RESOURCE RIGHTS IN TRANSITION:

RIGHTS DISRUPTION, REEMERGENCE AND THEIR IMPORTANCE FOR SUSTAINABLE LIVELIHOODS AND NATURAL RESOURCE MANAGEMENT

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CONTENTS

ACRONYMS AND ABBREVIATIONS

DFID	Department for International Development
IDP	Internally Displaced Person
NGO	Nongovernmental Organization
NRM	Natural Resource Management
NWP	Nature, Wealth and Power
SLA	Sustainable Livelihoods Approach
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

The disruption of land rights, and in particular tenure security, has implications for natural resource management, use, and governance. This document brings the Nature, Wealth and Power (NWP) framework and the Sustainable Livelihoods Approach (SLA) to bear on situations of disrupted land and property rights and the implications for natural resource management in post-conflict settings. The document presents case studies from Mozambique and Zambia which illustrate different forms of land rights disruption and different opportunities for engaging in the NWP framework.

As the paper suggests, the various stages of conflict may be categorized into the conflict or disruption phase, the post-conflict initial recovery phase, and the post-conflict later stages. Each of these phases is characterized by specific and distinct socio-political contexts, tenure situations, and natural resource management strategies employed by local populations. In particular, **the conflict phase** involves significant social disruption and erosion of human capital, the inability to enforce laws, and erosion of dispute resolution systems. Control and access to land is insecure, and often characterized by quick sale of assets. Land holders engage in a crisis livelihood strategy for natural resource management focused on short-term resource extraction. **The post-conflict initial recovery phase** entails rebuilding of social and human assets, weak ability to enforce laws, and continued lack of legitimate dispute resolution system. Tenure security is re-emergent in the form of local informal tenure systems, and returnees reclaim land, often leading to conflict over land resources. Land holders will lay evidence claims to land that will be seen as legitimate in the local socio-political context, and may engage in adaptive livelihood strategies of natural resource management characterized by longer-term strategies. **The later stages of post-conflict** are characterized by continued rebuilding of social and human assets, increased ability to enforce laws, and re-emergence of appropriate dispute resolution systems. Tenure security is characterized by re-emergence of formal tenure system and increasing ability to resolve land conflicts, while land holders begin making long-term investments in natural resource management.

Given the important role of tenure security in sustainable natural resource management, wealth generation, and good governance, the paper suggests different policy recommendations for the two post-conflict scenarios identified above. The paper recommends that in initial stages of recovery immediately after conflict, policies be focused on providing temporary degree of tenure security, reintegrating rural populations to original or new locations, encouraging effective governance by devolving land resource management to accountable local populations, promoting conflict management and equitable access to legitimate tenure dispute resolution institutions, and promoting alternative income strategies and self-reliance. In later stages of post-conflict recovery, the paper suggests that policies should focus on clarifying tenure and property rights systems, integrate informal constructs within formal land tenure laws, continue devolution of land resource management to accountable local populations, build local capacity and foster adaptive and risk management, strengthen markets, and improve information and knowledge management systems.

The two case studies describe different types of disruption common in Africa. The Mozambique case describes a post-conflict setting, and issues relevant to recovery and durable peace. The Zambia case describes tenure insecurity tied to large-scale migration into an area that is already occupied. The two cases illustrate how evidence of land claims is a fundamental aspect of tenure security, and how pursuit of effective evidence attesting to rights has repercussions for natural resource management—expansion of agroforestry in Mozambique, and rising incidences of deforestation in Zambia. Where effective and legitimate institutions are lacking, the emergence of certain forms of landscape-based evidence can be particularly robust, and there is greater need to make strong visible argument for claims, so as to preempt the likelihood of counterclaims.

1.0 INTRODUCTION

This document brings the nature, wealth and power (NWP) framework and the sustainable livelihoods approach (SLA) to bear on situations of disrupted land and property rights and the implications for natural resource management (NRM). Following a description of the SLA and how it fits with the NWP framework in disrupted settings, two cases are presented which illustrate different forms of land rights disruption and different opportunities for engaging in the NWP framework. One case involves conflict in Mozambique and the other deals with large-scale in-migration in Zambia.

Disrupted land tenure within the SLA is represented in Figure 1, and then described below.

FIGURE 1. COMPONENTS OF THE SUSTAINABLE LIVELIHOODS APPROACH (DFID)
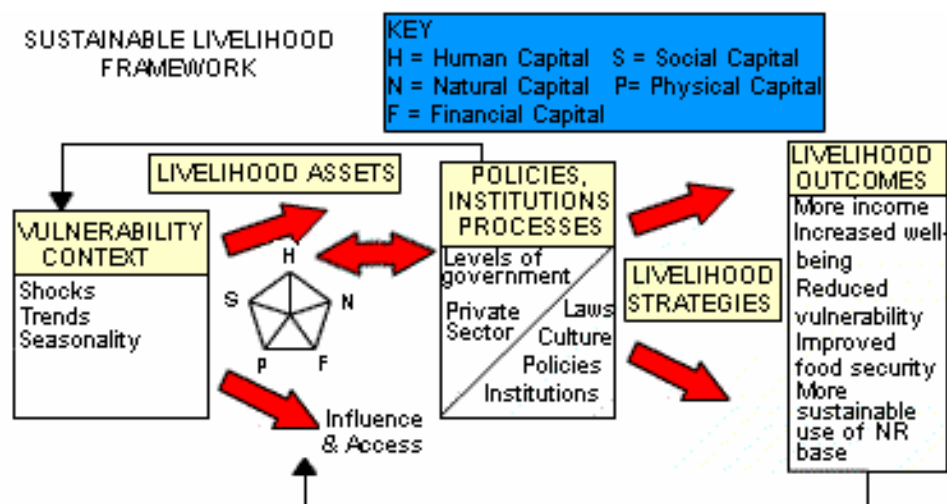
1.1 THE VULNERABILITY CONTEXT

1.1.1 Shocks, trends, seasonality

Shocks connected directly with forms of property rights disruption exist in their most acute form as dislocation from property. While dislocation can be due to direct or indirect shocks, dislocation itself is a shock as households and communities deal with the experience of greatly reduced and often complete loss of access to lands. Arrival in destination locations for displaced persons can result in an ongoing series of shocks as individuals and households are subject to discrimination and loss of personal possessions, while not being able to return to home areas. The results can range from a permanent or semi-permanent residence in a destination location, to repeated dislocation as people continue to attempt to find an area able to provide near-term personal security. Dislocation-related shocks can also affect communities hosting dislocatees. Often dislocatees are relocated to, or flee to, new areas and lands with little or no consultation with host communities. This can result in the local population's loss of access rights to agricultural lands, along with the forest product, grazing, and water resources that comprise NRM. With the presence of many dislocatees, competing land uses and competing claims can force local landholders to abandon features of their own

tenure systems due to lack of legitimate mechanisms for dispute resolution or because local residents may find little value in adhering to tenurial constructs that migrants and dislocatees may not be following.

In certain disruption scenarios, the shock events can continue long after the primary event has passed. For example, ongoing shocks due to landmine encounters after the end of conflict continue for years, as does the fear and subsequent decision making that certain areas still contain mines. This leads large, often agriculturally productive, assets to be treated as 'off limits' to rural inhabitants, with ongoing repercussions on NRM, crop and livestock sector rehabilitation, livelihoods, and resettlement (Unruh et al., 2003).

The dissolution of communities and their long-term reorganization subsequent to disruption is one of the most important trends influencing property rights vulnerability. Different notions of 'community' play a large role in land tenure in the developing world. Community reorganization subsequent to disruption can be a long and often difficult process. While some communities will be able to reestablish themselves quickly due to the easy access to natural, social, and human capital that accompanies the community cohesion less impacted by a disruption, often there are complicating factors. Tenure security is to a large degree less about rights possessed by a particular individual, than it is about the respect for those rights that a 'community' provides (Unruh, 2002; 2003). Where locals, internally displaced persons (IDPs), migrants, and commercial interests find themselves in one broad community, the degree to which an individual believes 'others' in the community are willing to respect rights based on specific evidence attesting to those rights, is fundamental to one's sense of tenure security (Unruh, 2003). For example, as newcomers, migrants can believe that they are second class members of a community, and this belief may prevail over other indications of actual adequate property rights provision and defense (Unruh et al., 2003).

Also relevant to 'community' is that profound shocks to human societies such as conflict, famine, and some natural disasters, frequently result in socioeconomic segmentation whereby many people become poorer or worse off, but at the same time there emerges a segment that is able to grow wealthier (Unruh, 1997). This occurs as crisis, adaptive, and livelihood coping strategies comprise progressively selling off assets, including land, sometimes at very low prices in order to move them quickly and gain a quick income. These assets are sold to others who can afford to buy them, ensure their security and hold them, and are then in a position to sell these assets either to others or back to the original owners subsequent to a crisis, but at higher prices. While this trend occurs at the village level, it can also occur at higher levels, including the level of the state, and can reach a point whereby such an activity is so lucrative that those in such an advantaged position can seek to slow or stop the process of recovery and rehabilitation, or even to end the war.

While shock-related disruption of tenure systems can result in an immediate stripping of land assets fundamental to NRM, trend-related dissolution of land tenure is longer term and more complicated. For example, migrant attempts at local integration, or dislocatee return to home areas and attempts at reintegration into NRM systems can find that significant system components are missing or not operable, and alternatives must be sought in their place—as the Zambia case below illustrates. This can result in trends progressively acting to dissolve aspects of preexisting tenure systems due to (1) conflict over land with no legitimate, respected institutions in place to resolve them; and (2) a lack of market opportunities and state support which leads to significant difficulties in reestablishing ecologically and economically sound crop-land and livestock-land mixes fundamental to productive NRM.

While seasonality can be a difficult variable in times of peace for smallholders, the difficulty can be increased in post-disruption scenarios. This increase occurs as the timing of the agricultural calendar intersects with the timing of activities linked with post-disruption survival such as resettlement to new areas, or return to previously occupied lands. Such incidences can serve to introduce a 'hungry season' when food stocks are low and crops are not yet harvested, or extend a 'hungry season' in areas that normally experience such food shortages.

1.1.2 SLA vulnerability in a NWP context

The 'nature' component of NWP intersects with land tenure vulnerability within the SLA approach by seeking to build resiliency into NRM systems. By building capacity and investing in human resource networks, 'communities of practice' can be built and options can emerge. Such building can occur by training, fostering of social learning, adaptive management, innovation, and experimentation. It can also occur by engaging in technical advisory services, particularly farmer to farmer and group approaches to services. The promotion of risk management and contingency planning is valuable in encouraging a more proactive approach toward responding to shocks and building resiliency. More important in such instances is the approach to management (innovation, experimentation, social learning, adaptation) and capacity building, as opposed to the actual agricultural techniques learned.

In the 'wealth' context, building and strengthening markets and rural organizations reduces vulnerability to shocks. More importantly, clear tenure and property rights systems, along with comprehension and clarity regarding procedural rights reduces vulnerability, since investments made due to known procedures and secure tenure allow for greater options, including those involved with economic gain.

In a 'power' context, improved governance can contribute significantly to tenure security. While the 'nature' and 'wealth' components can require significant time in order to have an effect on vulnerability, particular aspects of the 'power' component may contribute to tenure security more rapidly. For example, the transfer of land resource management powers to representatives accountable to local populations, particularly *prior* to the transfer of certain obligations will be critical. This would allow efficient decision making in response to shocks, but also early local response to prevent vulnerability. This effect can be valuable when pursued together with capacity building, training, and education.

## 1.2   LIVELIHOOD ASSETS: FORMS OF CAPITAL

An important aspect of land as natural capital is the security with which it is held. Thus while quantities of land as capital can be high or low, what one is able to do with this capital in terms of NRM is influenced by the degree of tenure security enjoyed. Ongoing reductions in security of access to lands in disrupted settings result in short-term resource use and extractive use of land resources (Korf, 2002). This has repercussions for the type of NRM engaged in.

Tenure security is ultimately a product of the mix between natural, human, social, and political capital. While land as a form of natural capital in disrupted periods is of high value in terms of opportunities for NRM, the asset itself can change value, as lands are overgrown due to abandonment, become unconnected to markets due to infrastructure destruction and neglect, or become mined or degraded due to high concentrations of dislocatees. While such changes may eventually be overcome with time, the real value of land as a natural asset comes as it intersects with primarily social and political capital and how these recover, or evolve in new directions after disruption.

A primary aspect of human capital in disrupted settings will be its role in dealing with the land disputes that will result from reintegrating rural populations. In the immediate post-disruption period, most dispute resolution and mediation will be accomplished by community leaders and others—including warlords—with the authority and power to decide such issues. The role of such human capital involving traditional authorities, however, can become eroded in some cases as forces favor deployment of physical power such as weapons, or external funds such as through nongovernmental organization (NGO) presence. This is a significant aspect of the ongoing land problem in Somalia, and the Karamajong Cluster (border area of Sudan, Uganda, Ethiopia, Kenya) where weapons as a form of political-financial capital supersedes human capital of local traditional authority, over sometimes large areas. For much of the immediate post-disruption landscape, the presence of local farmers, dislocatees, migrants, commercial interests, and soldiers—all located in the same areas—will mean that land disputes involving these players will be unlikely to locate a commonly respected and legitimate authority or institution. The delay between the end of disruptive events and effective

reestablishment of laws regarding land resource access (Rwanda over 10 years), and hence enforcement of formal legal arrangements will result in a 'sequencing effect' regarding dissemination about formal and informal property rights constructs (Figure 2). Given that subsequent to disruption, local informal tenurial constructs typically emerge faster and operate over much smaller areas than formal laws, local dissemination about these constructs will also occur sooner than state dissemination about new laws. This means that binding obligations involving land assets attached to informal constructs will be up and running by the time dissemination regarding formal law does finally occur, significantly complicating the implementation and enforcement of formal law. Building human capital in post-disaster situations will entail taking advantage of the sequencing of the formation of land tenure constructs by seeking to include the informal constructs within the process of deriving formal laws about land tenure and NRM. While it is argued by some that local informal tenure forms eventually become incorporated into state forms, there exist numerous instances where this is not the case. This poses significant risks for a return or turn to conflict (Figure 2, scenario 2). Such eventual incorporation or 'adaptation' however, if it does occur, is very different than what is needed with regard to post-disruption situations. Disrupted settings require a much faster, and much more purposeful incorporation of informal tenure constructs into land and property legislation in order to avoid creating or aggravating a 'disconnect' between customary and formal tenure systems. Such a disconnect is in reality commonplace in much of the developing world. Failing to incorporate emergent tenure constructs into state laws is particularly risky in post-conflict situations, as this failure may contribute significantly to a return to open conflict; and/or encourage the solidification of one or a few informal constructs based on power, creating a form of 'warlord tenure' (Figure 2, scenario 2).

FIGURE 2. SEQUENCING OF INFORMAL AND FORMAL PROPERTY RIGHTS ARRANGEMENTS SUBSEQUENT TO DISRUPTION: TWO SCENARIOS
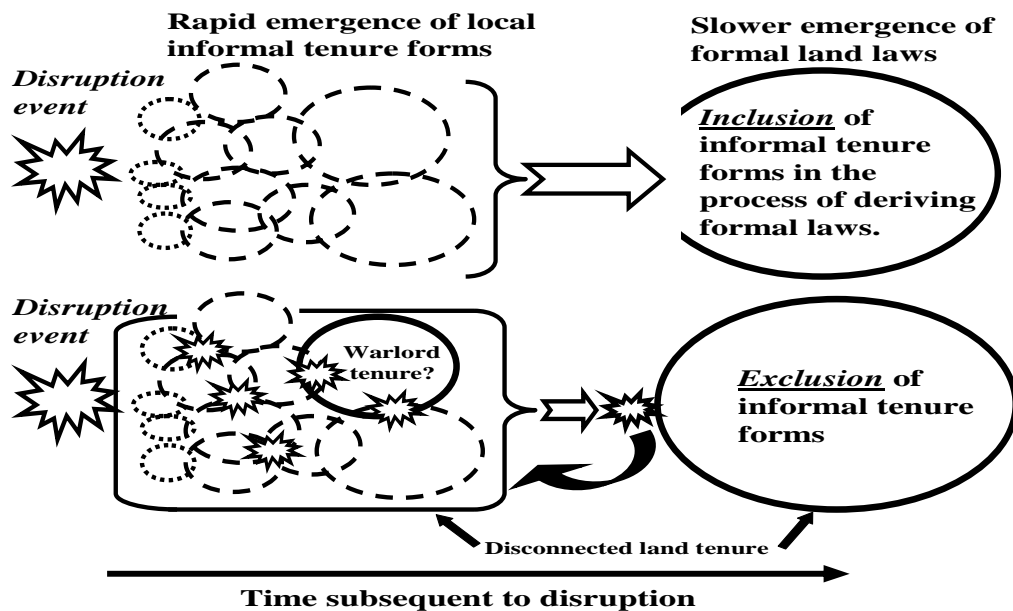
Continued social disruption can serve to delay, degrade, and rework social capital regarding land and NRM. This occurs as attempts to resolve land disputes, government missteps about how rural inhabitants are treated in the context of land issues, and lack of land and property access, along with personal, food, and livelihood insecurity lead to the abandonment of connections, networks, and forms of trust and exchange that do not work, in favor of alternative approaches which do work—often involving short-term extractive NRM (Korf, 2002). However, since alternative approaches are new, they are by necessity experimental and unpredictable. This in turn may lead to continued transitioning from one form of arrangement to another, which in aggregate can significantly slow the reformation of durable, predictable, workable forms of social capital over the long term.

While access to land resources as a form of natural capital is important in post-disruption settings, by itself land—as an asset—has little utility apart from short-term extraction activities. It is the mix of land with human, social, and political capital where tenure security emerges, and how the resulting longer-term NRM, production system, and livelihood security come about. With human and social capital in particular suffering the most in disruption scenarios, security of tenure declines markedly and land as natural capital is then only accessed in an extractive format, thereby compromising sound NRM. Alternatively, in the locations where human and social capital exist in highest potential for being rebuilt—such as refugee camps, IDP concentrations, settlements around cities, and membership in militia groups—agricultural land as a natural asset is in short supply. What can exist in aggregate is largely a spatial problem, where the forms of social and human capital of greatest potential are not located where productive land resources or rights to those exist.

1.2.1 SLA livelihood assets in an NWP context

Given that human and social capital degrade the most with disruption, and have the greatest impact on tenure security, the parts of the NWP framework of particular value will be those that rebuild these two forms of capital most rapidly. Hence the improvement of networks and 'communities of practice,' adaptive management, farmer to farmer and group approaches to technical services will be of value. Since degraded social and human assets result in low tenure security and higher extractive use of natural resources, the 'wealth' principles and actions that involve coordinating NRM resource allocation, and the 'nature' principle of promoting optimal agriculture/NRM integration will be of particular value in moving away from the extractive resource approach indicative of disrupted settings. In addition, as social and human assets are rebuilt following disruption, conflict over land resources becomes common, such that the principles of recognizing that NRM conflicts can present learning opportunities that can facilitate conflict management; and the promotion of social approaches that do not depend on consensus, within the 'power' component of NWP, can also be quite valuable.

1.3 POLICIES, INSTITUTIONS, PROCESSES

1.3.1 Customary vs. formal tenure

In many developing countries, the disconnect between formal and customary land tenure remains the prevailing property rights theme even in non-disrupted settings, and constitutes one of the primary development dilemmas. For example, if smallholder rural structures in a disrupted setting have had little or no history of connection to formal land tenure structures even in normal times, it may not suffer overtly due to a disruption of the formal tenure system and may experience a degree of benefit from a debilitated set of formal structures that no longer intrude. This may come about as those well positioned to use the state's structures to their advantage, such as elites and state officials, can be less able to pursue land claims in rural areas using formal organizations, which smallholders may have had little ability to defend against in the past.

The lack of appropriate legislation dealing with property rights in disrupted settings does not prevent a land market from operating—however informally. But without a formal legal and economic framework, the informal nature of the market can breed tenure insecurity particularly in urban areas, and discourage sustainable management of natural resources. Informal markets also have the potential to become conflictive later if subsequent property rights legislation is unable to adequately embrace market transactions that took place during the informal period (Marqhart et al., 2002). The latter can also lead to large-scale evictions, and the risk that the formal market will be for the educated elite only.

Because all societies experience land conflict, what is important to a recovery process in a land tenure-NRM context is equitable access to legitimate tenure dispute resolution institutions between groups who may view land resources very differently, and possess different evidence with which to pursue claims. For dispute resolution institutions to effectively operate between different forms of informal and formal tenure systems in the context of the reemergence of land rights, it must ultimately be realized that it is easier to modify national

land legislation to accommodate what is seen as existing legitimate rule-sets and evidence for claim, than it is to attempt to legislate smallholder norms regarding land tenure and land use out of existence, in an attempt at replacing customary tenure systems with the formal.

1.3.2 SLA policies, institutions, and processes, in an NWP framework

Of particular importance is the question of how to support the merging of the developing informal tenure arrangements, fluid as these are, with formal arrangements, so as to achieve 'buy in' by local communities with regard to formal law. In this regard the 'nature' component of NWP seeks to pursue a number of processes that are important. The improvement of information and knowledge management systems whereby the development of networks, communities of practice, and the role of field experience, are useful. Also important is the adaptation, or change of informal tenure and customary law, due to exposure to formal law. In this regard the 'power' component of NWP seeks to improve rural representation and amplify rural voices in public discourse and decisions, and engage pluralistic approaches together with conflict management. Such an improvement would go a long way toward reducing the isolation of rural communities in such situations— which can be a common feature in disrupted settings—so that adaptation and change become possible.

Encouraging effective governance can also act to engage the post-disruption land tenure surge in the process of informal institutional change toward increasing pluralism, and bring this pluralism into the national dialogue regarding recovery issues. Important in this regard will be ways that the NWP framework can engage the change in power relations that frequently follow socioeconomic disruptions whereby previously marginalized and unempowered people and groups can have an enhanced 'position' for NRM decision making. While such a scenario can be an opportunity for building improved NRM and governance, such empowerment can also be threatening to others, as the otherwise marginal groups acquire possession, command, or influence over a variety of resource access issues, including land tenure. As a result the 'power' component of the NWP framework will be particularly useful in order to mitigate the potentially negative effects of such post-disruption changes in power relations. Given the prevalence of experimentation with different NRM strategies as populations move from crisis to adaptive to coping strategies (SLA), the promotion of social learning, innovation, adaptive management, and cost-effective technical advisory services, as part of the 'nature' component of the NWP framework will be particularly useful.

1.4 LIVELIHOOD STRATEGIES IN A POST-DISRUPTION CONTEXT

1.4.1 The problem of transition

Moving from crisis strategies during disruption, to adaptive and then livelihood strategies after a disruption will take time, and possibly more time than initially expected. Being able to switch from one type of strategy to another requires that the process of pursuing one type of strategy does not work against changing to another. In this regard, timely, precise support regarding land access and tenure security may be needed to facilitate transitioning. For example, a temporary degree of tenure security provided by the state, NGOs, or donor projects for those that occupy lands to which others are returning, may mitigate against their eviction and a return to a crisis strategy.

Transitioning from one form of strategy to another can result not only in a redistribution of natural, human, and social capital, but redistribution between types of specific capital, such as types of social assets or types of natural assets. In other words, the type of land asset required for the functioning of a crisis strategy can be different than that needed for an adaptive or livelihood strategy even though the quantity of the asset may be the same. For example, in a crisis strategy, one type of natural asset that households would likely want to maximize might be non-agricultural areas such as forests, national parks, or woodlands where wild game, fuel wood, natural cover, natural water supplies, and other natural assets supportive of a resource extractive strategy exist. This would be different than needing to maximize natural assets involving fertile, easily irrigated

agricultural or grazing land near transportation networks which are needed for livelihood strategies in normal times.

1.4.2   SLA post-disruption livelihood strategies in the NWP framework

Changing from a crisis livelihood strategy to an adaptive livelihood strategy is significantly difficult following socioeconomic upheaval, particularly in situations where a crisis strategy prevents transitioning to an adaptive strategy. The utility of the NWP framework in this context resides in both facilitating the successful pursuit of a crisis strategy that supports populations in the near term, while laying the foundation for longer-term adaptive strategies important to NRM and development, and avoiding a return to crisis strategies. In this regard, the 'wealth' component of the NWP framework notes the importance of alternative income strategies, and the promotion of self-reliance, both of which can support the pursuit of crisis strategies for those that need such a strategy to survive in the short term. However, in one sense the facilitation of such a strategy may be less of a priority, given that such a strategy would occur on its own following disruption. Of greater priority may be support of the process of transitioning from crisis to adaptive strategies. In this regard, several principles and action recommendations from the NWP framework appear to be of utility. For example, in the 'power' component, the transfer of environmental powers to authorities representative of and accountable to local populations will be important. Care should be taken, however, with regard to selecting the right authorities. Subsequent to disruption, new leadership can emerge that were not present prior to the disruption. In such cases, pre-disruption customary, state, religious, gender, and ethnic leaders may not be the post-disruption leadership that is held to be accountable and legitimate by a local population—particularly where the local population is comprised of primarily refugees, IDPs, or ex-combatants. This will be particularly the case where one or more forms of pre-disruption leadership may be thought of as a reason for, or participating in the contribution toward, the disruption event in the first place. For example, in Sierra Leone, the paramount chiefs were widely thought to have contributed significantly to the conflict due to pre-conflict exploitive agrarian approaches that 'spun off' rural youth into the diamond mines and the insurgency.

Given that the 'right' local leaders are sought after a disruption, several aspects will be important to facilitating the transition from crisis to adaptive strategies: the transfer of discretionary decisions before obligations, making the transfers in the form of secure rights; and the transfer of powers even before capacity is demonstrated or built. Such transfers of decision-making powers will serve to provide an enabling environment for the adoption of adaptive strategies by people who do not yet pursue such a strategy. Such an approach to transfer of powers may appear to be misapplied, and potentially lead to mistakes and inefficiencies by a local population to which such powers have been transferred. However, it can be argued that the objective of a post-disruption/recovery process should be focused more on laying a broad 'invitation' to transition from one livelihood strategy to another, than on efficiencies and smooth functioning—which may become more attainable later. Post-disruption settings are complex, fluid and chaotic, and mistakes and inefficiencies will be common regardless of the recovery strategy. In such a setting, cost-effectiveness is less important than being, as the 'wealth' component recommends, "strategic about the economics of natural resource management." Such an approach should support an enabling environment that is tailored to a livelihood transitioning process. An additional aspect regarding transitioning is the importance of focusing on tomorrow's economy, as indicated by the 'wealth' component of the framework. Such a focus prepares the overall socio-political and economic environment for when large segments of a population come out of crisis strategies and transition to other strategies.

1.5   LIVELIHOOD OUTCOMES

1.5.1   Priorities for rural inhabitants in disrupted land rights scenarios

Increases in tenure security as a component of livelihood outcomes will be tied to notions of 'community', and community-level respect for individual level rights. But in disrupted settings, the community is likely to be of a different character than prior to the disruption. As noted earlier, there will potentially be much larger

numbers of migrants, dislocatees, or returning refugees, along with commercial interests, demobilizing combatants, and international actors that will all belong to a 'community' in terms of the needed acknowledgement and respect of land claims. That certain components of the community, such as migrants, combatants, and commercial interests will not adhere to local pre-disruption ideas of authority, evidence, dispute resolution, and land allocation, makes this acknowledgement and respect much more difficult.

Also important to livelihood outcomes will be issues involving property restitution, resettlement, and eviction of those occupying land claimed by others. A primary problem can be that informal authority, equity, welfare, retribution, disagreement, and enforcement can be very difficult if the state is not organized, available, and effective in a timely manner to deal with problems of restitution, resettlement, and eviction. In many cases, the state is not in this position, and the problem may fall on NGOs or the international community present at the time.

1.5.2   SLA livelihood outcomes in a NWP context

The need to deal with a reworked notion of 'community' within which tenure security is gained can be attended to by several principles and actions in the NWP framework. Under the 'nature' component that articulates various forms of local land use planning and appropriate resource tenure systems, the promotion of participatory approaches that include gender and user groups would contribute to communication and joint understanding of issues within a newly constituted post-disruption community, and contribute to a reduction in intra-community conflict over land, property, and NRM.

In addition, under the 'power' component, the strengthening of simple procedural rights to access and use of land resources would provide for an environment equally open to all members of a post-disruption community, including the less powerful. The conflict management approaches that do not depend on consensus, that help to identify winners and losers, and that are willing to engage with pluralism, will be a more realistic approach to managing a post-disruption community represented by the very different socio, political, and economic positions.

Table 1 shows key characteristics and policy recommendations for the various stages of conflict and post-conflict situations.

TABLE 1. KEY CHARACTERISTICS AND POLICY RECOMMENDATIONS FOR STAGES OF CONFLICT

	Disruption phase	**Post-disruption Initial recovery phase**	**Post-disruption Later stages**
Socio-political context	• Social disruption; erosion of human capital • Erosion of capacity to enforce appropriate legislation • Erosion of legitimate dispute resolution system	• Rebuilding of social and human assets in a new and complex community • Weak ability to enforce laws • Continued lack of legitimate dispute resolution system	• Continued rebuilding of social and human assets • Increased ability to enforce laws • Reemergence of appropriate dispute resolution systems
Tenure situation	• Insecurity of tenure (control and access to land) • Quick sale of assets (land)	• Reemergence of local informal tenure systems • Returnees reclaiming land; conflict over land resources	• Reemergence of state tenure system • Increasing ability to resolve land conflicts

TABLE 1. KEY CHARACTERISTICS AND POLICY RECOMMENDATIONS FOR STAGES OF CONFLICT

	Disruption phase	Post-disruption Initial recovery phase	Post-disruption Later stages
NRM strategy	Crisis strategy characterized by short-term resource extraction	Adaptive strategies, characterized by longer-term strategies and laying evidence claims to land	Adaptive strategies, characterized by improvements in long-term natural assets (e.g., investments in soil fertility)
Policy recommen dations		• Provide temporary degree of tenure security • Reintegrate rural populations to original or new locations • Encourage effective governance, devolve land resource management to accountable local populations • Promote conflict management and equitable access to legitimate tenure dispute resolution institutions • Use NRM conflicts as learning opportunities to facilitate conflict management • Promote alternative income strategies and self-reliance	• Assist in the clarification of tenure and property rights systems, and procedural rights • Assist in integration of informal constructs within formal land tenure laws • Continue to devolve land resource management powers to accountable local populations • Build local capacity, foster adaptive management and social learning, promote risk management • Strengthen markets • Improve information and knowledge management systems

2.0 MOZAMBIQUE AND ZAMBIA: CASE STUDIES

Two case studies are presented here which describe different types of disruption common in Africa. The Mozambique case describes a post-conflict setting and issues relevant to recovery and durable peace. The Zambia case describes tenure insecurity tied to large-scale migration into an area that is already occupied. The two cases illustrate how insecure rights to land have implications for NRM.

2.1 CASHEW AGROFORESTRY IN MOZAMBIQUE

In Mozambique, as elsewhere in the developing world, economically valuable trees are among the most common and valuable forms of customary evidence for claiming 'ownership' of land. Trees, by their enduring nature, can be evidence that lands in fallow are still 'owned.' This is important because many land laws, including Mozambique's, can stipulate that land is declared 'abandoned' if uncultivated for more than a certain number of years, which is frequently much shorter than an adequate fallow period. In Mozambique, cashew tree tenure plays a large 'evidence of claim' role in property rights for smallholders. There are important relationships between this evidence role and the continued adoption and maintenance of cashew agroforestry. In the early 1970s, Mozambique was the world's largest producer of cashew nuts in shell, and cashew was the primary export commodity. Thus cashew trees are a common feature of the rural landscape. However forces associated with the post-independence war acted to increase the evidence value of older cashew trees right after the war, compared to other forms of evidence which became less able to provide strong evidence of claims to property, and legitimate evidence in dispute resolution.

One of the most important results of the war was the creation and maintenance a significant age gap in cashew agroforestry trees. Perhaps most important was the direct effect of the dislocation of about six million people on tree planting and the removal of older, non-producing trees. Dislocatees residing on others' land were prevented from planting by their hosts because it was seen as a land claim. Likewise, removing trees from such land would have been a challenge to the owner's claims. For dislocatees cultivating land of no clear ownership, the temporary nature of their residence deterred tree planting. For communities not dislocated, the war and resulting food security problems meant that the agricultural time horizons of many small-scale producers were reduced considerably, effectively precluding tree planting with its expectation of production only after several years on land needed for much quicker producing annual crops. At the same time, older trees near the end of production were not removed, as they frequently still provided small amounts of cashew for food insecure agriculturalists; and provided the most powerful evidence for claim to lands by indicating long-term or previous occupation. The frequency and severity of land conflict also influenced the cashew age gap. Smallholders in areas where conflicts were a problem were especially reluctant to remove older trees due to their greater evidence value over seedlings and saplings, which can be easily pulled up. In the overall context of cashew trees as evidence, the war had destroyed many other forms of evidence, and the cashew tree age gap acted to shift emphasis to older trees, primarily because this is what was most prevalent and most meaningful as evidence in both customary and formal tenure systems. The land law in place at the end of the war acknowledged forms of smallholder evidence that demonstrated 'occupation' and explicitly disallowed forms of social evidence, such as testimony. While crops and field boundaries were evidence of occupation, these were severely disrupted during the war so as to be problematic for smallholders to connect with for purposes of evidence attesting to claim.

There were two overall effects of cashew agroforestry on property rights and tenure insecurity in postwar Mozambique. First, the rules and customs regarding the link between agroforestry trees, and land tenure in the postwar context, greatly facilitated, at no cost to the state, the coordination of defending and asserting rights to land, and hence post-disruption land reaccess and dispute resolution. This helped to organize important aspects of property rights in a way that might not have occurred had there been no, or very few, agroforestry trees present in the postwar period. Thus the NRM agroforestry technology, or an aspect of it— older existing trees—has and continues to play an important role in the organization of property rights in the period of recovery. The existence of, and comparative importance of, respected customs and norms regarding the connection between agroforestry trees, land, and people, in an otherwise chaotic postwar tenure environment, demonstrated considerable potential as a starting point for the evolution or re-formation of additional institutions regarding property rights.

The second effect of agroforestry trees as evidence on property rights has to do with the adoption and maintenance of cashew agroforestry as these intersect with the formidable tree age gap. The failure to adopt, or readopt, tree replacement strategies due to the high value placed on older trees as evidence could eventually result in a decrease in this evidence as the older trees die out, with impacts on the overall NRM— loss of agroforestry, as opposed to its adoption—and property rights. With decreasing numbers of trees, their availability as forms of evidence would eventually reach a point where the set of customs and norms that pertain to trees as evidence would begin to disintegrate. Very high value will continue to be placed on older trees unless other forms of evidence become available and legitimate, and institutions pertaining to these are able to evolve and deliver in terms of tenure security.

The Mozambique case is a good example of the problems that can emerge as a post-disruption setting 'transitions' from a crisis livelihood strategy involving older agroforestry trees as evidence for land claim after a war, to more adaptive strategies involving agroforestry trees as an economic asset. One could imagine that two directions may be possible in such a transition: continued elevated evidence value of old cashew trees compared to other forms of evidence, and an eventual collapse of the agroforestry system; or NRM and governance policies and activities that promote the utility and value of other forms of evidence to levels comparable to or greater than older cashew trees, and the resulting readoption of cashew more as an economic asset than as singularly important evidence for rights to land. Aspects of the NWP framework are useful in pursuing opportunities for the latter direction.

The designation of alternative forms of evidence for claim to land would first need to involve the input of rural communities who often already have a wide variety of evidence used in intra-community disputes. Considering such evidence for suitability in formal legal domains, thereby increasing its utility and value, means that robust rural groups and federations must be encouraged and supported ('wealth' component) in a post-disruption phase. In addition, the improvement of rural representation and amplification of rural voices in public decisions that affect rural lives and well being ('power' component) is equally valuable. As well, principles and actions pertinent to the 'power' component would also contribute to the effective transitioning of strategies regarding cashew agroforestry. Shifting the role of the state from command and control toward technical support and legal oversight would support the 'translation' of local customary forms of evidence to forms suitable to formal law. Transferring decision-making powers to local communities and legitimate leadership would facilitate the consideration of local forms of evidence in a forum where their suitability for inclusion in formal legislation could be debated. In addition, encouraging the recognition that NRM conflicts can present learning opportunities and facilitate conflict management is important to exploring alternative forms of evidence for claims that may be regarded as legitimate, available, and workable. For example, the national-level debate that ensued in Mozambique regarding land issues was notable for its hard won openness, and much was gained by such transparency and inclusiveness. The resulting inclusion of testimonial evidence in the new land law and other customary evidence of occupation was a positive result. This supports the action of encouraging inclusive national-level debate to guide restructuring of natural resource governance in the 'power' component.

The Mozambique case also highlights an important feature of post-disruption settings that the NWP framework can engage—which is that the level, type, and impact of disruption will be quite variable across the rural domain of a country. The NWP principle to promote local land use planning and appropriate resource tenure systems within the 'nature' component is important in this regard; as is the principle under the 'wealth' component that encourages the creation of a framework in which people can make better NRM choices in their own self-interest. These principles are critical in post-disruption settings so as to optimize the effect of specific actions seeking to address particular problems in different locations.

Lastly, the two effects of cashew agroforestry on property rights—assisting in the organization of postwar land reaccess, and then the potential disintegration of this same evidence and associated institutions— highlight the importance of the principle under the 'nature' component, which encourages social learning, innovation, and adaptive management. This is because, in a case like Mozambique and other countries recovering from disruption, as the socioeconomic and political context changes, so can the nature of the relationship between property rights and NRM.

2.2   CLEARING TO CLAIM IN SOUTHERN ZAMBIA

The Zambia case presented here describes a scenario where significant migration has resulted in a problematic NRM arrangement between the local population and migrants, contributing to Zambia experiencing one of the highest rates in deforestation in Africa. This case explores how the NWP framework could attend to the important aspects of the problem, and contribute to more positive NRM outcomes.

In the Zambian case, we find that local leaders provide migrants with rights to land that by all indications are as secure as, and much the same as, those enjoyed by nonmigrant locals. Nevertheless, the land rights thus provided are *received* by migrants much differently than by locals, leading migrants to clear much larger areas than are subsequently cultivated, for purposes of creating additional evidence of their claim to the land they have already been securely allocated. This practice requires substantial additional labor inputs, and leads to high rates of deforestation and ultimately unsustainable resource use.

Upon arrival in a new location, migrants acquire land by requesting an area from representatives of the local chief or headman. The local leadership usually grants such requests, in part because land is still abundant in the area, but to a large degree also because adding people increases the political base of a headman or chief. It is very rare for migrants to be relieved of land, even if they have incurred serious transgressions against the community. Once a parcel has been allocated, the migrant begins clearing land for cultivation. Migrants clear much more land than they intend to cultivate. This is a different system of clearing for agriculture than what is practiced by locals, who only clear the amount of land they intend to plant that season. In an NRM context, this is the defining physical distinction between migrant and local land tenure.

There are two broad patterns of land clearing by migrants for the purpose of establishing additional physical evidence of the landholdings they have been allotted by the local leadership. The first pattern involves migrants moving to an area where land is significantly abundant, and quickly clearing land provided by a local headman due to a fear that the local leadership may take back any land left uncultivated. In this case, rights as well as evidence attesting to such rights provided by local leadership are seen by migrants to be tenuous; and migrants, as a result, feel that additional evidence is urgently needed to solidify their claim in the face of what is perceived to be capricious leadership and insecure tenure.

The second pattern exists in areas where land is no longer abundant, and where all land has already been allocated either to locals or migrants. Such areas may include both cultivated land and large forest patches within cultivated allotments. In this type of situation, new migrants arriving in the area looking for land may approach the local leadership and make the case that patches of apparently unused forest land should be taken from the current holder and allocated instead to the new migrants. Also, when youth in the area come of age and need land to start their household and farming activities, there may be pressure to find land in the area. Such situations can render forested portions within land allocations vulnerable to allegations of non-use,

even if the landholder may in reality be holding such areas in reserve for future use by their children, or other NRM uses. This scenario thus encourages holders of forest areas to clear these so as not to incur allegations of non-use by others seeking land. In such cases, the need to clear is based on the perception that currently held evidence for holding forest land is not sufficient for a migrant to be able to guarantee continued rights of secure tenure.

Negative conservation outcomes associated with smallholder land management is often connected to the notion that 'enough rights' have not been provided to smallholders, and thus the provision of rights to those engaged in small-scale resource use are not sufficient to allow for 'ownership' of management decisions and their consequences. But, as in the Zambia case, if the problem is the migrant's lack of faith in the security of rights that are provided and the evidence attesting to them, then the provision of more rights will do little to encourage conservation. Nonmigrant communities have experience which has been gained over time that has allowed them to come to believe that specific evidence with regard to land in fact provide for adequate security. Migrants have no such experience in their new location within a community comprised of nonmigrants and other migrants. Is gaining such experience over time more important to security of tenure than an ill-defined notion of what are 'enough' rights?

A central point that emerges in the Zambia case is that the close similarity between local and migrant land resources users does not preclude the existence of serious NRM problems. The local plateau Tonga and the migrant valley Tonga speak the same language, are the same ethnic group; have similar forms of agriculture; and share many of the same social, kinship, and religious institutions. Yet rates of deforestation resulting from the distinction between the two groups are high. This underscores the importance of an approach such as the NWP framework for looking at the fundamental workings of social relations to improve NRM problems. The essential issue in this case is a 'rights reception' problem, whereby aspects of such reception result in migrants clearing much larger areas than needed for cultivation, in order to enhance their evidence set for land claim. As in the Mozambique case, the issue of 'community' in experiencing tenure security is significant. An important part of the NRM problem in Zambia is that this community is not homogeneous—here constituted as a combined migrant-nonmigrant community, where perceptions regarding what the 'others' might or might not do with regard to land tenure and NRM is of fundamental importance in tenure security. Does the NWP framework offer approaches that are able to mitigate the tenurial issues emerging from such perceptions? In this regard, several principles and actions are relevant—particularly those which deal with interaction and relationships between resource users at the local level; together with those that provide for certain linkages with the state. Specifically the question becomes, can aspects of the NWP framework attend to the 'belief' aspect on the part of migrants, that evidence attesting to land rights conferred by local leadership do in fact provide tenure security, given that they indeed do provide such security. The quicker this belief is experienced, the quicker the perception of the need to clear land in order to verify one's claim will decrease. Within the 'power' component of the framework, the principle to encourage checks and balances, pluralistic approaches, and conflict management is of utility. The creation of forums for NRM discussion between groups of locals and migrants, and the promotion of social approaches that do not depend on consensus and that identify losers and problems, may go a long way toward establishing trust and believability between groups of migrants and locals.

Within the 'nature' component of the framework, the principles involving the promotion of local land use planning and appropriate resource tenure systems and fostering social learning, innovation, and adaptive management are useful. Promoting participatory approaches that involve both migrants and locals regarding appropriate tenure systems, such as making local procedures of land access clear, simple, straightforward, repeatable, and easily understandable—including clarity of boundaries—is particularly useful. Social learning that provides for a continuous dialogue between migrant and nonmigrant leadership would assist in forging clear tenure rules between migrants and locals, and help to replace the need for personal experience in acquiring belief in the tenure security conferred by local leadership. In addition, adaptive management, with its emphasis on learning, is applicable in that learning in this case is the process of gaining knowledge, through experience, that certain evidence attesting to rights do in reality work in most cases. But instead of waiting for such experience to occur naturally while high rates of deforestation occur, the field of adaptive

management can bring to bear tools that may be able to quicken the gaining of experience regarding evidence and tenure security for migrants, to keep pace, or ideally operate quicker than ecosystem change—in this case deforestation.

Within the 'wealth' component, several principles and action recommendations are important to the Zambia case. The role of rural organizations as part of the long-term building blocks of development is important. If migrants had organizations that represented their interests vis-à-vis both the nonmigrant leadership and the state, then is it conceivable that they would feel their position with regard to land claims would be strengthened? Would migrants then believe that land problems that might emerge would benefit from an enhanced position, possibly precluding the need to strengthen individual migrants' position in land claims by simply clearing land?

2.3   CONCLUSIONS

The disruption of land rights, and in particular tenure security, has implications for natural resource management, use, and governance. Several key points are most relevant to disrupted tenure systems and NRM. First, tenure security is significantly affected by socioeconomic and political disruptions due to the connection between social relations about land, and the tenure security that one's 'community' provides. In disrupted settings, the composition of such a community is often quite different than prior to the disruption; such that differences in background, location of origin, ethnicity, politics, economic status, etc., among members of the new community will make provision of tenure security, particularly to small-scale agriculturalists, more problematic.

Second, disrupted socio-political situations are unique settings in their combination of a weakened and chaotic formal land tenure system, and robust, vigorous, and fluid, informal land tenure activity. The confusion, competition, confrontation, and yet importance of seeking secure access to rural lands during and following civil disruption can lead to a number of different ways (legal pluralism) for attempting to legitimize land access, claim, use, and security in a fluid sociopolitical setting. What are needed are tenure reorganization and reform efforts to assess how the development of tenurial institutions, problems, and processes are proceeding 'on the ground' so as to draw legitimacy from these processes into reformulating policy and law. Without this purposeful connection, tenure institutions at different levels risk evolving in different directions, with considerable difficulty later on in attempts to connect them. With such a connection, new policy can support what people are already doing, and engage in real ongoing issues important to NRM: disputes, resettlement, restitution, proof of claim, and development.

Third, reworked social relations following property rights disruption will mean that new forms of leadership, and different rules involving marginalized community status, will affect notions of evidence that attest to rights (i.e., group membership, occupation, access to or relationship to leadership) as well as the relationship of rights to grievances and perceptions of deserved rights. Evidence is a fundamental aspect of tenure security, as the two cases here demonstrate. In both cases the pursuit of effective evidence attesting to rights has repercussions for NRM—agroforestry in Mozambique, and deforestation in Zambia. That the pursuit of effective forms of evidence which attest to rights occurs in the absence of effective institutions to treat such evidence in a dispute resolution forum is instructive. Where effective, legitimate institutions are lacking, the emergence of certain forms of landscape-based evidence can be particularly robust, especially forms which connect with formal notions of claim such as 'occupation.' Purposefully planted trees deserve particular mention in an evidentiary context due to the very clear connections made between social relations and landscape. Clearing land is more pervasive as a means of creating evidence of occupation and thus claim. This practice is also of great concern for environmental conservation. Deforestation as a form of evidence is widespread in part because it is so effective. In one sense, the more lacking local to national institutions are for adequately treating evidence in terms of land claims and dispute resolution, the greater the need to make a strong visible argument for claim, so as to preempt the likelihood of a counterclaim and therefore the need for an institution to resolve a dispute.

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