who will decide fairly. Whether or not the decision is binding depends on the legal frame, as well as on the agreements between the parties. Generally, an arbitrator's decision should not be open to appeal through the courts. In some countries where the neutrality of the arbitrators cannot be guaranteed, however, the court should be accessible as an option of last resort.

All micro-social land conflicts which cannot be solved by consensual approaches, as well as all meso-social land conflicts among individuals or groups that will have to deal with each other in the future and which also cannot be solved by mediation (such as boundary conflicts between tribes or villages, illegal sale or lease of communal land, or land use conflicts between farmers and pastoralists) should be settled by arbitration. Even highly asymmetric land conflicts such as group invasions of private land or evictions from state land can be resolved by arbitration.

Arbitration can be carried out by different institutions. Special land courts or land tribunals could apply the method of arbitration, for instance.

Adjudication should be reserved for violent and major criminal land conflicts such as violent evictions, destruction of another's property, land grabbing, or expropriation through unethical behaviour by banks (e.g. forcing loans with extremely high interest rates on people while undervaluing their property etc.) which require punishment, not least to serve as deterrence.

4.2.3 Customary land dispute resolution

In many parts of the world, indigenous peoples have a very special relation to their land. For them, land is more than an economic or productive asset. It represents home, binds together past, present and future and constitutes their spiritual base. Land being such a complex issue for them, disputes about it have to be settled in a more comprehensive manner. Customary conflict resolution is therefore especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction.

Customary conflict resolution is a form of arbitration with a strong conciliatory character. This makes it different from litigation as well as from alternative dispute resolution (ADR). In other words, it includes elements of both: There is both a binding third party decision at the end as in litigation and there is a strong focus on the re-establishment of harmony as in consensual approaches of conflict resolution. As opposed to modern arbitration, the arbitrator in these cases cannot be chosen but is defined by his position.

The arbitrators are the elders (generally a panel of exclusively old men), whose main objective in conflict resolution is to re-establish harmony, cohesiveness and unity within the community. A conflict is therefore not considered to be simply a matter between the individuals involved but rather an affair of the entire community. The conflict is resolved when the conflicting parties are once again reintegrated into the community. Much attention is therefore given to spiritual and psychological measures such as purification, pacification and reparations, all of which are considered to have healing effects facilitating the mental and spiritual rehabilitation of victims as well as perpetrators.

Apart from acknowledging the wider dimensions of land conflict settlement and focusing primarily on conciliation to avoid any loss of face, customary conflict resolution has a number of particular additional strengths. First of all, it is generally credited with high legitimacy by the community and therefore represents a good or even better alternative to

the state justice system – especially in cases of state inefficiencies or collapse. Second, it is process-oriented, which guarantees more sustainable results than pure product-oriented methods of conflict settlement. It is also a very inclusive and participatory approach, which makes it more sustainable, as well. Finally, the costs are very low, making customary conflict resolution easily accessible for everybody (Boege 2006; Owusu-Yeboah 2005).

There are also, however, a number of weaknesses to this approach. One of these is that, due to its comprehensiveness and process-orientation, customary conflict resolution can take quite some time. Another problem is the limited sphere of applicability, as customary conflict resolution is generally confined to relatively small communities. It is therefore limited to the resolution of micro-level land conflicts. The main problem these days, however, seems to be its non-compliance with international standards of equity, basic ideas of democracy and universal human rights. In customary systems, all are not equal, with women, young people and strangers being generally disadvantaged (Odametey 2007).

Box 16: Customary land dispute resolution in Ghana

In Ghana about 80% of the land belongs to traditional areas and is held in trust for the people of each area by their tribal chiefs. Thus land in a particular traditional area can be allocated by the chiefs in consultation with the Traditional Council, or by the family heads with the approval of the chief and the Council.

Madam A was granted a piece of land by a man purporting to be the family head of the Bortey family of Zenu, a village in the Tema Traditional area. She was given a lease of 99 years for residential purposes and was made to pay a premium before the lease document was handed over to her for registration. She was shown the land, which was vacant at the time. She submitted the document for registration but the document got lost at the registration office and all efforts to trace it proved futile.

She later found out that Mr B was also claiming ownership to the same piece of land and had already started development. He had also been given a lease, but by another member of the same family who also claimed to be the family head. He had however yet to register the document. He had also paid a premium to his lessor and was not prepared to let go of the land since he had already invested in it. After several attempts to stop Mr. B from developing the land proved futile, Madam A made a complaint to the Tema Traditional Council, asking for an intervention to compel Mr. B to give the land back to her. The Council fixed a date for hearing and summoned both parties to appear before them with their lessors, witnesses and documents to prove their claims.

On the day of the hearing, the Council was represented by six elders and the paramount chief. The conflicting parties came with their lessors as well as some witnesses, including two officers from the registration office to testify that indeed the office had misplaced Madam A's lease document and were still looking for it. The hearing was open to the general public but apart from the above-mentioned persons and a few supporters of both parties no one else was there.

The complainant was asked to provide a drink for the pouring of a libation, which is believed to be a prayer for the success of the process. After this there was an introduction of the members of the Council and the conflicting parties. Both parties were then asked to deposit an amount of money to show their commitment to the process. The complainant was allowed to make her claims and call her witnesses, after which several questions were asked for clarification. The defendant was also given the same opportunity and when all the clarifications had been made, a recess was called to enable the panel discuss the issues and give their opinion.

On their return, the gathering was informed that upon much deliberation the Council would like to consult with the elders of the Bortey family and that the hearing would continue in three weeks' time. When the hearing resumed three weeks later, the chief conveyed the decision of the Council to the parties. The parties were informed that upon consultation with the elders of the Bortey family, it has been established that the family had yet to appoint a substantive family head following the demise of the previous one. Thus, neither of the lessors had any right to make grants on behalf of the family. The previous documents prepared for them were therefore null and void, although the family was prepared to replace the land for Madam A since Mr B had already started development on it. This would be done, however, only after the appointment of a substantive family head, who can prepare valid lease documents to be endorsed by the Traditional Council. They were to call at the Council's office in about six weeks to collect the documents. The parties accepted the decision and provided drinks for libation and money to thank the Council.

Source: observations by Cynthia Odametey

While customary conflict resolution is (still) quite popular in rural areas, the urban populations most often prefer alternative dispute resolution, one reason being that they do not want to be old-fashioned; another being that differentiated treatment according to status and position is thought to be unacceptable for modern people.

Therefore, it can be assumed that slight modifications of the customary conflict resolution - by simply recognising and integrating the principles of equity and inclusiveness as enshrined in most national constitutions - would greatly improve the acceptance of customary conflict resolution as a method.

4.2.4 Religiously based land conflict resolution

While many societies make reference to their religion or religious understanding when it comes to conflict resolution, this is done sometimes more – and sometimes less - consciously and directly. In many countries, religiously based morals and values have entered directly into customary or formal law. In other countries, religion has had an impact on the philosophy that has influenced formal lawmaking. In still other countries, religion is unconsciously referred to in land conflict resolution. In quite a number of countries, however, religious law is equal to state law. In most Muslim countries, for example, land conflict resolution can as often be based on the *Shari'a* as on the Civil Code or Civil Procedures Code – especially at the local level.

In the *Shari'a*, mediation towards reconciliation is invariably the recommended first-order mechanism to dispute resolution. *Solh* (the doctrine of conciliation) appears in seven verses of the Qur'an. When compromise is impossible, *wasta* (mediation) takes place, in which one or more persons intervene in a dispute, either on their own initiative or at the request of one of the parties (Sait/Lim 2006). As the *Shari'a* also gives high priority to local legitimacy and testimony (as opposed to pure rights-based approaches: see Box 4), it offers a favourable platform for the resolution of micro-level land conflicts and is often referred to in community-based land dispute resolution (World Bank 2005). This is additionally supported by Islamic legal tradition, which a) does not require any lawyers since the litigants themselves generally plead their own case, and b) seeks to address the needs of all parties within an Islamic framework, as opposed to the adversarial style of Anglo-American legal tradition (Sait/Lim 2006).

The advent of colonial influences saw the rise of the legal profession but it did not extinguish informal legal practises and local methods of conflict resolution (Irani and Funk 1998). Given that land disputes are considered a family and community matter and that court legal proceedings are viewed as uncivil and distasteful in many Muslim societies, there is frequent recourse to informal negotiated settlements. These are led or

assisted by neighbours and elders, local mosque councils or mosque leaders and the *wakil-e gozar* (the chairperson of the local council or neighbourhood representative, sometimes also referred to as the neighbourhood level “advocate”; Wiley 2005). To ignore these community-based procedures in most Muslim countries is to miss out on the chance for land dispute resolution through locally legitimated mechanisms deeply rooted in society.

Just as with customary conflict resolution, religiously based land conflict resolution – whatever its popularity and efficiency – should be tested for adherence to certain basic human rights standards, such as fairness, impartiality, honesty and inclusiveness.

Box 17: Local land conflict resolution by religious institutions in Kabul

Kabul has about 2.4 million informal settlers who often resort to informal community-based dispute resolution based on religious institutions. In informal areas, most disputes arise over matters such as one house invading the privacy of another, footpaths being ruined by waste disposal, and snow being cleared from one compound to another. In these instances, community-level mechanisms are the preferred means of dispute resolution because of time, cost, trust and enforceability.

At the community level, the mosque council is responsible for channelling disputes towards the most suitable forum for dispute resolution. Local mechanisms for resolution include i) neighbours and elders; (ii) the mosque councils, comprising representatives of each mosque in the neighbourhood; and (iii) the *wakil-e gozar*.

An important feature of these mechanisms is that actors are not always the same and none of those assisting in resolving the dispute are paid. No permanently standing council for dispute resolution exists, which makes them less vulnerable to bribes. Rulings tend to be satisfactory to the parties involved, making community-based procedures relying primarily on religious institutions an effective tool of dispute resolution.

Source: World Bank 2005

4.2.5 The cultural dimension of conflict resolution

Conflicts are dealt with differently in different cultures (defined here as either ethnic or social ones), and so are land conflicts. While certain societies, groups or individuals almost enjoy arguing – seeing it as a method for arriving at something new (thesis – antithesis – synthesis) – others prefer to ignore conflicts, hoping that one day they will vanish. It is very important to be familiar with the specific culture's common way of dealing with conflicts, in order to decide which method of dispute resolution best fits the case of an ongoing land conflict, and how this dispute should be addressed – even if this means never talking directly about the conflict issue or actively avoiding one party's loss of face.

Depending on the cultural context, three main models of dealing with conflicts are popular (Zaninelli 2001):

1. **Conflict exclusion** resulting in conformity and adaptation through deterrence and social control. Conflicts are generally suppressed.
2. **Conflict balancing** aiming at conciliation and harmony. Conflicts are easily belittled.
3. **Conflict settlement** allowing for openly and constructively dealing with the conflict, where differences in interests are accepted in order to find a compromise. A common consequence of this is that people tend to argue about everything.

Conflict exclusion can become very expensive and is rarely a long-term solution (Leung/Tjosvold 1998). However, if this is the rule in a given country, ways have to be found to sensitively solve the problem without mentioning it. If the *de facto* expropriation of farmers cannot be addressed as such, it might be acceptable to discuss measures to improve food security – which incidentally improve tenure security.

Whether a conflict can be directly addressed and settled, or if people would rather try to find balance instead, is very much linked to their common way of communication. Conflict settlement (or in other words having conflicts out) is only possible in an environment where contro-

versial opinions can be directly discussed and where conflicts can be sorted out verbally and analytically. Such a way of addressing conflicts is much more accepted in a context which is object-focused and individualistic than in societies that are based on collectivism. In the latter case, verbal confrontation is generally neutralised by ignoring it and contradictions minimized by referring to common interests and objectives and appealing to mutual friendship, all of which often results in negating the conflict. In such an environment, conflicts may only be referred to indirectly, and preferably not face-to-face but through an intermediary (Pedersen/Jandt 1996; Zaninelli 2001).

Customary conflict resolution fits in very well with the requirements of cultures based on balancing conflicts. In a traditional context, dispute resolution requires the intervention of a respected intermediary with decision-making authority. Therefore, consensual approaches won't work, and what is needed is arbitration. This, however, can include aspects of conciliation or mediation – giving priority to the re-establishment of harmony and good relations.

No matter what the cultural context, a conflict is best solved if the dispute resolution ends with a locally practised ritual: shaking hands, having a drink, making a sacrifice, etc. People need rites to put an end to a dispute and to be able to enter into a new era of mutual trust.

4.3 Land dispute resolution bodies

While a wide range of conflict resolution mechanism options (including consensual, non-consensual and customary approaches) can be considered positive, a strict hierarchy of institutions is nonetheless required. This will eliminate the tendency for “institutional shopping” (whereby those affected by conflict choose whatever institution they think will be most favourable to their case) pursuing parallel channels, or trying again with other institutions after a case is lost – as long as there is a chance to win it. Experience shows that such parallelism leads to wastefully high spending on legal battles and can even undermine the credibility of the entire judicial system (Deininger 2003).

In most countries, a number of formal and informal channels exist through which the litigants can pursue their interests, such as:

- Judiciary
- Special Land Courts
- Administration
- Political institutions
- Party system
- Customary institutions
- Religious institutions
- Civil society
- Private sector mediators

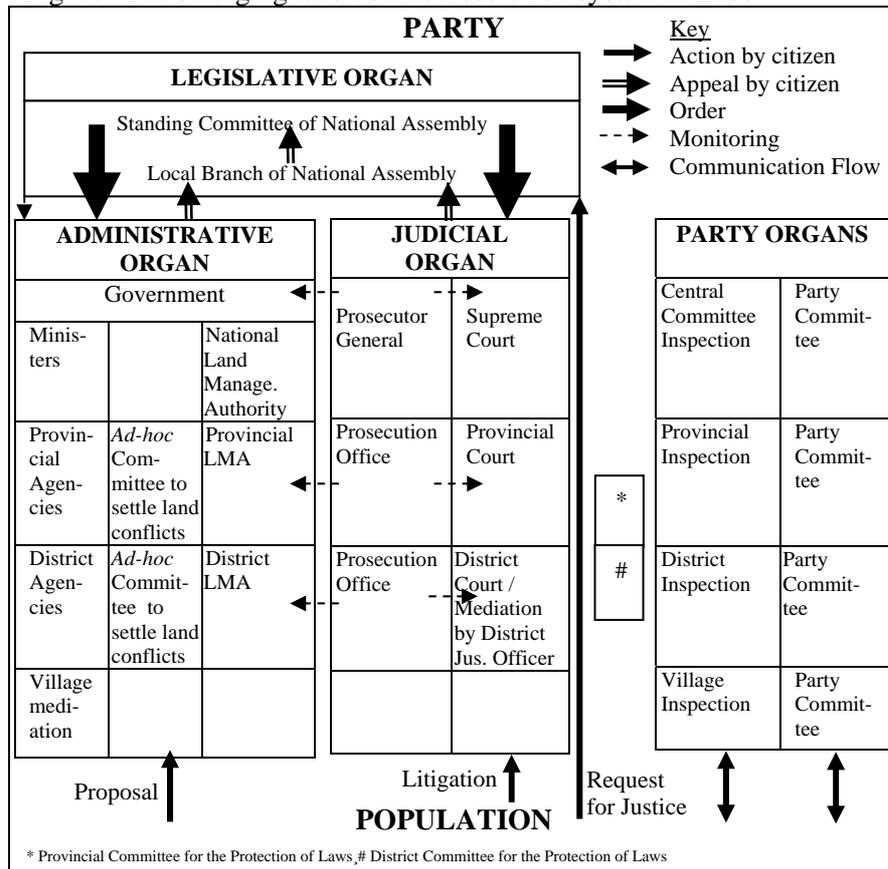
Many of these channels can be addressed or accessed at different levels; others are restricted to only one or two levels. Some channels are more formal and regulated, while others are rather informal and unregulated. Whether a land conflict resolution body is considered formal or informal – especially at the local level – varies greatly between countries. Table 8 gives an overview of potential land conflict resolution bodies at different levels and through different channels.

Tab. 8: Potential land conflict resolution bodies (examples)

Channel	Village / Community / Neighbourhood Level	District / Municipal Level	Provincial Level	National Level
Judiciary		<ul style="list-style-type: none"> • District/ Municipal Court 	<ul style="list-style-type: none"> • Provincial Court 	<ul style="list-style-type: none"> • High Court
Special Courts		<ul style="list-style-type: none"> • District Land Tribunal 	<ul style="list-style-type: none"> • Provincial Land Tribunal 	<ul style="list-style-type: none"> • National Land Tribunal • Land Title Adjudication Committee • Stool Lands Boundary Commission
Administration		<ul style="list-style-type: none"> • District Land Authority • Cadastral Commission 	<ul style="list-style-type: none"> • Provincial Land Authority • Cadastral Commission 	<ul style="list-style-type: none"> • Land Ministry • Cadastral Commission
Political institutions	<ul style="list-style-type: none"> • Village Chief • Village Council 	<ul style="list-style-type: none"> • Mayor • District Governor • District Council 	<ul style="list-style-type: none"> • Provincial Governor • Provincial Council 	<ul style="list-style-type: none"> • President • Prime Minister • Cabinet of Ministers
Party system	<ul style="list-style-type: none"> • Village / Area / Neighbourhood Party Committee 	<ul style="list-style-type: none"> • District Party Committee 	<ul style="list-style-type: none"> • Provincial Party Committee 	<ul style="list-style-type: none"> • Central Party Committee
Customary institutions	<ul style="list-style-type: none"> • Customary Chief • Land Chief • Council of Elders 			
Religious institutions	<ul style="list-style-type: none"> • Priest • Buddhist monk • Mosque council or leader (Imam) • Rabbi 		<ul style="list-style-type: none"> • Provincial Bishop 	
Civil society and private sector	<ul style="list-style-type: none"> • Local NGO, • CBO, grassroots, • Professional mediators • Elders • Neighbours • Head of local council • Teacher 	<ul style="list-style-type: none"> • National NGO, • CSO, • Professional mediators 	<ul style="list-style-type: none"> • National NGO, • CSO, • Professional mediators 	<ul style="list-style-type: none"> • National and international NGO, • CSO, • Professional mediators

Although many of these bodies exist in most countries, they do not necessarily have a mandate to resolve land conflicts. It could therefore be worth discussing adding mandate and functions to competent bodies dealing with land issues. While optimising the existing land conflict resolution system within a given country, it is important to analyse the existing linkages and hierarchies between and among the different conflict resolution bodies, as well as how and where people can access the system (see figure 17).

Fig. 17: The emerging land conflict resolution system in Laos



Source: Mahaphonh et al. 2007

Two kinds of land dispute resolution bodies deserve special mention because of their high and often not yet sufficiently utilised potential to resolve land conflicts: the local dispute resolution bodies and special courts only dealing with land conflicts.

4.3.1 Community-based land dispute resolution

Within a community the safeguarding and reestablishment of harmony and social cohesion is extremely important for assuring a peaceful life together. This explains the excessive number of local dispute resolution bodies. In many micro-level land conflicts, these are the preferred means of dispute resolution because of time, cost, trust and enforceability. The fact that there are many options whom to ask to conciliate, facilitate, mediate or even arbitrate prevents the development of monopolies in land dispute resolution based on permanently standing councils. This makes community-based land dispute resolution bodies less vulnerable to bribery (see box 17).

Community-based land dispute resolution bodies are highly efficient options in micro-level land conflicts such as boundary conflicts, building extensions on public space, the refusal of right of way, a house invading the privacy of another, blocked entries or trespasses, footpaths used for waste disposal, or the removal of snow or fallen leaves from one compound to another.

4.3.2 Land tribunals

These have many different names, such as Land Title Tribunals, Cadastral Commissions or Land Courts, but their objective is the same: to deal explicitly and exclusively with land-related conflicts. Some of them deal with all kinds of land conflicts, while others concentrate on one major type of land conflict, such as illegally allocated state land. Both models are possible and make sense. Non-specialised land courts help to free general courts from the burden of land-related cases, decrease the time people have to invest in solving land disputes and improve decision-making by arbitrators who are more familiar with land

issues. Special courts or tribunals focusing on a specific type of land conflict are generally put in place when there is an unusual accumulation of this type of land conflict, e.g. in post-conflict situations or in cases of a previously systematic illegal allocation of state land. The specific land tribunals should be temporary ones, existing for as long as there is a need to settle these specific types of land conflicts. The general land courts could be permanent structures. Both must be constituted by the state. Their decisions should be binding and final. Appeal to the High Court should only be a last resort. The High Court should only be allowed to verify the correctness of the procedure of the land tribunal but not to re-open a case. To avoid irregular procedures right from the beginning, civil society should be involved in the monitoring of the land tribunals, e.g. in a joint commission together with state officials.

Box 18: GACACA Courts in Rwanda

Offences against property committed during and briefly after the genocide in Rwanda are dealt with at traditional courts, so called GACACA courts, at the local level. The Government of Rwanda believes that the people of Rwanda should reconcile after many decades of division and hatred. In order to achieve this reconciliation, the Government feels that it is important that Rwandese feel that justice is being served, as there can be no reconciliation without justice. It would, however, have taken over 200 years to deliver this justice had Rwanda relied on the conventional court system. So, in response, Rwanda decided to implement a reconstituted form of the GACACA court system, which has evolved from traditional, cultural communal law enforcement procedures. In addition, the Government categorized the genocide related crimes into four categories. Category 1 included the 'planners, organizers, instigators, supervisors and leaders' of the genocide, and only cases falling under this category are tried in the conventional courts. Categories 2-4, where involvement was slightly less serious, are tried in GACACA courts. Category 4 exclusively encompasses persons who committed offences against property – including land. These land-related cases are dealt with at the lowest of four levels (cellule level) where GACACA courts have jurisdiction (cellule, secteur, commune, prefecture). Originally, the GACACA settled village or familial disputes. They were constituted as village assemblies, presided over by the village elders, where each one could ask to speak. GACACA means "justice on the grass," as grass is the gathering place. The GACACA court is thus a system of grassroots legal bodies, inspired by tradition. The current Rwandan GACACA court system, as established in March 2001, involves both plaintiffs and witnesses in an interactive court proceeding against alleged criminals who took part in the genocide. Traditionally, village elders called *Inyangamugayo* (Kinyarwanda for "uncorrupted") would convene all parties to a crime and mediate a solution involving reparations or

some act of contrition. The judges now qualified as *Inyangamugayo* have basic judicial training and are elected by Rwandans to serve in the GACACA courts. The defendants do not have lawyers, but all village inhabitants can participate and intervene, either against or in favour of the defendant.

This new process is supposed to significantly speed up trials and sentencing. The GACACA courts also have the advantage of involving the community in the trial and sentencing process. The Government of Rwanda believes that involving the entire population in the trials can contribute significantly to reconciliation. The process revives traditional forms of dispensing justice based on Rwandese culture, and it demonstrates the ability of local communities to solve their own problems.

However, as the first judgement of a GACACA court only took place on March 11, 2005, hardly any information is available so far on how the system is working.

Source: Government of Rwanda (website; 16.1.2008); Wikipedia (16.1.2008)

Box 19: Special Land Disputes Court in Afghanistan – a lesson learnt

The Special Land Disputes Court in Afghanistan exclusively deals with private persons who are returnees or internally displaced and who seek to retrieve private properties of which they have been unwillingly deprived since 1978. Neither the government nor its agents can use the court to seek restitution of non-private property. The Special Court, however, only resolves disputes over formal properties, which most often pertain to wealthier individuals and represent a minority of landholds – 71% of the cases involving claims of the better-off.

After a restructuring, today the Special Court consists of 18 judges operating in two courts, one for Kabul and one for the rest of the country. A second-level court of appeal within the overall Special Court has been established as well.

In spite of the good intention, the Special Court is failing to deal effectively with claims, having resolved only 5% of all registered cases in 2005 three years after the court had been set up. The main obstacles are:

- Lack of capacity to deal with the increasing number of cases.
- Time consuming procedure.
- Lack of qualifications as most judges are elderly with limited legal education beyond *Shari'a*.
- Difficulties in those cases where property has passed through the hands of several owners, each of which is seeking compensation.
- High costs resulting from the fact that no case will be swiftly heard or resolved without making a payment.
- Lack of co-ordination with other state agencies, particularly the police, which makes enforcement of decisions difficult as the police are typically bribed by wrongful occupants to claim they cannot be found.
- High number of cases that are appealed by the party who lost the case.

Source: World Bank 2005

As with any other court, land tribunals can suffer from shortcomings and misuse (see box 19). The following checklist may help to avoid common weaknesses.

CHECKLIST: Which provisions have to be made for a land tribunal?

1. The land tribunal has to be constituted by the state.
2. The objectives and functions of the land tribunal have to be defined.
3. It has to be defined who will bear the costs involved. In the case of general land tribunals, it should be the parties to the conflict. In the case of special land courts dealing with land conflicts resulting from government failure, costs should be borne by the state.
4. The members of the land tribunal (such as the chairman, deputy chairman and support staff) and their individual functions have to be defined. It has to be made certain that sufficient staff is available to investigate individual cases.
5. Special regulations should be defined for the procedures and duties of the land tribunal, providing for quick and cheap land conflict resolution.
6. It should be agreed that the civil procedure law and rules do not apply to the proceedings of the land tribunal, to allow for a more flexible approach.
7. The land tribunal must be established by an amendment of the existing land law (Land Act).
8. Other laws dealing with land issues or jurisdiction may need to be amended or adapted as well.
9. It has to be guaranteed that any person involved in a land conflict (or a land dispute of this special kind) can have access to the land tribunal.
10. A condition of the establishment of the tribunal would be that, while appeals to the High Court against its decisions would be available to any aggrieved party, the High Court would not be a court of first instance in any land-related conflict. The High Court would only be allowed to verify the correctness of the procedures of the land tribunal, but not to re-open a case.

11. The members who are appointed to become part of the land tribunal must have adequate qualifications and receive special training as required. They would need to be both experts on land issues and good arbitrators.
12. The procedures and decisions of the land tribunal have to be transparent, and every staff member accountable and bound to a strict code of conduct.
13. The procedures and decisions of the land tribunal need to be monitored, evaluated and made accessible to the public. These duties should be performed by a joint commission made up of representatives from both NGOs and the state.

4.4 “Technical” tools for solving land conflicts

In the case of land conflicts, conflict resolution often needs to be accompanied by technical tools. For instance, a boundary has to be (re-)determined, future land use needs to be agreed upon, usage rights have to be documented etc. Technical tools to solve land conflicts range from securing property rights and land registration over land use planning and land readjustment, to state land recovery and the recognition of customary land tenure and administration. They also include local conventions and solutions developed by grassroots organisations.

4.4.1 Land administration and management

Clarifying, legalising and securing property rights – the key to any kind of land conflict resolution

A crucial step in any land dispute resolution is the analysis of who holds what type of property rights over the piece of land under dispute. When identifying these rights, it is necessary not only to focus on documented formal rights but also on perceived rights due to customary tenure or modern informal, locally legitimated arrangements. The different property rights should be made transparent, documented, neutrally and

objectively evaluated, appraised and secured. Only then do the conflicting parties have a fair basis for discussing solutions, including the fair compensation of one of the parties if necessary.

In the case of informal settlements at risk of being evicted, additional measures may be taken, such as:

- A moratorium to stop forced evictions (as envisaged in Phnom Penh);
- The registration of the entire informal settlement as common property or trust land, as successfully implemented in Voi, Kenya (GTZ 1998, documentary on CD-rom). Common property protects members of the settlement from forced sale as only their huts belong to them while the land is not considered to be private property;
- The distribution of occupancy licences to those people who are actually living in the informal settlements, which increases the tenants' rights and prevents them from being driven out by an increase in land value which might prompt the owner to sell the land;
- A step-wise increase in tenure security, starting with any locally adapted form of intermediate tenure and arriving at freehold after 5-10 years. This, however, requires accompanying measures to protect those previously informal settlers who cannot afford the increases in tax and fees related to the formalisation of the area, such as a land ceiling and the prohibition of land consolidation or investment in nearby social housing, site-and-service or site-without-service programmes etc.

Surveying and land registration to solve boundary conflicts and to protect against illegal expropriation

Surveying, titling, and registration are definitely not a panacea for land conflicts, as they can create costs that are not affordable for the poor. Still, there are a number of land conflicts that definitely need a survey and an entry in the land registry and cadastre. Especially in case of boundary conflicts between neighbours, clans or administrative units,

surveying should accompany the boundary-setting. How accurate and therefore costly this should be depends on the value of the land, as well as on the characteristics of the conflict and the relation between the conflicting partners. In general, land registration should primarily be instituted where land values are high, that is in expensive urban areas. The rural tenure plan in Benin is an example of an apparently successful rural cadastre in a rather poor country (GTZ 2004). There are other examples which favour simpler and cheaper solutions for poor rural areas, including planting hedges along the agreed boundary line, which in addition to fixing the boundary also serves as a wind break to prevent soil erosion.

Land registration is generally more important for conflict prevention. Multiple sales of land, sales of somebody else's private property, or state concessions on private land only occur when land is not registered. Accordingly, surveying and registration should follow the dispute settlement of these land conflicts so as to secure the agreement and prevent a renewal of the conflict.

Land readjustment – an alternative to evictions

Whenever there are competing or overlapping interests on the same piece of land and all conflicting parties have agreed to give up some of their land, land readjustment can help in the process of redistribution. This generally only works if no party has a chance to get the entire original plot. Two situations are quite common:

- *Land sharing* is a compromise between a private landowner and the squatters living on his land. Land sharing prevents evictions and still leaves part of the property to the landlord to use that part for commercial purposes. A readjustment frees one part of the land so it can be used by the owner. Sometimes the owner can be convinced or even is forced to finance the reconstruction of the squatters' houses from part of the income he generates from the development of the remaining land. In India, land sharing is very popular and successful.

- *Land pooling* which is sometimes necessary to protect informal settlers from natural disasters or to build infrastructure. Land pooling therefore is another tool to prevent eviction – generally from state land. In this case, part of the occupied land is vacated by the settlers in order to gain land for flood protection or road construction. Land pooling is therefore also suitable for *in-situ* upgrading, and can be combined with the legalisation of informal settlements.

Land readjustment can offer a solution to conflicts caused by multiple sales of land. If the parcel is big enough for all buyers to realise their projects (though possibly on a smaller scale), they can all agree to split the property among them.

Land use planning to mediate between conflicting land uses

Balancing conflicting land use is the true task of any land use planning. While land use planning is generally a preventive tool, it can also be used in the case of existing conflict. In that case, however, it only works if done in co-operation with the conflicting parties. Examples are:

- Participatory planning in a neighbourhood where part of the land is needed for public infrastructure;
- Renewal of existing formal land use plans, together with customary land administrators or representatives of informally planned settlements, to solve the contradictions between formal and informal planning;
- Buffer zone management around protected areas, involving all people who depend on the natural reserve – including hunters, gatherers, beekeepers, coffee producers, firewood collectors, gamekeepers, environmentalists, local and national officers etc. – for the purpose of agreeing on a land use plan which is acceptable to all stakeholders.
- Common property rules by a rural population on common property to prevent erosion by overexploitation (see 4.4.2).

Public and private investment in the housing market – to reduce the demand for informal land acquisition and to avoid forced evictions

Informal land acquisitions are often the result of insufficient housing supply. This includes social housing as well as housing for the middle class, as the latter quite often occupy apartments that would be affordable for the low-income population if only they were available. A broad range of housing opportunities offered by public as well as private investors can therefore reduce pressure on the system, and reduce informal land acquisition and forced evictions. In this context, it is important that a wide range of housing options are offered, encompassing:

- Housing for the middle class,
- Social housing,
- Site-and-service programmes (especially for those people who are faced with forced evictions),
- Site-without-service programmes (especially for those people who are faced with forced evictions),
- Provision of social concessions for the poor, and
- Social land readjustment in peri-urban areas to provide shelter for the poor. Through conversions of agricultural land into construction land its value increases. Private landowners profiting from the creation of additional value share this profit by giving part of the land to the state for public purposes such as social housing.

Proper state land management – to recover state assets

Weak as well as corrupt state land management lead to a number of land conflicts that generally result in the loss of state land for the common weal. Most of the measures related to proper state land management are rather preventive tools, such as land inventory, ethical code for public officials etc. (see chap. 5). Only the recovery of state assets is a curative measure aiming to regain lost land. Recovery of state assets is prescribed by the UN convention to combat corruption. So far though, there is little experience in recovering misappropriated state land. Kenya laid

the foundations by proposing a land titles tribunal to check, on request, all questionable titles to public land being previously allocated. Despite being proposed in 2004, the land titles tribunal still has not been constituted.

Recognising customary land tenure and administration to settle land conflicts due to legal pluralism and irregular customary land administration

The recognition of customary land tenure and administration, again, is mainly a tool for the prevention of land conflicts. However, it can also serve to solve existing conflicts. Once the state and its public institutions acknowledge the legitimacy of customary and religious claims and consider their representatives as equal partners in negotiations over land and the use of land, mutual respect can slowly be re-established and joint solutions discussed. Two concrete measures that have been mentioned previously are the recognition of customary rights and joint land use planning.

In those countries where customary land is formally considered to be state land, it should be discussed whether it would not be possible to officially appoint the customary chief to allocate the land, under the condition that he respects the constitution and documents all allocations, including the fees he is charging. This can prevent customary chiefs from misusing their authority against the common good of his people, without formalising customary land administration. The risk of formalising local tradition is that this reduces its advantage of being local, grassroots, and essentially informal and thereby quick, cheap and locally legitimised. As long as there is social cohesion, respected local leadership and norms as well as effective social sanctions – and all of those are more reliable than state institutions – formalisation of customary land tenure and administration should not be considered.

Although all these technical tools can convey a sense of objectivity, there still always is a risk that they will be manipulated. Influential elites

often act in collaboration with the land administration. Public officials therefore often participate in the discrimination of the marginalised and the violation of legitimated informal claims (Zimmermann 2004). Technical approaches to solving land conflicts therefore need to be accompanied by popular or stakeholder participation and monitoring (see 4.4.2). They also have to be based on a functioning institutional frame and good governance (see chap. 5). This is especially true for land registration, as otherwise this can easily become a source for new land conflicts (Molen/Lemmen 2004; Törhönen/Palmer 2004).

4.4.2 Community-based approaches

“Limited outreach or credibility of state institutions can create a vacuum that leads to a power struggle at the local level. Where this is the case, working with and building on existing institutions in an incremental fashion may be the only option” (Deininger 2003: 163).

Establishing agreements and contracts: local conventions

Land conflicts can be resolved with minimal state intervention and even without any state intervention at all. This applies not only to minor inheritance or boundary conflicts but also to extended land use conflicts concerning common property and natural resources. The only condition is that all affected parties agree on settling the dispute together. This includes negotiations and a joint establishment of rules and sanctions regarding the use of the common property, and defining who may use the land and for what purpose at what times.

These local conventions are initiated by the land users and aim to resolve land use conflicts between different users, as well as between humans and nature. The goal is to achieve a sustainable use of fragile ecosystems, protect biodiversity and – at the same time – provide a long-term economic base for the local community.

Common cases of this are local conventions between farmers and pastoralists who solve their land use conflicts by fixing livestock passages and regulating the use of it. Another example is community-based natural resource management by competing camel herders and gatherers who live from the wild fruits of trees in the same area. All of these local conventions are performed and monitored by the affected land users. They can remain informal or become legally binding through authorisation by public administration – depending on local need and national law.

For examples of local conventions, including the original documents in Benin, Burkina Faso, Niger, Senegal and Mauritania, see GTZ 2003 and 2007.

A major advantage of local conventions is that they re-establish mutual respect and that they document the will to cooperate. By agreeing together on the future rules and sanctions, stakeholders assume responsibility and feel much more obliged to adhere to the rules, even accepting the payment of fines in case of offence against the convention.

People-managed resettlement programs

The urban poor, too, can take the initiative to settle land conflicts by surveying their settlements themselves, documenting the names and claims of the settlers, identifying available lands adequate for resettlement, and being involved in designing, planning and implementing the resettlement programme. They can thereby actively contribute to avoiding forced evictions and find themselves homes with long-term perspectives. At the same time, they can improve their social status by proving that they can take care of themselves if only the state treats them as full and equal citizens and agrees to collaborate (Patel/D’Cruz/Burra 2002).

“Perhaps the most significant initiative today in urban areas of Africa and Asia in addressing poverty [...] is the work of organizations and federations formed and run by the urban poor and homeless, [...] one of their priorities being

working with governments to show how city redevelopment can avoid evictions and minimize relocations, [...] thereby triggering changes in how politicians and bureaucrats perceive poor people: no longer just as clients and beneficiaries but as active agents” (D’Cruz/Satterthwaite, 2005: 1).

4.5 Creating mutual understanding and (re-)establishing respect and trust

Most of the technical tools described here depend on the co-operative attitude of all conflict parties. This can either be established by consensual conflict resolution or by other means of establishing or re-establishing mutual respect and trust.

Land conflicts - like any other type of conflict – often end up moving in vicious circles. Conflict parties stick to their positions and unconsciously force one another to adopt increasingly extreme positions. People normally tend to project negative characteristics onto one another until the opposite party finally incorporates them. Reality becomes more and more disguised and distorted, and the other conflict party ends up being blamed for all the negative aspects of life (e.g. squatters often make the state responsible for all their problems, while the state considers squatters to be a handicap to any development whatsoever). In such situations it becomes necessary that both conflicting parties change their perception of the other so as to pave the way for an equitable dialogue. This can be achieved by socio-drama (see 3.4). Generally, it cannot be expected that both parties will initially be willing to do this together, but then they can at least begin by doing it among themselves, thereby experiencing the feelings of the other party and developing empathy for their position, behaviour, interests and needs. As an alternative, street theatre, puppet theatre, radio plays and TV soap operas can be used to deal with the typical land conflicts in which people are involved. These allow the spectators to better understand the conflicts; what they are all about, why the opposing party reacts the way it does and what options or compromises exist to stop the conflict.

5. PREVENTING LAND CONFLICTS

„Looking at all the procedures of resolving a land conflict, we would conclude that it is easier to prevent a conflict than to cure it. In resolving a conflict, we cannot do much about the harm that has already been done. It is therefore a more worthwhile investment for every government to invest in land conflict prevention measures by putting the right policies in place and ensuring implementation of what the policies require” (Kariuki 2005: 99).

Preventing land conflicts means simultaneously avoiding institutional deficits, limiting extreme needs for land and reducing opportunities to make excessive economic profit from the land market (see figure 4). This can be achieved by a combination of correcting institutional weaknesses (5.2) and introducing good land governance (5.3). Once both are in place – functioning land market institutions and a good governance-based process by which decisions are made and implemented regarding the access to and use of land – the deeper causes of land conflicts will admittedly continue to trigger some land conflicts, but these will be fewer in number and should be less violent. Both approaches have to be accompanied by intentionally creating an awareness of the destructive nature of land conflicts – not only for individuals but also for entire societies and national economies.

5.1 Raising awareness

Many land conflicts can be predicted and if not avoided at least mitigated if provisions are made against them in time. It is therefore crucial to be aware of those changes and occurrences that have the potential to trigger land conflicts. Once a potential cause of conflict has

been identified, the extent of possible land conflicts and the scope of their social, economic, ecological and political consequences should be roughly calculated, and immediately communicated to decision-makers and responsible land management experts at both the central and local level. Land conflict experts should preferably discuss with these decision-makers which measures should be taken to avoid massive land conflicts. Failing that, proposals should be made to them.

CHECKLIST: Typical occurrences that may trigger land conflicts:

- Privatisation of land
- Returning refugees
- Refugees fleeing from neighbouring countries
- Internal displacements due either to sudden ecological calamities such as drought, floods, volcanic eruptions, earthquakes etc. or to chronic ones such as desertification
- Rural-urban migration
- Population growth resulting in additional demand for land
- Economic growth increasing the demand for land to be used for industrial and commercial activities, which can put pressure on land currently used by the poor
- Growing affluence leading to greater demand for large private properties or for land as a financial investment, incl. speculation
- Sudden and excessive increases in land value creating a high demand for private property on land which especially causes conflicts (black markets, land grabbing etc.) in countries that don't allow for land to be privately owned
- Extended building projects that include large-scale destruction of existing structures and the displacement of the current inhabitants
- Gentrification, up-grading measures and area rehabilitation
- Allocation of economic concessions in areas where state land is used by the local population to sustain their existence (e.g. for slash and burn agriculture, collecting fire wood, hunting etc.)
- Continuous denial of customary land rights by the state
- Lack of housing for the urban poor
- etc.

5.2 Fighting institutional weaknesses in the land market

Although weaknesses in the institutional frame of the land market are not the cause of land conflicts, their removal can hinder many conflicts from escalating or even occurring at all. Four different kinds of institutions influencing the land market have to be considered here (see figure 3):

- Constitutive institutions
- Regulatory institutions
- Supportive institutions
- Complementary institutions

Improving constitutive institutions to establish legal security

Legal security is the key to preventing land conflicts. Where property rights are clearly defined and secured and where conflicting interests over land can be negotiated in a fair and predictable environment, conflicts over who owns or may use which piece of land can be reduced to a minimum. The constitutive institutions of the land market include:

- **Tenure security:** Clearly defined and secured property rights to land, i.e. widespread tenure security for all groups in society. This may include the recognition of customary and informal rights. It may also include the introduction of new forms of intermediate tenure. [For details on the diversity of rights as well as different tenure policy options see Payne 2002, UN-HABITAT 2004a and UN-HABITAT 2004b)
- **Land registration:** To secure property rights, all existing claims have to be documented and overlapping interests addressed and clarified in a fair and transparent way. Land registration can be done in many different ways and does not necessarily have to include a technology-based land information system or highly accurate surveying. It should be as simple and cost effective as possible, “corruption-proof”, adapted to local conditions, established with active public participation and reflecting all legitim-

ated property rights: formal, informal, customary and religious; state, private and common/collective; primary and secondary; permanent and temporary. In areas with great potential for land conflicts such as peri-urban areas, systematic land registration should be considered.

- Customary land administration: To prevent conflicts resulting from either legal pluralism or a misuse of customary power over land allocation, a number of provisions can be made:
 - Legal recognition of customary land rights.
 - Identification of the boundaries of customary areas.
 - Identification of tasks and responsibilities of customary chiefs.
 - Improvements in record-keeping, to avoid multiple allocations of the same parcel.
 - Adjustment of customary land law to conform with the national constitution and human rights doctrines in regard to equity.
 - Establishment of local control mechanisms and the introduction of sanctions for chiefs misusing their authority by irregularly allocating land for their own profit.
 - Empowerment of communities living on customary land classified as state land to directly negotiate with investors who receive concessions there from the state in order to prevent people being dispossessed of their customary rights but instead to share in the profit made from and on their lands.
- Rule of law: The establishment of the rule of law is a prerequisite for all other measures for the prevention and resolution of land conflicts. This includes clearly defined, non-concealing, non-contradictory laws, legal norms and by-laws without loopholes, clearly defined roles, functions and responsibilities of all participating actors, a hierarchical court structure, administrative courts responsible for monitoring, an independent media and public participation in the making of laws and rules (Diaby-Pentzlin/Zimmermann 1999).

Improving regulatory institutions to provide for sustainable land use

A clear definition of land uses which considers all the various needs of every group in society – including those who are still unborn – will prevent many conflicts over the use of a given piece of land. That is, this is so if these defined uses reflect local needs and have been communicated to the public. The regulatory institutions of the land market include:

- Land management, which consists of a number of activities:
 - A fundamental precondition to avoiding conflict over the use of land is a comprehensive land use planning. This planning will anticipate and guide (future) land use and development while respecting existing structures. An important element is the early designation of land that will be needed for certain purposes in the future, including the reservation of those lands for these purposes.
 - Land use and building standards have to be realistic and adapted to local conditions, as otherwise they will be widely violated and result in unnecessary conflicts. [For more information on adequate regulations and standards see Payne/Majale 2004.]
 - In the case of legal pluralism, it has to be assured that customary land administrators are involved in the land use planning for their areas, to avoid dual planning and the land use conflicts resulting from that.
 - Active involvement of citizens in land use planning – especially at neighbourhood and village level – can radically reduce land use conflicts, as the land use plan can then be adapted to the needs of the local population who will feel more bound to it as a consequence.
 - To avoid intense land speculation and land grabbing at the urban fringes, mechanisms should be introduced to ensure that any added value created by the transformation of agricultural land to development land automatically goes to municipal budgets, instead of becoming private profit for the land developer.

- Ethical principles: Without shared values and a common commitment to social justice and environmental protection, land use conflicts will continue to occur en masse. Therefore, principles such as equity, the right to housing, protection of private property, protection of natural resources and the social obligations of ownership should be anchored in the constitution and laws.

Improving supportive institutions to increase transparency

Supportive institutions of the land market are those which are not explicitly needed to avoid land conflicts but whose presence can increase transparency and thereby reduce the occurrence of certain types of land conflicts. Land valuation is a supportive measure that can reduce conflicts related to the value of the land, such as disagreements on the amount of compensation, registration fees or land tax. Correct land valuation can also prevent people from losing their land to banks who might undervalue their property and unjustifiably expropriate their customers' collateral in the case of inability to pay back their loan.

Improving complementary institutions to improve access to land by improved access to capital

A number of land conflicts occur as a result of an inability to buy a property or to finance adequate building material. In certain situations – but not all – easy access to credit could improve the situation. In addition to bank loans, a wide variety of local funds should be made available to people to invest in housing. To avoid systematic expropriation of borrowers' land by banks, an external bank control mechanism (to check the valuation of properties, among other things) and eventually maximum interest rates should be introduced.

5.3 Promoting good land governance

“There is no substitute for dealing with grievances and demands early in their history; such is the normal business of politics and governance” (Zartman 1991: 301).

Land conflicts are the visible manifestation or outcome of the often invisible power and politics concerning access to and use of land. People generally have limited exact knowledge of who has what influence on the way decisions about land are made and enforced, or how these individuals and groups use that power. Governance of land is rather obscure, and often threatened by corruption. To prevent land conflicts, land governance has to be transparent, fair and sustainable.

What exactly is land governance? Land governance means “the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled” (FAO/UN-HABITAT *to be published*).

How can land governance become good? Land governance can be called “good” when this decision-making over access to and use of land as well as its enforcement and the reconciliation of conflicting interests is done in a fair and transparent way, allowing everyone to equitably participate and to receive an adequate share while at the same time guaranteeing economically, socially and environmentally sustainable land development.

Good land governance therefore requires the honest and serious application of certain principles to land policy, land related legislation, state land management, land administration, land management, land reforms, land conflict resolution etc. These principles include: equity, accountability, integrity, transparency, effectiveness, efficiency, rule of law, legal security, civic engagement, subsidiarity, security and sustainability (ibid.).

A key governance principle for the prevention of land conflicts is equity. Once there is a sense for equity, the realisation of other

principles will follow. Equity in this regard has several dimensions. It includes the equal recognition of formal, customary, religious and informal legitimate property rights over land. It also means equally respecting the land rights of men and women, as well as the legitimate claims of marginalised and vulnerable groups such as indigenous people, orphans, the elderly, minorities, refugees and slum dwellers. Equity also calls for inclusiveness of all stakeholders in decision-making on land issues such as land policy processes, land commissions, land tribunals, land laws etc. Finally, it means that all decisions on land – including those on conflicting interests over land – should firmly rest upon respect for fundamental human rights.

So, in the end, preventing land conflicts again comes down to values in the form of the ethical principles that are part of the regulatory institutions. However, it would be an unrealistic and probably unachievable task to make everybody selfless and altruistic. But this is not what is expected. As long as land governance is based on these values, mechanisms can be put in place that encourage and reward conflict-free (or conflict-impooverished) behaviour by individuals. Examples are incentives, checks and balances, a reliable public sector, capacity-building, awareness-raising, transparency, monitoring, sanctions, codes of conducts etc.

Box 20: Good Practise: the FIG Land Professionals' Code of Conduct

As early as in 1998, the International Federation of Surveyors (FIG) published ethical principles for their members and a model code of professional conduct that aimed to serve as orientation for national codes, identifying key issues that should be included in it. The ethical principles comprise integrity, independence, care, competence and duty putting special emphasis on the duty to the public: "The first duty of surveyors is normally to their clients or employers but as professionals they also have a duty to the public. Surveyors are fact finders and providers of opinions and advice. It is important that they are diligent, competent, impartial and of unquestionable integrity in ensuring that the information they provide is true and complete and that the opinions and advice that they give are of the highest quality."

The code of conduct is available at: www.fig.net/pub/figpub/pub17/figpub17.htm

Source: FIG 1998

As land administration is crucial to the limitation of land conflicts, applying good governance to it should be briefly explained. In most countries where excessive land conflicts exist, land administration and state land management are threatened by lack of capacity, administrative corruption and state capture. Good governance aims to address all three weaknesses. Good governance in land administration and state land management is therefore a fundamental component of land governance. It includes (FAO 2007, FAO/UN-HABITAT *to be published*):

- A framework for transparency consisting of the use of anti-corruption agencies and whistleblowers, effective contracting arrangements (e.g. based on integrity pacts), and customer orientation including a system for dealing with complaints.
- Service standards, benchmarking of performance against that of comparable organisations and client's surveys.
- Improved systems and services focussing on simplification, consolidation and standardisation and resulting in a quick, simple and affordable customer-oriented approach, e.g. single agencies and "one-stop shops".
- Capacity-building and human resources policy to assure accountable and adequately qualified staff.
- Effective use of information technology and communication.
- Public participation in adjudication and demarcation during titling or after disasters that have wiped out pre-existing boundaries.
- International standards of valuation, reasonable tax rates and regular revaluation.
- Independent auditing and secured finances.
- An appeals system for complaints concerning land adjudication, registration, valuation and taxation that is fair, independent and accessible to all.
- Recognition of and support to customary land administration (see 5.2).
- Clear policy objectives for state land management and a classification of state lands.
- Accurate records of state lands accessible to the public.
- Transparency in the allocation and management of state lands.

The following key questions can help in the evaluation of the status quo of governance in land administration and state land management (see box 21).

Box 21: Key questions for evaluating governance in land administration

- How many days/weeks/years does it take to register a property?
- How many steps are needed to register a property?
- What amount of informal payments has to be paid for land registration (as a percentage of total registration costs)?
- Are the registered rights protected under the law?
- Are there clear and appropriate service standards?
- Are these service standards easily known to the public? Are they known by the clients?
- Is the application of these service standards regularly monitored?
- Are there complaint mechanisms for people who are not satisfied with land registration (e.g. hotline, customers' surveys, complaints box)?
- Is information on properties and land ownership available to the public?
- Do the land records cover all social groups and all geographical areas, or are certain groups or areas marginalised?
- Is there a state land inventory and is it available to the public?
- Are there clear, fair and transparent rules for state land management (including regulations for leases, concessions etc.) and are they consistently applied?
- Does the government have clear, transparent and well-functioning procedures for disposing state land, including mechanisms for control and sanctions?
- Are there public displays in cases of boundary demarcation, adjudication or systematic registration?
- Is there any evidence of corruption in court decisions with respect to land disputes? If so, what is the government doing about it?
- Is there any evidence of corruption in customary land administration? If so, what is the government doing about it?
- Is there any evidence that poor people are deprived of their property rights due to weak governance in land administration?
- Is there any evidence that legitimate landowners are deprived of their property rights due to their customary origin (vague boundaries, oral proof only etc.)?

Source: Zakout/Wehrmann/Törhönen 2006: 18-19

6. CONCLUSIONS AND FUTURE CHALLENGES

“As for me, I’ll never abandon theft and robbery that is based on housing. There’s nothing on this Earth that generates as much profit as people’s hunger and thirst for shelter. So I never want to see this appetite diminish, even by the slightest amount. In fact, I’ve often stayed awake figuring out ways and means of increasing the whole country’s hunger and thirst, because the degree to which there’s a property famine determines exactly the level to which the price of houses will rise and hence the level to which profits will climb like flames of fire reaching out for fatty meat. When such a famine becomes intense – of course, we don’t call it famine; we give it gentler names – we, the eaters of the fat of the land, can sit down to devise ways of sharing the fat among ourselves” (from the novel “Devil on the Cross” by Ngugi wa Thiong’o, 1982: 117).

One man’s meat is another man’s poison. At the bottom of land conflicts are the need for shelter on the one hand, and the desire for profit on the other. Dealing with land conflicts, therefore, means reconciling conflicting interests over land.

Land conflicts seldom result directly from any absence of rules or an overlap of regulations. They rather result from the egoistic exploitation and intentional continuation of institutional gaps and the disregard of formal institutions. The reasons for this are numerous and diverse: Many people are in need of shelter but cannot afford to follow formal rules for obtaining it. Others simply don’t want to. This could be because of a desire to resist formal institutions because of previous experience of disrespectful treatment by them (e.g. through failure to grant recognition of legitimated customary or informal claims, or through a misuse of power) and the lack of trust or hurt feelings resulting from

this. Another reason a person might choose not to follow the formal rules and regulations for obtaining land is because of a material desire for wealth or an emotional desire for status. In civil war and post-conflict countries, the exploitation and continuation of institutional weaknesses is particularly common. First of all, these situations of change and chaos provide the opportunity for economic gain. Second, (civil) war evokes and intensifies extreme psychological fears (fear of loss and fear for existence) and desires (revenge, power). These create particularly pronounced material needs to ensure one's livelihood and wealth, as well as emotional needs for respect and sometimes for (moments of) power. Thus, the primary reasons for land conflicts are to be found in psychological desires and fears as well as in emotional and material needs. The resulting pursuit of individual interests is, however, considerably facilitated by the lack of an institutional framework. Huge deficits in the institutional framework of land markets are often caused by institutional change as well as by other elements of change in society (e.g. population growth, massive migration or outbreak of war) and a low level of development. However, even a perfectly functioning institutional frame will not prevent land conflicts. Just think of all of the inheritance and boundary conflicts that occur in peaceful and prosperous countries that dispose of well functioning institutions.

The complexity of causes leading to land conflicts, as well as their diversity and the large number of different actors involved, requires an integrated, system-oriented approach for solving land conflicts and for preventing additional ones. First, functioning constitutive and regulatory institutions adapted to local requirements are needed. These are tenure security, land registration, rule of law, land management and ethical guidance. Second, a co-ordinated system of land dispute resolution bodies has to be established, to provide for a wide range of options for resolution, always giving priority to consensual approaches. Third, land governance can and should be improved by applying principles such as equity, accountability, integrity, transparency, effectiveness, efficiency, the rule of law, legal security, civic engagement, subsidiarity, security, and sustainability to the relevant areas. These include land policy, land-related legislation, state land management, land administration, land

management, land reforms, land conflict resolution etc. Fourth, the establishment of transparent and accessible capital markets can help solve land conflicts, especially when small amounts of money are made available at the local level (e.g. through microfinance). Finally, the integration of psychotherapeutic methods to re-establish mutual respect and trust among the conflict parties should be considered and given priority.

The re-establishment of values and the introduction of mechanisms with which to implement them in society are of critical importance, especially in situations of post-crisis and post-conflict. These mechanisms include incentives, checks and balances, a reliable public sector, capacity building, awareness-raising, transparency, monitoring, sanctions and codes of conducts. Such an established, legitimated and widely accepted framework is necessary to avoid abuses and thus additional land conflicts before necessary technical approaches like land registration can be implemented without the risk of their misuse. Only then is the following true: „No matter how difficult concerted action might seem in the chaos and confusion following conflict, land questions have to be dealt with as early as possible” (Du Plessis 2003: 8). It goes without saying that each country needs individual solutions, which are adapted to its particular local, regional, national and supranational political, socioeconomic, cultural and power-related frame conditions. The facts of each specific case will determine which of the tools and approaches presented in chapters 4 and 5 should be applied for the effective resolution and prevention of land conflicts.

Land conflicts are likely to persist and even increase in the near-term and medium-term future. There will especially be an increase in land conflicts in peri-urban areas, given persistently high urbanisation rates, the dissonance between slowly progressing economic development and steadily increasing land prices as well as in the case of sub-Saharan Africa, the continuation of legal pluralism. Land conflicts will probably also increase in those rural areas, where fertile soil and water start becoming scarce or simply are misused. Local contracts will have to play an increasing role in dealing with these conflicts in these – often remote – rural areas.

Ways will have to be found to avoid situations in which powerful elites take advantage of institutional change to distribute property rights for valuable plots of land among themselves without hindrance. Unfairly distributing these lands – which include plots in urban centres, large forest areas, fishing grounds, mines, cultural sites of tourist interest – lays the foundation for future inequalities in land distribution, which negatively affect the development of the country and the living conditions of the majority of the population far into the future.

In other words, how can an institutional framework be created in time? Which further steps need to be taken? Who are the actors capable of implementing these steps? Another pertinent issue is how land use can be controlled in the ever-growing cities, and in the face of numerous informal actors, both legitimate and criminal, who enforce their interest or that of their group against state regulations and institutions.

The first and most important steps in actively and consistently preventing land conflicts will always be to establish an adequate institutional framework and to re-establish (traditional) values by creating incentives, checks and balances as well as sanctions aiming at positively influencing people's behaviour.

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