

Land, IDPs and mediation

Baptiste Raymond

Unmanaged resettlement of IDPs in eastern DRC might threaten an already fragile security situation.

Land-based conflicts are at the root of the turmoil in eastern DRC, where land constitutes both an insurance for bad economic times and a foundation of individual and community identity. All land in DRC is owned by the Congolese state, and legally Congolese people only have the right to use it. Customary chiefs receive tribute in exchange for granting to their people the right to use the land, thereby creating a form of stewardship, a collective system of risk management for economic uncertainty.



The fertile hills of Masisi district, in North Kivu

IRIN/Lisa Clifford

It has long been the responsibility of the customary chiefs, therefore, to mediate land disputes but the national government, in the person of the Minister of Land Affairs, preaches the supremacy of modern law and is suspicious of alternative methods of conflict resolution. The Minister, Maj Kisimba Ngoy, is also the father of property right reforms and the man who declared in 2009 in Goma that the key to ethnic conflict resolution in the East was sovereign land legislation. In order to address the issue of IDPs, he authorised property-rights title conversion, to bring formerly held property-rights titles under the modern legal framework, and the construction of new settlements in compliance with an official land tax register.

However, the modern legal framework is sometimes perceived, or denounced, by customary chiefs as the legacy of the colonial state, and most often people are simply not aware of the law. At the local level,

customary chiefs act as proxy for state authority, all the more so as the Congolese state has little capacity and reach in many of the regions to which IDPs might return. Even though their influence is fading, customary chiefs need to play a key role in the returns of IDPs in two ways. First, they may well constitute the best source of information and monitoring for authorities dealing with IDPs. Second, there is little chance for IDPs to live in peace on their land if their resettlement has not been approved by customary chiefs.

As land issues were recognised at the January 2008 Goma Conference as being central to the stabilisation and reconstruction of the country, UN agencies have also been prioritising land dispute resolution. UNHCR's target for 2010 has been for at least 80% of land property disputes to be successfully mediated or resolved by appropriate bodies.

UNHCR and UN-HABITAT have jointly developed an approach to land-based conflict resolution that is inclusive of all stakeholders and which focuses on mediation conducted either by conflict resolution and mediation committees or by individual mediators. Because it is participative and community-based, this approach has proven to be reasonably successful. For example, the Mediation Centre established at Kitshanga by UN-HABITAT has allowed 183 Pygmies to go back to their land, which had been taken away while they were in IDP camps.¹

Finally, local civil society is also active in the resolution of land-based conflicts. Local NGO Aide et Action pour la Paix underlines the limits of an exclusively legal approach, as framed by Congolese law, which tends to end with an angry 'loser' and a 'winner' fearful of retaliation by the 'loser'.² Aide et Action pour la Paix addresses the issue of displaced people by raising awareness in communities in the areas where IDPs might return and fosters a

participative approach based on mediation, trying to draw in both the legal authorities and the customary chiefs. Without the involvement of both, any resolution might not be recognised under Congolese law, or might not be implemented locally or be respected by the parties.

Another local NGO, the Pole Institute,³ relies on an international network of researchers and consultants and works in partnership with local peasants' organisations such as FOPAC,⁴ religious leaders and local NGOs. It focuses on information sharing (mainly via radio, to bypass the issue of literacy) as a means to empower the local population and to ignite citizen-based dialogue, so that they can start to develop their own solutions and have a sense of ownership of them.

What really matters

Eastern DRC has attracted most of the prominent players in the international community and it would seem useful, if not crucial, to agree on a set of guiding principles for coordination and implementation. Efficiency in the return of IDPs could be measured by three interlinked parameters: the sustainability of the action, its capacity to address the causes of displacement, and the sense of ownership each stakeholder is able to have in the activity.

IDP resettlement offers cases ripe for mediation. However, the foundations of mediation in DRC differ from Western models of mediation which tend to insist on the neutrality of the mediator, who acts as a guarantor of a safe space for the parties to interact. This vision reflects the relative importance of the individual, whereas in DRC community comes first. Therefore, mediators in DRC have to be acknowledged as such by the community of resettlement and must be integrated into its social network.

Government action appears to be inherently ambivalent. In the East, the government is often perceived as one of the parties to

conflict. However, the state is the only stakeholder able to design a sustainable framework to address land-based conflicts by addressing the roots of conflict. Imposing modern law in DRC might also have a positive impact on investments, which in the long run would enable more people to move from subsistence agriculture to develop other sectors of the economy, decreasing the cardinal importance of land as a mean of production.

Civil society's place in the spectrum of stakeholders makes it a privileged bridge-builder between IDPs, local communities and institutional authorities. Civil society can not only collect people's grievances and put them forward for consideration but can also participate in the development of the legal framework on land issues (such as the drafting of the Code Agricole).

Modern law provides an objective opportunity to start rehabilitating the state in the East, as long as it is not enforced bluntly. Current developments in decentralising DRC are working in that direction, by allowing customary chiefs to act as magistrates in well-defined cases. There is space and need for the participation of both Congolese

civil society and UN agencies in this context. It is important that UNHCR and UN-HABITAT continue in a role of technical cooperation, training mediators from civil society, gradually differentiating the role of mediator from that of community leader, a role that could eventually have status in Congolese law.

By building trust, all those who have been sources of trouble for each other become part of the solution leading to peaceful development in DRC. In order to foster the desire and the habit of living peacefully together and to contribute to solving the complex equation of IDPs in eastern DRC, other more specific recommendations include the need to:

- clarify the process of access to land and its right of use, in order to empower IDPs
- map customary chiefs' territories
- identify, train and pay district community mediators under the umbrella of the provincial government
- establish local IDP Return Committees staffed on a voluntary basis by customary

chiefs, influential representatives of the local community, IDP spokespersons, members of the justice arm of the provincial government and UN staff.

The main objectives of the IDP Return Committees would include:

- collecting and disseminating information about IDPs
- mobilising resources for IDP resettlement
- facilitating early warning and response in the case of IDP-related conflicts
- promoting and advocating peace, based on the rule of law, between local communities.

Baptiste Raymond (b.p.raymond@gmail.com) is a graduate student at Columbia University. In 2010, he conducted research on deforestation, land ownership patterns and conflicts in DRC, with Clarissa Baldin and Severine Losembe, in partnership with the Agence Française de Développement.

1. http://www.landcoalition.org/wp-content/uploads/unhabitat_n_3.pdf

2. 'Ce qu'il faut connaître sur le sol en droit Congolais' <http://tinyurl.com/sol-et-droit-congolais>

3. <http://www.pole-institute.org/>

4. Fédération des Organisations des Producteurs Agricoles du Congo au Nord-Kivu <http://www.fopac.org/>