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Access to land and other natural resources for improving rural people's livelihood

Background Paper

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Acronyms

| | |
|---------------|---|
| AfDB | African Development Bank |
| ALPI | African Land Policy Initiative |
| AU | African Union |
| CFS | Committee on World Food Security |
| EC | European Commission |
| ECA | United Nations Economic Commission for Africa |
| EU | European Union |
| FAO | Food and Agriculture Organization |
| FIAN | Food First Information and Action Network |
| GRAIN | Genetic Resources Action International |
| ICARRD | International Conference on Agrarian Reform and Rural Development |
| IFAD | International Fund for Agricultural Development |
| LPI | Land Policy Initiative |
| LUP | Land Use Planning |
| NGO | Non-governmental organization |
| OECD | Organization of Economic Cooperation and Development |
| RAI | Responsible Agricultural Investment |
| REC | Regional Economic Communities |
| SEA | Strategic Environmental Assessment |
| UNECE | United Nations Economic Commission for Europe |
| UNTAC | United Nations Conference on Trade and Development |

Summary

This background paper is designed by the EU Working Group on Land Issues. The EU Working Group on Land Issues started its work in 2002 as EU Taskforce on Land Issues to develop inputs for the EU Land Policy Guidelines which were approved in December 2004.

During the EU Heads of Agriculture and Rural Development meeting of January 2009, following a proposal from the Commission, the EU Working Group on Land Issues was re-activated. Objectives of the Working Group are to share information, exchange experiences, develop common EU positions and recommendations on land policy and reform initiatives in developing countries.

Land is an asset different from all others due to the connections of social, economical, environmental, institutional and political aspects. The importance of access to land and other natural resources has gained momentum again in the public debate, partly due to the recent developments of large-scale land acquisition and leases in developing countries.

The background paper intends to expose readers to the current land related debate and developments at global and regional level. It further draws the attention on how sound and effective national land legislations, democratic governance, and effective land management instruments such as registration can build the basis for secured land tenure and land use rights for vulnerable groups – especially women and indigenous people and thus contribute to food security and rural development.

1. Introduction

“My grandparents used to tell me that land for agriculture was not a problem at all. They had more than enough for cultivation. Large tracts of land remained fallow. The situation changed when their sons and daughters, including my mother, began to get married. They all wanted to have gardens of their own. My grandparents had to redistribute some of their land to them. By the time they died, they did not have enough land to grow crops to last them a year. The land my mother, aunts, and uncles were given cannot support the subsistence of our families either. Our families have grown big and our gardens are simply inadequate”. **(Malawi)**

“Rainfall is erratic and unreliable. Sometimes it is too much, and sometimes it is just not there. There are also many pests. To make things worse, our farmland is continuously decreasing as a result of concessions given to poultry farms by private investors”. **(Ethiopia)**

“Poverty (is) inherited. If you were born to a poor father, he cannot educate you and cannot give you any land, or very little land of poor quality; every generation gets poorer”. **(Uganda)**

“All our problems derive from lack of land. If we have enough land we will be able to produce enough to feed our households, build houses, and train our children”. **(Nigeria)**
(“Voices of the Poor”, World Bank 2000)

Global poverty remains a massive and predominantly rural phenomenon – with 70 per cent of the developing world’s 1.4 billion extremely poor living in rural areas.¹ Land is fundamental to the lives of these people. It is a source of food, shelter, income and social identity. With regard to the shortages of rural labor and capital markets, land is a production factor of outmost importance and therefore crucial for securing people’s livelihoods and reducing their vulnerability to hunger. But for many of the world’s extremely poor in developing countries, secure access is becoming more tenuous than ever.²

Consequently, the *EU’s policy framework to assist developing countries in addressing food security challenges* highlights the relationship between access to land and food security. Secure access to land is seen as prerequisite to enhance productivity of smallholder farmers, because people only tend to invest and to use resources sustainably, when they have guaranteed long-term user rights. However, continuing population growth, as well as climate change with its associated problems such as ongoing soil sealing, erosion and desertification put a tremendous pressure on land and other natural resources.

At the same time, three trends boost a growing competition for a limited amount of agricultural land on national and international markets:

- ▶ the rising demand for food and fodder;
- ▶ the request for biomass as a multiple energy source; and
- ▶ the increasing interest of investors, who discovered land as a profitable financial asset.

As a consequence, the number of land sales and leases in developing countries has increased dramatically. The sheer upraise in large-scale commercial farming which is partly solely export-oriented or focused on agro-fuel production instead of satisfying the local food demand pushed the media to describe the phenomenon as “land grabbing” highlighting its negative connotation. The World Bank estimates that until 2009, investors globally have applied for concessions on about 45 million hectares of land. Most host states for extensive foreign direct investment in land are thereby countries

¹ Rural Poverty Report 2011, page 3 (IFAD 2011).

² Land tenure security and poverty reduction (IFAD 2010).

with a large territory often struggling with serious food shortages themselves. Additionally, democracy and the rule of law are frequently not significantly consolidated which endangers the potential of negative impacts for the rural poor (i.e. forced displacement without appropriate compensation, violation of health and safety standards or immoral wages etc.). In contrast to former land deals, the current jump in land transactions affects countries traditionally not considered as viable targets for investments, such as DR Congo, Sudan or Liberia with a low record of governance in the land sector.³ To trigger the desirable impacts of large-scale investment in land, such as increased agricultural productivity and enhanced food security in the host states, various actors and organizations identified the urgent need for revised measurements of land governance.

In recent years mainly three initiatives to improve land governance have evolved at international and regional level. Working on principles and guidelines for better governance of land and other natural resources, they aim among others to counteract potential negative impacts of large-scale acquisition of land:

- ▶ the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources*, prepared by FAO in partnership with UN agencies, member countries, civil society and private sector representatives;
- ▶ the *Principles for Responsible Agricultural Investment*, drafted commonly by UNCTAD, FAO, IFAD and the World Bank; and
- ▶ the *Framework and Guidelines on Land Policy in Africa*, initiated by the AU.⁴

At the national level, the existence of a comprehensive and feasible legal framework is a prerequisite for good land governance guaranteeing secure access to land and other natural resources and minimizing negative impacts of large-scale land acquisition on food security. Furthermore, it is also crucial to document existing land rights. According to IFAD, less than 10 per cent of African land is registered within an officially recognized legal system.⁵ Access and user rights of these non-registered lands are in the majority of the cases regulated by traditional authorities or customary rights. The different legal systems – modern and traditional - usually coexist, but are often only partly harmonized or not compatible at all. Legal pluralism is often predominant and contains a big potential for conflicts, as overlapping land claims cannot be systematically circumvented and eradicated. Additionally, access to land registration or titling systems for poor people is often constrained by non-available information, insufficient financial means or poor transport infrastructure in rural areas. In case of conflict, the rural poor are especially disadvantaged as their customary acquired land rights can normally not be proven by official documents. This insecure legal status may enforce corruption in the land sector, fuelling negative impacts on the rural population.

Integrated land use planning approaches that include broad consultation processes and participatory approaches are necessary to guide investment decisions. Especially in fragile environments and in regions with high potential for large-scale land investments, they should be linked to a strategic environmental assessment as well as to a review of their social compatibility (i.e. human rights, conflict-sensitive criteria).

³ Rising interest in farmland (The World Bank 2010).

⁴ Endorsed by the AU's joint Conference of Ministers of Agriculture, Lands and Livestock held in April 2010 in Addis Ababa, Ethiopia, and officially launched on 28th October 2010, in Lilongwe, Malawi.

⁵ Land tenure security and poverty reduction (IFAD 2010).

2. International Initiatives

2.1 FAO Voluntary Guidelines on Responsible Governance of Tenure and other Natural Resources

To enhance responsible land tenure and governance of other natural resources, FAO is preparing Voluntary Guidelines which will constitute a framework for policies, legislations and programs. In setting out principles and internationally accepted standards, the Voluntary Guidelines intend to provide practical guidance to states, civil society and private sector. Being voluntary, they will neither establish legally binding obligations nor replace existing national or international laws, treaties or agreements.

The Voluntary Guidelines are closely linked to all relevant international and regional initiatives, such as the recently adopted *Framework and Guidelines on Land Policy in Africa* (see 2.3), that address human rights and secure access to land and other natural resources. They further expand the *Voluntary Guidelines on the Right to Food* with regard to (land) tenure reform, and they provide a follow-up to the *International Conference on Agrarian Reform and Rural Development* (ICARRD), both emphasizing the role of governance and the rule of law.

The Voluntary Guidelines are jointly prepared with governments, civil society, private sector, academia and other development partners. They draw on multi-stakeholder thematic and regional consultations (overall 15 consultations within 16 months) which assessed issues and actions to be included in the guidelines by a participatory and inclusive process. The guidelines will adopt an interdisciplinary approach recognizing rural and urban linkages and considering a variety of natural resources including land, forests, fisheries and water.⁶

2.2 Responsible Agricultural Investments – Seven Principles

In parallel to the work on the Voluntary Guidelines, FAO, IFAD, the World Bank and UNCTAD are elaborating the *Responsible Agricultural Investment* (RAI) principles. Since April 2010 the RAI principles have been discussed in a number of policy fora where they attracted the interest of many governments (in particular from OECD countries), as well as the attention of the private sector, civil society groups and the UN Special Rapporteur on the Right to Food. The RAI principles consist of:

- ▶ **Principle 1:** Existing rights to land and associated natural resources are recognized and respected.
- ▶ **Principle 2:** Investments do not jeopardize food security but rather strengthen it.
- ▶ **Principle 3:** Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
- ▶ **Principle 4:** All those materially affected are consulted, and agreements from consultations are recorded and enforced.
- ▶ **Principle 5:** Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
- ▶ **Principle 6:** Investments generate desirable social and distributional impacts and do not increase vulnerability.
- ▶ **Principle 7:** Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/ magnitude of negative impacts and mitigating them.⁷

⁶ See <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

⁷ See <http://www.responsibleagroinvestment.org/rai/>

The first principle addresses the primary concern that large-scale land acquisitions for agricultural investments may threaten the rights of current land users. Existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, collectively or individually, should be respected. This requires: (i) the identification of all right holders; (ii) legal recognition of all rights and uses, together with options for their demarcation and registration or recording; (iii) negotiation with land holders/ users, based on informed and free choice, in order to identify the types of rights to be transferred and modalities for doing so; (iv) fair and prompt payment for all acquired rights; and (v) independent avenues for resolving disputes or grievances.⁸

Many investments requiring access to large-scale land surfaces on areas that often have considered being 'empty' or 'marginal'. Yet it is important to distinguish that there are only very few areas truly "unoccupied" or "unclaimed", and that frequently land classified as such has in fact been used over generations under traditional law following long-standing rights of use and custom-based management. Failure to recognize such rights, including secondary ones (e.g. rights of way), will deprive the local population of key natural resources on which their livelihoods depend. Lands that have been abandoned by internally displaced persons, but also areas which could be used alternatively by them pose particular challenges. It is important that efforts to make land available to investors do not undermine current or future livelihood opportunities for those involuntarily displaced by an investment.

Recognition of local and indigenous rights to land and associated natural resources – regardless whether they are formally documented or not – together with the acknowledgement of the right to negotiate their uses, can empower local communities and should be seen as a precondition for direct bargaining with investors. Furthermore, special attention to land rights of pastoralists, women, migrants and indigenous groups that have often been neglected in the past is critical to achieve a fair, inclusive outcome.⁹

On the occasion of the World Bank annual conference on land policy and administration in April 2010 a coalition of NGOs and farmers movements including La Via Campesina, FIAN and GRAIN expressed strong criticisms on the RAI principles highlighting that the entire development process of the principles has left out some of the main stakeholders, such as civil society and farmer organizations. The RAI principles have been further criticized by civil society representatives for their lack of reference to human rights, and they are accused of legitimizing "land grabbing".

During the 36th session of the CFS, the committee took note of the ongoing development process of the *Principles for Responsible Agricultural Investments that Respect Rights, Livelihoods and Resources* (RAI), and decided to start an inclusive process of consideration within CFS. Additionally, the committee urged governments and other stakeholders involved in the drafting process of both, the Voluntary Guidelines and the RAI, to ensure consistency and complementarity between the two processes.

2.3 Framework and Guidelines on Land Policy in Africa

In view of the importance of addressing land related challenges to facilitate broad based economic growth and social development as well as to ensure peace and security, the majority of African governments have embarked on land policy and institutional reforms since the two last decades. Most of these reforms aim to address the twin challenges of providing a sound basis for strengthening property rights so as to facilitate investment and the generation of economic opportunities while at the same time guaranteeing access to land for the rural and urban poor as a basis for secure livelihoods, improved food security and peace. A progress review made by African governments with regard to the

⁸ See <http://www.responsibleagroinvestment.org/rai/>

⁹ See <http://www.responsibleagroinvestment.org/rai/>

formulation and implementation of comprehensive land policies shows a wide variation among African countries reflecting different grades of achievements.

Therefore, the AU-ECA-AfDB Land Policy Initiative (LPI), working in close collaboration with Regional Economic Communities (RECs) and other stakeholders, has developed a *Framework and Guidelines on Land Policy in Africa* (F&G).¹⁰

The F&G was endorsed by the AU's joint Conference of Ministers of Agriculture, Lands and Livestock held in April 2010 in Ethiopia. The official launching of the *African Land Policy Initiative* (ALPI) took place in October 2010 in Malawi.

The implementation of the F&G is supported by the EU, under the *Capacity Building in Support of Land Policy Development & Implementation in Africa* from the Intra-ACP envelope of the 10th European Development Fund as well as by UNECA and IFAD.¹¹

3. At national level

3.1 Land policy and legal framework

The land policy framework is a very complex field with different characteristics in the various partner countries. While land is state land in several countries and cannot be sold but only be leased to someone, in other countries it is a community resource, which is acquired by the person, who is making the land arable and is using it. Moreover, due to a lack of documentation some areas can be even both, state-owned and at the same time claimed by communities. Frequently land administration is subordinated to traditional hierarchies, which distribute land according to criteria that are not explicitly codified. On the one hand this offers a great amount of flexibility at relatively low costs and might be rather an inclusive approach considering the interests of the rural poor. But on the other hand it can lead to crises and conflicts caused by an increasing competition among potential land users (e.g. population growth in the traditional land user group or uprising interest of foreign investors) as well as between different types of land use (e.g. small-scale vs. commercial farming, residential land, and environmental buffer zones). Therefore, it is yet more important to support partner countries in improving their legal framework to clarify access and to eradicate overlapping claims, but also to support their institutional development to implement land rights and to contribute to the clarification of land use in rural areas. As land administration, especially at local level, is often weak institutional development should be consequently accompanied by capacity strengthening of civil servants and non-state actors at communal level.

The main shortcomings of the institutional frameworks in many countries can be characterised as follows:

- ▶ In several countries an inventory of natural resources in combination with a cartographic description, typology and elements involving planning is missing. Due to a lack of monitoring and evaluation tools, this has a negative impact on the conservation and the protection of collective natural resources and leads in many cases to conflicts of multiple interests concerning different use and users of land.
- ▶ Moreover, in many countries a well-balanced land use plan as well as a concerted agenda for the development of natural resources is missing. Thus, questions like which resources are given to the municipalities in the process of decentralization and which ones remain in the responsibility of the national level seem to be often answered arbitrarily. Furthermore, it underlines the impression that land is given out to foreign or domestic investors under

¹⁰ Text taken from the information note of the LPI secretariat in the course of the launching event of the F&G in Malawi, October 2010 (unpublished).

¹¹ See http://ec.europa.eu/europeaid/documents/aap/2009/af_aap_2009_intra-acp.pdf.

intransparent conditions serving only the personal interests of a selected elite instead of the nation's well-being.

- ▶ Land as an agricultural resource is in many cases administered through traditional authorities, whose land distribution is partly criticised as intransparent and non-traceable. The question of inheritance is often influenced by traditional and religious customs which frequently disadvantages certain societal groups (e.g. women, migrants, illegitimate children, or disabled persons). Existing land disputes are often settled according to traditional or religious customs, which might also lack traceability and transparency. In good cases customary rights are deep-seated in a society and acknowledged as practicable and fair mechanism of land distribution which is enforced under good leadership and peer reviewing. But in worse cases, if the flexibility of non-codified rules is misused by traditional authorities, they enhance clientelism and rent-seeking.
- ▶ Due to a shortage of institutions mandated to formalize traditional land use rights, land allocation is often not documented which is endangered to result in a constant insecurity concerning long-term land use and control. The lack of officially registered property rights on both, communal and national level may also lead to the problem that farmers are constraint in accessing credit because land does not serve as collateral. In this regard, missing land titles – or even worse no access to land at all – can undermine development through investments and prevent rural development. Nevertheless, one has to keep in mind that a lack of land titles does not necessarily trigger the negative outcomes mentioned. What matters is if the people perceive locally established systems to be legitimate and reliable. However, a lack of land titles might be problematic, when local governance does not perform and land rights have to be proven in case of conflict.

In the past, programmes and projects by development cooperation have often failed because they underestimated the relevance of land rights – codified and customary – and land use. This often led to a lack of sustainability and in some cases to conflicts. In this sense interventions with a focus on rural development, on the promotion of value chains, on the support for decentralization and environmental policy should in the future systematically deal with the question of land rights and land management. In this regard it is also important to strengthen the institutional framework at all administrative levels also reaching to the target group level.

Legislation, control and the creation of an implementation strategy are in this context top-down-processes. Participation, lobbying and the control of public action are on the other hand bottom-up-approaches.

In line with the new institutional landscapes, it is crucial to develop new partnerships to find answers to a canon of question:

- ▶ How to harmonize land administration at national, regional and community level in order to identify existing multiple land interests in advance and to circumvent overlapping land claims in future?
- ▶ How to integrate customary rights within the implementation of national land legislation policies without cutting their flexibility and accessibility for the rural poor?
- ▶ How to institutionalise the protection of common pool resources and to secure fair access to land for minority groups?
- ▶ How to design land legislation in such a way, that it advocates efforts improving food security and aiming at sustainable development?

Another actor, which also has to be taken into account, is civil society: Active participation of citizens in the field of land policy, education of citizens on their rights, lobbying for disadvantaged groups, the creation of transparency but also the control of the use of public funds can only be achieved by building up well-resourced and educated civil society organizations (bottom-up approach).

A transparent land policy, acknowledged and supported by citizens, is therefore a precondition for a development approach that eradicates poverty and settles disputes. Therefore, the participation of representatives of the civil society within land rights commissions at the sub-national level (regions, districts, municipalities) needs to be ensured.

3.2 Securing land rights

In many regions, particularly rural areas with small-scale farming, the livelihood of the majority of the population depends on the use of land and the access to it. Access and use rights to natural resources such as grazing land, water, forest or foraged foods are usually linked to land rights. For the food supply of entire families and for the overall development of rural areas, it is essential that such access is protected:

- ▶ Legal certainty and long-term prospects of use and ownership of land are prerequisites for the willingness and ability to invest in land and agriculture.
- ▶ In addition, the holders of secure land rights are rather able to access credits to market conditions and to use public services.
- ▶ Long-term investments can greatly increase farm productivity and incomes, leading to improved food security and rural as well as overall economic development.
- ▶ Secure land rights can function as a safety net in times of hardship as they enlarge the scope of action when used as collateral, and therefore reduce vulnerability to personal shocks (e.g. illness) and covariate risks (e.g. droughts).¹²
- ▶ The potential negative effects of large-scale land acquisitions can be significantly reduced when small-scale farmers in the region have secured and documented access and use rights over land and other natural resources.

The term 'security of tenure' does not only include individual private property rights but also communal ownership and users' rights. There is a wide range of formal and informal land rights and land tenure systems. These rights can vary with regard to content, effective institutions, the extent to which they are legally recognized and binding, the type of documentation etc. The clarification and formalization of individual land rights at the national, regional or communal level, which is usually understood as integration into the legal system, can be an effective instrument for achieving legal security. But also communally held land – doesn't matter if it is distributed according to customary rights for individual purpose or if it is a common pool resource (e.g. fishing grounds) which is held in trust for a specified user group – can be formalized through registration in cadastres.

Security of tenure does, however, not necessarily correspond to formalizing rights. Land rights should therefore be registered wherever it is appropriate, but traditional or customary systems need to be taken into account, too¹³. Informal tenure offers a number of advantages to the poor that formal tenure often cannot, such as low costs, social embeddedness and high flexibility. The disadvantage is often a lower degree of tenure security. In order to maximize the advantages of customary systems and at the same time minimizing their insecurity, a possible option can be seen in the superordinate registration and demarcation of community land, whose administration and distribution keeps at the local level, according to the principle of subsidiarity. Although registration helps to increase tenure security, non-registered rights need to be respected in the same way.

Moreover, land rights are not secured simply by allocating land titles or certificates. Rather, the rights must be accepted by the institutions in charge and the population involved. They must be implemented and guaranteed by the necessary mechanisms, and sanctions for violations must be defined, imposed and enforced.

¹² See UNECE, page 13.

¹³ For example, according to current figures, less than 10 per cent of land in Africa is registered in an official legal system (IFAD 2010).

In rural areas many poor households lack the information and resources needed to officially register their land (and their customary titles). Especially women, disabled people, migrants and indigenous people often experience discrimination regarding secure access to land. In conflict situations these population groups are in particular disadvantaged, because their existing land rights are usually not officially documented. Any attempt to secure land rights should therefore devote special attention to disadvantaged groups and their needs.

Appropriate land laws and regulations which document and administer rights to land, use of land and its valuation contributes further to securing land rights. On top of this, specialized bodies for land administration are needed which are responsible for establishing and updating land information systems. All land management measures require appropriate land information, such as an up to date topographic or cadastral mapping system which defines the exact size and location of land parcels and links them to information about ownership and use. These efforts should not be limited to the securitization of individually farmed land, as protected access to the commons (e.g. pastures or forest) is also crucial for both, a secured livelihood of the rural poor as well as the maintenance of ecosystem services. Geographic Information Systems (GIS) are useful tools for handling information on the current land use as well as for monitoring changes.¹⁴ To ensure ownership and sustainability their introduction and/ or diffusion has to be accompanied by capacity development at all levels.

The development and support of effective land administration and land registration plays an important role in development cooperation. Land rights will become more secure if the rules and measures governing access, use and valuation are clearly defined. It is crucial that this information is correctly administered and easily available to the public. In all cases, promoting legal security in the land sector and building up a reliable and transparent land administration within the scope of development cooperation requires that the specific situation of the partner country is taken into account and is addressed in each particular development concept.

3.3 Land use planning and strategic environmental assessment

Land use, meaning all types of human usage of land areas and soils, is not static. Almost all regions in the world have witnessed rapid changes in land use over the past few decades. The signs are particularly noticeable in rural areas. There is inevitable competition between different types of land use which sometimes have incompatible economic, social and ecological objectives, frequently leading to land use conflicts. To anticipate and prevent them is one of the key tasks of Land Use Planning (LUP). Accordingly the role of LUP is to identify the most sustainable ways of using scarce land resources in rural areas and to initiate and monitor the implementation of corresponding land use plans.

By safeguarding natural resources, LUP lays the foundation for securing the rural poor's livelihood. This can be achieved by a participatory approach that ensures the inclusion of all stakeholders and combines local experience and the knowledge of external experts (i.e. development specialists, scientists or private investors) to identify the best use of all land and natural resources in question. Furthermore, local needs have to be balanced with regional and national (ecological, social and economic) objectives. In order to pay adequately attention to local people's prioritization and to gain a free, prior and informed consent, participatory approaches should be accompanied by capacity development of local actors (i.e. communal officials, traditional authorities and representatives of the civil society).

Recently, LUP has been combined with measures to improve or secure access to land. This is generally done through additional regulations such as local agreements on access to land or through the identification and registration of state, communal and private land in the LUP area. Due to legal

¹⁴ See Global Land Tool Network page13 and15.

pluralism, the LUP area might be characterised by overlapping land claims which were often given different grades of priority in accordance with their acknowledgement by the legal framework or in line with the bargaining power of their holders. The LUP approach has great – and yet underexploited – potential to support sustainable development, particularly in rural areas of developing countries, when it recognizes all those vested land interests – individual and communal as well as formal and informal.

LUP can substantially contribute to the following objectives food security; sustainable natural resources management; protection of biodiversity; national park and buffer zone management; disaster risk management; adaption to and mitigation of climate change; territorial development; conflict prevention and resolution; and land governance.

To be highlighted is the fact that LUP can be used as a tool for responsible land governance. Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use. LUP can be applied to optimize the use of land to attain sustainable use of scarce natural resources. In a limited way, LUP can also contribute to improve access to land, particularly in cases of land use conflicts that generally imply a conflict on access to land. LUP can for instance solve land use conflicts between farmers and pastoralists by identifying animal transit routes and defining seasonal rights in a special agreement.

Recently, another approach has been promoted to improve ecological sustainability that can easily be combined with LUP: Strategic Environmental Assessment (SEA). SEA refers to a range of analytical and participatory approaches that aim to integrate environmental considerations into policies, plans (including spatial plans) and programs and evaluate the inter-linkages with economic and social considerations. The OECD (2006) clearly suggests the application of SEA to spatial development plans and programs, when highlighting that: “applied to spatial plans or programmes [SEA] provides an important opportunity to integrate sustainable development approaches within the decision-making process. It encourages multi-stakeholder consultation and ensures that the environmental consequences of plans and programmes are identified and assessed during preparation and before their adoption. Integration of the environmental dimension at all stages (ex ante, interim and ex post) of evaluating and implementing a programme/plan enables the competent authorities to carry out changes and improvements throughout the life of the programme/plan, as appropriate.”¹⁵

The integration of SEA into LUP can improve its impact on the environment and hence contribute to the conservation of biodiversity and the maintenance of ecosystem integrity. Key questions to monitor SEA application to land use plans are:

International cooperation could promote responsible governance of tenure and sustainable land use in partner countries. Key activities are to raise awareness about the potential of LUP among stakeholders and the general public in order to increase the efficiency of LUP instruments and further strengthen their role within the partner countries and international cooperation.

4. Conclusion

Secure access to land and other natural resources and secure tenure and use rights are decisive and crucial requirements to increase food security and to enhance sustainable rural development.

Besides the ongoing international efforts to establish guidelines and frameworks for land policies, elements at national level are indispensable. Sound and effective national land legislations, democratic governance, and effective land management instruments such as registration build the

¹⁵ Organization of Economic Cooperation and Development (OECD): Applying Strategic Environmental Assessment – Good Practice Guidance for Development Co-operation. DAC Guidelines and References Series. Paris 2006.

basis for secured land tenure and land use rights for vulnerable groups – especially women and indigenous people.

Policies and legislation have to recognize the complexity of land rights and land usage with their multi-faceted challenges. Above all, poor rural people must be enabled to participate in policy formulation to ensure that their rights and needs are adequately addressed and protected.¹⁶

Development cooperation can play a major role on national, regional and communal levels to meet these manifold challenges by supporting partner countries directly in:

- ▶ the development and the implementation of national land policy reforms, systems and structures for land administration and improved land governance including capacity development;
- ▶ the certification of land (e.g. documentation of land rights including customary rights) as an important element of a comprehensive land reform;
- ▶ the establishment of instruments, such as participatory land use planning and land management as well as strategic social and environmental assessments;
- ▶ the strengthening of capacities and public awareness creation to enhance sustainable land use and to overcome the institutional constraints related with land use planning and land management.

The EU and its member states should further enhance their collaboration and coordination to facilitate participatory land policy design and reform processes in developing countries. Amongst others, the EU Land Policy Guidelines adopted by the EU's Council in December 2004 could provide additional useful guidance in this regard.¹⁷

¹⁶ Land tenure security and poverty reduction (IFAD 2010).

¹⁷ http://ec.europa.eu/development/policies/9interventionareas/ruraldev/rural/landpolicy_en.cfm

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Useful Website

EU Working Group on Land Issues

<http://capacity4dev.ec.europa.eu/eu-working-group-land-issues>

Knowledge Exchange Platform for Responsible Agro-Investment (RAI)

<http://www.responsibleagroinvestment.org/rai/node/256>.

FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources

<http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

International Land Coalition

<http://www.landcoalition.org/>

CASE STUDIES

This breakout session has been organized and coordinated by European Commission; EuropeAid Development and Cooperation Directorate General; Unit I.2 - Sustainable Management of Natural Resources

Case Study: Bolivia

Agrarian Reform: 15 years of an unstable balance

By Alcides Vadillo

The Agrarian Reform of 1953¹⁸ freed the work force of the countryside, dissolved the system of the country estates and the power of the landowners, and formed part of the important changes driven by the National Revolution of 1952. It also promoted the appearance of a dual rural development model; on the one hand, the small properties, the smallholdings and the dividing up of the land, mainly on the Altiplano and in the Valleys; on the other, it encouraged the concentration of land and the capitalist development of the lowlands of the country.

Insofar as access to land was free for all types of landowner (large, medium and small), this stratification of the owners represented an unfair distribution of the capital, as while a small owner acquired on average 18 hectares of family heritage, a business owner acquired 1,353 hectares that were freely transferrable on the market. Over the course of time the prebend, corruption, favouritism and state inefficiency distorted the redistributive essence and the generating of equity that originally characterised the Agrarian Reform.

In 1996, Bolivia passed a new land law (the INRA Law - *Instituto Nacional de Reforma Agraria* or National Institute for Agrarian Reform), which was the result of a long process of negotiation between the various social and productive sectors concerned with the land (peasants, indigenous groups, businessman and the state). This law redefined a new agrarian institutionality, new mechanisms for the regularization of property, the rights and obligations of landowners and new forms of property were recognised, particularly for indigenous people.

The INRA Law was the “Possible Agreement” that was reached by all social and productive sectors and the state in 1996. It has permitted the fragile balance of this legality and institutionality for 14 years, allowing social peace, legal security and historic redress for indigenous people who had been forgotten for many years.

The aim of the presentation is to show the main milestones and results of this process of Agrarian Reform (1996-2010), the implementation of the so-called “Restructuring of Agrarian Property” and the importance of generating basic agreements on regulations, institutions and the role of the state as far as landowning is concerned.

This process has had its lights and shadows, among which the following can be mentioned: Among the positive aspects (**lights**) of the process, it can be pointed out that: a) it imposed a limit on the concentration of land; b) it improved the administration of the land resource; c) it curbed the indiscriminate process of the handing over of land; d) it established causes and procedures for the return of land; e) it recognised the Community Lands of Origin (*Tierras Comunitarias de Origen*, TCO) for Indian groups and communities and f) it gave legal security to the restructured properties.

The negative aspects (**shadows**) of the process refer to the cost and the time needed for the restructuring. It is also questioned whether the agrarian structure has really changed.

¹⁸ By means of Decree Law N° 3464 of 2nd August 1953 which was converted to a Law on 29th October 1956

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Case Study: Cambodia

Land' registration and its effects on the rural population

By Franz-Volker Müller and Daniela Harris

Cambodia is a country with a troubled past of internal strife and war. In the mid 70ies the radical Khmer Rouge came to power, and in a time span of only five years, implemented a social and economic reform program which resulted in the death of almost a third of the population. During this time all land and property was collectivized and all documents related to private ownership were destroyed, and therewith the basis for a functioning cadastral system. Only the enactment of the constitution in 1993 and the new Land Law in 2001 fully paved the way for a market economy, and the reestablishment of a modern cadastral system. This brought with it the tenuous task of systematic land registration, i.e. the formalisation of private ownership through private land titles. A functioning land administration is necessary for land tenure security and the development of land markets.

The estimated number of privately owned parcels in Cambodia is about 12 million, of which approximately 2 million have been surveyed since 2003. The procedures are swift and efficient with a poor-oriented fee scheme. 1000 titles are being produced daily, which means that approximately 200-250 households per day get access to land tenure security. The vast majority of the beneficiaries (85%) have been poor rural households. Much effort is placed on awareness building on legal rights and duties relating to land titling among the local population through radio and television announcements, local theatre performances and print materials appropriate for the rural population (literacy rate 74 % in rural areas). The process of land registration is participatory, e.g. parcel boundary demarcation is done by the possessors of the land and their neighbours, the registration teams just survey and collect the personal data. Out-of-court land conflict resolution institutions have been set up as part of land registration process. Transparency is achieved through public display of surveying and registration results, complaint handling mechanisms, pro-poor oriented registration fees, clear leadership and ownership from the Cambodia side, production based performance schemes for the registration teams and a "sandwich" type management system (top down - bottom up).

Local people and local level administrations know best about local land use, thus households' participation and their knowledge is crucial to formalising private land titles without aggravating or even causing conflict. Beneficiary assessments conducted in 2007 and 2009 confirm that after registration, the feeling of tenure security sharply increased among the population and there were hardly any conflicts about titled land. The currently ongoing deconcentration and decentralisation reform in Cambodia helps to speed up titling processes, as some responsibilities can be handed over to the provincial level authorities and they benefit from capacity development. Overall, the experience shows that even in an environment that faces many problems of intransparency in general, administrative processes like land registration can be made transparent, cost-effective and citizen/service oriented. The example from Cambodia shows that functioning land administration for the poor is possible.

Case Study: Madagascar

Decentralization of land management

By Rija Ranaivoarison

Since 2005, Madagascar has undertaken a deep land reform aiming at developing quality public services to **«meet the massive demand for land tenure security, in a short period of time and adjusted to the economic context... »**.

This reform is based on decentralization of land management, which involves the introduction, at Commune level, of a proximity legal and institutional structure called «communal or intercommunal land management office». These land offices are a permanent public service, mainly financed by the communities. They are responsible for issuing a document guaranteeing ownership of land/issuing acknowledging private property rights by issuing (land certificate) after local recognition. They also address transactions subsequent to certification (transfer, mortgage, lease, ...).

Since January 2006, 401 communes are equipped with a land office. On February 28th 2011, these communes have nearly issued 65,000 land certificates corresponding to an area of 53.000ha. This brings the average area secured by certificate to 0.8ha. 38,355 people now hold certificates, about 3 areas of land secured per household. 21% of certificate holders are women. The average cost of issuing a certificate for an owner is 16 USD. They are issued within an average of 170 days (Land Observatory, February 2011).

Compared to former procedures (land titles), the initial findings suggest a clear improvement of public service warranty and property management. Indeed, obtaining a certificate is 12 times faster and 30 times cheaper than the land title.

Most certificates are issued for an average area of 0.8 hectares in rural areas. This clearly means that smallholders have responded positively to the new system of land tenure security. This finding is important all stakeholders insist on the vital role of family farming in food security.

A first set of lessons learnt, still to deepen and formalize more rigorously, is as follows:

Sufficient social consensus guarantees the effectiveness of the reform process. The debates and open forums to different actors have allowed innovation to occur. The idea of land management offices and land certificates, field tested and observed by elected officials and civil organizations, was carried out not only by researchers and technicians, but also by actors perfectly legitimate regarding land management.

Strong and enduring commitment of the government in the land program is needed to address issues such as the inconsistency of laws and regulations, the occupation of land, corruption and conflict.

More effective decentralization? Transfer of jurisdiction = transfer of corruption? The performance measure of the Malagasy land reform will show whether management decentralization proved to be a pertinent choice for a better response to social demands, greater efficiency and greater equality.

Land certification as a development tool: formal land tenure security is not an end in itself. There is a need to progressively better articulate the mechanics of securing land with the various sustainable development issues, including food security.

Case Study: Manhiça, Mozambique

Land Deals and Equitable and Sustainable Poverty Reduction

By Alda Salomão

In its struggle to combat absolute poverty the Mozambican government has embarked in a massive campaign to promote investments for the use of land and other natural resources for revenue generation and promotion of rural development. In this process, one of the main challenges has been to ensure balance between protection of community lands rights and interests and protection of investor's interests.

Despite being reputed as one of the best land laws in southern Africa, government implementation of the Mozambican land law, especially the progressive provisions that balance community and private land rights, has left much to be desired due to the gap between theory and practice.

These problems were exposed in recent years by the race of foreign investors to large tracks of land in Mozambique and other African countries, and by the Presidential campaign for promotion of biofuels and the Green Revolution, through production through massive plantation of Jathropa, sugarcane, for biofuels and monoculture also for food production such as rice plantation.

An example of this tension is brought from the District of Manhiça in the southern province of Maputo, where a conflict over land opposes the local representation of the National Farmers Union (UNAC) and private companies (Maragra an Incomati), both sugarcane producers.

The Manhiça UNAC delegation comprises 3876 members from 6 localities, of which 2774 are women. These members are organized in 61 farmers associations, 4 cooperatives.

In January 2008 this conflict reached its pick with a demonstration violently repressed by the policy. The conflict was originated by the occupation of community lands by these companies, in a consultation process that raised concerns among community members. Such concerns were mostly related to: **1. Disrespect of community land rights.** Contrary to what the Mozambican Constitution and Land Law prescribe, the fact that the area occupied by communities is not delimited has been used by government officers to challenge the rights of communities to their land. Land tenure security is a major problem especially because community consultation for allocation of land to the companies was done only with selected people. Communities accuse private companies and powerful individual of grabbing their land and of disrespecting the constitutional recognition of community land rights by occupation.

2. Unfair out grower schemes. Community members are also not satisfied with the relationship they have with the companies, because they don't feel involved in the decisions on how much the farmers should gain for selling their products to the companies. The companies establish the price unilaterally which raise concerns about transparency and fairness.

3. Threat to food security and revenue. Another complaint from small farmers in Manhiça is related to lack of access to water resources as well, resulting from the deviation of water courses by irrigation channels built by the companies. Farmers are also barred from accessing rivers and the more productive land areas close to the rivers to grow vegetables and cereals for their subsistence. Since their approach to the government, through letters and meetings, to get help to solve these problems brought no results, the UNAC delegation of Manhiça organized a peaceful demonstration with the objective of calling the public's attention to the situation. UNAC-Manhiça followed all the legal

prescriptions for this event, namely to formally inform local authorities (District Administration, Municipal Council and the Police of the Republic) of the date, time and objectives of the demonstration.

The district administration and the municipal authorities of the Manhiça District opposed the demonstration arguing that UNAC objectives were not clear and that it needed a permission from the district consultative council. Because this position could not be backed up by the law, UNAC-Manhiça proceeded with the plan and the demonstration took place on January 24, 2008. When the group of about 700 farmers approached the center of the Manhiça village the demonstrators were violently attacked and forced to disperse by the police, allegedly because they were from the opposition and were following the opposition's agenda. The farmers from Manhiça, who continue their fight despite the attacks, are still wondering whose interests are defended by the government in the implementation of the land law and the National Action Plan for Combating Absolute Poverty (PARPA).

The major lesson from the Manhiça case is that it is not enough to have a good land policy and law, when the provisions of these instruments are not translated into practice. In fact, evidence from Manhiça and other community areas show that so far the number of community land delimitations is far less than expected; community consultations are not undertaken in a manner that involves and considers community positions and priorities; benefits promised by investors are not materialized and; government officers are not held accountable for their involvement in unlawful actions in the attribution of land use rights.

The Manhiça case exposes the tension between investors and communities (and the government) and reflects crucial governance aspects that need to be urgently addressed so that land can be an effective and secure asset for the generation of income by the rural poor. It also calls the attention to the importance of good land administration and management, including the models of engagement between investors and communities, in the promotion of social stability and sustainable development in rural areas.

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Case Study: Tanzania

The SULEDO Village Land Forest Reserve

The SULEDO Forest in Kiteto District, Tanzania is an area of miombo woodland that has been under community management since the mid 1990s. Under the Forest Act 2002, it is a designated Village Land Forest Reserve (VLFR) protected by Model By-Laws and gazetted in the Government Notice No. 191 2009. The whole area is comprised of ten villages on 268 000 ha of land, of which 167 000 ha constitute the VLFR. The population is approximately 30,000; they are pastoralist and farmers of several ethnic groups. It took 15 years to achieve the legal framework within which the villages operate today.

The reserve is managed, owned and protected by the villagers who are entitled to all income generated from the forest. The biggest part of their income today is from selective logging of hard wood tree species and charcoaling the byproducts. The Forest Act provides the legal basis for communities to own and manage designated forests in the form of Community Based Forest Management.

The SULEDO initiative started in Sunya village as a response to long standing land conflicts between the residential population, that is, small scale farmers and semi-sedentary pastoralists. With the support from Sida, the Land Management Programme (LAMP) initiated activities in the SULEDO forest in Kiteto District between 1996 and 2007. Main activities included land surveys, border demarcation and subsequent land use plans for each village taking the needs of farming as well of pastoralist communities into account as well as supporting the process of putting the SULEDO forest under the joint management of the villages. It also assisted in the formulation of a management plan and village by-laws and, during another 2 year phase of support the management plan was reviewed, Model Bylaws were developed and gazetted, a tender process for selective harvesting was started and, finally, harvesting operations went ahead.

In the final analysis, SULEDO forest is unique in Tanzania in terms of size of a forest that a community has managed to access and control while conserving biodiversity and maintaining the integrity of the ecosystem. Furthermore, the many years of support to the villages in conservation, land rights, financial management and planning, to mention only a few, has empowered villagers and built a community that is self assured and, technically and administratively capable to manage their natural resources and the business opportunities connected with it.

By legally securing the forest borders and the management of the resource they have safeguarded the area against land grabbing by big farmers, against clearing the forest by small holders as well as illegal loggers. Not only have they contributed to the microclimate of the area, biodiversity and reduced carbon emissions but also to an improved livelihood of their communities: The pastoralists have a secure grazing ground throughout the year, farming is good, and the income accrued from harvesting the forest enables the communities to protect the forest, to pay for village development projects and it also provides income for women and men who find work during harvesting operations or as forest guards. The people of SULEDO can see that the unreliable rainfall and the uncontrolled slash and burn farming has badly affected the areas beyond SULEDO and is decreasing the yields of food and cash crops. They know that it is their forest which is saving their livelihoods.

In 2002 The SULEDO community was awarded the UNDP Equator Initiative Prize for "extraordinary efforts to reduce poverty through the conservation and sustainable use of biodiversity".