LAND TENURE JOURNAL

REVUE DES QUESTIONS FONCIÈRES

REVISTA SOBRE TENENCIA DE LA TIERRA

1·10

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LAND TENURE JOURNAL

Land Tenure Journal is a peer-reviewed, open-access flagship journal of the Climate, Energy and Tenure Division of the Food and Agriculture Organization of the United Nations (FAO). Land Tenure Journal, launched in early 2010, is a successor of the Land Reform, Land Settlement and Co-operatives, which was published between 1964 and 2009. Land Tenure Journal is a medium for the dissemination of quality information and diversified views on land and natural resources tenure. It aims to be a leading publication in the areas of land tenure, land policy and land reform. The prime beneficiaries of the journal are land administrators and professionals though it also allows room for relevant academic contributions and theoretical analyses.

REVUE DES QUESTIONS FONCIERES

La Revue des questions foncières est une publication phare, accessible à tous et révisée par la Division du climat, de l'énergie et des régimes fonciers de l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO). La revue des questions foncières, lancée début 2010, est le successeur de la revue Réforme agraire, colonisation et coopératives agricoles, publié par la FAO entre 1964 et 2009. C'est un outil de diffusion d'informations de qualité et d'opinions diversifiées sur les questions relatives aux régimes fonciers et aux ressources naturelles. La revue des questions foncières a pour ambition d'être une publication de pointe sur les questions relatives aux régimes fonciers, aux politiques foncières et à la réforme agraire. Les premiers bénéficiaires de la revue sont les administrateurs des terres et les professionnels du foncier, mais elle est également ouverte à des contributions universitaires et à des analyses théoriques pertinentes.

REVISTA SOBRE TENENCIA DE LA TIERRA

La Revista sobre Tenencia de la tierra es una revista insignia de revisión por pares de libre acceso de la División de Clima, Energía y Tenencia de Tierras de la Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO). La Revista de Tenencia de la tierra, que inició su publicación a comienzos de 2010, es la sucesora de la Reforma agraria, colonización de la tierra y cooperativas, que se publicó entre 1964 y 2009. La Revista de Tenencia de la tierra es un medio para la difusión de información de calidad y de diversas opiniones sobre la tenencia de la tierra y de los recursos naturales. Aspira a ser una publicación fundamental en las áreas de la tenencia de la tierra, la política de la tierra y la reforma agraria. Los principales beneficiarios de la revista son administradores de la tierra y profesionales aunque también ofrece la posibilidad a contribuciones académicas relevantes y análisis teóricos.

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JUNE 2010 JUIN 2010 JUNIO 2010

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REVUE DES QUESTIONS FONCIÈRES

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE

ORGANIZACIÓN DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACIÓN

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Preface

In recognition of the need to bring land and natural resource tenure issues onto a common platform, and in response to a sizable demand among land professionals and practitioners, we are pleased to release the first issue of the *Land Tenure Journal*. It is a global forum promoting the latest knowledge in land tenure, land policy and land reform. These topics will be looked at from the technical, economic, political and social points of view.

The *Land Tenure Journal* was born out of the recognition of the need to modernise the previous *Land Reform, Land Settlement and Co-operatives*. The *Land Tenure Journal* builds on that publication's legacy but takes on a new name, an updated appearance and modern distribution methods. The new journal is published both in hard copy and in electronic form, which will be sustained through the Open Journal System (OJS) interface, easily and freely available to all.

The name *Land Tenure Journal* builds on FAO Land Tenure Team's global role and hands-on involvement in this sector. The new Journal is FAO's main regular publication in land tenure, linking FAO with other professionals and practitioners in the sector.

Préface

En reconnaissant le besoin de ramener la terre et les ressources naturelles sur un terrain commun et en répondant aux requêtes des professionnels du secteur, nous sommes heureux de présenter le premier numéro de la *Revue des questions foncières*. Il s'agit d'un forum global valorisant les dernières connaissances sur des questions, politiques et réformes foncières qui seront traitées sur les plans technique, économique et social.

La *Revue des questions foncières* est née de la nécessité de moderniser la publication précédente *Réforme agraire, colonisation et coopératives agricoles*. C'est sur son héritage que s'appuie la nouvelle revue, tout en adoptant un nouveau nom, une allure renouvelée et des méthodes modernes de distribution. La revue est publiée sous forme imprimée et électronique. Cette dernière est gérée à travers d'un système informatique librement accessible à tous.

La *Revue des questions foncières* tire son nom du rôle global et des expériences de terrain de l'équipe des régimes fonciers. Elle est la publication régulière de la FAO dans le domaine foncier, en instituant un lien entre la FAO et les professionnels du secteur.

Prefacio

Reconociendo la necesitad de considerar la tierra y los recursos naturales dentro de un marco común, y en respuesta a una demanda creciente entre los especialistas, tenemos el agrado de lanzar el primer número de la *Revista sobre tenencia de la tierra.* Se trata de un foro global para la promoción de los últimos conocimientos sobre la tenencia de la tierra, analizados desde un punto di vista técnico, económico y social.

La *Revista sobre tenencia de la tierra* nació de la necesitad de modernizar la precedente *Reforma Agraria, Colonización y Cooperativas*. La nueva revista se basa en esa publicación, pero adquiere un nuevo nombre, un aspecto actualizado y métodos modernos de distribución. Ella se publica tanto en forma impresa que en formato electrónico, realizado a través del sistema de interfaz Open Journal (OJS), y será a disposición de todos.

El nombre *Revista sobre tenencia de la tierra* se basa en el papel global del grupo de tenencia de la tierra y su participación práctica en este sector. Es la principal publicación periódica de la FAO sobre el tema y establece vínculos entre la FAO y los especialistas del sector.


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This journal would not be possible without the enthusiasm, commitment and energy of the Editorial Board. The Board is formed by many of our external partners, and includes both women and men, from diverse cultural and regional backgrounds and technical specializations. They advise on the journal's policies and contribute to the peer review process that entails impartial, double-blind review of articles. This process ensures the integrity and quality of the journal and its recognition in the academic world.

Each volume of the *Land Tenure Journal* will consist of articles written in English, French or Spanish, selected to demonstrate

Cette revue ne serait pas possible sans l'enthousiasme et l'engagement de son Comité éditorial. Il est composé de nos partenaires extérieurs, femmes et hommes de différents milieux culturaux et régionaux et ayant des spécialisations les plus diverses. Ils conseillent sur les politiques éditoriales et révisent des articles selon des critères d'impartialité et d'anonymat. Ce processus assure l'intégrité et la qualité de la revue, ainsi que sa reconnaissance au sein du monde académique.

Chaque numéro de la *Revue des questions foncières* est constitué d'articles écrits en anglais, français ou espagnol qui témoignent

La revista no sería posible sin el entusiasmo y el compromiso del Comité Editorial. Este incluye muchos de nuestros socios externos: mujeres y hombres de diversos orígenes culturales y regionales, especializaciones técnicas y ámbitos de experiencias. Se trata de especialistas que inspiran la política de la revista y contribuyen al proceso de revisión, imparcial y con doble anonimato, de los artículos. Este proceso garantiza la integridad y la calidad de la revista y su reconocimiento en el mundo académico.

Cada volumen se compone de artículos en inglés, francés o español, seleccionados respectando

the geographical and thematic diversity of issues. In this *Land Tenure Journal* No.1 alone, issues on land tenure reform, privatisation and natural disaster management are addressed, drawing from experiences in Africa, Asia and the Near East, demonstrating the global nature of this journal.

We very much hope that you enjoy the new Journal and would like to encourage you to submit articles on land tenure issues for consideration by the Editorial Board.

This Journal has been created for you.

Paul Munro-Faure
Principal Officer, NRC

Mika-Petteri Törhönen
Editor, Land Tenure Journal, NRC

la diversité géographique et thématique des questions foncières. En abordant des sujets relatifs aux réformes foncières, à la privatisation des terres et à la gestion des désastres naturels et en s'appuyant sur des expériences venant de l'Afrique, de l'Asie et du Moyen Orient, ce premier numéro met déjà en valeur le caractère global de la revue.

En espérant que vous apprécierez cette revue, nous vous encourageons à soumettre vos articles pour qu'ils puissent être examinés par le Comité éditorial.

Cette revue a été crée pour vous.

Paul Munro-Faure
Principal Officer, NRC

Mika-Petteri Törhönen
Editeur, Revue des questions foncières, NRC

la diversidad geográfica y temática de los temas. Sólo en este primer número de la *Revista sobre tenencia de la tierra* se abordan cuestiones sobre la reforma agraria, la privatización de la tierra y la gestión de los desastres naturales en África, Asia y Oriente Medio, lo que evidencia su carácter global.

Esperamos que disfruten de la nueva revista y les instamos vivamente a que presenten artículos sobre cuestiones de tenencia de la tierra para que el Comité Editorial pueda examinarlos.

Esta revista ha sido creada para Ustedes.

Paul Munro-Faure
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TENURE SECURITY, FORMALIZATION OF RIGHTS, LAND REGULATION INSTITUTIONS AND INVESTMENTS
For a broader conceptual framework

SÉCURISATION FONCIÈRE, FORMALISATION DES DROITS, INSTITUTIONS DE RÉGULATION FONCIÈRE ET INVESTISSEMENTS
Pour un cadre conceptuel élargi

SEGURIDAD DE LA TENENCIA, FORMALIZACIÓN DE LOS DERECHOS, INSTITUCIONES DE REGULACIÓN AGRARIA E INVERSIONES
Para un marco conceptual más amplio

ABSTRACT

TENURE SECURITY

LAND RIGHTS

GOVERNANCE

Numerous studies have questioned the standard reasoning behind the theory of property rights according to which issuing property titles automatically leads to productivity gains. Such reasoning fails to consider the diversity of land rights. It supposes that the "informal" nature of rights is the main cause of tenure insecurity and that the legal status of land is the key impediment to investment. Adopting a contrary position to these findings, this paper proposes a broader conceptual framework to analyse links between tenure security, formalization of rights, land regulation and investment. It underlines the issues associated with

RÉSUMÉ

SÉCURISATION FONCIÈRE

DROITS FONCIERS

GOUVERNANCE

De nombreuses recherches remettent en question le raisonnement standard de la théorie des droits de propriété, selon lequel la délivrance de titres de propriété entraîne mécaniquement des gains de productivité. Ce raisonnement ne prend pas en compte la diversité des droits sur la terre, suppose que le caractère «informel» des droits est la cause principale de l'insécurité foncière, et que le statut juridique de la terre est le principal blocage à l'investissement. Partant au contraire de ces résultats de recherche, cet article propose un cadre conceptuel élargi pour analyser les liens entre sécurité foncière, formalisation des droits, régulation foncière et

SUMARIO

SEGURIDAD DE LA TENENCIA DE LA TIERRA

DERECHOS DE LA TIERRA

GOBERNANZA

Numerosos estudios ponen en cuestión el razonamiento habitual de la teoría de los derechos de propiedad, según el cual la concesión de títulos de propiedad entraña automáticamente aumentos de la productividad. Este razonamiento no tiene en cuenta la diversidad de los derechos sobre la tierra y da por supuesto que el carácter "informal" de los derechos es la causa principal de la inseguridad de la tenencia y que el estatuto jurídico de la tierra constituye el principal obstáculo a la inversión. Tomando como base, en cambio, los resultados de esos estudios, en el presente artículo se propone un marco conceptual más amplio a fin de analizar los vínculos


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land regulation mechanisms and suggests the conditions needed for the virtuous circles of tenure security and investment to function.

investissements. Il souligne l'enjeu des dispositifs de régulation foncière et met en avant les conditions pour que les cercles vertueux de la sécurisation foncière et de l'investissement puissent se réaliser.

entre seguridad de la tenencia, formalización de los derechos, regulación agraria e inversiones. En él se destaca el desafío de los dispositivos de regulación agraria y se exponen las condiciones para hacer posibles los círculos virtuosos de la seguridad de la tenencia y de la inversión.

INTRODUCTION

Les débats sur la sécurisation foncière opposent, en simplifiant, deux positions (Comité – Technique Foncier et "Développement, 2009: 71): celle qui met en avant les rapports fonciers existants comme frein à l'investissement, et prône une privatisation des terres et une libéralisation du marché foncier, et celle qui met en avant la reconnaissance des droits fonciers locaux comme outil d'intégration sociale et économique des populations, dans les quartiers urbains périphériques comme dans les zones rurales.

Les acteurs qui portent la première position s'appuient sur la théorie évolutionniste des droits de propriété (Platteau, 1996), qui met en avant les liens entre sécurité foncière, droits de propriété privée et investissements. La formalisation de droits de propriété privée est censée favoriser l'investissement et l'efficacité économique. Les seconds insistent sur l'exclusion juridique des populations dans les politiques foncières d'origine coloniale, et sur les conséquences néfastes du dualisme juridique qui organise cette exclusion à travers une conception de la propriété foncière réduite à la propriété privée individuelle, et plus encore des dispositions d'accès au droit qui sont complexes, coûteuses, et en pratique inaccessibles au plus grand nombre. Ils insistent sur la diversité des droits sur la terre et les ressources naturelles dans les zones rurales, la diversité des normes qui les sous-tendent, et leur légitimité aux yeux des populations.

Pour les tenants de ces deux positions, la sécurité foncière est un objectif en soi, et la formalisation des droits fonciers est une condition pour y parvenir. Mais la conception de la sécurité foncière n'est pas la même. Les effets attendus de cette sécurité foncière non plus: pour les premiers, ils sont avant tout d'ordre économique; pour les seconds, ils renvoient davantage à la gouvernance, à la réduction des conflits, et à l'intégration sociale.

Processus souples de formalisation des droits sont fondés sur la reconnaissance et la sécurisation des droits fonciers locaux

Les nombreuses critiques, tant théoriques qu'empiriques, portant sur ces deux conceptions ont abouti à l'émergence d'une troisième posture, qui semble constituer un relatif consensus international et qui met l'accent sur des processus plus souples de formalisation des droits, fondés sur la reconnaissance et la sécurisation des droits fonciers locaux (Comité - Technique «Foncier et Développement», 2009: 72; Colin *et al.*, 2010). Mais

les liens entre formalisation des droits, sécurité foncière, régulation foncière et investissement, dans cette nouvelle posture, demeurent peu explicites.

Dans un article précédent (Lavigne Delville, 2006), j'avais tenté d'analyser la notion de sécurité foncière, pour en préciser le sens et éviter les flous et les raccourcis qui obscurcissent trop souvent les débats sur ce thème. À la suite des travaux d'E. Le Roy (Le Roy *et al.*, 1996; Le Roy, 1997), je montrais que définir la sécurité foncière comme la propriété privée est un piège conceptuel, et qu'une approche en termes de sécurisation permettait d'éviter ces biais et rendait possible de prendre en compte une diversité de droits fonciers et de sources de droit.

Prolongeant cette réflexion, je voudrais ici proposer un cadre conceptuel élargi sur les liens entre formalisation des droits, sécurisation foncière, investissement et institutions de régulation foncière, à partir d'un état des connaissance sur deux grandes questions: celle des liens entre formalisation des droits de propriété et productivité, et celle de la pluralité des normes et des modes de régulation. Le raisonnement s'appuie sur les contextes africains, mais vaut sans doute pour toutes les régions où le droit positif (le droit écrit de l'Etat) demeure d'essence coloniale et où les droits locaux ne relèvent pas d'une propriété privée de fait. Le débat en Afrique francophone est en effet marqué, d'une part par la prégnance des droits locaux, dits coutumiers (Le Roy, 2003), d'autre part par la référence à l'immatriculation comme seul mode légal d'accès à la propriété privée, le Titre foncier issu de cette procédure étant garanti par l'État.

SÉCURITÉ FONCIÈRE, ACCÈS AU CRÉDIT ET PRODUCTIVITÉ

Le premier axe de réflexion porte sur les questions de développement économique: comment favoriser le développement économique et l'investissement? C'est un souci légitime et largement partagé. De nombreux responsables des politiques foncières continuent à supposer que la formalisation de droits de propriété privée induit mécaniquement des gains de productivité, et à justifier sur cette base les politiques d'enregistrement systématique des droits fonciers et de privatisation des terres. Pourtant, depuis au moins quinze ans, les résultats de la recherche foncière ont largement remis en question le raisonnement standard et ont permis de mieux en identifier les conditions de possibilité.

Le raisonnement standard: un schéma séduisant mais…

Personne de sérieux ne peut soutenir aujourd'hui que les droits locaux sont par essence des freins à la productivité et doivent être remplacés «par le haut» par un système de propriété privée (ce que Bruce et Mighot-Adholla – 1994 – appellent le «paradigme de substitution»). La grande majorité des acteurs raisonne dans «un paradigme d'adaptation», qui reconnaît le caractère dynamique des droits locaux. Le raisonnement standard (appelé par J.-Ph. Platteau, 1996, «théorie évolutionniste des droits de propriété, dans sa variante de l'innovation institutionnelle induite») repose sur la théorie standard des droits de propriété, qui peut être schématisée à la figure 1.

La grande majorité des acteurs raisonne dans "un paradigme d'adaptation", qui reconnaît le caractère dynamique des droits locaux

Selon cette conception, les droits fonciers locaux, qui assurent une sécurité foncière suffisante lorsque les enjeux sont faibles, posent problèmes lorsque la pression démographique et l'insertion dans les marchés s'accroissent. On observe alors des processus partiels d'individualisation et de développement des transactions marchandes. Cela aboutit à un flou sur les droits et à des conflits. Il y a alors une demande pour une intervention publique visant à formaliser les droits et à délivrer des titres de propriété individuels (partie supérieure du schéma). À noter que, dans le langage des économistes, «titre de propriété» renvoie à tout document juridique mais pas nécessairement au Titre foncier issu de l'immatriculation, qui en est une forme bien spécifique.

Le fait de disposer de titres de propriété privée est alors censé sécuriser les acteurs, leur donner accès au crédit en utilisant le titre comme garantie, le tout induisant donc des investissements, des gains de productivité et un accroissement de la richesse nationale (partie inférieure du schéma).

Ce schéma est séduisant, et un tel cercle vertueux sécurisation/investissement est sans nul doute à favoriser. Le problème, comme de très nombreux travaux l'ont montré, est que, dans la pratique, chaque étape du raisonnement est discutable et qu'en particulier:

1. il repose sur une conception discutable de la sécurité foncière; et
2. les déterminants de l'investissement sont plus complexes que cela.

De ce fait, le lien entre formalisation des droits et investissement ne marche que dans des contextes précis.

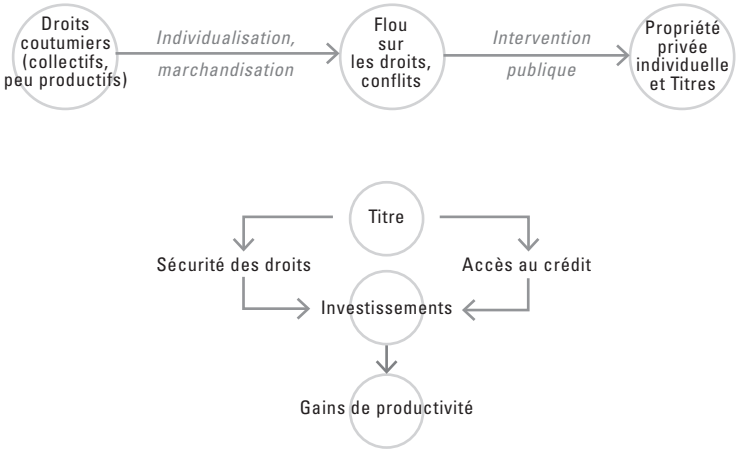


Figure 1
Théorie évolutionniste des droits de propriété (d'après Platteau, 1996)

source: Ph. Lavigne Delville

Qu'est-ce que la sécurité foncière?

Trop souvent, les débats sur la sécurité foncière sont obscurcis par des définitions floues de ce terme. Tout le monde s'accorde pour dire que les habitants des villes, les agriculteurs, les entrepreneurs, ont besoin d'une sécurité foncière suffisante pour investir, produire, et être sûrs de bénéficier du fruit de leurs efforts. Mais quand Bruce et Mighot-Adholla (1994), par exemple, définissent la sécurité foncière comme «le droit, ressenti par le possesseur d'une parcelle de terre, de gérer et utiliser sa parcelle, de disposer de son produit, d'engager des transactions, y compris des transferts temporaires ou permanents, sans entrave ou interférence de personne physique ou morale», ils définissent la propriété privée, et non pas la sécurité foncière. En effet, des droits d'exploitations obtenus en faire-valoir indirect peuvent parfaitement être sécurisés si l'on a un contrat (écrit ou oral) clair et la certitude que ce contrat sera respecté; on peut être sécurisé dans ses droits, même avec des restrictions quant au droit de vendre.

Le type de droits sur la terre et les ressources naturelles qui est nécessaire à un acteur pour pouvoir bénéficier du fruit de ses efforts dépend du type d'investissement ou du mode d'exploitation du milieu: un pasteur, un agriculteur en cultures pluviales annuelles, un planteur d'essences pérennes, un agriculteur qui investit dans des équipements d'irrigation fixes (canaux, planage) n'ont pas besoin des mêmes droits ni de la même perspective de temps. La durée nécessaire est celle qui permet de rentabiliser l'investissement. Des droits *précaires* (par rapport au mode d'exploitation) sont démotivants, mais ne sont pas nécessairement *insécurisés*. Mais surtout, la *nature* des droits (plus ou moins individualisés, plus ou moins exclusifs, plus ou moins longs) n'est qu'une partie de la question. La sécurité des droits est avant tout le fait que les droits dont on dispose légitimement (quels qu'ils soient) ne seront pas contestés sans raison et que, en cas de contestation infondée, les droits légitimes seront confirmés.

La sécurité foncière est d'abord une question d'institutions

La sécurité foncière est donc d'abord une question d'institutions: quels sont les droits légitimes dans un espace donné? Quelles sont les normes sociales qui les justifient? Les règles qui s'appliquent sont-elles claires? Les instances de gestion foncière et les mécanismes de règlement des conflits sont-ils fiables? Les revendications illégitimes sont-elles déboutées? Poser la question en ces termes met en avant ce que droits «formels» et droits «locaux» ont en commun: tous reposent sur des principes socialement validés (le droit à la propriété, inscrit dans la constitution, d'un côté; l'acquisition de droits par la défriche ou l'héritage, de l'autre), et les uns comme les autres ne peuvent exister sans institutions les affectant, les validant et les garantissant (un service des domaines et le tribunal, d'un côté, ou des autorités coutumières de l'autre). Cela permet aussi de comprendre que des droits «informels» puissent être sécurisés: lorsque les règles et institutions locales sont claires, que les droits fonciers locaux sont l'objet d'un consensus social, que les autorités foncières locales sont légitimes, que les acteurs externes ne recourent pas au dispositif public pour réclamer des droits illégitimes localement, il n'y a pas de problème de sécurité foncière. L'insécurité foncière apparaît lorsque des acteurs ne respectent plus les règles, lorsque la capacité régulatrice s'effrite, lorsque les contradictions entre normes locales et droit écrit sont instrumentalisées par certains acteurs (voir la question du

dualisme juridique, ci-dessous). Ou lorsque le marché foncier se développe et que la mémoire de l'histoire foncière incorporée par les autorités locales ne suffit plus à garantir les droits.

À l'inverse, il n'y a pas de lien mécanique entre document juridique et sécurité. Des documents juridiques peuvent être un puissant outil de sécurisation foncière, s'ils sont légitimes et donnent une validation juridique à des droits ayant fait l'objet d'une validation sociale préalable. Et si les institutions de gestion foncière sont fiables. Toutefois, si les registres ne sont pas actualisés, si le titre a été obtenu de façon illégitime, si les institutions de gestion foncière sont inefficaces ou corrompues, si le recours à la justice est impossible ou inéquitable, alors la sécurité apportée par la formalisation juridique des droits est en partie affaiblie, voire inexistante.

C'est donc de façon empirique qu'il faut analyser les problèmes d'insécurité qui se posent concrètement aux acteurs, et leurs causes. On s'aperçoit alors que, plus que le caractère oral ou «coutumier» des droits, les premières sources des problèmes sont:

- la pluralité des normes et les dysfonctionnements des dispositifs publics de gestion foncière; et
- le fait que l'État n'offre pas de dispositif pratique pour formaliser et sécuriser les transactions foncières sur des parcelles de statut «informel».

«Tant que les performances des instances juridiques, administratives et judiciaires étatiques n'auront pas apporté l'assurance d'une plus grande efficacité des dispositifs et des formalismes officiels, le plus grand nombre des acteurs continuera à recourir à des formes plus ou moins métissées et coutumières d'encadrement des sociétés» (Hesseling et Le Roy, 1990: 11). Cela étant, la délivrance de documents juridiques ne suffit pas à traiter cette question.

Les déterminants de l'investissement

Ni la propriété privée, ni un statut formel ne sont une condition indispensable pour l'investissement: les populations urbaines ont investi des milliards de FCFA dans l'urbanisation sans avoir de titre de propriété; avec un foncier «coutumier», les paysans cotonniers d'Afrique de l'Ouest ont triplé leurs rendements en 40 ans, utilisent culture attelée (et parfois tracteurs),

Ni la propriété privée, ni un statut formel ne sont une condition indispensable pour l'investissement

engrais et pesticides et seraient compétitifs à l'échelle internationale sans les subventions des Etats-Unis d'Amérique à leurs producteurs suréquipés; sans avoir de document juridique sur leurs parcelles, les paysans de l'Office du Niger ont des rendements de 10 tonnes/ha/an (en deux cultures) qui sont dans les records mondiaux. Bref, il n'existe pas de lien mécanique entre statut juridique formel et sécurité foncière effective.

Il faut ici rappeler quelques évidences :

1. **Il n'y a pas de lien mécanique entre propriété privée et investissement**: il peut y avoir des investissements sans propriété privée, et sans droits formels (voir ci-dessus). Inversement, ni le statut légal, ni la propriété privée n'induisent automatiquement l'investissement: les paysans du Sud Bénin, qui voient de nombreuses terres achetées et «gelées» dans l'attente de l'urbanisation le savent bien, de même que les petits paysans exploitant des lopins à côté d'*haciendas* sous-exploitées. Dans certains cas, la propriété peut même être un obstacle à la mise en valeur, au sens où elle bloque l'accès aux terres pour des exploitants intéressés (d'où l'importance des expropriations pour utilité publique, ou des mesures – fiscales ou autres – décourageant la propriété non valorisée).
2. **L'investissement ne se fait pas qu'avec du crédit formel.** Une bonne part des investissements «populaires»(ceux des habitants des quartiers populaires, ceux des paysans et des éleveurs) sont faits en mobilisant le travail (travail familial ou de main-d'œuvre externe), ou avec du crédit familial. De fait, tant en milieu rural qu'urbain, la polarisation sur les investissements «visibles» de quelques entrepreneurs cache trop souvent la forêt des petits investissements «populaires». Lorsque des études ont tenté de quantifier l'investissement réalisé par les habitants des quartiers populaires, les montants étaient pharaoniques: multipliés par des centaines de milliers de ménages, la valeur – faible dans l'absolu – d'une petite maison fait vite des sommes gigantesques. Le même calcul pourrait être fait pour les plantations paysannes.
3. **Enfin, les contraintes d'accès à la terre et au crédit ne sont pas les seuls freins à l'investissement.** Dans bien des cas, les rapports de prix entre produits agricoles et intrants, les dysfonctionnements des filières, les risques climatiques, etc. sont de loin les principaux freins à

l'investissement. De bonnes performances économiques découlent d'une combinaison optimale des facteurs de production, dépendant à la fois de l'accès à la terre, de débouchés, des rapports de prix et de l'accès aux autres facteurs de production (main-d'œuvre et capital). Comme le montrent clairement les économistes de la Banque mondiale (Binswanger *et al.*, 1993), le raisonnement standard, et plus largement bon nombre des analyses existantes sur les impacts de la titrisation et les marchés fonciers, souffrent de cette vision mécaniste entre titre et investissement. Les conclusions changent radicalement dès lors que l'on prend en compte les interactions avec les autres dimensions: «si les problèmes d'incitations et de risque ne sont pas résolus de façon satisfaisante sur un des marchés, ils ont des répercussions qui débordent sur les autres marchés. De même, les enjeux de pouvoir, les collusions d'intérêt et les distorsions dans les marchés du travail, du crédit et des produits agricoles se traduisent par un manque de compétition et des anomalies dans les marchés de ventes et de location de terres» (id, traduit par nous). Autrement dit, «si l'accès au crédit ou à la force de travail est malaisé, ou si les débouchés ne sont pas assurés, un bon fonctionnement du marché foncier aura peu d'effets positifs, et risque même d'avoir des effets pervers» (id.).

Dès lors, on ne peut pas attendre d'impact mécanique de l'enregistrement des terres sur l'investissement. Des actions sur l'environnement économique (prix, filières, etc.) peuvent être prioritaires sur des actions sur le foncier. C'est bien une analyse rigoureuse des contraintes, sans présager du poids relatif des facteurs, qui peut amener à conclure à la pertinence d'une opération d'enregistrement.

On ne peut pas attendre d'impact mécanique de l'enregistrement des terres sur l'investissement

À l'issue d'une recherche économique de la Banque mondiale sur l'impact du statut juridique de la terre, Bruce et Mighot-Adholla (1994) concluaient: «Peut-on identifier des circonstances dans lesquelles l'enregistrement et la délivrance de titres, sur la demande ou systématiquement, restent appropriés et rentables?». En milieu urbain, on note les mêmes interrogations sur les liens entre enregistrement et investissement (Durand-Lasserve et Selod, 2009). En définitive, nombreuses sont les études qui questionnent les impacts réels des opérations d'enregistrement, aussi bien en milieu rural (Platteau, 1996; Colin et al., sous presse) qu'urbain (Durand-Lasserve et Selod, 2009).

Les conditions de pertinence d'un système d'information foncière

La troisième question sur la validité du raisonnement standard renvoie aux conditions de pertinence et de validité de systèmes d'information foncière. La délivrance systématique de titres ou certificats fonciers suppose un système d'information foncière, capable d'en assurer la gestion de façon durable, fiable et transparente. De nombreuses expériences de type cadastral de par le monde ont été des échecs, faute d'actualisation: les mutations (héritages, ventes, dons, etc.) ne sont pas enregistrées, et au bout de quelques années, un nouveau décalage se crée entre la réalité foncière et les documents, rendant ces derniers caduques et suscitant des conflits. La viabilité du système d'information foncière en est une condition de pertinence. Celle-ci n'est obtenue que dans certaines conditions:

- lorsque la valeur des terres est suffisante pour que les acteurs locaux soient prêts à faire la démarche de faire enregistrer les mutations;
- lorsque les dispositifs d'administration foncière leur sont accessibles, pratiquement (distance, durée du voyage) et économiquement (taxation, coût du séjour en ville, etc.); et
- lorsqu'ils sont conçus pour être fiables et transparents, et fonctionner avec des coûts récurrents faibles.

Là où ces conditions ne sont pas réunies, des alternatives doivent être privilégiées. Au niveau urbain, UN-Habitat (Augustinus, 2003) et la Fédération internationale des géomètres (FIG, 2005) se sont fortement investis dans la recherche de telles alternatives. La question est encore plus cruciale en milieu rural. Formalisation des transactions foncières (sans nécessairement de support cartographique), cartographie participative, méthodes allégées d'établissement de plans parcellaires, font partie des axes de réflexion.

Quel domaine de validité du raisonnement standard?

L'ensemble de ces analyses questionne sérieusement le raisonnement standard et amène à s'interroger sur les conditions dans lesquelles il a une chance de fonctionner. Il est très clair qu'il n'a pas de validité universelle, et ne fonctionne que dans des configurations particulières: on ne peut attendre d'impact rapide de la formalisation des droits sur la productivité que si le statut foncier et/ou les conflits sont à la fois:

- un frein *réel* à l'investissement (et non pas supposé du simple fait de leur statut «informel»), ce qui suppose des analyses empiriques des formes de l'insécurité foncière et de leurs causes (la formalisation des droits n'étant qu'une des réponses possibles aux problèmes d'insécurité, et pas forcément la plus efficiente);
- un frein *majeur* par rapport aux autres contraintes (rapports de prix, accès à la main-d'œuvre et aux intrants, organisation des marchés, etc.), car sinon, les mesures essentielles à prendre sont ailleurs que dans le foncier.

Par conséquent, sous réserve d'analyses empiriques plus précises, le domaine de validité du raisonnement standard est principalement les zones économiquement dynamiques, là où i) les régulations coutumières/locales sont en crise réelle et où l'extension d'un marché foncier se fait sans institutions de régulations, et suscite de nombreux conflits et où ii) l'importance quantitative des acteurs extérieurs au milieu local et la valeur des terres justifient le coût de mise en place d'un système d'information foncière, les acheteurs de terre étant prêts à en assumer le coût. En dehors de ces zones, il serait illusoire d'en attendre un impact positif, sauf à la marge, et le rapport coût/efficacité d'un système d'information foncière invite plutôt à rechercher des alternatives. De fait, la littérature économique semble plutôt confirmer, mais avec de nombreuses nuances, le raisonnement standard en Asie et Amérique latine, et à l'infirmer en Afrique, pour des raisons qui tiennent plus à la faible rentabilité de la production agricole et aux imperfections de l'environnement de marché qu'à la nature ou la forme des droits fonciers (Colin *et al.*, 2010). Dans ce dernier type de contexte, au moins, la «demande d'innovation institutionnelle» adressée par les acteurs ruraux à l'État, lorsque les conflits se multiplient, porte sur des réponses pratiques aux problèmes d'insécurité (et parfois d'accès au crédit), et pas nécessairement sur le seul enregistrement standard des terres comme offre institutionnelle (Ministère des affaires étrangères, 1998).

DUALISME JURIDIQUE, LÉGALITÉ, EXTRA-LÉGALITÉ ET RECONNAISSANCE DES DROITS LOCAUX

Le second axe de réflexion concerne la question de la nature des droits fonciers locaux à sécuriser, et du type de statut juridique à promouvoir à cet effet. Il est moins souvent posé dans les débats sur les politiques foncières, mais il est crucial partout où les droits fonciers locaux ne sont pas une propriété privée de fait, à l'échelle de l'individu ou du ménage, avec une transmission essentiellement par héritage et par le marché. C'est-à-dire partout où on rencontre un ou plusieurs des traits suivants: i) les droits fonciers sont un ensemble complexe de droits individuels et de régulations collectives; ii) ils prennent principalement la forme de patrimoines familiaux ou lignagers dépassant l'échelle du ménage, et pas (seulement) de propriétés privées individuelles; iii) il existe une organisation collective du territoire, gérant la coexistence de différents modes d'exploitation du milieu (agriculture, pastoralisme, extractivisme, etc.); et iv) l'accès à la terre est fonction des identités sociales. Ce qui représente une part importante des espaces ruraux des pays du Sud.

Ces caractéristiques sont les fruits de l'histoire et du milieu, mais aussi des politiques foncières coloniales et postcoloniales, qui ont parfois toléré ou renforcé ce caractère «coutumier», en s'appuyant sur les institutions politiques locales pour gérer les êtres humains et les territoires. Elles vont souvent de pair avec un cadre légal fondé sur la propriété privée, et sur des procédures administratives de «création de la propriété privée par le haut» (Comby, 1995; Comby et Gerber, 2007). C'est en particulier le cas en Afrique francophone, avec l'immatriculation, dont l'origine coloniale, au service des intérêts des colons, est évidente: visant justement à répondre à l'absence (réelle ou supposée) de propriété privée dans les sociétés rurales locales, ces procédures établissent une propriété garantie par l'État, suivant des procédures lourdes, coûteuses, et en pratique inaccessibles à l'immense majorité de la population. On a donc un cadre formel dual, organisant la coexistence plus ou moins pacifique entre la faible partie des terres qui dispose d'un statut juridique garanti par l'État, et l'essentiel du territoire, souvent intégré juridiquement au Domaine de l'État, et relevant

en pratique de droits locaux, «coutumiers», «indigènes». Ne pouvant pas, légalement ou pratiquement, accéder à la reconnaissance légale, ces espaces sont maintenus dans une situation «d'extra-légalité».

Sortir du dualisme juridique d'origine coloniale

Il est de plus en plus largement reconnu que ce dualisme juridique, qui maintient les acteurs locaux dans une situation «d'extra-légalité», constitue une des sources majeures de conflits et d'insécurité foncière. Ses droits fonciers étant niés, la population est soumise au risque d'arbitraire et d'éviction. Le flou sur les règles censées s'appliquer dans un espace donné favorise les conflits: différents acteurs peuvent revendiquer des droits sur un même espace en se référant à des normes différentes; des acteurs peuvent obtenir des droits formels, juridiquement incontestables, sur des terres pourtant légitimement appropriées par d'autres. En cas de conflit, les instances d'arbitrage ne savent pas sur quelles bases fonder leur jugement et un arbitrage réalisé par une instance peut être remis en cause auprès d'une autre. Face aux contradictions de la loi, des acteurs publics formels peuvent valider des droits et mettre en place des procédures locales, extra-légales, de constatation des droits ou d'arbitrage.

Le dualisme juridique, qui maintient les acteurs locaux dans une situation "d'extra-légalité", constitue une des sources majeures de conflits et d'insécurité foncière

Cette insécurité juridique ne se traduit pas toujours en insécurité réelle: là où les normes locales restent la référence partagée, où l'administration ne veut pas ou ne peut pas imposer ses propres normes, où il y a peu d'acteurs externes introduisant de nouvelles normes ou refusant de reconnaître les normes locales, il n'y a guère de problème, la pluralité des normes est toute théorique et les conflits sont régulés. Par contre, là où l'État est intervenu fortement, là où des acteurs (locaux ou externes) contestent les normes locales et mobilisent le droit positif, cette pluralité est effective et produit les effets pervers comme décrits ci-dessus.

Sortir du dualisme juridique, permettre à l'ensemble des citoyens de voir leurs droits reconnus et protégés, et mettre en place des mécanismes fiables et accessibles de gestion foncière constituent ainsi un enjeu majeur, qui fait de plus en plus consensus. L'argument classique selon lequel l'État doit aisément pouvoir mobiliser la terre pour des projets d'intérêt général ne saurait justifier ce dualisme et cette «extra-légalité», au coût économique et

social élevé pour les populations, d'autant plus que ce principe a largement été dévoyé au profit d'intérêts privés.

Il y a donc un consensus croissant sur le constat qu'on ne pourra traiter la question foncière en faisant fi des réalités et que c'est d'abord au droit positif de s'adapter pour être capable de prendre en compte les droits fonciers locaux, tels qu'ils font consensus à l'échelle locale. La stabilisation des droits fonciers est avant tout un processus historique de consolidation de certains droits, que le droit écrit vient orienter et entériner. Levons ici deux ambiguïtés possibles : reconnaître les droits fonciers locaux *d'aujourd'hui* n'implique en rien de «figer» des situations «traditionnelles», puisque ces droits locaux sont évolutifs, caractéristique qu'il faut préserver. D'autre part, cela n'empêche pas l'État d'avoir sa politique et de vouloir orienter la diversité des droits et leur distribution dans le sens qu'il souhaite, sur le moyen ou long terme.

C'est d'abord au droit positif de s'adapter pour être capable de prendre en compte les droits fonciers locaux

Reconnaître les droits locaux: oui, mais lesquels et comment?

Ce consensus sur le principe d'une reconnaissance des droits locaux recouvre des choix différents, qui sont rarement explicites:

- S'agit-il de reconnaître et de formaliser les patrimoines fonciers des individus et des familles tels que constatés à un moment donné ou bien de reconnaître les modes locaux de régulation et les instances de gestion foncière?
- Dans la première alternative, formalise-t-on une propriété privée ou une gamme de droits fonciers évolutifs?
- Si l'on raisonne en termes de propriété privée, le statut juridique est-il celui du seul Titre foncier ou bien une propriété privée non garantie par l'État, qui se transmet par contrats de vente comme dans tous les pays où le cadastre n'est pas juridique?
- Si l'on raisonne en termes d'une gamme de droits évolutifs, jusqu'où et comment prendre en compte la diversité des droits? Traite-t-on de la même façon les droits sur les terres et les droits sur les ressources naturelles? Et quelles dispositions permettront de constater et valider les évolutions?Dans la majorité des espaces, en particulier en zones rurales, les droits fonciers locaux ne relèvent pas d'une propriété de fait, avec

l'ensemble des droits concentrés sur la même personne (le propriétaire), qui délègue éventuellement des droits d'usage: ces droits sur la terre et les ressources naturelles sont un ensemble plus complexe de prérogatives individuelles et de régulations collectives, au niveau des familles élargies ou des segments de lignage pour la gestion de patrimoines familiaux, ou au niveau du territoire pour les ressources naturelles et les règles d'exploitation du milieu. La figure 2 (Lavigne Delville *et al.*, 2009: 14) explicite la différence entre une conception des droits fonciers locaux en termes de propriété et en termes de faisceaux de droits ou de maîtrises foncières, dans les savanes soudaniennes.

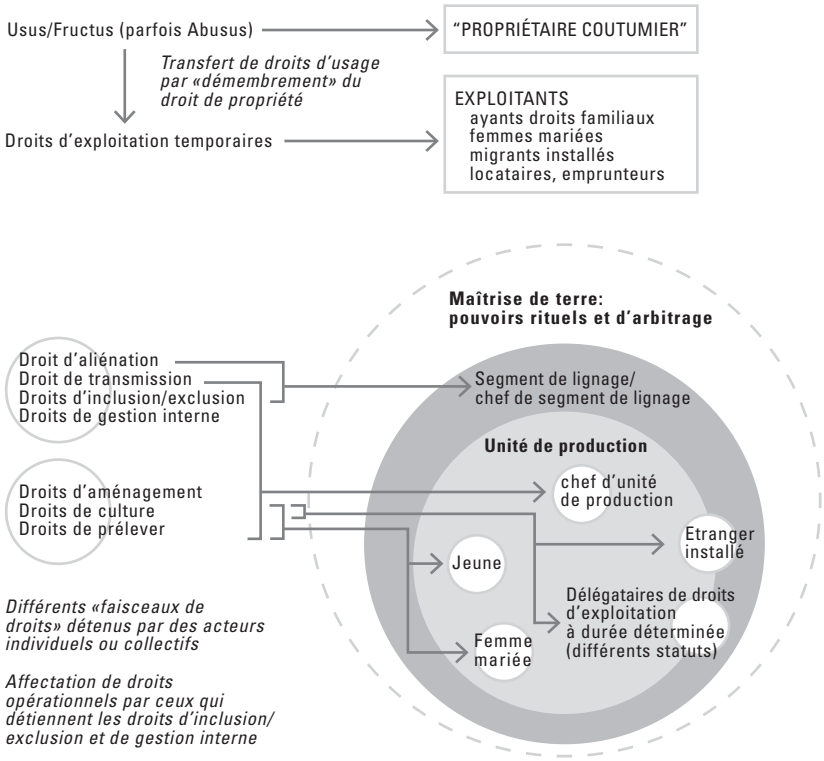


Figure 2
«Propriété d'origine coutumière» versus « faisceaux de droit»

source: Ph.Lavigne Delville

Prendre en compte la question de la nature des droits fonciers à enregistrer a des conséquences très fortes pour les démarches d'enregistrement: partout où les droits fonciers ne sont pas individualisés, où différents usagers ont des droits (culture, cueillette, pâturage, etc.) sur une même parcelle, partout où la terre est un patrimoine commun, à l'échelle d'une «communauté» locale ou d'un groupe familial, avoir la propriété individuelle comme seul cadre juridique ne peut qu'exclure de nombreux ayants droit, avec des conséquences sociales potentiellement graves (aggravation des inégalités foncières et de la pauvreté rurale, exclusion des femmes et des jeunes, voire des branches cadettes des lignages, multiplication de paysans sans terre, etc.). De plus, lorsque la coordination de ces différents usages (agricoles, pastoraux, extractivistes, etc.) renvoie à une gestion du territoire sous l'égide d'autorités foncières locales, mais l'officialisation d'une propriété ne risque-t-elle pas de désorganiser cette gestion du territoire?

Face à la diversité des situations, la réflexion s'oriente de plus en plus vers la notion de «continuum de droits», de gamme de droits sur la terre, appelant ainsi à l'élaboration d'une gamme (plus ou moins large selon les cas) de solutions juridiques articulées les unes aux autres. En fonction des modes dominants d'exploitation du milieu dans une région ou un territoire villageois, en fonction de la force des mécanismes locaux de gestion foncière et selon les options politiques en vigueur quant aux rapports entre États, individus et communautés d'appartenance, les choix peuvent être multiples et aller de l'institutionnalisation des instances locales de gestion foncière jusqu'à l'enregistrement des droits individuels (Fitzpatrick, 2005).

Le champ de réflexion est vaste et ses enjeux énormes. Pourtant, au-delà des principes, les démarches pratiques sont encore peu stabilisées, en particulier concernant l'identification de droits fonciers complexes. Les recherches en «ethnographie des droits» (Colin, 2005; 2008), d'ailleurs en partie stimulées récemment par les questions posées par les expériences d'enregistrement des droits fonciers locaux, ont encore du terrain à prospecter et leurs premiers résultats ne sont pas encore totalement opérationnalisés. Il y a là un champ de réflexions et d'expérimentations, sachant que tout enregistrement de droits complexes est nécessairement une simplification de réalités tout aussi complexes et dynamiques, susceptibles de manipulations par les acteurs (voir

Tout enregistrement de droits complexes est nécessairement une simplification de réalités

d'Aquino, 1998). C'est le cas, c'est bien connu, dans les vastes opérations de cadastrage, qui sont des moments privilégiés de manipulation des droits et d'exclusion (Shipton, 1988). Cela peut aussi être le cas, si les précautions ne sont pas prises, pour les démarches d'identification des droits locaux (Chauveau, 2003). Les droits des pasteurs, des femmes, des migrants, sont particulièrement susceptibles de remises en cause.

POUR UN SCHÉMA CONCEPTUEL ÉLARGI

On peut maintenant tenter d'articuler les analyses développées ci-dessus, pour complexifier le modèle et le rendre un peu plus réaliste, en termes de *«référentiel»* (Muller, 1990) pour des politiques de sécurisation foncière. Toute politique repose en effet sur une réduction de la complexité, sur des schémas cognitifs qui permettent de *«diminuer l'opacité du monde en définissant de nouveaux points d'appui pour agir»* (idem: 44) et définissent à partir de là *«un ensemble de normes prescriptives qui donnent sens à un programme politique»* (idem: 43).

Ce schéma élargi a pour simple objectif de donner des repères pour formaliser le déplacement de perspective par rapport au raisonnement standard, dans une perspective opérationnelle. Il reste nécessairement simplificateur. En particulier, elle ignore trois dimensions essentielles des politiques d'enregistrement des terres, largement et à juste titre mises en avant par Colin et al (op.cit): la place des politiques foncières dans l'économie politique du pays, les dispositifs des opérations foncières et leur dynamique propre, et la coproduction des impacts de ces politiques dans les arènes locales.

Une demande d'innovations institutionnelles pour la paix sociale et une exploitation paisible et durable des terres et des ressources naturelles

Les analyses proposées précédemment amènent à construire le raisonnement à partir des constats suivants:

- le raisonnement standard sur l'enregistrement des terres et la privatisation est sérieusement remis en question. Favoriser l'investissement est un objectif d'un développement économique inclusif, mais encore faut-il

savoir quel type d'investissement et pourquoi, et quels sont les réels leviers (dont le foncier n'est pas l'unique, et souvent pas le principal);

- les problèmes d'insécurité découlent autant des dysfonctionnements institutionnels que des évolutions des droits locaux; la sortie du dualisme juridique et le travail sur des dispositifs opératoires, capables d'adaptation, et fiables de gestion foncière doivent être un axe central de réflexion;
- selon les contextes, et en fonction des modes d'exploitation du milieu, la nature des droits locaux ne sont pas les mêmes, les problèmes d'insécurité non plus. Un cadre juridique et institutionnel monolithique, ne reconnaissant qu'une forme de droit de propriété, aura du mal à répondre aux problèmes. Tant pour des raisons de pertinence que d'efficience, il est utile de raisonner de façon large, en offrant une gamme de solutions juridiques articulées entre elles et évolutives, aptes à répondre aux différents besoins;
- l'impact de la sécurisation foncière est multiple, elle permet la réduction des conflits (mais ne supprime pas la compétition pour la terre et les ressources naturelles), lève certains freins à l'investissement (mais pas tous), contribue à créer une citoyenneté. Elle ne peut s'évaluer au seul prisme de l'investissement;
- si la formalisation juridique des droits existants contribue à la sécurisation foncière, cela ne réclame pas pour autant un modèle unique de propriété privée, encore moins une généralisation d'un instrument juridique du type Titre foncier, legs colonial qui du reste ne saurait intégrer tous les types de droits qu'il convient de sécuriser;
- la sécurisation découle autant de la qualité des institutions (instances de gouvernance et d'administration foncière, systèmes d'information foncière) que de la formalisation elle-même. Le design institutionnel (les instances, les règles, les modes concrets de fonctionnement) sont un enjeu important de pertinence et d'effectivité des politiques foncières, et mérite une attention soutenue; les outils (les plans parcellaires, les registres, les documents juridiques) n'ont d'utilité que dans un cadre institutionnel cohérent et efficace;
- dans un contexte de pluralité juridique, la façon dont le cadre institutionnel articule légalité et légitimité (Lavigne Delville dir, 1998) est fondamentale.

On peut schématiser cela dans le schéma suivant (figure 3): les dysfonctionnements observés (conflits, revendications opportunistes, conflits peu réglés) découlent principalement du dualisme légal, qui fait que la compétition foncière et les processus partiels d'évolution des droits vers l'individualisation et la marchandisation ne sont pas régulés, et des carences du dispositif légal et institutionnel public.

Face à cela, les acteurs développent des innovations, comme le recours croissant aux „petits papiers", aux contrats sous-seing privé pour les transactions foncières (Lavigne Delville, 2002). Ils cherchent à coupler sécurisation par le consensus local sur leurs droits et sécurisation par le recours à l'État, mais ne trouvent pas une offre publique adéquate. Il y a bien „demande d'innovation institutionnelle", comme postulé par la théorie évolutionniste des droits sur la terre, mais celle-ci est plus large que la seule propriété privée. Elle porte sur une gamme de solutions juridiques, sur des mécanismes de conciliation et d'arbitrage légitimes et effectifs, sur des procédures clarifiées de formalisation des transactions foncières, bref sur des dispositifs publics permettant de réconcilier légalité et légitimité, et d'encadrer et de réguler les dynamiques foncières.

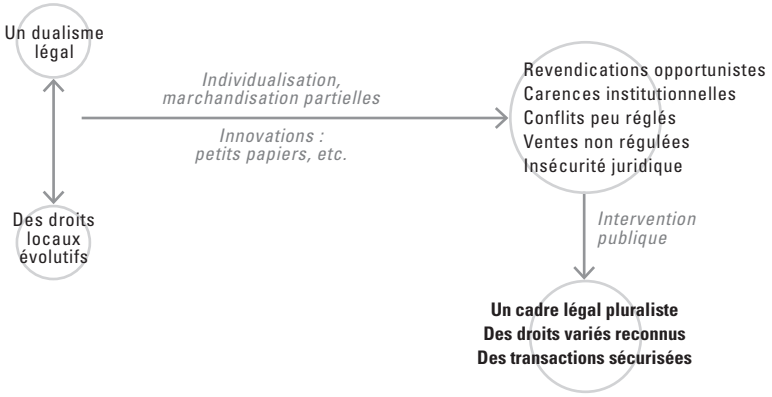
Dès lors que l'État répond à ces aspirations, en proposant un cadre légal pluraliste apte à prendre en charge la diversité des situations et des dispositifs opératoires, il peut y avoir place pour des effets positifs, en termes de paix sociale et de productivité. Mais ces impacts ne sont pas mécaniques, ils demandent un certain nombre de conditions:

- une gestion foncière transparente et effective;
- des mécanismes de médiation et d'arbitrages efficaces;
- et (pour des impacts économiques*)* une politique économique et agricole cohérente, des rapports de prix favorables, du crédit accessible en pratique.

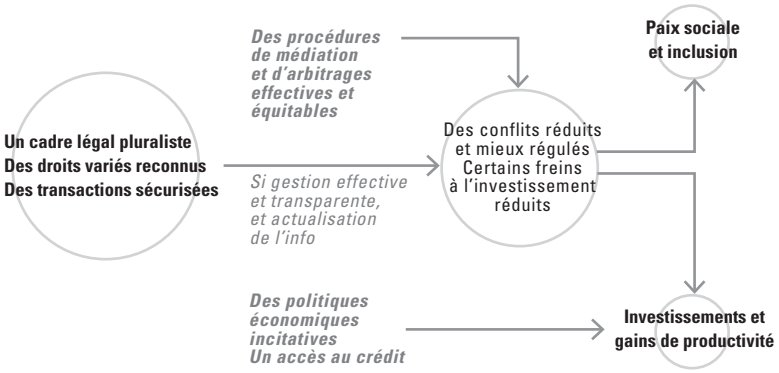
Ces éléments ne sont pas des conséquences mécaniques de la formalisation des droits, mais bien des conditions pour que la formalisation ait les effets attendus. On voit bien qu'il est illusoire de postuler que la formalisation des droits puisse avoir par elle-même des impacts positifs sur la productivité, quelque soit l'environnement économique et institutionnel.

Figure 3 (A et B)
Pluralisme juridique, enregistrement des droits, conflits et productivité. Un cadre conceptuel élargi

A. SORTIR DU DUALISME JURIDIQUE…



B. POUR LA PAIX SOCIALE ET UN DÉVELOPPEMENT ÉCONOMIQUE INCLUSIF



source: Ph. Lavigne Delville

Un enjeu de gouvernance

De même, il est illusoire d'attendre une amélioration de la qualité de l'administration foncière (transparence, etc.) de la simple mise en place de systèmes d'information foncière. L'enjeu est bien en amont, il est dans la construction de dispositifs de régulation foncière permettant d'apporter des réponses concrètes aux acteurs, et d'organiser la coexistence paisible des différents modes d'exploitation du milieu, dans un contexte marqué par la pluralité des normes, par la diversité des acteurs et des modes d'exploitation du milieu. De ce fait, la gestion foncière n'est pas uniquement une question «d'administration»(c'est-à-dire de procédures d'enregistrement des droits et des mutations). C'est en amont de cela une question de *gouvernance*, qui pose la question de la prise en compte par les politiques publiques de la diversité économique et sociale dans une logique d'inclusion, et qui nécessite des choix politiques forts, quant aux types de droits reconnus, au degré d'ouverture du cadre légal et institutionnel, à la conception des instances chargées du foncier pour assurer légalité et légitimité. Les procédures d'administration foncière sont une façon de traduire dans les pratiques ces choix de gouvernance. Dans un contexte de pluralité des normes, et face à la diversité des situations, un cadre institutionnel lui-même pluriel, hybride (c'est-à-dire empruntant, dans des proportions variables, aux institutions publiques et aux institutions locales) et évolutif est souvent nécessaire.

La gestion foncière n'est pas uniquement une question "d'administration". C'est une question de gouvernance

Cela demande *de nombreuses innovations, tant juridiques qu'institutionnelles ou techniques.* Outre la réduction des contradictions internes au cadre légal actuel, différentes approches sont proposées, qui mettent l'accent sur l'une ou l'autre dimension, sur les droits concrets ou sur les modes de régulation et d'arbitrage (Le Roy, 1998). De nombreuses expériences sont en cours, qu'il est utile de soumettre à ce cadre conceptuel.

Il faut en tous cas noter que, dans ce schéma, la formalisation des droits de propriété n'est qu'un des éléments de la sécurité foncière, et pas nécessairement le premier. Ce type de dispositif est incontestablement utile lorsque les droits sont individualisés, lorsque le marché est, avec l'héritage, le principal mode d'accès à la terre, lorsque les institutions locales ne sont pas/ plus capables d'assurer une régulation foncière suffisante, et lorsque l'État est capable de proposer un dispositif d'administration fiable et efficient. Là où ces conditions ne sont pas réunies, la priorité est ailleurs:

- dans des instances de gouvernance foncière qui peuvent, au fur et à mesure des besoins, être équipées de dispositifs techniques plus ou moins sophistiqués, en démarrant par des dispositifs de formalisation des contrats évitant les conflits sur les ventes, et de stabilisation de la coexistence des usages sur un même territoire; et
- dans des mesures visant à améliorer la cohérence des dispositifs de régulation foncière en régulant le pluralisme institutionnel et en assurant une plus grande cohérence dans le traitement des conflits fonciers.

On peut même considérer que le type de «demande institutionnelle» dépend du contexte, avec un gradient en fonction de la valeur des terres et de la capacité des institutions locales (celle-ci dépendant pour beaucoup de la politique foncière) (voir figure 4), les systèmes d'information foncière ne se justifiant que là où la valeur des terres, d'une part, et les limites des dispositifs locaux, d'autre part, font que les acteurs ont intérêt et ont les moyens d'assumer les coûts d'un tel dispositif.

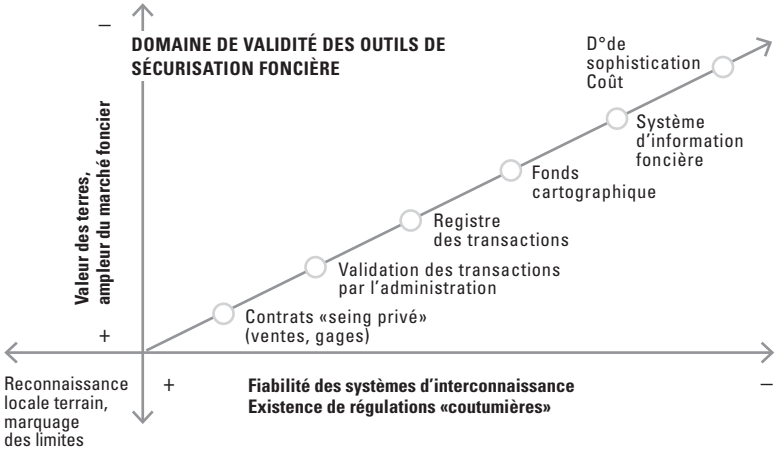


Figure 4
Régulations locales, enjeu économique et demande d'outils d'administration foncière

CONCLUSION

Ce double cheminement à travers d'une part, les limites du raisonnement sur les liens entre formalisation des droits et d'autre part, les questions de pluralité des normes et des droits, nous amène assez loin du raisonnement standard. Ce n'est pas que le cercle vertueux qu'il propose (sécuriser le foncier et favoriser les gains de productivité) ne soit pas à favoriser, c'est qu'il ne suffit pas à le produire, qu'il ne fonctionne que dans des conditions spécifiques, et que, appliqué de façon mécanique, il risque finalement plus de déboucher sur des exclusions que sur des gains massifs de productivité.

C'est d'autant plus vrai que le cadre légal de la propriété demeure fondé sur une conception coloniale, faite pour une élite et non pour la masse de la population, et que les droits fonciers locaux sont plus éloignés du modèle de la propriété privée.

Dès lors, l'enjeu est bien de trouver des façons de sécuriser les droits des acteurs locaux, de sécuriser les transactions foncières, au plus près des réalités locales, et sans les enfermer dans des conceptions «traditionnalistes», ce qui suppose de prendre au sérieux la question de la nature des droits fonciers à reconnaître et sécuriser.

L'enjeu est de trouver des façons de sécuriser les droits des acteurs locaux et de sécuriser les transactions foncières, au plus près des réalités locales

Dès lors, on est dans une problématique de gouvernance au sens fort du terme, l'administration foncière (la façon d'administrer les droits légalement reconnus) n'étant qu'une partie de la problématique.

En effet, au-delà de ses dimensions sectorielles, une politique foncière porte en elle des conceptions des droits fonciers (à travers la gamme, plus ou moins large, des statuts juridiques reconnus par la loi) et des façons de les administrer, et à travers cela, des conceptions de la citoyenneté, du rapport public/privé, du rôle de l'État dans l'économie, etc. Elle définit un cadre, plus ou moins large, plus ou moins excluant, par rapport à la diversité des droits fonciers des populations, par rapport aux populations indigènes, et par rapport aux fractions les plus fragiles des populations, rurales et urbaines.

Dans des sociétés marquées par un dualisme juridique d'origine colonial, qui n'a pas été remis en cause par les régimes postcoloniaux, c'est un enjeu majeur de démocratisation. En ce sens, un choix de politique foncière est aussi, et plus fondamentalement, une question politique au sens fort du

terme, un choix de société. Définir ou redéfinir une politique foncière renvoie au contrat social qui lie entre eux les citoyens, et les citoyens et l'État, et pose la question des fondements du vivre ensemble dans une société donnée au-delà des clivages socioéconomiques et politiques qui la traversent, et celle de la prise en compte de la diversité et des inégalités sociales et économiques en son sein (disparités entre les sexes, inégalités sociales, marginalisation culturelle et politique de sociétés locales/ indigènes, etc.).

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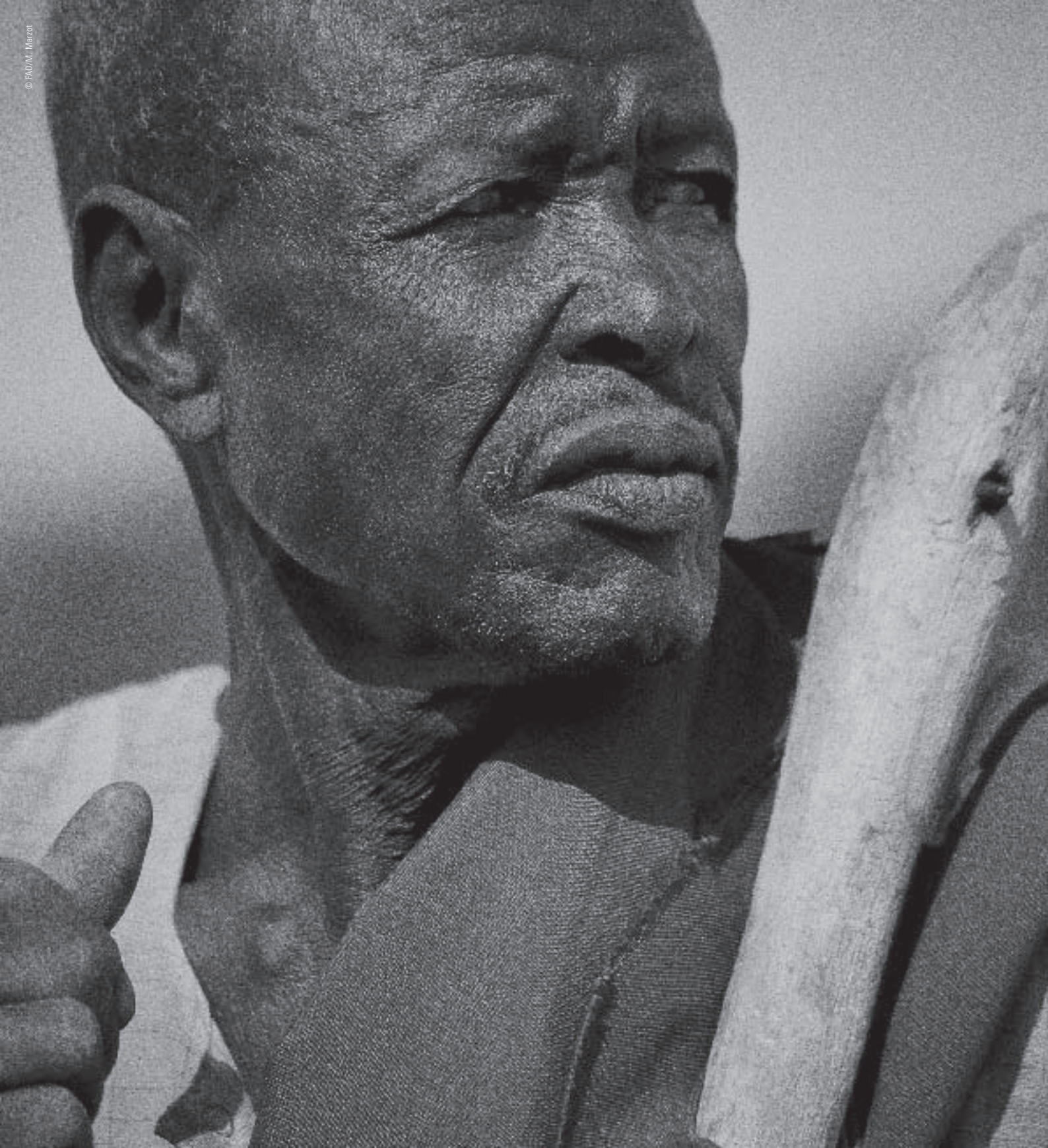

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DECENTRALIZATION, LAND TENURE REFORMS AND LOCAL INSTITUTIONAL ACTORS
Building partnerships for equitable and sustainable land governance in Africa

DÉCENTRALISATION, RÉFORMES DES RÉGIMES FONCIERS ET ACTEURS INSTITUTIONNELS LOCAUX
Construire des partenariats pour une gouvernance foncière équitable et durable en Afrique

DESCENTRALIZACIÓN, REFORMAS DE LA TENENCIA DE LA TIERRA Y AGENTES INSTITUCIONALES LOCALES
Establecimiento de asociaciones para lograr una gobernanza equitativa y sostenible de la tierra en África

ABSTRACT

GOVERNANCE

LAND TENURE REFORM

AFRICA

Greater formalization of access to land tenure and natural resources may assist the rural poor in protecting their assets, improve tenure security, and reduce land-related conflict. The land administration services on offer need to be appropriate, accessible and available on a massive scale. Achieving this level of availability requires subsidiarity and localization of service delivery. This paper explores ways of engaging rural local governments in land administration. Several new land policies propose the creation of committees (often voluntarily) at the community or local government level, which would facilitate the inventory of rights and registration, to record transactions and even reconciliation. Attention

RÉSUMÉ

GOUVERNANCE

RÉFORME DES RÉGIMES FONCIERS

AFRIQUE

Une plus grande formalisation des régimes fonciers et des ressources naturelles peut aider les personnes pauvres vivant en milieu rural à protéger leurs biens, à améliorer leur sécurité foncière et à limiter les conflits fonciers. Les services d'administration foncière proposés doivent être adaptés, accessibles et disponibles à grande échelle. Pour atteindre ce niveau de disponibilité, il est nécessaire d'y intégrer une dimension de subsidiarité et de localisation. Le présent document expose les différentes manières d'engager les autorités rurales dans l'administration foncière. De nouvelles politiques foncières prévoient la création de comités (souvent volontaires) au niveau des villages ou des autorités locales,

SUMARIO

GOBERNANZA

REFORMA DE LA TENENCIA DE LA TIERRA

ÁFRICA

Una mayor formalización del acceso a la tenencia de la tierra y los recursos naturales podría ayudar a los pobres de las zonas rurales a proteger sus activos, mejorar la seguridad de la tenencia y reducir los conflictos relacionados con la tierra. Los servicios de administración de tierras que se ofrezcan deben ser apropiados y accesibles y estar disponibles en gran escala. Para lograr este nivel de disponibilidad son precisas la subsidiariedad y la localización de la prestación de servicios. En el presente estudio se exploran formas de lograr la participación de las administraciones locales de las zonas rurales en la administración de tierras. Varias nuevas políticas agrarias proponen la creación de comités (a menudo con carácter voluntario) en el plano de la


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needs to be paid to mandate, composition, accountability and oversight. Responsible land governance is a challenge also at the local level. One method of achieving this is to build on ongoing initiatives to support local governments in improving governance, via better communications, transparency and accountability, and by promoting citizens' rights to voice their concerns and scrutinize processes.

qui faciliteraient l'inventaire des droits et l'enregistrement, afin de conserver la trace des transactions et même de favoriser la conciliation. La détermination du mandat, de la composition, de la responsabilité et des modalités de surveillance de tels comités doit faire l'objet d'une attention particulière. La gouvernance foncière responsable constitue également un défi au niveau local. L'une des façons de le relever est de s'appuyer sur les initiatives déjà en place afin d'aider les autorités à améliorer la gouvernance – grâce à de meilleures communications, ainsi qu'à une transparence et une responsabilisation plus grandes – et la promotion du droit des citoyens d'exprimer leurs préoccupations et d'examiner les processus entrepris.

comunidad o de la administración local, lo que facilitaría el inventario de derechos y el registro, a fin de documentar las transacciones e incluso la reconciliación. Debe prestarse atención al mandato, la composición, la rendición de cuentas y la supervisión. La gobernanza responsable de la tierra constituye un desafío también en el plano local. Un método para conseguirla es aprovechar iniciativas ya en marcha con objeto de ayudar a las administraciones locales a perfeccionar la gobernanza, mejorando las comunicaciones, aumentando la transparencia y la responsabilidad y promoviendo el derecho de los ciudadanos a manifestar sus preocupaciones y examinar los procesos.

INTRODUCTION

The livelihoods of the rural poor in Africa rely on secure rights to land and natural resources. Secure rights are a critical factor to conditioning how the rural poor in developing countries can benefit from markets. Resource tenure systems set the arrangements for rights, rules, structures and processes that regulate access to land and its use. These formal or informal systems influence who controls land, and who can use land resources for how long and under what conditions. Tenure security and insecurity are relative concepts. They refer to a bundle of rights held by one or more persons. These rights are described in several dimensions, such as type, breadth, duration and certainty of exercise (Place, 2009). Tenure security can be defined as the degree of reasonable confidence not to be deprived arbitrarily of the land rights enjoyed, or of the economic benefits deriving from them (Cotula *et al.*, 2006).[1]

Resource tenure systems are embedded in societal values, norms and relations, and as such they reflect power structures. They will evolve in response to changes in social, cultural, economic or political structures. When there is an increase in competition over land and natural resources, or growing fear of expropriation, social demand for better boundary security, land transaction processes and rights tends to augment. There have been numerous local responses towards greater tenure security, such as the '*petits papiers*', which are written contracts prepared in presence of a witness to record sales and leases (Lavigne Delville & Mathieu, 1999; Mathieu, 2001). Often these informal measures provide sufficient security for land users to continue working the land and invest.

Tenure systems are embedded in societal values, norms and relations, and as such they reflect power structures

When local resource tenure institutions are breaking down and land-related conflict within families and between neighbours is rising, some kind of formalization of tenure rights may be helpful. The search for greater legal or official protection of local rights will also grow when claims to land

1 The author would like to thank KIT and FAO, in particular Paul Mathieu, for making it possible to develop this paper and for their valuable feedback.

and resources are being staked by actors who do not feel bound by local institutions[2], or who prefer formal procedures for securing property rights and transactions. Such formalization would result in greater support from the state for local land tenure systems and would better guarantee rights of marginalized groups.

This paper explores approaches for formal land administration services that are appropriate and accessible to the rural poor, and which will better protect their assets, improve perceptions of tenure security, and reduce land-related conflict (Sjaastad & Cousins, 2008). To make a difference, for the rural poor these services need to be accessible on a very large scale, since building systems that are accessible only to well-informed and affluent investors will not materially improve local tenure insecurity. 'Going for scale' is feasible only when administration of land and natural resources is localized. Subsidiarity is necessary to increase uptake, reduce costs and improve accountability. It requires the engagement of local institutional actors such as local governments (Alden Wiley, 2008; Place, 2009).

The latest wave of democratic decentralization (or devolution) starting in the 1990s[3] resulted in the establishment of thousands of new local governments in rural areas of Africa. Devolution may create an enabling environment for greater subsidiarity in land governance. Opportunities for more robust local resource tenure systems are explored, by linking the implementation of 'new' land policies to devolved public administration. This paper will look particularly into reform that allows at least some degree of discretion and freedom of action on the part of local institutional actors. It also assesses the requirements for ensuring responsible governance at the local level. The focus will be on countries where elected local governments are present in rural areas and where land policy is being reviewed.

2 Often these actors are external to local society, but they also include members of the diaspora who have left for urban areas or abroad.

3 A commitment to decentralization and devolution can also be regarded as a recognition of limits to state intervention (Place, 2009).

EXPERIENCES WITH FORMALIZING DECENTRALIZED MANAGEMENT OF THE COMMONS

Before delving into localized land administration, this paper will first look into previous experiences with formalizing decentralized management of natural resources in the common lands, such as forests, grazing lands, and water bodies. Although these natural resources are de facto used as common heritage, they are formally often considered to be state land.

Decentralized resource management of the commons allows for adaptive and flexible decision-making in response to seasonal and annual variations. Local level institutional structures, which supervised and managed these common lands, existed everywhere and were rooted in customary authority systems. Over time they have weakened, caused partly by the expansion of formal resource tenure systems involving centralized management[4]. The capacity of these local institutions is also affected by growing pressures on natural resources and the unravelling of social capital.

Decentralized resource management of the commons allows for adaptive and flexible decision making in response to seasonal and annual variation

Towards the end of the 1980s, initiatives by projects and NGOs to promote participatory natural resource management emerged in order to reverse the disempowerment of local resource users. Examples include '*gestion de terroir*', local conventions, community-based natural resource management, community forestry, and participatory forest management. In countries such as Mali, these Community Based Natural Resource Management (CBNRM) initiatives facilitated the production of locally-accepted agreements on regulating resource use (Djiré & Dicko, 2007).

In countries where local governments existed and could make bye laws, such as Tanzania, it was possible to formalize these agreements. Elsewhere, formalizing agreements proved to be more difficult and these were, at best, tolerated by governments. This was the case in francophone West Africa at a time when elected local governments were not yet in place. The implication is that local regulations on resource use can be ignored by

4 To complicate matters even further, these laws may be perceived locally as unjust and inappropriate from an ecological point of view.

outsiders when they are able to make their case to official authorities, such as the forestry department. Some of these outsiders have even called for support from these formal agencies to exercise their 'formal rights' to use natural resources.

Decentralized management of common pool resources received support via legislation in several countries. Examples are laws and policies related to community forestry and participatory forest management, fisheries, hunting, and pastoral resources. Implementation is lagging behind, however. For example, framework laws have not always been accompanied by the required decrees and procedures and thus not applied (on pastoral legislation, see Hesse & Thébaud, 2006). Moreover, governments continue to appropriate increasingly valuable local commonage and lease these lands to investors for farming, logging, mining, ecotourism and carbon credits compensation schemes. Rural peoples' access and control over common lands is therefore the area most at risk of being interfered with and reallocated to investors (Alden Wiley, 2008).

GROWING NUMBERS OF RURAL LOCAL GOVERNMENTS

Institutional reform towards devolution

Since the 1990s, there has been a new wave of institutional reform towards greater devolution[5] in a number of African countries. Devolution creates possibilities for more autonomous decision-making in response to local needs and circumstances, more room for citizen participation, and encourages downward accountability[6]. A tangible result is the spread of elected local governments in rural areas. Some local governments are new

Devolution creates possibilities for more autonomous decision-making in response to local needs and circumstances, more room for citizen participation, and encourages downward accountability

5 Democratic decentralization (or devolution) is defined as the transfer of a sphere of decision-making from the central state apparatus to elected sub-national government, which is downwardly accountable to citizens. In the case of *deconcentration*, only functions are transferred to a sub-national level of government that remains upwardly accountable (e.g. the departmental office of the cadastral service).

6 Objectives driving these policy agendas include supporting 'deeper' democratization, meaningful participation, downsizing the central state, improving service delivery and local economic development. Decentralization (devolution) has both passionate supporters and ardent opponents, with debates on its results tending to become normative.

configurations (e.g. Mali), others are grafted onto existing administrative bodies (e.g. Benin, Burundi). A third feature is the expansion of authorities within existing local governments and the introduction of elections (e.g. Cameroon, Madagascar)[7].

The first round of local government elections is often the conclusion of years of extensive legal and institutional reform. Local governments are now the lowest administrative level. They are involved in the registration of births, marriages and deaths, issuing permits, and other basic administrative practices. Increasingly too, rural local governments become responsible for the management of basic service delivery, infrastructural development and economic development in their area. The next challenge is to build effective, legitimate and accountable local governments.

Devolution can be a politically-charged process. Moves towards decentralization are followed by recentralization, such as the restriction of devolved competences via the earmarking of funds and other imposed conditionalities. For devolution to work, central government needs to move away from implementation and concentrate on policy development, giving guidance and advice to local governments, and oversight and arbitration. The capacity of local governments to operate depends on the balance achieved between what is stated in the law and the mandates and resources that are actually transferred[8].

For devolution to work, central government needs to move away from implementation and concentrate on policy development, giving guidance and advice to local governments, and oversight and arbitration

To be effective, local governments need adequate resources to carry out their duties and responsibilities. The mobilization of financial resources is therefore a concern for local governments. Sources include transfers by central government, local government development funds, or direct donor-funded projects and programmes. Often, there is only a partial transfer of human and financial resources from central to local governments. In some

7 Decentralization used to be limited mainly to urban areas, and was mostly administrative in nature (e.g. councillors were appointed). Similarly, local governments are sometimes presided over by an administrator appointed by central government, instead of an elected mayor (e.g. in Ghana).

8 A law becomes effective only when the necessary decrees and administrative procedures are in place. Fiscal decentralization, for example, can be hampered by a lack of procedures to transfer funds to the local government level and monitor them there.

countries, local governments are allocated a part of the overall budget/ investment and running costs in line with their respective mandates (e.g. Rwanda, Uganda), while in other countries they receive only a small subsidy for operational costs (e.g. Mali, Burkina Faso, Benin, Niger). Local government development funds are being set up in a number of countries (e.g. Mali, Benin, Burkina Faso).

Increases in the collection of local taxes are another possibility. The exploitation of firewood, timber and grazing lands can be sources of tax revenues for local governments. In some countries, local governments have begun to engage in setting up land registration, knowing that this will provide a basis for taxation (e.g. Benin, Madagascar)[9]. Giving permission for the conversion of agricultural lands into building plots can also be very profitable for local governments, but unfortunately these projects are often not a showcase for responsible land governance. These conversions can also be detrimental to rural livelihoods when farmers lose good quality land without adequate compensation (Bagré *et al.*, 2003). With respect to land administration, some rural local governments have become a repository for land transaction deeds and act as a witness to these, for which they are paid (e.g. cases in Benin, Burundi, Rwanda). Finally, the need to collect taxes locally is stimulating some councils to communicate better with citizens, and demonstrate their good performance and transparency (e.g. Mali, Benin and Niger).

Rural local governments tend to operate at the interface between formal and informal institutions. Although legal, rural municipalities are not automatically perceived as legitimate in the eyes of local people. With respect to local government staff and councillors, the former *administré* will not immediately be considered as 'citizens', while the latter may also not behave as citizens, that is acknowledging both their rights and their obligations. The establishment of local governments can

9 The possibility of collecting fees for registration is also used as an incentive in Madagascar to engage local government. Meanwhile a new law in Burkina Faso stipulates that taxes only have to be paid to local government when the rural land is not used.

also result in taking over responsibilities of villages, which the latter may perceive as centralization. Particularly, changes to decision-making regarding the allocation and management of land and natural resources can be sensitive.

Local governments involvement in land related issues

The emergence of rural local governments offers opportunities to strengthen the decentralized management of common lands (Ribot, 2002 and 2004). Land use planning, promoting sustainable natural resource use and environmental management are generally part of the mandate of local governments. But, these prerogatives tend to be weakly developed, both legally and with respect to capacity building and methodology. Still, the growing discretionary space for local governments may give new impetus to territorial planning, such as clarifying land use and placing local development planning in a broader spatial perspective, including rural–urban synergies (EC, 2007).

The emergence of rural local governments offers opportunities to strengthen the decentralized management of common lands

Certain local governments have prepared by-laws on land use and common pool resources may even be registered in their name (e.g. Niger, Ethiopia). In some countries, local government is also responsible for the management of small-scale irrigation schemes and drained wetlands in valley bottoms (e.g. Rwanda, Burkina Faso, Benin). Even when lacking a formal mandate, local governments are becoming involved in regulating resource use and the management of commonly-used lands, often at the request of local land users. The main reason for this is that local governments are in charge of keeping the peace and preventing conflict (Hilhorst, 2008).

Within the context of CBNRM-type initiatives, new local management structures were often set up. The emergence of local governments requires a reassessment of this approach as these may drain local government of authority and resources (Gaventa, 2002; Ribot, 2003). Like central governments, local governments are also not well placed to engage directly in natural resource management. Best practice would suggest that actual management should be delegated to users with a stake in sustaining these resources. Local governments would then be responsible for developing management agreements, ensuring that

equity principles are respected, and monitoring adherence to contracts and fulfilment of commitments[10].

NEW LAND POLICIES

Increased recognition of customary rights

Currently, a number of countries are reviewing land policies and legislation and introducing new approaches to land administration. Their aims are broadly comparable and address securing the rights of smallholders, encouraging more efficient and productive land use[11], and making land available to investors. Another general feature is a shift towards some form of legal recognition of customary rights (Bruce and Knox, 2009; Fitzpatrick, 2005).[12] With respect to land administration, the promotion of low cost and accessible forms of land administration is combined with more pragmatism and flexibility. Decentralization is often proposed (Place, 2009).

The approach chosen varies from one country to another. In new land policies, an inventory of prevailing rights is often included, followed by registration. Despite interests in uniformity, the implication is that the types of rights registered may differ from one locality to another (this is explicitly acknowledged in the land policy of Burkina Faso). These inventories may cover all rural lands or only fields, and may include rights related to ownership and occupancy rights, or address a broader set of rights. However, declaration and registration of rights entail a form of codification and fixation (Le Meur, 2006). Challenges may also emerge around the definition

10 Experience with this type of contracting out, involving local governments and local committees (or the private sector) is developing in other sectors, such as for drinking water (e.g. Benin).

11 What 'productivity' implies depends on local development models. The question is how acknowledgment of 'rights' on the one hand and 'productivity and investment' on the other are being combined, and what the combination implies for the rights of rural poor.

12 This is possibly partly the result of the large body of research and the many international conferences that have shown that customary systems are not a source of insecurity *per se*, and actually form the basis of many land administration and dispute resolution systems in rural areas all over the world.

of 'rightholders' and derived rights concerning access. These latter rights tend to be held by groups with a weaker status in society, like women, pastoralists, migrants, former slaves and younger brothers. Customary resource tenure systems may include forms of discrimination and exclusion. Moreover, the registration process can be associated with a reconfirmation of perceptions of long-held rights, even though society may have evolved[13]. Latent disputes will flare up when local actors realize that via registration, land rights will become definitive (Benjaminsen *et al*., 2008).

Registration may be followed by the issuing of a certificate without costly surveying (e.g. Ethiopia, Niger), or with a lighter form of surveying (e.g. Rwanda). Some countries only register at the request of individuals (e.g. Madagascar, Burundi), or communities (e.g. Benin, Niger). Local governments can also suggest registration (Niger again). Other countries roll out programmes that aim to cover all fields (e.g. Ethiopia) or all land (e.g. Burkina Faso). Archives of land information may be kept at the village level only (e.g. Tanzania, Malawi), at the local government level (e.g. Burkina Faso, Ethiopia) or may be fed into a nationwide database (e.g. Madagascar).

Although countries follow their own path, there are also shared sources of inspiration. For example, the approach now being tested in Burundi around *guichet foncier* at the local government level is based on experience gained in Madagascar. The '*plan foncier rural*' was developed in Ivory Coast, Benin and Burkina Faso, and influenced new land policy in the latter two countries.

The challenge for more recognition of customary rights may be to mobilize political support and sufficient resources to ensure large-scale implementation of new land policies. Given the complexity and sensitivity of land policies, a progressive approach and adaptive management is required for implementation, such as using the results from pilots, and continuous dialogue and monitoring of progress, as stepping stones before going large scale. Capacity building is another key activity and should address technical

13 AFD, GRET, Landnet, CEBEDES. Atelier d'échanges sur la gestion foncière à l'échelle communale. 20–24 October 2008, Cotonou. (Available at: http://www.foncier-developpement.org/vie-des-reseaux/le-projet-appui-a-lelaboration-des-politiques-foncieres/atelier-dechanges-sur-la-gestion-fonciere-a-lechelle-communale)

aspects of the resource tenure system as governance issues. Those concerned include professionals within the relevant ministries and services, members of commissions, local government councilors and staff, local-level courts, and (informal) mediators.

Cost efficiency and recovery need to be addressed too. Involving local institutions can be a strategy to shift some costs to communities and local governments. A related issue concerns what part of the services the users should pay for. Similarly, what will be the contribution from local and national government, including an assessment of the risks related to accessibility and continuity.

Finally, the possibility for a kind of formalization of their rights over rural lands by groups (such as clans or even communities) seems barely developed in the land policies explored for this paper[14]. Group rights may be a faster way of recognizing and securing rights, particularly where there is pressure from 'investors' or other external pressure. This is also important for compensation. Assessing the possibility of securing group rights over rural lands needs more attention (Cotula *et al.*, 2008). Most experience seems to exist with respect to collective rights for common lands[15] .

Group rights may be a faster way of recognizing and securing rights, particularly where there is pressure from 'investors' or other external pressure

Common lands

The treatment of common lands varies in the new land policies. Common lands are part of the registration process in Burkina Faso and Niger, but not included in Madagascar. However, if the registration of fields is limited to cultivated plots and not accompanied by measures to protect rights to forested land and grazing lands, degradation of natural resources may accelerate, or these resources may no longer be accessible to the landless. In

14 Mozambique is not included in this paper because elected local governments only exist in urban areas. The members of district councils are appointed. Districts tend not to be very downwardly accountable, and they facilitate commercial interests. Communities in Mozambique can register land collectively following a participatory process often facilitated by NGOs. What constitutes a community and who its representatives are depends on local realities and institutions. Alongside communities, investors can also register land. (Wit, 2002).

15 Several countries in Latin America provide examples of collective titling of the rights of indigenous peoples.

northern Ethiopia many collective grazing lands have been individualized; in southern Ethiopia, farmers decided to convert their forested lands into fields to secure claims over the land (DiGrazia & Dupuy, 2009).

Current linkages between these 'new land policies' and existing legislation concerning forests, grazing lands, fisheries and other natural resources, or legislation related to 'community based natural resource management', is often missing. In practice, it may be up to local governments to bring together these various strands of legislation and policy.

Table 1

A comparison of the involvement of local level committees in rural land administration

	ESTABLISHMENT OF AN ELECTED RURAL LOCAL GOVERNMENT (LG)	APPROVAL OF LAND POLICY	REGISTRATION INCLUDES COMMON LANDS	ESTABLISHMENT OF LOCAL COMMITTEES	LEVEL OF COMMITTEE		MAIN TASKS OF COMMITTEE			
					LG	community	inventory	registration	verification	mediation
Rwanda	2000	2005 OLL	N	Y		*	*	*	*	
Ethiopia	2001 (more autonomy)	1998–2005 (regional) 2005: federal	N	Y		*	*			*
Tanzania	1996 (more autonomy)	1999 Village land act	Y	Y		*		*		
Madagascar	1995	2005 PNF	N	Y	*				*	
Burundi	2005	Land policy 2008	N	Y	*				*	
Burkina Faso	2006	2009	Y	Y		*	*	*		*
Mali	1999	In preparation	?	Y	*					*
Benin	2003	2008	Y	Y	*	*	*			
Niger	2004	1993	Y –LG level	Y	*	*	*	*		

Sources: Bruce, 2007; Hilhorst, 2008; Kanji *et al.*, 2005; Le Meur, 2006; Mamalo *et al.*, 2007; Ministere de l'Agriculture, 2008; Odgaard, 2006; Sagashya and English, 2009; Teyssier *et al.*, 2009.

ENGAGING LOCAL INSTITUTIONAL ACTORS

Structures

Deconcentration and devolution is on the agenda of ministries engaged in policies related to land and natural resources. This interest is partly in response to institutional reforms and is also aimed at arriving at decision-making that is more sensitive to local needs, resulting in more efficient service delivery. Such moves towards greater decentralization are also opposed within these ministries. Staff responsible for land administration are 'entrenched stakeholders with vested interests in existing systems' (Bruce & Knox, 2009).

Deconcentration of land administration can be costly, as became clear in Uganda (Bruce & Knox, 2009). Relying mostly on an extensive network of deconcentrated land administration services is an option only when

1. these services are not too demanding of technology and skilled labour, and
2. a gradual introduction of survey and registration technology is foreseen in line with requirements for more precision (Bruce & Knox, 2009).

The role of central level land administration services will then shift away from implementation, towards overseeing and validation, developing capacity building, and providing advice.

One reason why the possibility of working with local institutional actors is explored is because of the costs and complexities of deep deconcentration. Several options are possible for engaging other kinds of local institutions, which may be chosen from:

- Local governments
- Local-level land committees or commissions composed of selected, elected or appointed volunteers and which are responsible for:
  - assisting with land administration
  - the management of common lands.
- Customary authorities.

We will consider these in turn now.

Local governments

Where local governments exist, they tend to be increasingly formally included in the implementation structure of land administration (see Table 1). Local governments may be in charge of land registration, with support for, land administration services (e.g. Ethiopia); they may employ staff that keep records of transactions (e.g. Benin); they may host decentralized land administration services (e.g. Madagascar, Burundi, Rwanda) or they may facilitate land administration.

Depending on the options taken, the private sector or NGOs may also play a role in service delivery in relation to land registration (measurement, mapping etc.), land use planning, archiving, conflict resolution and more.

The private sector or NGOs also play a role in service delivery in relation to land registration, land use planning, archiving and conflict resolution

Generally, a combination of deconcentration and devolution is envisaged, with the various actors having to work in partnership (see Table 1). A number of structures and actors must therefore work together for the new land administration systems to perform well, perhaps even beyond their basic legal obligations. These include the deconcentrated agencies, local government, land committees, traditional authorities, projects and programmes, NGOs, courts, mediators and investors. A more pivotal role for local government in land policy and land administration can facilitate coordination and dialogue amongst stakeholders. Equally, local governments may have experience in establishing forums for consulting citizens; these can be used to promote dialogue around land issues.

The contribution of local governments to securing tenure rights needs not be limited to supporting land policy implementation. They may also play a role in encouraging additional local responses aimed at reducing insecurity and conflict, such as promoting the marking of boundaries using locally available materials (e.g. tree planting, stones) following transactions or an inheritance settlement. They can encourage systematic and complete recording of transactions, such as making forms available for recording transactions, acting as witnesses, and safeguarding a copy of the deed. They could assist with the functionality of local courts (providing transport etc.) or make sure that people are informed about the implications of polygamous marriages where these are not officially recognized (e.g. Burundi).

Box 1
Benin, Burkina Faso, Mali and Niger: Comparing land governance choices

Around 1990, Benin, Burkina Faso, Mali and Niger all decided to introduce devolution in public administration in response to severe political crisis, which had delegitimized centralized government. Rural elected local governments were installed in Mali for the first time in 1999, in Benin in 2003, in Niger in 2004 and in Burkina Faso in 2006.

The approach towards land governance differs across these four countries, which are broadly comparable in terms of ecology, farming systems and customary tenure systems. Niger approved the *code rural* in 1993, and the establishment of local governments has given a boost to the implementation of the code. Before 2004, code rural activities were confined to some pilot areas only.

The Burkina Faso land policy was marked by a distinction between rural and urban land (*reforme agraire et foncier*); the policy was overhauled in 2009. The new policy includes a village level inventory of rights. The parliament in Benin voted a new land policy in 2007, which also foresees village level land inventories and registration. Implementation in selected communities has started. In Mali, consultations around a new land policy began in 2009 and are piloted by the Ministry in charge of urbanism and domains. Meanwhile, extensive consultation around tenure and management of rural lands already took place (2007–2008) within the context of the *loi d'orientation agricole (LOA),* and the decree for the '*commissions foncières*' is already approved.

The use of village level committees to assist with the implementation of land administration is foreseen in all four countries. They may be involved in the inventory of rights and land administration work. In Mali, conflict management seems to be the main task. In Niger, however, this task is explicitly not part of the committees' prerogatives as it may blur responsibilities.

Community-level committees

A common trend found in all the countries analysed for this paper is the establishment of a local committee of volunteers at the village and/or local government level. These committees of volunteers will play a key role in the implementation of new land policies and make it possible for central government to achieve scale at low cost. These new structures are expected to facilitate the creation of rights inventories, the marking of boundaries, registration of land, recording transactions and safeguarding deeds. In some countries, committees are also expected to play a role in mediation and reconciliation around land-related conflicts (see Table 1). Members of these committees may be elected, proposed by the community, or appointed. In most countries, customary authorities are encouraged to become members or to collaborate with these committees. Examples of such committees are the Land Administration Committee (LAC) in Ethiopia at the *kebele* level, the *commissions foncières* at village level in Niger, the *commission de reconnaissance locale* in Madagascar and the land adjudication committees (cell level land committees and sector level land committees) in Rwanda.

The status of these committees and their relationship with local governments and the ministries responsible for land administration or with their respective judicial systems, vary across countries. Formally, these committees may be linked either to land administration agencies or to local governments. Attention needs to be paid to their status, mandate, composition, working methods, capacity building, accountability and oversight. Making sure that women are part of these committees has proven to be important for equity in Ethiopia (Askale Teklu, 2005).

Customary authorities

Traditional authorities have been, and often still are, very cost effective in delivering services around land administration (Bruce & Knox, 2009). Formally engaging customary authorities in land administration is rare, though there are a few exceptions. The position of customary chiefs is explicitly acknowledged in a few countries only (e.g. Ghana and Uganda). With respect to the common lands, however, development organizations

and also government bodies actively seek collaboration with customary authorities to regulate the use and management of natural resources.

The legitimacy of customary leaders varies from place to place and may change, particularly when land becomes a commodity. Customary authority can also be reconstructed, with chiefs changing from trustees into owners to capture benefits, or reinvented. It can become a source of abuse (Alden Wiley, 2008; Sjaastad & Cousins, 2008). However, the re-emergence of customary chiefs in land tenure systems has drawn criticism. It is argued that these institutions do not follow (formal) democratic procedures, that they may confirm the position of local elites and tend to exclude certain groups (Ribot, 2003; Whitehead & Tsikata, 2003). Therefore, engaging customary authorities is a strategy that should be pursued with caution and realism (Bruce & Knox, 2009).

LOCAL LAND GOVERNANCE

The way that land tenure systems are governed influences how benefits, costs and risks are distributed. Moreover, resource tenure institutions only enhance security when they are trusted. For formal land administration to be useful to the rural poor, services need to be appropriate, accessible, predictable and reliable. Appropriateness implies responsiveness to local requirements and circumstances. Accessibility concerns issues such as proximity, language, costs. Accessibility is also about awareness amongst potential clients of the services on offer. Rural land users therefore need to be informed about rights, responsibilities, procedures and appeal mechanisms. Information and communication campaigns that are extensive and continuous are essential (Cotula *et al.*, 2008). Regarding predictability and reliability, land users need to be sure that the application of procedures is correct, consistent, just and transparent, and that service delivery is not interrupted.

For formal land administration to be useful to the rural poor, services need to be appropriate, accessible, predictable and reliable

Weak land governance can discourage investments in land and sustainable resource use, and may contribute to the emergence of conflict, ultimately affecting broad-based economic growth (FAO, 2007). Occurrences of weak

land governance may involve administrative negligence, abuse of authority, and corruption, all of which may contribute to inequity (see also World Bank, 2010). The more marginal and vulnerable groups in society are most at risk, even so far as losing their rights[16]. Given that control over land and natural resources is a source of wealth and power, attempts to 'grab' land occur at all levels. One of the challenges for land administration is where the elite takes undue advantage of the system or uses political interference to improve its land holding position.

Promoting responsible governance of land and natural resources is therefore also a challenge at the local level. In order to strengthen local institutions engaged in land governance, the following aspects need to be kept in mind (see also Hilhorst & Guijt, 2006):

- performance, efficiency and effectiveness of service delivery
- transparency, checks and balances
- equity
- coordination and collaboration.

Strong and robust institutions, mechanisms and procedures that enhance transparency and accountability should be at the core of land administration systems. Multiple oversight systems –internal and external, formal and informal – need to be in place. Mechanisms should include systematic oversight, regular inspections and audits, and complaints and appeals procedures that are known to potential users, accessible and relatively fast. Engagement of users, organizations in civil society and the media in monitoring local land administration should be an intrinsic part of the approach (Hilhorst & Guijt, 2006).

Strong and robust institutions, mechanisms and procedures that enhance transparency and accountability should be at the core of land administration systems

With respect to responsible land administration, initiatives to support and enhance well-governed land administration institutions can build on

16 Responsible land governance is an important element underlying social and economic developments in both urban and rural areas, and is also a condition for achieving the Millennium Development Goals (MDGs). Therefore, UN agencies, civil society organizations and individual countries proposed in 2008 to develop voluntary guidelines on responsible governance of land tenure. These set out principles and internationally accepted standards for responsible practices, as has already been promulgated for the 'right to food'.

ongoing initiatives towards improving local governance in general. These initiatives engage local governments, citizens, service providers, community-based associations and customary authorities, and operate in the wider context of devolution[17] programmes. Councillors and staff are assisted in improving coordination, information, communications, transparency and citizens' involvement, and promote the voice of citizens and their organizations. Transparency of financial management is promoted as are service level agreements, participatory monitoring, public hearings, budget tracking, and performance assessment via citizen score cards (Ackerman, 2005). Experience with using the range of approaches and instruments can also be applied to improving the governance of land administration institutions and service delivery.

17 Numerous programmes supported by the United Nations, multilateral/bilateral donors and NGOs, focus on improving transparency and accountability.

CONCLUSION

New policies around land and natural resources can provide openings for the decentralized administration of land and natural resources, contribute to stronger formal recognition of existing resource tenure systems, and enhance legal protection of local land rights. However, other components of these new land policies emphasize productive use of land and the importance also of promoting investment in land by new actors such the business sector, which can result in the over-ruling of local rights. Therefore these two aspects of new land policies need to be balanced and progress together, to enhance tenure security and ensure that investments are also to the benefit of the majority of the local population. The challenge will be in mobilizing political support and sufficient resources to ensure a balanced implementation of new land policies.

Enhancing local tenure security on a massive scale requires the engagement of local institutional actors. Particularly, rural local governments can play an important role. Sections of this paper have addressed the potential contributions of local government in enhancing the accessibility and appropriateness of land-related services. However, in reality the track records both of staff and councillors are more ambiguous with respect to the allocation of public land[18].

Building sustainable institutions and mechanisms takes time. But time tends to run out in those areas where perceptions of insecurity are increasing fast. The prospect of (or rumours about) large-scale land acquisitions can erode tenure security. 'Half-way house' approaches, which can be applied rapidly but which may not yet provide ideal security, may nevertheless be required[19]. A 'group rights' approach is one example. Whichever approach is chosen, protection of the position of marginal groups needs special attention to ensure pro-poor outcomes in land registration processes.

Building sustainable institutions and mechanisms takes time. But time tends to run out in those areas where perceptions of insecurity are increasing fast

18 Trust is affected by a lack of transparency around the conversion of rural lands into residential plots, and misuse of public lands.

19 They may even ensure that present land holders and users are properly compensated.

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THE DRIVING FORCES OF LAND CONVERSION
Towards a financial framework for better land use policy

LES MOTEURS DE LA CONVERSION DES TERRES
Vers un cadre financier pour des politiques visant une meilleur utilisation des terres

FUERZAS MOTRICES DE LA CONVERSIÓN DE TIERRAS
Búsqueda de un marco financiero para mejorar la política de utilización de la tierra

ABSTRACT

LAND USE POLICY

LAND CONVERSION

PROPERTY TAXATION

This article analyses some important economic drivers of land conversion, illustrated by examples in Germany, China and Cambodia. Despite differences in how problems manifest themselves, and in governance and institutions, some patterns of failure are essentially the same.

The process of land use change is often actively driven by strong and well-organized beneficiaries. The costs of conversion are to a large extent externalized, e.g. to poorly organized groups or to society as a whole. In order to avoid the problems of such externalities, this article suggests that a better coupling of benefits and costs is necessary. If society bears a significant share of the costs of land conversion, it

RÉSUMÉ

POLITIQUE D'UTILISATION DES TERRES

CONVERSION DES TERRES

IMPÔT FONCIER

Le présent article analyse quelques moteurs importants de la conversion de terres, illustrés par des exemples provenant d'Allemagne, de Chine et du Cambodge. Bien que les problèmes se manifestent de façon différente et que l'on observe des disparités en matière de gouvernance et d'institutions, certaines successions d'échecs sont fondamentalement identiques.

Le changement d'affectation des terres se déroule souvent à l'instigation de bénéficiaires forts et bien organisés. Les coûts de cette conversion sont externalisés dans une large mesure, par exemple, vers des groupes mal organisés ou la société dans son ensemble. Afin d'éviter les problèmes que posent de telles externalités, le présent article

SUMARIO

POLÍTICA DE UTILIZACIÓN DE LA TIERRA

CONVERSIÓN DE TIERRAS

IMPUESTOS SOBRE LA PROPIEDAD DE LA TIERRA

En este artículo se analizan algunos importantes factores que impulsan la conversión de tierras, ilustrados con ejemplos procedentes de Alemania, Camboya y China. A pesar de las diferentes formas en que se manifiestan los problemas y de las diferencias de la gobernanza y las instituciones, algunas pautas del fracaso son esencialmente iguales.

El proceso de cambio de la utilización de la tierra es impulsado activamente con frecuencia por beneficiarios fuertes y bien organizados. Los costos de la conversión recaen en gran medida en partes externas, por ejemplo grupos mal organizados o la sociedad en conjunto. A fin de evitar los problemas causados por esa circunstancia, en este artículo se sugiere que es necesario establecer una mayor


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should also reap the benefits, e.g. via a suitable property tax on land.

At present, local governments' revenues depend heavily on changes to land use. In order to turn local governments into more neutral actors in land use policy, they should not be direct beneficiaries from land use changes. Instead, the revenues from land taxation should be integrated into a financial equalization scheme and redistributed to the municipalities.

suggère d'améliorer le couplage des bénéfices et des coûts. Si la société supporte une part significative des coûts de la conversion des terres, elle doit également en retirer les bénéfices, notamment par le biais d'un impôt foncier approprié.

Actuellement, les revenus des autorités locales dépendent fortement des changements d'affectation des terres. Pour devenir des acteurs plus neutres des politiques d'utilisation des terres, elles ne doivent pas être les bénéficiaires directs de ces conversions. Au lieu de cela, les recettes issues des impôts fonciers doivent être intégrées à un plan de péréquation financière et redistribuées aux municipalités.

correspondencia entre los beneficios y los costos. Si la sociedad corre con una proporción significativa de los costos de la conversión de tierras, debería también recibir los beneficios, por ejemplo mediante impuestos apropiados sobre la propiedad de la tierra.

Actualmente los ingresos de las administraciones locales dependen considerablemente de los cambios en la utilización de la tierra. Para que las administraciones locales lleguen a ser partes más neutrales respecto de la política de utilización de la tierra, no deberían beneficiarse directamente de los cambios en la utilización de la tierra. En cambio, los ingresos procedentes de los impuestos sobre la tierra deberían integrarse en un sistema de compensación financiera y redistribuirse a las municipalidades.

INTRODUCTION: TWO TYPES OF LAND USE CHANGES

Unsurprisingly, land use problems usually arise when there are significant changes in land use. Land conversion often goes hand in hand with problems such as evictions, loss of farmland, food security problems and other issues. This article outlines the driving forces of changes in land use. The findings are illustrated using the examples of Germany (as an industrialized country), China (as a threshold country) and Cambodia (as a developing country). The article will focus on two important types of land use changes, although there are others.

Land conversion often goes hand in hand with problems such as evictions, loss of farmland and food security

The first is the conversion of agricultural land into land used for settlements and traffic. For example, in the People's Republic of China, the per capita area of arable land decreased from 1.59 mu in 1996 to 1.39 mu in 2006 (15 mu = 1 hectare; Zou and Oskam, 2007, Jiang *et al.*, 2008). The government has fixed a minimum of 120.0 million hectares (1.80 billion mu) in order to guarantee food security (Jiang *et al.*, 2008). In Germany, the average growth of areas used for settlements and traffic was between 113 ha per day (2003–2006) and 129 ha per day (1997–2000) (German Federal Parliament, 2008). The largest portion of converted land was farmland. The German Government declared a target to reduce daily conversion to 30 ha per day by 2020 (German Federal Parliament, 2007). Issues such as ecological degradation, rising infrastructure costs due to urban sprawl, and the provision of minimum service infrastructures in remote areas for elderly people and children, are the most important aspects under discussion (Köck *et al.*, 2008).

The second type of land conversion discussed in this article is the result of agro-industrial investments. Plantation or industrial farming – involving high specialization, high input of capital, mass production and application of modern techniques – is completely different from small-scale farming. Agro-industrial investments may be carried out by domestic companies, by foreign direct investors, or as joint ventures between domestic companies and foreign investors. In Cambodia, so-called 'Economic Land Concessions' (ELCs) were created by the Land Law (2001) and Sub-Decree No.146 (2005) for this kind of investment. ELCs are long-term leases that grant land for

agro-industrial or other economic exploitation (Art. 49, Cambodian Land Law 2001). The Cambodian Government claimed that agricultural development was a priority, citing the aims of ensuring food security, providing raw materials for industry, increasing exports and creating employment. However, issues of concern arising from the law include dislocation, land concentration and – despite the government's aims – food security (Sokheng, 2009).

It is not only the manifestation of land conversion problems that are quite different in the countries studied, but also their governance (Tan *et al.*, 2009). The purpose of this paper is to show that, despite these differences, some patterns of failure are essentially the same. In section 2 we analyse the driving forces of changes in land use. The section focuses on the problem of external effects and bargaining power. It also examines the role of local governments, who can hardly be considered neutral actors. Section 3 presents proposals on how to solve the problems. It will highlight the role of a property tax on land and of the property tax assignment (financial equalization scheme) in changing the behaviour of the municipalities. Section 4 provides a brief outlook and draws some conclusions.

ANALYSIS: WHO BENEFITS AND WHO BEARS THE COSTS OF THE CONVERSION?

Land rent and incremental value

Normally, land use changes go hand in hand with higher land rents and an incremental increase in land value. On the basis of Ricardo's capitalization formula, the value of land V can be explained by the discounted land rent: $V = R/i$, where R is the annual rent and i is the discount rate. In a more complex explanation, the flexibility value of an unimproved site could be added in order to obtain an 'extended present value'; the real-option approach does this (Holland *et al.*, 2000). The land rent can be explained as a 'differential rent', which is a function of location (von Thünen, 1826), the quality of the land (Ricardo, 1817 / 2004) and differences in the intensity of cultivation or use. Rents on unimproved land are generally not based on labour input, but on random factors such as location and quality.

These theories were originally created for agricultural land, but they can be applied to any kind of land if certain modifications are made. The most important realization for our purpose is that any *R* is much higher for construction land (e.g. settlements, industrial areas) than for agricultural land. In addition, at least in developing countries, *R* is also often higher for agro-industrial production – i.e. cash crops, which are often exported – than for growing food crops for subsistence or local markets. Because of the increase in *R*, these types of land use changes cause the value of land to increase incrementally. Having said this, the development of the land also costs money. Thus, the developer's or foreign direct investor's profit does not amount to the total incremental value. Instead, they use a part of the incremental value in order to cover the costs of planning, servicing (infrastructure) and selling. However, normally there is enough profit involved to make the investment worthwhile; this holds for developing rural to urban land as well as for developing infrastructure connected with agro-industrial investments. In Cambodia for example, land is often given to long-term leaseholders almost for free. As an illustration, in Kampong Cham Province the price of one hectare of agricultural land peaked at US$ 2000 in 2007.1 Nevertheless, the fees for land concessions were only between US$ 0 and US$ 10 per ha per year. Hence, even if the costs of private provision of infrastructure and other expenses are taken into account, the value of the land (e.g. calculated by using the residual value approach) and the rents of the improved land are definitively higher than the (discounted) fees paid. This demonstrates that in reality, the government subsidizes the holders of ELCs.

External effects

From an overall economic point of view, land use changes only make sense as long as the marginal social benefits exceed the marginal social costs of land conversion. Hence, higher rents and values, if caused by land use changes, are not an issue of concern *per se*. Yet from an economic

1 Interview with Dr Tep Makathy, GTZ consultant, Phnom Penh, October 2009. Due to the economic and financial crisis, prices decreased by circa 35 to 40 percent in 2009.

viewpoint, all benefits and costs have to be taken into account, not only the private benefits and costs. In section 2.4, we will see that many of the benefits of land use changes are often reaped privately, e.g. by landowners and developers, as is often the case in Germany, or by local governments, as is often the case in China (Tan *et al.*, 2009). According to the findings of the New Political Economy and Public Choice Theory, the leaders of the local governments are also utility-maximizing agents, who do not primarily pursue an optimizing of the common good, but rather individual benefits (see section 2.3, cf. Cullis / Jones, 1998).

In western democracies, local leaders may not be re-elected in the event of poor economic performance indicators. In China, urbanization and industrialization are regarded as indicators of strong performances by local leaders, who want to be promoted within the party hierarchy (Ding, 2004). Economic development is also an important political target in Cambodia. However, applications for ELCs have to be approved at central government level by the Ministry of Agriculture, Forestry and Fisheries (MAFF). From September 2008 onwards, only the MAFF has the authority to grant ELCs. Since September 2008, provincial or local authorities are no longer involved in the application process (Sub-Decree No. 131 on the Modification of the Sub-Decree on Economic Land Concessions, Article 1).

External benefits of land use changes also have to be taken into account. Private investments may create jobs and increase the income of local people. The private provision of infrastructure as a precondition for economic development is particularly important if the state is too weak or unwilling to do this. Furthermore, foreign direct investments lead to export revenues and thus have a positive impact on the national trade balance. Such aspects are strong arguments in political debates and also play a role in the decision-making of local governments. However, blanket subsidies (e.g. low leasing fees for ELCs) are not an adequate compensation for such external benefits – instead there should be clear and transparent compensation rules in order to contribute to good governance.

A larger issue concerns how the costs of land use changes are distributed. Most countries have regulations to shift at least a part of the direct costs of land use changes to private actors. In China, the up-front payment for leasing land

also contains an urban infrastructure fee as well as a community infrastructure fee (Deng, 2003). In Germany similar land improvement contributions have to be paid. In Cambodia there are no such regulations yet. In the future, the Cambodian municipalities and communes will be entitled to limited value capture. In addition, to ensure the development of local infrastructure, landowners will be forced to take on some of these infrastructure costs.

Nevertheless, there is some evidence to suggest that such contributions only cover a fraction of the costs of the technical and social infrastructure that result from land conversion. In Germany, municipalities often push for the zoning of new development areas. However, in many cases higher administrative levels, such as district or municipality associations, are in charge of the provision of hospitals, schools and other social services for the new development area (Federal Office for Building and Regional Planning, Germany, 2006). In this way an important part of the costs of land use changes, which are initiated by municipalities, are shifted to higher administrative levels. Comparable effects probably also occur in China and Cambodia, despite their different institutional backgrounds.

Even more attention should be given to the opportunity costs of planning. Private investment decisions are considered efficient because private investors normally take private opportunity costs into account. For example, in a net present value calculation, the discount rate serves as such an opportunity cost rate. Hence, the investor always compares the performance of the intended investment with the performance of the next-best investment alternative. However, planning decisions too have opportunity costs, not only private investments. If the land use plan favours a certain use (e.g. settlement), other uses cannot be realized (e.g. commerce or agriculture). Almost all uses of land compete with each other and are associated with opportunity costs. Whereas private investors and local governments reap many of the economic benefits of land use changes (incremental value, higher land rent), they often do not take the social opportunity costs into account. Instead, the opportunity costs are externalized. In addition, external consequences such as degradation of the environment and loss of biodiversity can also be interpreted as lost social benefits, i.e. social opportunity costs.

Private investors and local governments often do not take the social opportunity costs into account

Here are a few examples of different types of externalized costs:

In Germany, urban sprawl causes an increase in costs for social and technical infrastructure. Growing land consumption is also decoupled from population growth: Germany's population growth is stagnant or shrinking and the average age of the population is rising. Fewer and fewer working people are obliged to cover a rising burden of costs – for underused infrastructure (Löhr, 2008).

In China compulsory expropriations involving little or no compensation have been a major issue of concern in the past. These expropriations have been connected with relocations that caused many difficulties for the relocated people, as well as for the government (Guo, 2001).

In Cambodia, dislocations, land disputes, deforestation and ecological degradation due to cash cropping in large-scale monocultures have been reported (World Bank, 2009).

In general there is a lack of transparency concerning the total measurable value of the externalized costs. Nevertheless, the examples show that land use policy suffers from a general decoupling of the marginal benefits and marginal costs of land use changes, because private and social costs are not equal.

Table 1
Decoupling of the marginal costs and marginal benefits of changes in land use

TODAY'S MARGINAL BENEFITS AND MARGINAL COSTS	PRIVATE INVESTORS AND LOCAL GOVERNMENTS	PUBLIC / STATE
Benefits	Sharing land rent and incremental value	Limited public participation, different intensity
Costs	Bearing only a fraction of direct infrastructure costs	Mainly opportunity costs and indirect infrastructure costs
Consequences	Externalities and pressure to convert even more farmland	

This decoupling of benefits and costs is like an invitation to the beneficiaries for a free lunch. Lobbying and pressure on the authorities to push land use changes are supported. Corruption is considered a major problem, and not only in developing countries. In an overview of the Global Corruption Barometer, land services are ranked third in the corruption scale (Transparency International, 2009).

Local land use planning cannot be neutral

In order to optimize social welfare, theoretically all benefits and costs of land use changes could be assessed in order to make optimized land use decisions. However, the reality is quite different: The decision about land use changes has to be made during the planning process, due to the difficulties in assessing external effects and because of other problems. The planning process should be neutral – the competing claims of the various stakeholders should be balanced in order to optimize the common good. Both Germany and China have a legal basis for a spatial planning system: for example, the Federal Planning Act (Raumordnungsgesetz) and Federal Building Code (Baugesetzbuch) in Germany, and the Land Administration Law and the new Property Rights Law in China. China has even passed some important legislation in order to preserve China's farmland, including the Basic Farmland Protection Regulation or the New Land Administration Law (Ding, 2004). These laws propose a so-called 'zero net loss farmland policy' and seek to protect environmentally sensitive and agricultural lands. A comprehensive spatial and land use planning system is not yet in place in Cambodia, although land use planning at communal and district level (e.g. in Battambang) has been piloted.

Considering in particular the local governments of Germany and China, many important goals of the planning regulations have not been achieved (uncontrolled land conversion, cf. section 1). In fact, despite the differences in planning systems (which reflect the characteristics of the political system) the lower levels in both countries are crucial in implementing the higher-level plans. However, as mentioned in section 2.2, local governments and local politicians may pursue their own interests and do not always attempt primarily to optimize the common good.

In China, local economic development is a main political objective of the local government. Local officials are easily tempted to sacrifice farmland or rural development to achieve a higher rate of economic growth (Ding, 2004), because urbanization and industrialization are regarded as indicators of strong performances by local leaders. Hence, developers are particularly distinguished guests in the eyes of local government officials. Often the local cadres' demand for land development is far beyond the supply of projects proposed by developers. In order to encourage developers to invest in their region, local government officials will offer them land use rights on very favourable terms. As a result, the actual price of the land use rights will be a discount on the real land value. Furthermore, local officials have strong incentives to subsidize local state-owned enterprises by granting them land at nearly no cost (Deng, 2003).

In Germany, local politicians want to be voted into office again. In order to achieve this, they try to attain financial benefits for the municipality. Revenues from taxation or from the financial equalization scheme may rise if the number of inhabitants increases, or if local authorities attract new companies to their area. As a result, local authorities are tempted to change the zoning in order to increase the supply of land.

In Cambodia, agro-industrial investment plays a role for the Royal Government, but not so much for the municipalities.

Seeking land rents and incremental value, some strong actors try to lobby and manipulate local government in order to influence its policies. Sometimes these strong actors even attempt to 'capture' local governments in order to turn them into their agents, using both legal and illegal means. A 'captured' local government is no longer a neutral trustee of the common good. Furthermore, there are financial interests common to the local government and the external actors: The local government also depends strongly on land use changes. In Germany this occurs mainly through taxation or the financial equalization scheme. In China, the development itself is also an important source of revenues. In Cambodia, the government hopes that agro-industrial investors will also develop remote areas by supplying infrastructure. Furthermore, it hopes to create additional tax revenues in the future (RGC, 2008).

A 'captured' local government is no longer a neutral trustee of the common good

Hence, when local governments in Germany and China play an important role in the land planning process, they cannot be considered as neutral actors. Meanwhile in many developing countries such as Cambodia, the municipalities cannot be considered as driving forces of land conversion due to a lack of capacities and formal power.

Power and interests: Captured governments

The analysis provided so far enables us to identify the winners and losers of the game: Developers, enterprises and local governments often represent powerful and well-organized groups with common interests, that act in close collusion. These powerful actors share the incremental value they have generated by converting the land.

Meanwhile, the costs of land use change are shifted to poorly organized groups. The larger the group, the more difficult it is to organize and protect its interests (Olson, 1965). Hence, a major part of the social costs of land use change are shifted to poorly organized groups, which lack bargaining power. In China, the peasants' cooperative is a loose organization without strong common interests (Cui, 2009). Peasants have hardly any political bargaining power when land expropriation is underway. The Communist Party of China (CPC) Central Committee made some important decisions on 12 October 2008 that sought to advance farmers' user rights, allowing them to transfer or sublet their rights (China Daily, 2008). These efforts seek higher participation of farmers in the incremental value of land. However, there is a trade-off: Greater participation of peasants in the incremental value will ease the social bias, but the farmers themselves will then become promoters of farmland conversion. The situation could turn out to be similar to that in Germany: Here, it is farmers who mainly benefit from farmland conversion, since they are the owners of the sites. The value of the converted land may easily be 20 to 50 times higher than the value of farmland (Tan *et al.*, 2009). In the event of successful conversion, the value of a farmer's property could increase significantly overnight. Together with other organized groups, some farmers are lobbying politicians in order to pursue their individual interests; in so doing they do not always use the legal channels that would form a normal part of a wider process of

participation, involving all interested parties. An amicable cooperation between local governments, farmers and investors is quite common. Despite this, the conversion process does not create a win–win situation for society as a whole. A loss of biodiversity and of farmland, urban sprawl with rising costs of infrastructure, and falling prices of existing houses in some regions, are just some of the consequential social costs.

Meanwhile in Cambodia, private investors often fill in for the absent regulative power of the state: As described above, ELCs are the main legal instruments for investments in agro-business. Sub-Decree No. 146 on ELC (Art. 4 and 5) stipulates that environmental and social impact assessments have to be completed in accordance with the planned new land use, and that public consultations must be conducted with local authorities (e.g. Commune Councils) before starting the ELC project. However, ELCs can also be granted through 'unsolicited proposals', whereby the investor proposes an outline for the project, including planning and construction materials. These proposals come about because of a lack of land use planning documents and because authorities also lack the capacity to follow the requirements mentioned in Sub-Decree No. 146.2 Generally, investors can be expected to promote their individual interests, which are not always in line with the common good. The consequences of this include land disputes, evictions and rising landlessness: these costs are shifted to the most vulnerable groups in society.

Society as a whole is the most poorly organized group, and the most difficult to organize. Hence, external costs are often shifted to society, although sometimes there is resistance from *ad hoc* subgroups such as 'NIMBY' groups – "not in my back yard" – that may form to protest a particular cause. This holds true in western democracies, where parties – as the name suggests – represent only particular interests and not the interests of society as a whole. We conclude: The winners of land use changes (higher land rent, incremental value) are mostly small and well-organized groups that work in close collusion with local governments in order to gain from the conversion of land.

The winners of land use changes are mostly small and well-organized groups that work in close collusion with local governments

2 Interview with Robert Deutsch, GTZ consultant, Phnom Penh, October 2009.

Too many regulations

Individual decision-making by private actors does not necessarily lead to an optimal outcome for society. This is an important result of game theory that also holds for land use policy. It is not only rent seeking that may alter planners' ideas. Blockades and an unwillingness to cooperate on the part of landowners also pose severe problems. Regulation is required in order to bring the actions of private-sector actors in line with the plans and the intentions of the law, i.e. to define good land use policy.

Table 2 illustrates that good land use policy is not compatible with a full bundle of property rights. A completely privatized ownership title may be interpreted – from an economic viewpoint – as encompassing all four sets of rights mentioned below (Pejovich, 1990; the following economic classification is abstract and derived from Roman law):

Table 2
Dilution of property rights (from an economic point of view)

EXCLUSIVE RIGHTS, BASED ON …	… VALUE AND RENT	… CONTROL AND USE
Asset (stock)	Right to sell the asset and to participate in its value (disposal). Latin: *ius abutendi*	Right to control and to change the asset according to one's needs. Latin: *abusus*
Utility (flow)	Right to appropriate any returns on the asset. Latin: *usus fructus*	Right to use the asset. Latin: *usus*
Controlling of the behaviour of the private investors	**Traditional way:** e.g. purchasing consents. **Alternative way (cost-by-cause principle):** Negative economic incentives, such as taxation or leasehold.	**Traditional way:** Regulations.
Consequence	Dilution of the rights due to value and rent (cost-by-cause principle).	Dilution of the rights due to control and use.

In order to bring the actions of private-sector actors in line with the plans, authorities need to control the behaviour of these actors, either by diluting property rights based on value and rent, or by diluting them based on control and use. The traditional approach to regulation is to introduce many rules, and grant as many rights as possible to private-sector actors based on value and rent. For example, in Germany many regulations and public bureaucracy impact on *usus* and *abusus*. Building orders (§ 176 Federal Building Code – Baugesetzbuch, BauGB), modernization orders (§ 177 BauGB), development reduction orders (§ 179 BauGB) and compulsory purchase in relation to urban development plans, are just some examples of regulations put in place to bring the behaviour of the owners in line with the land use plans. Indeed, this kind of regulation is nothing less than a dilution of private property rights through public law (Dieterich, 2001). Hence, from an economic point of view, the so-called 'full ownership title' is anything but full.

However, the burden of bureaucratic costs that are connected to this kind of regulation indicates weak governance. Additionally, the regulations still cannot achieve their goals as long as there is a strong counteracting force based on the decoupling of benefits and costs of land use change.

An alternative method would be to create regulations and negative economic incentives, such as a suitable property tax or a suitable leasehold system. From a regulatory policy viewpoint, these economic incentives should indeed be negative: Landowners should not be rewarded for not damaging society; instead they should be punished if they damage society (the costs-by-cause principle). Otherwise, the price of a good land use policy is unaffordable. Furthermore, such a policy does not solve the fundamental problem of the decoupling of the benefits and the costs of land use changes.

INSTITUTIONAL CHANGE

A better coupling of benefits and costs: A site value tax on land

Creating appropriate legislation and planning systems is necessary, but not enough. Land use policy has to be based on at least two pillars – the second pillar is a suitable economic framework. Considering the pressure private investors exert on authorities in order to achieve land use changes, institutions have to be created to counteract the damaging externalization phenomena. The benefits of land use changes should be coupled inextricably to their costs.

The benefits of land use changes should be coupled to their costs

One way to achieve this would be to assess the externalized costs as quantitatively as possible and then to internalize them, e.g. by taxation. However, the assessment of externalities is difficult, expensive, and always a source of debate.

A better solution would be to allocate the lion's share of the benefits – the (discounted) land rent – to the public, since the public bears a large proportion of the costs of land use changes. This could be achieved by a site value tax or a sensible leasehold system. The structure of the tax would not be the same as with an internalization approach: The target of the site value tax would not be the internalization of external costs, but rather the transfer of a significant share of the land rent from the private-sector actors to the public / state.

This kind of tax was promoted intensively by Henry George in 1879. Even before George, in 1817 David Ricardo also thought about taking advantage of land rents via taxation. In the remainder of this section it will not be possible to discuss the whole spectrum of the tax discussion, which potentially has infinite permutations; only some limited but key remarks will be made suggesting a suitable tax base and tax rate.

A. Tax base

The tax base can be compound, i.e. applying the tax on the value of land plus the value of the buildings on it, or isolated, i.e. applying the tax only on the value of unimproved land, without fixtures, buildings etc. Beginning with Ricardo, a differentiation has been made between land (alone) and

capital (improvements on land), as a tax base. Many land use management experts agree that taxing unimproved land alone will support land use policy (this is explained further below). These experts believe that a compound tax base discourages efficient land use: The better the use of a site – through the addition of buildings and other fixtures – and the higher the resource efficiency, the higher the tax. (For a further critical analysis cf. Evans, 2004; Evans does not always agree with the conventional economic viewpoint, which stems from Henry George.)

There are also different views concerning whether the perceived overall value of an unimproved site should be taxed or whether, quite simply, a fixed tax per square metre should be applied (and there are also views promoting mixed solutions). Certainly, the latter would be the simpler alternative. Supporters of this approach claim that the relative costs of using sites in suburbia – compared with settling in the city centre – would rise because of the initial lower land prices further out of town. They also claim that a fixed tax per square metre would help to stop suburbanization tendencies.

However, the author of this article believes these arguments are misleading. A critical response is illustrated below using the simplifying capitalization formula. Let us first consider the effects of a fixed tax per square metre. Without taxation, the annual land rent in a city centre is $US 10 / sqm. In the suburbs the rent is only $US 5 / sqm. Discounted with 5 percent (terminal value) gives values of $US 200 / sqm in the centre and $US 100 in the suburbs. Now let us introduce a uniform tax of $US 1 / sqm and suppose that it cannot be shifted, due to the fixed-cost nature of the tax (although in reality, this assumption will not hold completely). The results are as follows:

Table 3
Effects of a fixed tax per square metre of land

FIXED TAX PER SQM	WITHOUT TAXATION ($)US	WITH TAXATION ($)US
Centre	200	180
Suburb	100	80
Price ratio	*2 : 1*	*2.25 : 1*

So even though the pressure of the current costs is higher in relative terms in suburbia, the sites in suburbia actually become cheaper in relative terms. The first effect (higher current costs, in relative terms, in suburbia) decreases suburbanization tendencies; the second effect (lower prices of suburban sites in relative terms) increases these tendencies. So which effect will dominate? This depends on the capital markets. In reality, capital markets are incomplete. Liquidity matters, as it is always good to have cash available. Equity also matters, because normally an investment cannot be financed 100 percent by debts. Hence, the investment strategy that provides more actual liquidity and grants a higher rate of equity is preferable. This is why the dominant effect will be decreases in prices in suburbia, in relative terms. The cheap land in suburbia will be preferred. Hence, suburbanization would actually be supported by this tax, rather than hindered by it. Furthermore, regarding land as a real option, such a tax also creates pressure to exercise the option ('dividend'), particularly in low-price areas. This causes pressure to speed up the conversion of farmland in remote areas (Löhr, 2008).

Before we are able to judge the effects of the site value tax, we must take a look at the formula. We need to take into account that the value of land as a tax base is reduced by the tax itself. Hence the formula is (Lemmer, 2004):

$$V = \frac{R}{i + t}$$

where R is the land rent (before taxation), i is the real interest rate (deflated) and t is the tax rate. The net value V (with taxation) is the rent R (without taxation) divided by the discount rate r plus the tax rate t.[3] We assume a discount rate of 5 percent, a tax rate of 1 percent (on the value of land), a rent of 10 $ / sqm (centre) and 5 $ / sqm (suburbs). Hence, we arrive at:

3 The formula shows that the proposal made is only a dilution of Henry George's idea: For technical reasons, such a tax could not achieve the goal of skimming off the whole land rent: Because $R > 0$ and i may be some 3 to 5 percent in the long run, t would have to approach infinity in order to bring the value V to zero.

Table 4
Effects of a tax on the value of land

FIXED TAX PER SQM	WITHOUT TAXATION ($)US	WITH TAXATION ($)US
Centre	200	166
Suburb	100	83
Price ratio	*2 : 1*	*2 : 1*

Immediately we see that the tax on the value of unimproved land is completely neutral: it does not affect the price ratio.

The assessment of the tax base could be carried out by committees according to the blueprint of the German land assessment boards ('Gutachterausschüsse', § 192 BauGB), which are public land assessment agencies. These boards collect data on all land transactions and set out annual guiding values of unimproved land (Bodenrichtwerte) for zones of plots that share similar characteristics. These guiding values are also used for taxation purposes. Without a doubt, a great deal of time and effort is required to build the capacity for doing this. Development assistance for threshold and developing countries should emphasize this point, and suggest a clear blueprint for the function of the boards.

B. Tax rate

A fixed tax rate always means the same tax burden on the owner. The owner of the land cannot avoid the tax burden: it has the character of a fixed cost. The only way to lower the effective burden of the tax is to use the site efficiently, according to the plan.

The situation is different if the tax rate depends on the effective use of the site. For example, in Germany proposals have been made to levy different tax rates according to the ecological quality of land use (Bizer / Lang, 2000). In this case, the costs of the tax are no longer fixed for the owner of the site. The supply curve of land, derived from the marginal costs of land supply, may be flatter, in which case the owner is able to shift the tax, e.g. to the tenant. The effectiveness and efficiency of the tax suffers as a result. Furthermore, local authorities are incentivised to stimulate those uses of sites that would make the most money (in the case above, the uses with the worst ecological impacts). In order to avoid these effects, the tax rate should not depend on the way the land is actually used (Lemmer, 2004).

The proposed fixed tax rate on the value of unimproved land leads to greater neutrality in planning decisions: If the tax has the character of a fixed cost, it cannot be shifted. If parts of the land rent are skimmed off by such a tax, the economic value of land for the private sector will decrease (see the formula above). In addition, the incremental value due to land use changes will be lower. If the tax rate is high enough, it may burst land price bubbles and prevent speculation (see the formula above, cf. Dieterich, 2004 and Erlandsen *et al.*, 2006).

In China, Shanghai is especially affected by speculation. However, due to the different system of property rights, speculation manifests itself in different ways compared with western countries. "Bu po bu li" (no demolition without new buildings), the slogan of Mao Tse Dong, has become the motto of the land speculators of today's Shanghai (Bommarius, 2005).

In Cambodia, a rollout of urban capital caused a land bubble from 2004 to 2008. For example, in Puok district (Khnat and Tuek Vil) the land price was reported to have increased from circa US$ 1000–3000 / ha before 2004 to $US 50 000 / ha in 2008: approximately a 25-fold increase in just five years. Many peasants sold their land and were eventually made completely landless. Unsurprisingly, the sites were mostly bought for speculative motives; many of them have been left unused and undeveloped by their new owners. This scenario also generally holds true for ELCs: According to the World Bank, only 10 percent of the areas granted by ELC are in use (World Bank, 2007). Hence, the provision of infrastructure to remote areas by Private Participation in Infrastructure (PPI) was also among the expectations.[4]

If the incremental value is lowered as a result of the site value tax, speculation and the seeking of land rent are also lowered. The incentives to lobby or to bribe local authorities due to land rent seeking – having the 'free lunch' – are also reduced. The planning process would become more neutral and the site value tax could even contribute to good governance. Having said this, if the tax is then levied too high, developers (whether private or public) will not even be able to cover their costs out of the

4 Interview with Dr Tep Makathy, GTZ consultant, Phnom Penh, October 2009.

incremental value. However, the author would argue that developers should not necessary even be required to foot the bill for infrastructure costs at all: Infrastructure is basically a public good, and providing infrastructure is a public task that should be financed out of taxes. If private investors supply the infrastructure, they should do so as an agent of the state and be compensated fairly to cover their costs. Of course, it will be very important that the rules of compensation are clear and open for the sake of transparency. In this author's view the current approach, which involves shifting risks (costs) and opportunities (participation in the incremental value) to developers – as is often the case in Germany via Private Public Partnership – is not compatible with good governance (cf. Bretschneider, 2008, who also warns against the adaption of plans to the wishes of private developers). Covering development costs via taxation removes speculative opportunities from developers (value capturing). However, they would be compensated in terms of the consequent increase in security: speculation on the incremental value should not be the economic remit of developers.

Furthermore, by introducing the proposed tax, better compliance with public plans for the land could be achieved. The tax is charged on the value of unimproved land. The value of unimproved land is calculated according to the yields that can be earned via the best possible use of the land. Hence, the tax is paid according to the best possible use. If owners use the land in an inefficient way, they bear costs that are not covered by yields. So the user of the land is currently required to earn the tax. The user must always ensure that the site is used efficiently, within the limits set forth in the guidelines of the planners. Inefficient use of plots, either for economic or for other reasons, costs money. According to an appraisal of the Bavarian State Ministry of the Environment and Public Health (2006, Germany), up to 36 percent of the potential sites in Bavarian municipalities are left underused or unused. Such inefficient use of sites and a rising pressure to develop new settlements on the edges of towns are two sides of the same coin. Regardless of the reasons why the plots are underused or unused, a site value tax would create pressure to use the sites more efficiently. Given that such a tax would not cause any tax wedge, not only land reformers but also liberal economists such as Milton Friedman have supported such a tax (Mankiw and Taylor, 2000).

Due to the costs of the tax, no investor would keep more land than they really need. Ongoing tax payments would create a pressure to offer properties on the market. Generally, such a tax would mobilize the market and would guarantee a large supply of plots. As a result, enterprises especially would feel less of a need to hoard 'reserve plots' or to bank land (cf. Evans, 2004), because this would only cost money. The market would then become more dynamic in meeting the demand for available sites. Also the 'reservation' of plots for strategic reasons (e.g. impediment of competitors) would be more difficult than it is today. And as mentioned earlier, the price of land would also decrease. This will make it easier for firms and households with weak budgets to act in line with the ideas of planners.

If the value of the land goes down due to the site value tax, access to land for low-budget households and firms will be made easier. Exceptionally, policy-makers should think about introducing tax breaks for small-scale farmers – in order to protect their incomes given their specific role in society, and to encourage a greater acceptance of the system among this group.

The effects mentioned above would make it possible to temper regulatory constraints that weaken rights based on control and use (Table 2). Nevertheless, such a tax is also a dilution of property rights. However, instead of adding to the density of regulations (as mentioned above) the dilution refers to *ius abutendi* and *usus fructus*, and not to the rights of users. Hence, this regime is in fact more compatible with liberal ideas of how a market economy should work. Furthermore, there is no negative impact on tenure security. By diluting these rights with a significant tax, the targets of planning could be achieved more effectively, compared with creating a great deal of red tape: Better plans and better compliance might be achieved using suitable financial incentives.

Given that the above scenario would require significant institutional changes, the political feasibility of such a regime should also be taken into account. The advantage of a site value tax is that the existing system of property rights (e.g. full ownership titles in Germany, or the existing leasehold system in China) need not be radically reformed. However, an argument against a site value tax is that in many threshold and developing countries, there is no operational legal cadastre and assessment regime.

The advantage of a site value tax is that the existing system of property rights need not be radically reformed

Certainly, it would be necessary to build new capacities and institutions as well as a proper land assessment process: such a tax cannot be introduced from one day to the next. Nevertheless, even in the absence of a legal cadastre, local authorities could install a fiscal cadastre in order to identify and value a plot of land; they could then post a public notice indicating that the particular piece of land in question owes a given amount of tax. If no one steps forward to pay the tax, the government could seize the land (Perkins, 2009).

Even more theoretical positive effects could be discussed. However, it is difficult to give evidence by mentioning best practice. The financial framework proposed here – a tax and financial equalization scheme –is a blueprint and has not yet been realized. Germany's property tax is currently under dispute, as it probably violates the constitution and there is common agreement that a reform is necessary. China has a leasehold system, combined with an underdeveloped tax system that is not intended to support land use policy. Discussions about setting up a land tax have begun. In Cambodia, a general property tax on land has not yet been introduced. However, in the past some interesting experiments have taken place that are a reasonable match for the proposal in this paper, and can therefore be studied. Dieterich (2004) describes the positive experience of Denmark with a tax on the value of unimproved land (before the tax freeze in 2001; cf. Dieterich, 2004 and Erlandsen *et al.*, 2006). A comparable and apparently very successful approach was already used in Qingdao in 1898 (Warner, 1999). The system was set up during the colonial era by a German administration officer named Schrameier, who between 1924 and 1925 was also an advisor to Sun Yatsen. If such a system could be introduced in the 19th century, then developing and threshold countries should be able to do the same today.

Making local governments neutral actors

Another issue is how to make local governments neutral actors in land use planning and land development. If the financial resources of local governments depend heavily on funds that can be increased by land development and land conversion – via direct participation in the

incremental value, tax revenues, or money from a financial equalization scheme – then local governments cannot be expected to be neutral actors. The solution should be the same as proposed for private-sector actors: Local governments should not be direct beneficiaries of land use changes either.

In order to make local governments more neutral, the money raised by land use changes should be integrated into a financial equalization scheme. The money could be transferred to a higher administrative level and pooled there. Eventually it could be redistributed to the local governments according to the size of the local population (cf. the idea of the 'Baulandausweisungsumlage' as has been discussed in Germany; Krumm, 2002). Hence, farmland conversion would no longer provide any direct financial benefits to local governments. It is true to say that local governments would need incentives to care for the attractiveness of their local area in order to encourage greater settlement (and so receive a higher share of public revenues) and for local politicians to achieve their political ambitions. Nevertheless, local governments as a whole would neither win nor lose anything. All local governments would actually receive as much revenue as before.

The road to achieving such an arrangement is long and complex. Presently, municipalities in many countries depend heavily on the revenues arising from land use changes. In Germany, a municipality's right to collect property tax on land is fixed in the constitution – naturally, they therefore resist any changes to the tax assignment. China on the other hand has a weak and decentralized tax system; hence, local governments need the revenues of land conversion (Deng, 2003). Cambodia meanwhile is a 'blank sheet of paper' – a suitable property tax has yet to be introduced. If this proposal were to become part of the political agenda, Cambodia has the opportunity not to repeat the mistakes other countries have made.

CONCLUSION

Land rent is an important allocation force that regulates the use of the land

The intention of the reform of the financial framework is better governance, via changing the allocation of the land rent. The land rent cannot and should not be abolished. It is an important allocation force that regulates the use of the land (Pfannschmidt, 1990). High land rents lead to opportunity costs, that can normally only be covered by valuable investments. The interesting question is: Who is the beneficiary? The allocation function of the land rent is based on the pressure it puts upon the user, either as payment of rents (the tenant) or opportunity costs (the owner). The allocation also works if a share of the increased land rent of developed sites and incremental value is shifted to the public purse, e.g. by a tax. Furthermore, from an allocation viewpoint there is good reason to create a suitable tax system in order to achieve a better coupling of benefits and costs. Neither the increase of land rent nor the incremental value due to land use changes should be completely private, because the land rent is determined either by coincidence or by public planning and investments (infrastructure), and rarely by uncompensated investments by private owners of sites.

However, the proposed reforms need to be made step by step. For China and Cambodia, the first step would be to lay the foundations by stressing the capacity building in valuation and introducing assessment boards and a financial cadastre. Generally, the taxation system (including income tax, corporate income tax and value added tax) needs to be strengthened. Chinese local governments especially should be allotted more money from these sources, in order to make them more independent of the revenues raised by land use changes. The next step would be the introduction of a site value tax system. From the outset, the site value tax should be integrated into the proposed tax assignment regime; if the introduction of such a financial equalization scheme were to be carried out later, communes would be obstructive to the reform of the tax assignment regime (as is the case in Germany).

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SUSTAINABLE LAND PRIVATIZATION INVOLVING PARTICIPATORY LAND USE PLANNING IN RURAL AREAS
An example from Tanzania

PRIVATISATION DURABLE DES TERRES IMPLIQUANT UNE PLANIFICATION PARTICIPATIVE DE L'UTILISATION DES TERRES EN ZONE RURALE
Un exemple de la Tanzanie

PRIVATIZACIÓN SOSTENIBLE DE LA TIERRA MEDIANTE UNA PLANIFICACIÓN PARTICIPATIVA DE LA UTILIZACIÓN DE LA TIERRA EN LAS ZONAS RURALES
Un ejemplo de la Tanzanía

ABSTRACT

LAND USE PLANNING

PRIVATISATION

TANZANIA

Land ownership is a key issue for rural development in Africa. Are the rural communities in the margins or the centre of discussion on land issues? The Tanzanian model of land tenure arrangements empowers local people. It combines community and private ownership and also includes preparation of a Village Land Use Plan (VLUP) by villagers together with professionals. It facilitates economic development by separating and defining specific areas for land use activities that formerly overlapped. This reduces conflicts between different stakeholders by securing the land ownership not only of villagers but also of investors (who pay the VLUP). According to the National Land Use Plan Committee,

RÉSUMÉ

PLANIFICATION DE L'UTILISATION DES TERRES

PRIVATISATION

TANZANIE

La propriété foncière est une question clé pour le développement rural en Afrique. Les communautés rurales sont-elles en marge ou au centre du débat sur les questions foncières? Le modèle tanzanien en matière de régimes fonciers renforce l'autonomie des populations locales. Il combine la propriété collective et privée, et prévoit également la préparation d'un plan d'utilisation des terres rurales (VLUP) par des villageois et des professionnels. Il facilite le développement économique en définissant des zones et en les affectant spécifiquement à des activités qui étaient auparavant imbriquées. Cela limite les différends entre plusieurs parties intéressées en garantissant

SUMARIO

PLANIFICACIÓN DE LA UTILIZACIÓN DE LA TIERRA

PRIVATIZACIÓN

TANZANÍA

La propiedad de la tierra es una cuestión fundamental para el desarrollo rural en África. ¿Las comunidades rurales están al margen o se encuentran en el centro de los debates sobre las cuestiones relacionadas con la tierra? El modelo de régimen de tenencia de la tierra en Tanzania concede autonomía a los habitantes locales. Combina la propiedad comunitaria y la propiedad privada e incluye igualmente la preparación de un plan local de utilización de la tierra (VLUP) por parte de los aldeanos junto con profesionales. El modelo facilita el desarrollo económico separando y definiendo áreas específicas para actividades de utilización de la tierra que previamente se superponían.


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the VLUP process has provided dramatically better environmental management in the villages.

However, the VLUP process is too slow, due to a lack of government support. This has created an open access situation which has caused extensive misuse of forests and natural resources, environmental degradation and land grabbing.

la propriété non seulement des villageois, mais aussi des investisseurs (qui financent le plan). Selon le Comité du plan national de l'utilisation des terres, ce processus a considérablement amélioré la gestion environnementale dans les villages.

Cependant, il est trop lent car les autorités n'y apportent pas suffisamment leur concours. Cela a créé une situation d'accès libre qui a donné lieu à un usage abusif des forêts et des ressources naturelles, engendré une dégradation environnementale et permis l'accaparement de terres.

De esta forma se reducen los conflictos entre distintas partes interesadas ya que se garantiza la propiedad de la tierra no solo a los aldeanos sino también a los inversores (que pagan el VLUP). Según el Comité del Plan nacional de utilización de la tierra, el proceso del VLUP ha permitido mejorar de forma muy notable la ordenación ambiental en las aldeas.

Sin embargo, ese proceso es demasiado lento, debido a la falta de apoyo del Gobierno. Por esta razón se ha creado una situación de libre acceso que ha causado un uso inapropiado generalizado de los bosques y los recursos naturales, una degradación ambiental y la apropiación de tierras.

INTRODUCTION

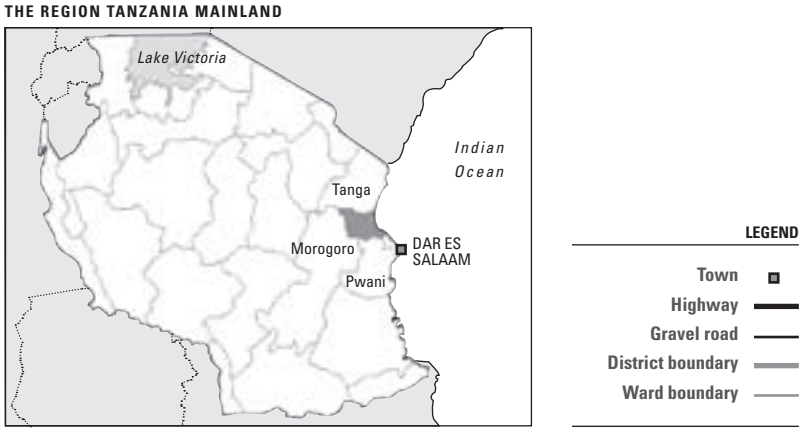
The article has two aims:

1. to introduce the Tanzanian model which replaces customary land tenure systems with a formal land tenure system, using participatory approaches and involving relevant professionals in the planning process in rural areas, and
2. to describe the present situation at the local level, including its positive and negative consequences.

The article analyses the progress of land tenure and management devolution, from the state level down to rural communities and private individuals, through the VLUP process at the village level. New statutory land tenure and management systems are assessed in terms of their legislation, practice and consequences at local community level and how they affect the sustainability of land use, livelihoods and natural resources. In addition, the security of the tenure of local communities and families is assessed in the case study villages. The field study findings suggest that the results of the VLUP process itself are positive, but also that there are unintended negative effects related to the slow diffusion of the VLUP and implementation of land laws. The data from the field testifies to the importance of a good land law and its positive effects, but also shows what can happen when the law is not implemented.

The case study is from western Bagamoyo district, in eastern Tanzania, 100–200 kilometres from Dar es Salaam. The article is based on field work carried out over three and a half months. The data is based on village and district officers' meetings, transect walks, observations, and an analysis of land use changes based on satellite images and aerial photographs made at the GIS Laboratory of the Department of Geography, University of Turku. A household survey of 5 percent of the total population in the area, made by Ph.D. student Mr. Emmanuel Mhache from the University Dar es Salaam, supports the findings. The research carried out by a research team from the Institute of Development Studies, University of Helsinki in the same area in 1975–1981 has also provided historical background material for the study.

Map 1
The research area (Bagamoyo district)



BACKGROUND

In almost all African countries, written 'legal' ownership of natural resources is based on colonial legislation which commonly left outside its legal protection all agriculture, animal husbandry, forestry, hunting and collection activities of African people. New land legislation should correct the above historical injustice (e.g. Koponen, 1988 and 1994), while guaranteeing sustainable land use. Re-evaluation of land legislation is also needed because of significant contextual changes affecting lands: a tripled population, depletion of the forests and fertile lands due to governance problems in land tenure, scarcity of arable land, competition between different forms of land use, biofuel production, changes in the forms of settlements, urbanization, changes from subsistence cultivation to a cash economy, and increasing global interest in the land. The impacts of climate change will also affect the productivity and value of different kinds of land and increase competition over higher value resources. Cotula *et al.* (2009) have estimated that over the past two years, 20 million hectares of land have been sold to foreign investors in Africa. Recently in Tanzania alone, over 3 million hectares of land have been allocated for investors (domestic and foreign); a large proportion of the land in the study villages has been allocated in relatively small parcels of 50–100 ha almost for free, in reality without investments. Many relatively small property transactions are not transparent. In the case study area there have also been land allocations of 12 000 to 20 000 ha for local and foreign investors.

The land ownership rights of African people were left outside colonial legislation

The greatest motivator for a change in the recent land ownership situation is the possibility and necessity of enhancing production, income and food security for rural people, in order to motivate them to develop and cultivate the land and use natural resources sustainably (WSFS, 2009). How can this be achieved? This is a key question, given that more than half of the population of the continent derives its livelihood directly from natural resources. There are many different opinions and approaches that need to be considered, especially since the most vulnerable need to be included in the process (e.g. ILC, 2007).

International financial institutions consider private ownership – which allows land to be used as a collateral – to be a prerequisite for rural development, and a collateral is necessary for farmers to invest in their farmlands (Soto, 2000). The World Bank may not have made such objectives explicit in its official statements; however, its actions promoting free enterprise, especially free entry of foreign capital, have given a strong impetus for African governments to deal with land tenure issues. These actions have created new competition over natural resources, between large-scale farmers and smallholders, between pastoralists and cultivators, and between forest keepers and lumber business interests. (Yoshida, 2005). However, research in Burkina Faso indicates that in this country, the driving force behind using land as collateral is the banking sector, while farmers seem to be quite sceptical about the idea (Wit *et al.*, 2009). In Mozambique, a certificate under the customary land ownership certificate system, DUAT, (Tanner *et al.*, 2009), developed with the support of FAO, is not accepted as collateral (Wit *et al.*, 2009), while in Tanzania the land devolution process is strongly promoted via the idea of access to loans.

Another central issue of land tenure in many African countries is the conflict between traditional and private land ownership rights. Traditional rights are seen in many places as authoritarian: a system in which the chiefs are the main owners of land. Meanwhile privatization is seen as a competition between ordinary villagers' rights to their cultivated lands and legitimizing the 'feudal' ownership rights of chiefs (e.g. Boone, 2007). In many parliaments, the devolution of land rights from the central government to already-powerful chiefs and groups of people can be difficult to legalize. This is one reason why in many African states the privatization of lands is still unsettled. The position of local chiefs in Tanzania was strengthened during the British regime, especially in matrilineal societies (Jerman, 1997). The chiefs lost their status as regards land allocation soon after Tanganyika (present day Tanzania mainland) achieved her independence in 1961. In addition, in Tanzania land use changes during the socialist Ujamaa period have changed traditional customary rights, or traditional rights overlap with new rights (e.g. Oppen, 1992; Ylhäisi, 2006). This is a confusing element in the land tenure of the local communities. Relatively recent studies such

as Oppen (1992) suggest that customary tenure arrangements explain the unequal land distribution between the original population in an area, and those who were moved there more recently. There are also many positive examples of customary land management and land tenure cases, mainly in areas where the Ujamaa system did not have an effect (e.g. Lerise, 2005).

In any case, most of the local customary practices would need to be democratized to guarantee equal rights for women, the poor and the landless. These principles are widely accepted in official policies although the reality is commonly very different (e.g. ESCR, 2009). In Tanzania, the former chairman of the Presidential Commission of Inquiry into Land Matters (URT, 1994) Issa Shivji (1999) has written: "The issue of land tenure reform cannot be separated from the question of democracy in a country". For a long time the tendency has been to ignore the existence of local customary structures as a basis for building new land ownership legislation. Cases exist where customary rights are also being (or have been) deliberately weakened or annulled in law (Mwihomeke *et al.*, 1998; Wily, 2003).

When a country is moving from a single party system to a multiparty division of power (for example), without a proper policy or implementation of land devolution, and at the same time there are instructions and demands by international organizations on changing the system of land ownership, there is a danger of 'elite capture': people who have official control (Grover *et al.*, 2007) or knowledge use the situation to reallocate common property to their own advantage (Raphael & Swai, 2009). Governments' takeovers of the management of common property resources have often resulted in open-access situations in which there are no respected tenure rules (Ribot, 2003). This is happening so openly in Tanzania that the situation appears to be intentional (e.g. Nathan *et al.*, 2007). Anyone can use the resources to his or her advantage, without constraints. When land privatization takes several years the planned devolution of rights to locals will not necessarily occur in time to prevent the loss of the natural resources.

During the land devolution, there is a danger of 'elite capture'

Probably one of the most important reasons for the persistence of tenure systems created during colonial times is the difficulty of persuading land elites to give up their power: not only at the top level, but also in all offices dealing with land management. For example, in Tanzania almost one sixth of the country's land area is under the direct management of the Forestry

Department, but central government revenues from lumbering in these forests have varied from 1.6 percent of the value of timber in the mid 1980s to 4 percent in 2004; the rest (96.0–98.4 percent) has disappeared (Milledge *et al.*, 2007).

Because of low revenues from these large areas of forest, and the considerable administrative cost of official management combined with simultaneous environmental degradation and loss of natural resources, the trend since the 1980s has been to pass an increasing degree of responsibility for land use management to local communities, using participatory and joint management methods (Vihemäki, 2009). Globally, Tanzania has been an innovator in this field (see Box 4): e.g. participation via numerous schemes such as Community-Based Natural Resource Management (CBNRM), Joint Natural Resource Management (JNRM), Joint Forest Management (JFM), Community-Based Conservation Management (CBCM), and Community-Based Wildlife Management (CBWM). These management models have been fairly successful. Their success has opened up possibilities for joint management by the government and local communities, and other groups of state-owned reserves and communal areas. This process has paved the way for the use of similar approaches in overall rural development and the creation of VLUP, although it is also true to say that officials may find it difficult to change their role from controllers to extension advisors.

The official process of land devolution to local communities and individuals via participatory land use planning in Tanzania

In Tanzania, the planning process of land legislation has involved an exceptionally open debate which started about 20 years ago in preparation for the comprehensive report by the Presidential Commission of Inquiry into Land Matters in 1992 (URT, 1994). During the debate, politicians perceived the land law more from a local community and economic perspective, and as part of a safety net, than is the case in any western tenure law, where the main aim is the owner's security of tenure. In discussions on the Land Act 1999, the Village Land Act 1999, and supplementary acts (the latest of which is the Land Use Planning Act 2007), strengthening the capacity of elected village councils was seen as essential.

Granting communities ownership within their boundaries is a radical change. In the past, farmers' rights to their land were only customary. Now, they will receive a certificate stating their rights of occupancy to their fields, which cover about 5 percent of the total land area of Tanzania. In addition, villages will receive a certificate covering the area within their boundaries, equivalent to 70 percent of the total land area of Tanzania. The number of registered villages has increased significantly in the last ten years: a figure as high as 13 000 villages has been suggested, although a ministerial report gives the figure as 10 397 (Kironde, 2009). The main reason for the increase in the number is the fact that some sub-villages have become independent villages, but in some cases the old villages have simply been divided in two. From the point of view of land ownership and community building, the splitting of villages on two sides of highways, which has been common (e.g. in Handeni District), creates geographically as well functionally artificial villages: common land areas are split between the authority of separate communities. This phenomenon also radically increases administrative costs.

Table 1
Village registration and awarding of certificates of customary rights of occupancy (CCROs)

REGISTERED VILLAGES	SURVEYED VILLAGES	VILLAGES WITH VILLAGE LAND CERTIFICATES	CCROS GIVEN	VILLAGES WITH LAND REGISTRIES
10 397	8700	753	14 017	30

While the majority of the villages have been surveyed, which is the key requirement for issuing village land certificates, issuing the certificates lags very much behind. Issuing the remaining land certificates should be easily achievable, and would provide the villages with management rights in their area. Recently there have been cases where village councils have protected their natural resources from outsiders (where there is no VLUP or village land certificate but the boundaries have been demarcated), but the district has taken the cases to court. The village has lost because the district needs

to approve the village by-laws in order for them to become legally binding, and in these cases the district has not done so. Reluctance to let go of the associated power may be one reason why the village land certificates are still in a land officer's drawerd.

The land devolution process part of land use planning takes place at three levels: 1) national framework land use plan 2) district land use plans and 3) village land use plans (Box 1). Levels 1 and 2 are still mostly missing, which means that the few established VLUPs have been made without the guidance of levels 1 and 2.

In Tanzania only 13 districts out of 127 have finished their DLUP. In the village land use planning process, meetings leading to agreements between stakeholders to secure ownership of the land area within the village boundaries are required. Individual certificates of customary rights of occupancy are considered only as temporary titles which will be revoked once there is a VLUP. In Box 1 the six steps of the participatory VLUP process are presented.

Participatory Rural Appraisal (PRA) methods (e.g. Hatcher, 2009) assist common decisions in complex situations where there are conflicting interests. PRA provides a tool for a simultaneous consideration of socio-economic and environmental development in order to achieve changes to both. PRA makes it easier for poor, less communicative, less active and less powerful people to participate and express their opinions and needs in meetings. Here, villagers take responsibility for explaining, assessing and evaluating issues such as their situation and resources. They are helped by a facilitator so that all participants learn from each other and teach each other in an egalitarian way (e.g. Anyaegbunam *et al.*, 2004). In Tanzania, the rural poor are thus relatively empowered during the VLUP process.

Box 1
The Land Use Plan Process of Tanzania: NFLUP, DLUP and VLUP

(NFLUP) The National Framework for Land Use Planning

The time line of the NFLUP is up to 2028 and it covers elements of national interest: wildlife and forest lands, community ranching areas, commercial and smallholder agricultural lands, conservation of water resources areas, infrastructure, energy supply, rural and urban agglomerations.

The national framework affects every other plan under it.

(DLUP)The District Land Use Plan

provides for district and villages a land suitability and land use scheme to guide decision making.

The NLA considers this process as scientific management of land and land use conflicts between different stakeholders in the districts. DLUP acts as a framework for the VLUPs.

The six steps of the Participatory Village Land Use Plan (VLUP) process

Step 1. District officials training (fourdays) : LandActs, wildlife, land, natural resources, agriculture, livestock, community development, planning, and water resources management. Agree a common district vision in interventions needed in villages.

Step 2. Drafting of a participatory land use management plan VLUM by district officials together with the Village Council VC and Village Assembly VA. Agree VC and VA roles in VLUP. Election of the VLUM committee. Identification of PRA assisted problems, opportunities and priorities.

Step 3. A supplementary village survey in order to identify the boundaries of major land uses e.g. agriculture, grazing, residential, forests and wild life.

Step 4. Demarcation, mapping and registration of public and reserved land, drafting a VLUP, creating by-laws by participatory methods and administration by villagers.

Step 5. Implementation of the plan which in residential areas can include improved houses, access paths and roads, pit latrines and waste water drainage. In farming lands improvements can mean tree nurseries, crop rotation, agro-forestry, improved irrigation, etc. In grazing lands it can mean protection of water points, water tracts etc., in forest and fragile areas reforestation, selective tree cutting, useofwoodsavingstovesetc., and in wild life areas minimizing wildlife moving into villages, protection of water points.

Step 6. Monitoring of the impact of VLUM and the capacity of villagers and their institutions to continue the implementation independently.

Modified from NLA Tanzania

Picture 1
Paraquyu–Maasais and their seasonal calendar in Mindu-Tulieni. They are pastoralist–farmers. The village was established in1975 during the Ujamaa period.

Developments in land tenure and management in rural Tanzania

From 1967 to the mid 1980s and unlike other countries, rural development was the main objective of the Tanzanian government. Many people were moved from their scattered settlements in the valleys to Ujamaa villages along existing roads, built mainly in catchments areas. In 1976, everyone in western Bagamoyo district and 85 percent of the population of the entire country lived in Ujamaa villages. Only densely populated areas in the mountains avoided settlement changes. (Sitari, 1983) The village council – an institution created during the Ujamaa era and elected by adult villagers – managed village lands more as an agent of the land commissioner than as an organ of the village, accountable to the village assembly. One issue was that village boundaries were not demarcated – although there were some attempts at this in the late 1980s – and therefore it was unclear where the authority of the village ended (URT, 1994, Swantz, 1996; Nathan *et al.*, 2007). The effects can still be seen today: for example, forests around villages are, according to district officials, "managed" by them until the VLUP is finalized.

Agriculture was organized into cooperatives, but these did not succeed. As a result of the Ujamaa policy among others, by the mid-1980s the economy was in ruins. Tanzania then underwent one of the most radical structural adjustment programmes in Africa, during which land issues were also taken into consideration again (e.g. Bagachawa & Limbu, 1995). The programme of commercializing smallholder farming, which included removing subsidies and ending cooperatives (Sokoni, 2008) resulted in stagnation and even a decrease in agricultural production in areas like western Bagamoyo. There, cotton was the main cash crop, and it disappeared without being substituted by any other cash crop.

The population in the area has substantially increased. At the same time, the productivity of the fields has decreased. The land area being farmed has remained constant from 1993 to 2004 (Haapanen & Mhache, 2009) and to the present. In this situation one would expect there to be very little money in villages, but actually there is more money than ever. The money is coming from natural resources officially 'managed' by the state, partly from property sales to outsiders, e.g. to biofuel, carbon trade and land investors. Entire villages, excluding settlements and subsistence farmlands, have been rented for 99 years in the neighbouring district, and many smaller land transactions have been made in the research area.

Out of a total of 4 million ha requested by companies for biofuel production, about 640 000 ha have been allocated in Tanzania. This has aroused attention from Tanzanian policy makers. Investments have affected thousands of local people, leading to the alienation of their rights over customary lands. (Sulle & Nelson, 2009). The Tanzania Investment Commission (TIC) has a mandate to identify and provide land for investors, and has allocated 2.65 million ha of land for this purpose (NLA, 2009). In Bagamoyo district, TIC has allocated about 20 plots of land to possible investors. Most of these areas are on the coast with beaches, but some are for sugarcane production for biofuel, which needs a well-watered area. People living and working in these areas are not pleased to have to move away.

According to the law villagers will be compensated fairly by the government when village land is transformed into general land (e.g. Box 2 – FAO, 2008).

Box 2
Categories of Land in Tanzania

In Tanzania there are three different categories of land:

1. Reserved lands, which cover 28 percent of the land area (forests, national parks, game reserves, and for infrastructure development). According to new forest and wildlife acts, joint management in these government areas is possible. These areas are unoccupied.
2. Village lands, which cover some 70 percent of the total land area of Tanzania, accommodating 80 percent of the population.
3. General lands (2 percent of the total land area) consisting mainly of urban areas and accommodating 20 percent of the population (Kironde, 2009; TIC, 2008). According to the law, if an investor wants to buy a land area from a village, the category of this land will change to general land and it will receive a government land title.

In practice, investors themselves tend to pay the villagers directly. When land is not classed under the village land category, companies have compensated villagers for the value of the resources on the land, such as trees, grazing, and water sources. In northern Bagamoyo, 12 500 ha of land has been given to a private company to establish carbon trade under the Reduced Emissions from Deforestation and forest Degradation programme (REDD). According to the investor, the justification for renting the land to a private company is that the local communities do not have access to loans in order to raise the $US 40 million needed for the project. In the land archive of the district it was not possible to find information about the overall situation of the land titles in the area.

The most important source of money for the villagers, however, is the selling of charcoal. This source of income is also the most evenly distributed in the villages. Along the main highway 200 kilometres inland from Dar es Salaam, the contribution of charcoal production to household income was evaluated to be as high as circa $US 170 per year in the early 1990s (Monela *et al.*, 1993). In Bagamoyo district, forests along the highways have been cut for charcoal and sold in Dar es Salaam. Similar situations are being

reported all over the country (e.g. Strömquist & Backéus, 2009; Drigo 2005). According to a case study survey by Mhache, in 2008 almost 20 percent of households were involved in illegal charcoal making, though in reality the true percentage is probably much higher. In one village meeting in Msata, attended by members of the village council and it's natural resources committee, the general opinion was that almost every family participates in charcoal making: Near a growing city such as Dar es Salaam this is a lucrative business. Some publications have cited this as a form of income redistribution from urban centres to rural areas. However, this is realized at the expense of forests and the environment; according to Mwampamba (2007), forests on public land could be depleted by 2028.

At present in Bagamoyo district, forests have been cut from areas where it has been possible to transport the products. By whom and for what reason is this happening? District and divisional forest officials may say: "We need to feed the cities. Everyone is using charcoal in the cities. This is a problem, but there are no alternatives." The sector ministry's policy developer may also say the same: "Cities and people need cheap energy; there is nothing that can be done about it." Nothing? "We have plans to regulate the charcoal selling sites in the new policy so that the approximate distance between sales points is about 10 kilometres." (Interview, December 2008) At the same time, in the report of Halmashauri *(*2008) to the district council on district forests it is stated that: "All communities depend on forest resources as a source of income and this causes a great loss of forest. Charcoal making has spread everywhere. In the villages and institutions knowledge and understanding of various forms of forest ownership is lacking. Also data on forests is limited, and this is a hindrance in forest management."

At the same time, villagers are under the impression that they do not have legal instruments to protect their forests, and that village forest reserves (VFR) cannot be established without a VLUP process. Their belief is based on information given by the forest officials, but when queried about it foresters agreed that a VLUP is not necessary. Also, villagers believe that VFRs are established so that the villagers may plant trees in them. The villagers are under the impression that VFRs cannot be utilized. When the

aims of the forest law and policy – to create VFRs as a source of natural resources for communities – are explained to people, they start to show some interest (Ylhäisi, 2003). However, creating VFRs owned and managed by villagers requires that village boundaries should be defined. When asking an experienced former government forester why (in this environmental situation) the policies are not implemented, the answer given is: "The idea of participatory village forest reserves is only another way to 'mislead' villagers to perform free work." (Interview, November 2008) At the same time, nearly half of the national budget for the fight against environmental degradation is allocated to land use planning (NLA, 2009). This indicates that the central government acknowledges the power of ownership rights as a key to environmental protection. A VLUP also involves substantial environmental education and planning, based on principles of sustainable development. For example, the results of village land use planning in Kisarawe are positive: with VLUPs in place, nearly all villages are constructing their own village land registries. All villages have their VLUP displayed in their offices and have developed by-laws, but the most important result is that "the rate of deforestation has been reduced by 90 percent". (NLA, 2009).

Almost half of the budget for the fight against environmental degradation is allocated to land use planning

There is a contradiction between the attitude of the foresters and the official policy. Similarly there is a contradiction between the environmental destruction which can be identified by remote sensing from satellite images and by field transects walks, and the observations of local, ward and district officials. There is also a contradiction between the national budget – where money is allocated for land use planning (land devolution) – and the government allowing young men to engage in self-employment, making charcoal. There is a lack of law enforcement as regards natural resource management (Madulu, 2005), and it is increasingly clear that, in practice, there is an open access approach to natural resources. In Bagamoyo and elsewhere, there are 'hidden' villages full of young charcoal makers and their families. When the forests have been cut and there is no more self-employment in charcoal making,finding alternative livelihoods will be a major challenge, as will be cheap energy for the cities.

Whatever the circumstances, there will be a large permanent loss of biodiversity. Fortunately there are still some traditionally protected forests

(TPFs) – even in badly eroded areas – which have always been rich in species (Mwihomeke *et al.* 2000). Under the VLUP process the facilitators also advise villagers to protect their TPFs. In each completed VLUP there are about 20 small TPFs which are now officially protected.

State of the art in Bagamoyo district

There are too few people qualified in the VLUP process, and the work would take years even if the money for it were available; now, after the demarcation of the village boundaries, the limiting factor has been money. In Bagamoyo, there is only a draft VDLUP. In January 2010, the plan was almost ready when the laptop computer containing it was stolen. There are already 19 villages with a VLUP. In practice, the few completed VLUPs are in villages where there have been serious conflicts between pastoralists and farmers. The 13 villages under the Wamimbiki wildlife conservation project (Box 3) are those where the investor has paid for the work, and has an option to lease the land after the VLUP is finalised; this is the way investors are also acquiring land in Mozambique (Wit *et al.*, 2009).

Picture 2
A sign indicating the farming and housing area according to VLUP by-laws in Masuguru village, which is now divided into two villages. People in the new Mwetemo village are not aware that they may need a new VLUP, because the water source on their side is still being used by people from old Masuguru. Both villages are still waiting for their land certificates.

Box 3
The Wamimbiki wildlife conservation project

A Danish hunting association, in association with the surrounding villages, protects 2500 km² of forest along the western boundary of Bagamoyo. The 13 participating villages in Bagamoyo and 11 in Morogoro region benefit in different ways. All of them receive an annual fee of one million Tanzanian shillings. The association has also paid for the preparation of the Village Land Use Plans (VLUPs) and land register offices in these villages. The cost of the VLUP in 2005 was 120 million Tsh, and the process took 6 months. The land certificates have not yet arrived from the government, but all the villages are expecting them to be delivered at any moment. Villagers have to forgo access to their own hunting, fishing and gathering areas. The project is organizing photography excursions, including lodging for nature and animal lovers to make it economically sustainable. Environmentally, the project has been a success: 3000 km² of natural forests have been protected, although there are also problems (Madulu, 2005). This kind of a joint wildlife management and JFM, which started 11 years ago, is a relatively new method of managing wildlife outside parks and reserves. The project is a clear recognition of community entitlements to rural land resources (Brockington, 2007; Schroeder, 2008).

The total area of Bagamoyo district is 9847 km². The planned farming area in the draft DLUP is 5767 km²: seven times larger than the existing farming area. Only 7 km² is irrigated at the moment, and 164 km² is offered to investors for establishing irrigation farming. The land area for livestock is 1700 km², but only 20 percent of it is in use at present. The area for protection of water sources and use is 855 km². According to the plan, the area reserved for forests in the district is only 347 km². (Halmashauri, 2008). Implementing the plan will mean a very large permanent environmental change in the district.

In the district there are 82 villages, and the boundaries of 79 of these had been demarcated in 2007. (The three undefined villages are neighbours to Sadani National Park (578 km²); the villages have not accepted the demarcation of the boundaries of the park.) In Bagamoyo the average size of a village is 110 km². The boundaries between the villages have been defined by an average of 10 boundary posts. (In addition, 60 percent of the

villages have a river defining some parts of their boundary. Perennial rivers are always boundaries for villages.) (Plans, 2007)). In practice, this means that dividing lines between boundary posts are straight, and consequently many farms are divided by a boundary between two villages. Recently there have been cases where the part of the farmer's land found in another village has been sold to investors by the other village, because the farmer only has a right to land in the village where she or he lives.

During the VLUP process the facilitating team makes proposals for multiple land use systems. Conflicts between pastoralists and farmers are the most difficult: lives have even been lost. Pastoralists in general are, according to the NLUP Committee (NLA, 2009), "a highly vulnerable group which should be carefully handled under the Village Land Act implementation due to threats from farmers who tend to disregard this mode of production". The pastoralists have been quite content with the VLUP process in Bagamoyo district because it legitimizes their rights to land use, although in every village where the VLUP has been finished the grazing areas have became smaller than before. In many villages, the presence of Maasais peoples is less than 20 years old. The reason for local farmers' agreement to VLUPs is the advice of facilitator teams, who tell them that this will bring in regulations concerning where the Maasais will not be allowed to herd their cattle. Farmers are advised that the situation will be an improvement on the present one. In some areas in Bagamoyo district, pastoralists are newcomers: a result of the open access situation in Tanzania. In most of the district pastoralists take their cattle to the forest areas that have been cut.

Attitudes of local officials and members of the village natural resources committees towards the VLUP process are still positive, but there is some frustration because of delays with promised certificates. Individual sacrifices have been made by families that have moved to a correct land use area from another area, as part of the implementation of the plan. In Box 4, sample results of a participatory VLUP meeting are presented. After the VLUP process in Msoga village, villagers are still expecting to receive their land certificate and a land archive has been built in a corner of the village square. Land prices have increased in the village after the devolution of rights, and they are now higher than in the division centre 10 kilometres

Picture 3
A village forest reserve demarcated on the left side of the road by the VLUP, on the way to the village centre of Msoga. The present bushland is recovering as a result of protective measures, including moving Maasai houses and cattle to a more remote area near the eastern boundary of the village.

away. According to the village chairman (Meeting, December 2008) the only negative aspect following the process has been an increase in quarrels about boundaries between neighbours in the village. (Manara (2008) Similar reports haves been heard in insimilar reports, in the neighbouring Handeni district.) Pastoralists are still entering the existing farming areas proposed for irrigation (Interview, February 2010).

Box 4
Sample results of participatory VLUP meeting

The VLUP document of Msoga village, with an area of 29.5 km^2 and a population of 1926 people, contains 61 pages of land use information and land use plan maps in a georeferenced format (Jamhuri, 2007). It would appear that the facilitators have taken the appropriate approach in their PRA work, respecting the participants and empowering the villagers to think about the situation, and encouraging discussions with officials and specialists in the VLUP team. This behaviour also makes it easy to ask questions related to land ownership, the land law and land management rights.

The question of how to empower the poorest is not mentioned in the document, but the following decisions benefit everyone in the village equally. Participants at the meeting considered that the area controlled by the village council should be distributed to people, and private individuals could agree with the village assembly on allocated areas that would be given to them. Later participants agreed that each plot of land given to villagers for settlement would be 0.25 acres. Those who already had 1.0 acres should distribute land to their children or sell it to other villagers. After the discussions, it was decided to increase production in each area instead of expanding farm sizes. Each sub-village would select two participants to learn new farming methods. It seems that the facilitator, with the support of the VLUP team, guided the participants in the direction which had already been decided upon in the district (see Box 1, Step 1).

Participants also agreed that a village forest reserve was needed, as well as a plan to increase forests and to create by-laws to protect them, and water resources and other areas for special use. Presently, villagers are now annually planting 10 trees per household. They now also have a 180 ha VFR, 13 Traditionally Protected Forests (TPFs), a cattle pass of 1.7 km, a tree nursery, a one million m^3 dam, and an irrigation project of 177 ha at the planning stage. Cattle keepers moved from the established VFR; villagers also created by-laws to implement the plans.

The facilitator explained the process of customary land titling and issues such as the need to make a decision in the village on how farms will be measured: separately one by one, or using a larger area, which is less time consuming. In the next meeting the villagers decided to create the boundary mapping together in 10-person groups, to reduce costs.

CONCLUSION

The Tanzanian model has a number of interesting features:

1. The fields used by the villagers become their legal property.
2. At the same time, communal ownership applies to the rest of the village area.
3. Part of the communal land remains pooled and can be tapped when there is a new need for plots.
4. Land use zones have been defined.

These features make the model an attractive alternative: a democratic community ownership of land, combining a private land ownership system with the needs of modern societies and economies. The system also provides the flexibility to allow for adaptation to future situations that as yet cannot be predicted, such as changes in agricultural methods (e.g. tractors) and climate change (e.g. REDD). Large grazing areas may become obsolete (e.g. because of greenhouse emissions), or they may even become the main source of livelihood (e.g. because of changes in vegetation). The food price spike recently experienced may be repeated, or the demand for bioenergy may rise. However, it is important that the process of producing VLUPs, which in practice is stagnated, is speeded up.

To counter the recent situation of open access to natural resources, a faster method for first aid than VLUP is required. It is positive that village boundaries have been defined almost everywhere in Tanzania; this has been a long-winded and expensive part of the land devolution process. The emphasis should now be on guaranteeing that the land inside village boundaries belongs to the villagers. A village land certificate should be effective up to the time when the VLUP has been completed. The village certificate should be sent immediately to every surveyed village, giving them the legal right to protect their environment, natural resources and ownership.

This allows communities to avoid land grabbing by their own members as well as by outsiders. It also helps to avoid group movements from overpopulated areas or overgrazed areas, which are sometimes organized by powerful people in the state administration.

The most promising result of the VLUP process is that the rate of deforestation has been reduced by 90 percent in villages where a VLUP has been completed. "VLUPs will affect the lifestyles of the people", promised the NLA in 2009. Increased rights of villagers come with increased responsibilities, and result in a higher commitment to the management of common lands, forests, and grazing areas. Relationships between pastoralists and farmers will improve, due to clear land zoning: a comprehensive plan separates farmlands from cattle and grazing areas, and fenced cattle passes are connected to grazing areas. A combination of common and private land ownership will allow more opportunities socially and economically, providing safety nets and resources for the poorest members of society.

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LAND TENURE AND DISASTER RISK MANAGEMENT

RÉGIMES FONCIERS ET GESTION DES RISQUES DE CATASTROPHE

TENENCIA DE LA TIERRA Y GESTIÓN DE RIESGOS DE CATÁSTROFES

ABSTRACT

DISASTER RISK MANAGEMENT

LAND RIGHTS

LIVELIHOODS

The frequency of natural disasters has been increasing since the 1950s. The most vulnerable groups are more likely to live on disaster-prone land, and are at greatest risk of displacement and loss of livelihood assets in the event of a disaster. For the more severe natural disasters, temporary or permanent resettlement of large numbers of people is necessary. Natural disasters can also create circumstances where land speculation and land grabbing occur; good governance of land is critical in the emergency response and recovery phases. Drawing on existing literature and case studies examining land tenure issues after natural disasters, this paper makes recommendations on responses to land issues

RÉSUMÉ

GESTION DES RISQUES DE CATASTROPHES

DROITS FONCIERS

MOYENS DE SUBSISTANCE

La fréquence des catastrophes naturelles s'est accrue depuis les années 1950. Les groupes les plus exposés sont généralement ceux qui vivent dans des zones sujettes à ce type de phénomène et qui risquent ainsi davantage d'être déplacés et de perdre leurs moyens de subsistance. En cas de catastrophe grave, il est nécessaire de réinstaller un grand nombre de personnes de manière temporaire ou permanente. Les catastrophes naturelles peuvent également créer des circonstances propices à la spéculation foncière et à l'accaparement de terres. Une bonne gouvernance foncière est essentielle pour gérer l'urgence et la reconstruction. En s'appuyant sur

SUMARIO

GESTIÓN DE LOS RIESGOS DE CATÁSTROFES

DERECHOS DE LA TIERRA

MEDIOS DE VIDA

La frecuencia de las catástrofes naturales viene aumentando desde la década de 1950. Los grupos más vulnerables tienen más probabilidades de vivir en zonas expuestas a catástrofes y corren un mayor riesgo de verse desplazados y perder sus medios de vida en casos de catástrofe. Las catástrofes naturales más graves hacen necesario proceder al reasentamiento temporal o permanente de muchas personas. Las catástrofes naturales pueden también crear circunstancias que favorecen la especulación de la tierra y la apropiación de tierras; una buena administración de la tierra tiene una importancia decisiva en las fases de respuesta de emergencia y recuperación.

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within the context of a Disaster Risk Management framework. Recommendations are also made for improvements in land policy and legal frameworks, and formal recognition of historical attitudes to land, as part of an adaptation and mitigation process to improve the resilience of the more vulnerable members of society. Considering land issues in the various stages of disaster risk management will help to protect displaced people's land rights, and allow them to return successfully to their pre-disaster land and livelihoods where appropriate.

la documentation et les études de cas existantes qui traitent des questions de régimes fonciers à la suite de catastrophes naturelles, le présent document fait des recommandations en matière de résolution des problèmes fonciers qui s'inscrivent dans le cadre de la gestion des risques de catastrophe. D'autres recommandations concernent les améliorations des politiques et cadres juridiques fonciers, et la reconnaissance officielle de la place des comportements fonciers historiques dans un processus d'adaptation et d'atténuation destiné à améliorer la résistance des personnes les plus vulnérables. L'examen des questions foncières à divers stades de la gestion des risques de catastrophe contribuera à protéger les droits fonciers des personnes déplacées, et leur permettra de réussir, le cas échéant, leur retour aux terres et aux moyens de suabsistance dont ils disposaient avant la catastrophe.

Basándose en la literatura existente y en estudios de casos en los que se examinan cuestiones relacionadas con la tenencia de la tierra después de catástrofes naturales, en el presente estudio se formulan recomendaciones sobre las respuestas a las cuestiones relativas a la tierra en el contexto de un marco de gestión de riesgos de catástrofes. Asimismo se formulan recomendaciones con vistas a mejorar el marco jurídico y el marco de políticas agrarias y a reconocer formalmente las actitudes históricas ante la tierra, como parte de un proceso de adaptación y mitigación encaminado a aumentar la resistencia de los miembros más vulnerables de la sociedad. Considerar las cuestiones relacionadas con la tierra en las varias fases de la gestión de riesgos de catástrofes ayudará a proteger los derechos sobre la tierra de las personas desplazadas y permitirá que estas puedan regresar a las tierras que trabajaban antes de la catástrofe y recuperar sus medios de vida cuando convenga.

INTRODUCTION

There is evidence of an increase in the frequency of natural disasters in the last few decades. According to the IPCC Fourth Assessment Report (IPCC, 2007), climate change is very likely to lead to an increase in the frequency and intensity of some extreme weather events, such as heat waves, tropical cyclones, floods and drought. A list of natural disasters since 1975 involving more than 10 000 fatalities shows that five out of the ten worst disasters occurred between 2003 and 2008 (ISDR, 2009). Wisner and Luce (1993, p.130) argue that "disasters produce more marginal people – people who have survived but are unable to recover their livelihoods, who are destitute and forced to live in even more vulnerable situations". Wealthy groups have financial reserves that enable them to recover more quickly (Cosgrave, 2008). Meanwhile, the most vulnerable groups are more likely to live on disaster-prone land, and are at greatest risk of displacement and loss of livelihood assets in the event of a disaster. In these situations, natural hazard mitigation strategies will often involve more than one location of livelihood, ideally within different microclimates.

Once displaced people lose their connection with their associated livelihood assets, they are more vulnerable to the shock of the disaster and have more difficulty resuming livelihoods

Displacement of many people is common after a major natural disaster. People may also become landless due to the death of a family member, an inability to prove prior occupation, or from damage to the land that leaves it unusable, even pre-disaster. Once displaced people lose their connection with their associated livelihood assets, they are more vulnerable to the shock of the disaster and have more difficulty resuming livelihoods. If livelihoods are not resumed they face the prospect of selling assets at reduced prices to feed their families. Some of these effects are short-term, in which case they are able to resume living on their land and can recommence their livelihoods during the emergency recovery or reconstruction phases. However, some households lose access to their pre-disaster livelihoods and are unable to return to their land.

The most vulnerable households are those that rely on access to land with insecure tenure. These include sharecroppers, farm labourers, or informal settlers. Secure land tenure allows claims to land to be validated easily and underpins the return of displaced people to their livelihoods, to

food production and to activities aimed at rebuilding their lives. The most vulnerable family members include women, children, the elderly and those with disabilities. Ethnic minorities can also be very vulnerable.

In many of the developing countries that are most at risk of natural disasters, a vast majority of the population have insecure land tenure. This presents a problem when a disaster occurs and decisions concerning restitution need to be made quickly, to allow the rebuilding and resumption of livelihoods. In many countries, legally-recognized land titles do not exist; other records or verification from community elders may be needed to provide evidence of property rights. Property rights existing before the disaster can be very complex and involve overlapping or communal rights. There may be little protection for property rights in land policies or in the legal framework. When a disaster occurs, groups whose rights to land are informal yet socially legitimate (such as tenants, or sharecroppers, or farm labourers), or those who have been occupying land illegally (e.g. in informal settlements or as squatters), are vulnerable to land grabbing or resettlement without compensation (Brown and Crawford 2006; Cosgrave 2008).

In many of the developing countries that are most at risk of natural disasters, a vast majority of the population have insecure land tenure

A review of the literature reveals considerable discussion of land issues following natural disasters. Many of the land issues have been discussed for some time, e.g. D'Souza 1986, Pantelic and Srdanovic 1992, Wisner and Luce 1993, and Oliver-Smith 1996. However, following the 2004 Asian tsunami, interest in land issues has increased. Starting in 2006, several case studies were commissioned by UN agencies on land issues following natural disasters. In 2007, the Inter-Agency Standing Committee, the main United Nations mechanism for inter-agency coordination of humanitarian assistance, agreed to coordinate efforts concerning land tenure issues following natural disasters. This work has commenced and will result in a set of guidelines developed by UN-HABITAT, FAO and UNDP for addressing land tenure issues after natural disasters.

Lessons from recent natural disasters have highlighted several threats to landholders. First, there are material threats caused by displacement, include the risk of land grabbing and coercion to sell, the need for temporary shelter and resettlement, and the impact of resettlement on those with insecure tenure. A second category of threats is the material threats caused

by destruction. These include damage to property, degradation, loss of official records, a reduced capacity of authorities to carry out their duties, and damage to boundary marks. The third type of threat is administrative, post-disaster. These include limited public sector capacity, planning rule changes and inadequate compensation. The final threat relates to legality and human rights, and includes discrimination and inappropriate land acquisition for resettlement (Williams 2006; Fitzpatrick 2006).

In the emergency response sector there has been recognition of the importance of disaster mitigation and preparedness and a move away from Disaster Risk Reduction (DRR) towards Disaster Risk Management (DRM). DRM is a broader concept and includes a management perspective that includes the stages of prevention, mitigation, preparedness, response and recovery (Baas *et al.,* 2008). The aim of this article is to consider how land issues can be incorporated into the various stages of DRM, building upon the existing literature on land issues following natural disasters. The discussion is not intended to cover all the possible land issues that may arise, but rather to provoke discussion on how land tenure issues may be best considered in the context of DRM.

In the emergency response sector there has been recognition of the importance of disaster mitigation and preparedness

The article makes recommendations on responses to land issues within the context of a Disaster Risk Management framework. The author argues that decisions about land tenure should be based on land policies that are developed in line with a DRM framework, as part of a disaster mitigation process. The discussion is limited to hydro-meteorological disasters such as floods, tropical cyclones, storm surges and tornadoes, and geophysical disasters such as earthquakes, tsunamis, avalanches, and landslides. Most of these disasters are 'rapid-onset' and cause extensive loss of life, loss of livelihoods and damage to infrastructure. Drought too is a very significant natural disaster that often has a large impact on people and livelihoods; however, it is not considered here as the slow-onset nature of drought involves a different relationship to land tenure.

CONSIDERING LAND ISSUES DURING THE EMERGENCY RESPONSE

Immediately after a natural disaster the primary focus of the national and international institutions involved is on saving lives and providing medical assistance, shelter, food and water. Human life is at risk and a fast response is needed to control the crisis, restore order and minimize the physical and psychological effects of the disaster. There is little scope or capacity to begin considering land issues at this critical stage. However, if at least some consideration is given to the extent of land issues during the emergency response, the impact on access to land and livelihoods may be reduced. Many land-related responses to natural disasters are long-term considerations, but need to be anchored early so that livelihoods can be resumed as soon as possible. For example, the choice of resettlement sites can have a significant impact on whether displaced people are able to resume their pre-disaster livelihoods. By incorporating this understanding into early recovery planning, the most vulnerable are more likely to be protected.

Applying a rapid assessment of land issues during the emergency response

A rapid assessment provides an overview of the major issues requiring attention. Land tenure issues are not the priority during the emergency response. The focus is on shelter, livelihoods, vulnerability and food security issues, and various rapid assessment tools have been developed to consider these issues during the emergency response (e.g. USAID 2004, FAO and WFP 2005, IFRCRCS 2005, FAO and ILO 2009). Each of these areas are strongly interrelated to land tenure and should therefore incorporate both a) an assessment of the pre-disaster land tenure circumstances and b) changes to these following the disaster. In fact, several of these existing rapid assessment tools do include questions on land tenure. Consideration of land issues in a rapid assessment allows for improved design of early recovery and reconstruction programmes, which will provide better protection against loss of land and discrimination.

In the design of a rapid assessment it is important to consider the land tenure systems that existed prior to the disaster, and the impact of the disaster on households and livelihoods. Also important are issues of capacity, and the damage caused by the disaster to land records, property boundaries, and surveying infrastructure. Table 1 describes the typical information concerning land issues that would be of benefit to the planning of resettlement and early recovery, and should therefore be incorporated into rapid assessments:

It is important to consider the land tenure systems that existed prior to the disaster, and the impact of the disaster on households and livelihoods

PRE-DISASTER CONDITION	Pre-disaster attitudes to land.
	The main features of the property rights and land tenure systems.
	Existing land policies.
	Key land laws and regulations.
POST-DISASTER CONDITION	The impact of the disaster on individual properties.
	The impact of the disaster on communal and customary lands.
	The impact of the disaster on land records.
	The impact of the disaster on vulnerable groups.
	The impact of the disaster on land agencies.
	The demand for resettlement and related needs.

Table 1
Typical land issues to be considered in a rapid assessment

Consideration of land issues in livelihood, shelter and food security assessments will provide information about tenure security and livelihoods that will be important for early recovery and reconstruction, and can feed into more detailed assessments of needs later.

Transitional shelter and resettlement

Addressing emergency humanitarian needs in the first stage of the response involves finding emergency and transitional shelter for displaced people that provides safety and does not threaten the rights of others. Temporary planned resettlement camps may be required where the original land

has been severely damaged, or where security threats exist; this provides important and rapid shelter. However, such camps should not become the default solution, neither should they become permanent. Relocating large numbers of people moves them away from their source of livelihoods and forces them to leave behind assets which are vulnerable to looting and damage. It also damages the social support networks of a community at a time when the strength of the community is most important. Lessons from previous disasters show that people are sometimes happy to move away from a site that is vulnerable to recurrent disasters, but that they also often return later, if suitable alternative livelihoods are not found (e.g. D'Souza 1986, Pantelic and Srdanovic 1992).

The *Handbook on housing and property restitution for refugees and displaced persons* (Inter-Agency, 2007) provides guidance on implementing the so-called 'Pinheiro Principles': under these principles, all displaced persons have the right to have land and property restored to them following a disaster, or to be compensated where this is factually impossible. Restitution is the preferred remedy for displacement, and rights to compensation are not necessarily considered to have the same value as a durable solution. However, the right to restitution is not prejudiced *per se* by the return or non-return of the refugees or displaced persons. The Handbook takes the view that efforts to secure return-based solutions should be exhaustively explored, unless the displaced persons voluntarily choose to accept a compensation-based solution. Where compensation-based solutions are chosen, care needs to be taken that the arrangements do not disproportionately affect the poor in a negative way and that there are equal rights for men and women. Return to land should be voluntary, in safety and dignity, protected by legal security of tenure and with equal access to inheritance (Inter-Agency, 2007).

The location of resettlement sites is important, and should respect the human rights of survivors. In 2004, the Sphere Project developed the *Humanitarian Charter and Minimum Standards in Disaster Response*, which recommends minimum standards for shelter and settlement. For most disaster-affected people the opportunity to return to their original dwellings and livelihoods is a major goal. If a return to the site of their

original dwellings is not possible at that time, disaster-affected people often prefer to stay with other family members, in a host community, or with people who share historical or cultural ties (The Sphere Project, 2004).

Sites should be chosen so that risks from natural hazards are minimized and the area is not prone to disease. They should also be provided with all essential infrastructure (The Sphere Project, 2004). It is important to decide on the location of resettlement camps in consultation both with the displaced community and the host community, to reduce the likelihood of conflict and to ensure that displaced households can access necessary markets and services. This will allow for the continuation of their livelihoods. Compulsory acquisition of land for resettlement needs to be considered carefully and based on principles of good governance.

Well-managed resettlement with secure land tenure rights can facilitate recovery and a return to previous livelihoods. Recognition of property rights for people who have been resettled can help to reduce land disputes (Barnes and Riverstone 2009; Cosgrave 2008). Documentation and recognition of the rights to land allocated during the resettlement, along with a consultative process for deciding on claims to land after the disaster, allow for people to protect their previous land and livelihoods against claims by others. It may also be necessary to protect property rights at the land of origin so that displaced people do not feel obliged to return to their land, in order to protect it from others when it may not be safe to do so.

PROCESSING LAND CLAIMS DURING RECOVERY AND RECONSTRUCTION

As order begins to be restored, attention turns from immediate relief to preparing for recovery. Consideration of longer-term issues identified in the rapid assessment can lay the foundations for a sustainable recovery and rehabilitation, and building back better (ISDR, 2005). This is consistent with trends away from a purely emergency response to a more comprehensive DRM approach that leads to an improvement on the pre-disaster conditions.

Land ownership disputes and claims over land must be resolved – that is, legally adjudicated – prior to reconstruction. If this does not occur, the

Land ownership disputes and claims over land must be resolved prior to reconstruction. If this does not occur, the potential for land disputes is high and the wealthy or influential will have the opportunity to take land from the more vulnerable

potential for land disputes is high and the wealthy or influential will have the opportunity to take land from the more vulnerable. In one example, displaced people were provided with temporary shelter after the tsunami in Sri Lanka and then evicted as soon as the shelters were completed (Lee, 2005). In another example, one group without formal title was dispossessed of its land in Thailand following the tsunami (CNRACNR and CNACCS, 2005).

There are two aspects to adjudication – determining the validity of claims to land, and establishing the location of land boundaries. A compromise needs to be made between a rapid determination of rights to land to allow for fast reconstruction, and the need for transparent decisions on land rights that include appropriate community participation. Adjudication involves verification of ownership via public records, should be consistent with the 'Pinheiro Principles', and should comply with international human rights standards. It is very important to respect traditional cultural norms concerning land, and existing institutions that are used for making decisions about land disputes. The aim of restitution should be to provide tenure security that is at least at the level of the situation before the disaster.

However, in many countries land records have not been kept up to date and provide little assistance in the adjudication process. Typically there are a large numbers of parcels affected by a natural disaster and the process of adjudication may take a long time. Limited capacity in the public sector may delay the recovery and reconstruction efforts (Williams 2006). Most developing countries at greatest risk of natural disasters have limited institutional capacity to process the large number of claims for restitution in a timely manner. Decisions about land tenure rights after a disaster are also complicated by any damage to official land records and land offices, the deaths of land office staff, the loss of evidence of property by landowners, and the destruction of boundary markers and surveying infrastructure (Fitzpatrick 2006; Cosgrave 2008; Deutsch 2008; Barnes and Riverstone 2009). In addition, when family members also die in the disaster, it may be difficult for the surviving members to prove their inheritance (Fitzpatrick 2006; Deutsch 2008). Where the remains of the body are not found this may be even more difficult.

Where public records are out of date, lost or damaged, other forms of evidence and verification from village elders and neighbours are needed. In other words, prior rights now need to be defended against new claims. Land tenure arrangements frequently involve several claims to land including those of registered owners, squatters, lessees, sharecroppers, or farm labourers. Where customary land rights exist these are often widely accepted within the group and may include rights to a building, or to a fixed parcel of arable land, or to an area of shared arable land, or rights to harvest from trees in certain seasons. Recognition of customary rights is very complex as there are likely to be many layers of rights to land and natural resources, and some of these may overlap geographically or temporally. When decisions are made on rights to land without a full understanding of all the claims to land, rights are concentrated in the name of the primary landholder and secondary rights may be extinguished.

Claims to different tenure types require different forms of evidence to validate the claim. Palmer *et al* (2009) list three different aspects of the legitimacy of a claim of land rights. These include:

1. Rights that are legally legitimate, such as individual, or group tenure, or use rights recognized by law.
2. Claims to land lacking legal or social legitimacy. These may include commercial developers who expect to profit by developing in protected areas, or people with influence who illegally appropriate public land for their own purposes. In the absence of evidence, such claims cannot be supported during adjudication.
3. Rights that are considered legitimate through broad social acceptance but without legal recognition. These may include customary rights on state land, informal settlements, or squatters who have not gained possessory rights. This category of claims is the most difficult to adjudicate, and may be within a continuum that ranges from those with long-established rights and strong evidence of a claim, to rights that were more recently established with limited evidence. Adjudication requires some judgement; where the local community has well-established attitudes and social norms regarding land, the community's institutions should be involved in decisions on land rights. In some cases it may not be possible to arrange restitution for these groups, and compensation

may not be possible. However, the overarching principle is their right to restitution, and alternative arrangements should be found that are at least equivalent and provide access to previous livelihoods.

CONSIDERING LAND ISSUES IN DISASTER MITIGATION AND PREPAREDNESS

Literature on previous disasters makes reference to threats to legal and human rights that include discrimination and inadequate compensation, which are more likely to affect the most vulnerable. In many developing countries at risk of recurrent natural disasters, there is a strong tradition of land ownership being recorded in the name of the husband (Cosgrave, 2008). After a disaster, surviving family members may have difficulty claiming their inheritance. For example in Tonga in 2002, women whose houses were undamaged after a natural disaster were required to give up their houses to a male relative whose house was damaged (World Bank, 2006).

The immediate post-disaster context provides an opportunity for developing risk-reduction measures – such as mitigation and preparedness – as part of a DRM process. However, Cosgrave (2008) argues that a single disaster response cannot undo decades of underdevelopment. Risk-reduction measures need to draw on lessons from the disaster when developing mitigation projects. For example, problems with land tenure or access to land highlighted in post-disaster assessments may lead to conflict over land or land grabbing if they are not resolved. The discussion in this section identifies two areas where these lessons may be implemented as part of a preparedness and mitigation process – improvement of land policies and physical planning. Decisions on where people live (land use planning), and recognition of their property rights in the land policy and legal frameworks, will help mitigate against further loss of land and livelihoods in future natural disasters.

Improving land policies

Following a natural disaster it is difficult to improve tenure security quickly in a manner that is sustainable. There may be some mechanisms that are

easy to implement in the short-term that result in some improvements for groups who have socially legitimate but not legally-recognized tenure. These include issuing decrees recognising the rights of groups, entering into legal leasehold arrangements for people where these do not exist, or official recognition of customary lands and landholders. However, more significant improvements to land tenure security are difficult to achieve in a disaster recovery and reconstruction context.

Each land parcel and land tenure type may require different approaches to improve tenure security. Barnes and Riverstone (2009) recommended that improvements to tenure security should be incremental, allowing for an incremental improvement to tenure security along a 'ladder of rights', as described in the publication *Secure Land Rights for All* (GLTN, 2008). In some circumstances a long-term commitment to formal land titling programmes may be warranted. If the decision is made to issue land titles it needs to be systematic and within the context of a comprehensive land policy and legal framework.

The policy environment is an important factor in the effectiveness of a recovery. In order to develop effective disaster recovery and reconstruction policies it is important for emergency agencies and NGOs to engage fully with the government and local communities, to test their approaches to emergency response. A land policy framework developed in a consultative manner forms the basis for the legal framework that guides decisions on resettlement, restitution and conflict over land. This is likely to be more important in mitigating against future disasters and supporting a long-term and sustainable improvement to tenure security, than ad hoc interventions on land tenure security. An important factor is state recognition of land rights and a sound land policy framework supported by a comprehensive legal framework, developed in consultation with the community. The 'Pinheiro Principles' recommend that states establish procedures and guidelines to assess restitution claims that include capacity building measures such as training, and the development of mechanisms for enforcement, dispute resolution and appeals. Land policy should include provisions for legal and social recognition of land rights and allow for improved tenure security for communal lands. In rural areas, land policies should provide sufficient flexibility to accommodate traditional migration of farmers between seasons.

It is important for emergency agencies and NGOs to engage fully with the government and local communities, to test their approaches to emergency response

Implementation of the policy framework is dependant on sufficient capacity in public agencies. The second and third goals of the *Hyogo Framework for Action* (ISDR, 2005) call for the development and strengthening of institutions, mechanisms and capacities, and the systematic incorporation of risk reduction approaches into emergency, response and recovery programmes. Decisions made in consultation with government, local institutions, individuals and networks will be more effective and result in greater community satisfaction (Leitmann, 2007). Local people know the major land issues in their area and what their priorities are. This is particularly important for decisions about land tenure, as there are often very complex pre-disaster mitigation measures and land use arrangements that need to be considered.

In many cases, local land institutions will lack the capacity to process decisions about land tenure quickly, for the potentially thousands of people displaced by a natural disaster. In most developing countries the land administration system is in poor condition and only covers urban areas. There may be no land records concerning rural lands, and even if land records do exist, many people may live far away from land offices, making recording of land transactions impractical. Improving the capacity of land administration agencies will be important – especially in areas at risk of natural disasters. The 'Pinheiro Principles' recommend that states should designate specific public agencies with the responsibility for enforcing property restitution decisions, and that local and national authorities are legally obliged to accept the decisions of this agency.

Physical planning

Cosgrave (2008) states that it has been common for governments to implement planning restrictions on land use and rebuilding after natural disasters, in order to reduce vulnerability. After the 2004 tsunami, zones prohibiting housing construction along the coast were introduced in Indonesia, Sri Lanka and India. The Sri Lankan government, for example, wanted to establish a restricted area between 100 and 300 metres from the coastline that would have required the relocation of over 118 000 houses and risked increasing tensions between resettled and existing communities (Brown and Crawford, 2006). These restrictions were soon

relaxed in Indonesia; however, in Sri Lanka the authorities were slower to relax restrictions. In another example, planning restrictions introduced in India almost two years after the Gujarat earthquake provoked large demonstrations by property owners (Nakagawa and Shaw, 2004).

Quite often the affected population are expected to bear the economic cost of such regulations without compensation, and families may not wish to move given that they have made considerable investments in housing or agriculture (Williams 2006, Cosgrave 2008). The World Bank (2005) argues that while these restrictions may seem sensible initially, the costs need to be balanced against the risk that others may occupy the unsafe land once it is evacuated. Wisner and Luce (1993) argue that quite often it is not the existence of households in vulnerable locations that is the root cause of vulnerability, but rather that individual persons and households within those regions lack the resources or influence to mobilize defences or recover their livelihoods and rebuild. They argue for a focus on the vulnerability of the people and not the systems. Settlement patterns are not arbitrary; the location of dwellings and agricultural plots are dictated by many social and economic factors (Cosgrave, 2008). Also, displaced people commonly return to forbidden zones (Pantellic and Srdanovic, 1992); evidence of this has occurred in 7 out of 30 World Bank funded projects in the last 30 years (World Bank, 2006).

The Hyogo Framework for Action lists land use planning as one of the key priorities. It also suggests that disaster risk assessments should be incorporated into urban planning and management in disaster-prone human settlements. However, the above examples are based on decisions made during the recovery or reconstruction phases of a disaster, where quick decisions are made in difficult circumstances. The desire to reduce the vulnerability of people living in hazard-prone locations is understandable, but the decision-making process needs to acknowledge the complexity of the issues and the attachment people have to their land. Decisions on resettlement are more appropriately undertaken later during a mitigation or preparedness phase, in which a consultative and transparent process is undertaken.

CONCLUSION

Poor tenure security and a lack of recognition of access rights reduce the resilience of people to natural disasters; the poor are the most vulnerable in this situation. The most significant consequences are loss of land, shelter, and delays in resuming livelihoods. Another consequence is the need for long-term resettlement, possibly far-removed from the pre-disaster land. Resettlement of people is a difficult process and must include acceptable livelihood alternatives if it is to function. This is especially true for people with insecure tenure such as squatters, sharecroppers and farm labourers.

There is little scope for addressing land issues during the emergency phase. However, land tenure is a major factor in livelihoods, food security and shelter, and should be included in any rapid assessments undertaken during the response period. This will provide DRM and land agencies with important overview information for disaster planning and management, and allow for greater protection of access to land for the more vulnerable. During the recovery period more detailed 'needs assessments' of livelihoods can assess in greater detail the impact of the disaster on tenure security and access to land. This information also provides a basis upon which land agencies and the community can develop improved land polices and land laws as part of a mitigation and preparedness process. In all cases, consulting the local community and developing their capacity builds resilience and leads to outcomes that are more likely to be accepted.

Land tenure is a major factor in livelihoods, food security and shelter, and should be included in any rapid assessments undertaken during the response period

Improvements to tenure security require a long-term commitment and should be based on the development of comprehensive land policies and legal frameworks. Understanding the land tenure issues that may arise following a natural disaster provides an opportunity to minimize the impact during the emergency response, recovery and reconstruction stages. Where recognition of potential and existing land issues are incorporated into national land policies as part of the DRM process, the most vulnerable members of the community are more likely to be protected from loss of land and livelihoods.

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LAND TENURE IN JORDAN

RÉGIMES FONCIERS EN JORDANIE

TENENCIA DE LA TIERRA EN JORDANIA

ABSTRACT

LAND ADMINISTRATION

CADASTRAL SYSTEMS

LAND LAWS

Modern Jordan was born after the First World War when the Ottoman Turks were defeated and their empire dismantled. Transjordan became an emirate under the British mandate. The Department of Lands and Survey (DLS) was established among other public bodies, and a number of laws organizing land tenure were issued. These laws can generally trace their roots to the Ottoman Land Code, which was promulgated in 1857.

Today, the Jordanian Department of Lands and Survey is responsible both for land surveys and property registration. This paper will examine Jordanian land tenure systems and show that the DLS has achieved substantial progress in modernizing land tenure to the

RÉSUMÉ

ADMINISTRATION FONCIÈRE

SYSTÈMES CADASTRAUX

LOIS FONCIÈRES

La Jordanie moderne est née après la Première Guerre mondiale, au moment de la défaite des Ottomans et du démantèlement de leur empire. Ce territoire, alors dénommé Transjordanie, est devenu un émirat sous mandat britannique. Le Departement des terres et de l'enregistrement foncier (DLS) et d'autres organes publics ont été créés, et un certain nombre de lois relatives aux régimes fonciers ont été adoptées. Elles sont, pour la plupart, inspirées du Code foncier ottoman, promulgué en 1857.

Aujourd'hui, le DLS est chargé à la fois des études et de l'enregistrement fonciers. Le présent document étudiera les systèmes fonciers en Jordanie et montrera que le DLS

SUMARIO

ADMINISTRACIÓN DE LA TIERRA

SISTEMAS CATASTRALES

NORMATIVAS SOBRE LA TIERRA

La Jordania moderna nació tras la Primera Guerra Mundial cuando los otomanos de Turquía fueron derrotados y su imperio desmantelado. Bajo el mandato británico Transjordania se convirtió en un emirato. Entre otros órganos públicos, se estableció el Departamento de Tierras y del Catastro, y se promulgaron diversas leyes con objeto de organizar la tenencia de la tierra. Estas leyes tenían su origen en general en el Código Agrario otomano, promulgado en 1857.

Hoy, el Departamento de Tierras y del Catastro de Jordania es responsable tanto de los levantamientos topográficos como del registro de la propiedad. En el


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benefit of the country's people, e.g. the digitizing of all cadastral plans and registers. Nevertheless, radical reform to existing land laws and property registration procedures is still pending.

a réalisé des progrès substantiels quant à la modernisation des régimes fonciers au bénéfice de la population, notamment en numérisant tous les plans et registres cadastraux. Néanmoins, une réforme radicale des lois et procédures d'enregistrement foncières est toujours en attente.

presente documento se explorarán los sistemas de la tierra en Jordania y se mostrará que el Departamento ha realizado progresos considerables por lo que hace a la modernización de la tenencia de la tierra en beneficio de la población del país, por ejemplo mediante la informatización de todos los planes y registros catastrales. Sin embargo, una reforma radical de las leyes y los procedimientos de registro de la propiedad aún está pendiente.

INTRODUCTION

The land that became the modern country of Jordan is part of the richly-historical Fertile Crescent region. At the crossroads of the Middle East, Jordan and Palestine have served as a strategic nexus between Asia, Africa and Europe for thousands of years. Since the dawn of civilization, Jordan's geographical location has given it an important role as a conduit for trade and communications. The country continues to play this role today.

Jordan's geographical location has given it an important role as a conduit for trade and communications

Because of its location at the crossroads of Africa, Asia and Europe, it became a geographic prize and changed hands many times throughout antiquity. In Biblical times it was known as Gilead, Moab and Edom. Its known history began around 2000 BC, when Semitic Amorites settled around the Jordan River in the area called Canaan. Subsequent invaders and settlers included Hittites, Egyptians, Assyrians, Babylonians, Persians, Nabataeans (4th century BC to 1st century AD), Greek Seleucids, Romans, Byzantines and Arab Ghassanides (4th to 7th centuries AD), Arab Muslims, European Crusaders (12th century AD), Mamelukes of Egypt (1250–1516), Ottoman Turks (1516–1918), and, finally, the British.

At the end of the First World War the territory now comprising Israel, Jordan, the West Bank, Gaza and Jerusalem, was awarded to the United Kingdom by the League of Nations as the mandate for Palestine and Transjordan. In 1922 the British divided the mandate by establishing the semiautonomous Emirate of Transjordan, ruled by the Hashemite Prince Abdullah, while continuing the administration of Palestine under a British High Commissioner. On 25 May 1946 Jordan became fully independent from Great Britain, and has remained ever since the independent Hashemite Kingdom of Jordan.

Jordan's total land area is 89 329 km^2, 80 percent of which is desert, with a population of just over 6 million inhabitants. Jordan's capital, Amman, has a population of about 2 million people. The country is divided into 12 administrative districts called *muhafadhat* (governorates).

Map 1
Jordan's location

Source: adapted from Graphicmaps.com

HISTORICAL BACKGROUND

In 1516 the Ottomans occupied Bilad ash Sham – Greater Syria, which comprises present day Syria, Lebanon, Jordan and Palestine – and Egypt, after conquering the Mamelukes who ruled over the region from their base in Cairo.

The Ottoman Empire attained a high degree of military power and expanded into eastern Europe, simultaneously occupying almost the entire Arab world. But the seeds of its collapse were sown in the late 17th and early 18th centuries. The Empire was essentially military, its main interests being to levy taxes and to recruit men in the army. An indicator of the mentality of its rulers was the interdiction of the printing press and printed

books for about four centuries throughout the Empire. Consequently, its people lagged behind those of European countries in terms of access to knowledge, which in turn leads to scientific and political inquisitiveness, and ultimately is essential to the establishment of modern economic and political societies. The main reason for the Empire's survival after the 18th century was that European powers were not entirely united in attempting to defeat it.

Even when the Empire began to use modern technologies, such as for the construction of the Hejaz railway, the project was a disaster for Greater Syria: large tracts of forests were cut down for wood fuel used in the railway's trains. New taxes were imposed to finance the construction of the railway; one of these newly imposed taxes was a tax on houses (musaqqafat), which is still levied in Jordan today (Peake, 1934).

LEGAL BASES OF LAND TENURE

The author's view is that the region which is now modern Jordan became deserted for some time during the Ottoman rule, and this is a key reason why much of Jordan's land area became Miri land. There is a paragraph in the Ottoman Code and its amendments[1] which supports this conclusion. In the first page of this law – which was promulgated in 7 Ramadan 1275 AH (1857 AD) – after Article 2, one reads:

> *Outline of the Imperial Decree issued on 18 Rajab 1278: "Since the Wilayat ash Sham [Greater Syria province] lands were originally Kharajia lands whose majority of owners perished over the years, their land became, by the force of law, Miri [or Amiria: state] lands ... (NB. Kharajia is the adjective of kharaj, which describes that type of land on which the kharaj is levied.)*

1 See the DLS web site (www.dls.gov.jo) for an Arabic copy of this law, included in the Collection of Laws, Volume 2.

Kharaj means the produce of the land, and also the tax (*jizya*) levied on the properties of non-muslim people whose country was conquered peacefully. The Kharaj tax was between 10 and 50 percent of the produce of the land, and was called *kharaj muqasama* (sharing), or *kharaj muwaddaf*, meaning that a fixed sum of money was assigned to be paid (Ongley, 1892).

The quotation above is therefore clear evidence that the lands of Greater Syria were originally owned by ordinary people, and that there were few Miri lands. Later on, almost all lands became Miri.

It is worth exploring some of the basic definitions in the Ottoman Land Code, as follows:

Article 1 – Land in Turkey is divided into five classes:
1. Aradi Mamluka: Lands held in fee simple; freehold lands.
2. Aradi Miri: Crown lands, belonging to the state exchequer.
3. Aradi Mawqufa: Lands possessed in mortmain or endowment.
4. Aradi Matruka: Lands abandoned without cultivation or ostensible owner.
5. Aradi Mawat: Dead lands, uncultivated and unappropriated.

Article 2 - Aradi Mamluka are themselves sub-divided into four types:
1. Building sites within the town or village.
2. Land separated from Aradi Miri, which has been given into the possession of a person to be held freehold.
3. Aradi Ushria: Places given into the possession and distributed among the (muslim) conquerors at the time of the conquest.
4. Aradi Kharajia: Places left in the hands of the original non-muslim owners at the same time.

When Aradi Ushria and Aradi Kharajia belong to the Bayt al Mal (State Exchequer) upon the death of the owner without heirs, they acquire the effect of Aradi Miri.

The promulgation of the Ottoman Land Code was a remarkable and vital development in the empire's administration. But its application suffered from corruption, bureaucracy and centralization. For example, the title deed (Qushan) was to be issued exclusively from the capital, Istanbul. If the would-be

proprietor was in a hurry, he could make a trip to Istanbul himself to acquire the deed. One can imagine the immense centralized workload and the time necessary to issue title deeds for land parcels of an empire of that immensity.

This 'spirit' of the Ottoman land laws has been inherited by modern Jordanian land laws. For example, Jordan issued the Civil Law No. 43/1976, which in its content and approach clearly superseded the Ottoman Mejelle of 1869. Similarly, these historical ties can be seen in the 'Law of Sale and Leasing of Immovable Property to Non-Jordanians and to Legal Persons No. 47 for the Year 2006', or the laws concerning Treasury Lands. These laws could have stated clearly who is entitled to receive a particular property, but instead, approvals must be obtained from the Prime Minister, or the Minister of Finance, or the Central Committee of Treasury Lands, or the DLS Director General. In some cases the approval of all these parties is required. This creates a bureaucratic nightmare in which each signature is hard to come by (given how busy these top officials are), but nevertheless is something of a formality at the moment of putting pen to paper: considering the huge number of such transactions, it is questionable whether the official signatory really has time to check properly the document they are putting their name to.

INSTITUTIONAL ARRANGEMENTS

A short history of land surveying in Jordan

The establishment of the first institution dealing with land registration can be traced back to 1857 when the Ottoman government created Tapu, or land registry offices[2]. The Ottoman government's main objective was to make a kind of land inventory for taxation purposes. To this end it created the 'Tapu books', which documented information about the land, such as its value or rent (yield), its owner or beneficiary (user), neighbouring owners, and general descriptions of the roads and geographical features it contained. There were no real mapping or surveying processes at that stage. Jordan

The establishment of the first institution dealing with land registration can be traced back to 1857 when the Ottoman government created Tapu, or land registry offices

2 *Tapu* means the immediate payment given in exchange for the right to possess land.

legally remained part of the Ottoman Empire until 6 August 1924, the date of ratification of the Treaty of Lausanne, Article 139 of which entitled and enabled Transjordan to acquire the registers and documents related to public and private property. The government soon began reorganizing lands and properties after this date.

In 1927 the Law of Land Boundary Establishment and Valuation came into force. This law promulgated the defining of village boundaries, state forests and land properties. The name 'Department of Lands and Survey' appeared for the first time on 30 September 1929, after unification of the Departments of Surveying, Treasury Land and Land Registration. An English official was assigned by the Mandatory Government to preside over it. DLS began producing cadastral maps, initially at 1:20 000 and 1:10 000 scales, then later at other scales such as 1:5 000, 1:2 500, 1:1 250, 1:1 000, and even 1:500 in some densely built-up areas. Since then, cadastral surveying and registration have been combined under one authority, and both components form the cadastral system in Jordan. Today, the usual scale of cadastral plans is 1:2 500 inside villages, and 1:5 000 or 1:10 000 in agricultural lands.

After the unification of Transjordan and the West Bank in 1950, the Lands and Survey Departments on both banks of the River Jordan were unified. The headquarters at Amman became responsible for all land registration directorates throughout the country. Most of the laws concerning land and water rights, settlement, registration and so forth came into force in 1952 and 1953.

In the field of surveying and maps, DLS was responsible for topographic and photogrammetric surveys until 1968, at which point the Military Survey took over this role. In 1975, the Royal Jordanian Geographic Centre (RJGC) then took on responsibility for this. In the 1930s and 1940s, the English army had established several triangulation networks, which served as a basis for both topographic and cadastral surveying. In 1988 the RJGC completed the national geodetic network (1st, 2nd and 3rd order), in cooperation with the French Institut Geographique National (IGN). A new projection system has been adopted: The Jordan Transverse Mercator (JTM) instead of the Palestine Grid System. Similarly, cadastral maps have also been transformed into JTM instead of the old Cassini system.

Besides cadastral plans, the RJGC owns a complete map cover of the country. The base map is at scale 1:50 000 (topographic maps). Additionally, 1:25 000 scale maps were produced for the western inhabited region. However, the flow of information and the exchange of documents between public bodies in Jordan is not always easy. Sometimes it is more convenient and cheaper to ask for and obtain documents from foreign sources. This was especially true in the 1990s, in areas such as geodetic networks, aerial photos, satellite images and topographic maps.

The methods used for mapping have been as follow:

- Baseline (method) mapping until 1942
- The plan table method until the mid 1970s
- Mapping by tacheometry until the late 1980s
- Mapping using modern instruments (e.g. EDM, total station, GPS) since the late 1980s
- The digitizing of all old maps from 1997 onwards.

By the end of 1999, 25 percent of Jordan's territory – mainly cultivated and populated areas – was cadastred, and by mid 2002 the desert and other underdeveloped areas were also mapped for cadastral purposes. These were divided into squares of about 10 × 10 km, and any development within these areas was signalled. In such a case the land would be registered in the name of the developer. However, these lands are now undergoing the process of registration, mostly in the name of the Treasury. Today, more than 95 percent of Jordan's territory is mapped and registered.

The Department of Lands and Survey (DLS)

The DLS was established in 1927. Its responsibilities and dependence were modified several times, and it now handles three main tasks: cadastral surveying, registration of land property, and management of treasury lands.

All land transactions must, by law, be processed and registered by the DLS. The DLS has computerized all its procedures and documents, including the land registers and the cadastral plans. A cadastral database has been established, and a comprehensive web site in Arabic has been available since 2002 (www.dls.gov.jo). Land plans can be obtained online, free of charge.

All land transactions must, by law, be processed and registered by the DLS

Besides the DLS headquarters, there are 34 Land Registration Directorates (LRDs) and 2 land registration offices distributed in all governorates and sub-governorates of Jordan. They are all connected with the headquarters and to each other via the Internet.

DLS carries out several tasks concerning treasury lands, including leasing, accreditation and dedication (for public bodies), as well as expropriation and the control of subdivision and boundary fixing transactions carried out by licensed surveyors from the private sector. DLS is responsible for licensing these surveyors, as well as land assessors and land brokers. It also collects sales taxes and registration fees for the government. The revenues of DLS in 2008 amounted to 379 million JD (1 JD = 1.4 USD). In 2009, revenues were about 30 percent less than the previous year, due to the local recession which followed the global economic downturn.

DLS adopts the parcel-based system of registration. Every land parcel has a unique code, consisting of the name and number of the village, the hawd (block of parcels), the quarter (inside cities and villages), and the parcel

number. Both the land register and the cadastral plans have been digitized; title deeds and plans are issued instantly by the DLS computer.

But the cadastral system still suffers from several drawbacks and handicaps. For example, the same proprietor might have different names in the land register; conversely, some different proprietors might have the same name (e.g. a 4-syllable name, which consists of the person's prename, his father's, his grandfather's, and the family name). This problem can be solved by adding the national number to the name of each proprietor, and the DLS has already begun this practice. But the procedure has its complications and costs users and the DLS considerable time and effort; neither is it 100 percent reliable.

Another issue is that the cadastral plans do not show names, contour lines, or buildings. They consist merely of boundaries of parcels. Even distances or the lengths of parcel sides are not shown on the plans. There are unacceptable discrepancies between the cadastral plans and the reality on the ground, a fact which leads to serious problems. The main issue is that the plan is considered to be the correct reference: this sometimes means that, in practice, actual land boundaries must be modified to match those on the plan. This type of operation is called 'boundaries re-establishment'.

An effective solution to this is to produce and adopt orthophoto maps that show the actual land parcels' boundaries, in addition to buildings and the type of land use. However, such a mission must by law be carried out by RJGC, who have asked for exorbitantly high prices for doing this kind of work.

THE CURRENT LAND ADMINISTRATION SYSTEM

DLS is responsible for property registration. No land transaction is considered legal if it is carried out without DLS approval. However, there are certain regions that enjoy a special status. For example, the Jordan Valley Authority (JVA) has for many years been managing the different aspects of economic and social activities in the Jordan Valley (Al Ghawr), including those concerning land. In the early 1960s, when the government irrigated Al Ghawr, the JVA bought plots larger than 200 dunums, equivalent to 20 hectares (1 dunum = 1000 m^2). It subdivided them and resold them to

farmer tenants in 30–50 dunum plots. But no title deeds were issued for those tenants until recently, when the DLS carried out a property survey and registration in this region for the benefit of the JVA.

A special status also exists in the Aqaba Region, where the Aqaba Special Economic Zone Authority (ASEZA) is responsible for almost every government-related issue. A somewhat similar situation also exists in the Petra region. But land transactions in these regions must still be registered via the DLS.

In the early 1930s, the DLS launched surveying works by defining and fixing villages' boundaries, then carrying out land and water settlement works, first in the agricultural lands and afterwards inside the villages. Registered agricultural parcels were usually large: hundreds of dunums. These properties are now becoming smaller and smaller, as they are subdivided between heirs. However, the law generally does not allow subdivision of these lands into parcels smaller than 10 dunums, and at most 4 dunums in some specific regions.

The law is meant to be aimed at preserving the agricultural lands and maintaining a reasonable minimum area for them. But actually this is not guaranteed, for a number of reasons. Many Jordanians do not work in agriculture any more, and if they do, it is a hired worker (usually Egyptian) who works the land. Deserted farms were built upon as urban areas expanded. Many parcels outside villages are now sold to rich families from Amman, who build rural or secondary houses which are rarely visited.

In the early days following the establishment of the Emirate of Transjordan, and the first land settlement works, the country's population was just a few hundred thousand. Only a small part of the land was exploited by the people, and hence registered in their names. Other lands were considered state or treasury land. But now with a population of about 6 million, the Jordanian people need more land. They try to obtain treasury land by lease or accreditation.

However, this is not always easy. Treasury land can be leased to the person who proves that he/she has exploited the land (although, paradoxically, the exploitation of treasury land is prohibited by law). After a 5-year lease period, the land can be accredited to the lessee in return for a moderate price, but only after lengthy and complicated procedures. Additionally, the accredited land cannot be sold or disposed of any earlier than 10 years after the date of accreditation.

In general, therefore, treasury lands remain under-exploited, especially those lands to the east of the Hijaz railway, which constitute the majority of treasury lands. These lands could be used to establish new agglomerations and housing projects. This is partly being realized through allocating such lands to government officials for housing purposes. In 2009, the employees of the Prime Ministry and the Ministry of Finance and its departments were each allocated 500 m2 parcels in Al Ghabawi region near Az Zarqa', a desert area. Five years ago, judges were also allocated land parcels for housing in the northeast of Amman. Meanwhile the lands of the western region need to be kept for agricultural use; they are the most suitable for this purpose, thanks to their fertile soil and their comparatively abundant rainfall.

Land management in Jordan has been established on a solid basis, thanks to two British general directors (1929–1954) of the DLS. Land laws have been continually developed to suit the changing situation, and in recent times computerization has also been largely applied. In reality, a fairly effective and appropriate working method is the norm in the Jordan DLS, and this needs to be recognized. However, this paper naturally looks towards areas for improvement, and the author therefore needs to emphasize the weak or negative points that could be rectified.

Procedural complications have their roots in the Ottoman Land Code and in the mentality that produced it. Some of these negative points are:

- The major part of the country's land is state, or treasury land, which implies that it is being under-exploited. Consequently many Jordanians do not have access to land, either for housing or for farming.
- Many procedures are still long and complicated for no obvious reason. Every day, thousands of people visit DLS headquarters and the land registration directorates (LRDs). Compare this to the old practice in the UK, as described by J.J. Wontner in *Land Registry Practice* (1930). In the introduction to the book a phrase is written in bold letters: "The whole business of registration can be conducted by post and there is no need for any audience at the Land Registry" .One might think that the British general directors of the Jordanian DLS would have applied the same system in Jordan if the situation had permitted it. Eighty years

later, Jordan has come a long way and is now in a position to do what the British did then. However, no one has dared as yet to change radically or develop the laws or procedures further.

- All employees of the DLS are busy, not least the Director General, who, every week by law, has to sign hundreds of papers and transactions concerning Treasury lands, as well as the transactions of non-Jordanians and legal persons buying land. It is questionable whether he can really study the papers he is signing. It is also questionable whether he has the time to really direct and lead the Department, even working long hours each day. The same applies to the Minister of Finance, who must countersign many of these transactions.
- One of the old practices (when people did not possess identity cards) still used in the DLS is requiring the presence and signature of two witnesses for a land sale transaction. This adds to the complexity of land transactions, given the difficulty of organizing two witnesses who really know the person making the transaction.
- Another practice which causes headaches and consumes time is adding the national number to the land register, and consequently to the title deed. Similarly, the correction of family names by settlement judges causes problems when, for example, the definite article 'al' is added to the family name (even though everybody in Jordan knows that almost all family names can be written alternatively with or without 'al'). As a result, many citizens may have property documents showing both forms of the family name, requiring long correction procedures in order to rationalize them to just one name.
- Land property information is considered confidential. Only the concerned person can have access to information about his own property (or else a court order must be presented). This practice is inconvenient for many reasons and has to change. For example, if someone wants to buy land, he will not be able to know the owner's name in order to contact him, except by unorthodox means (Still many land transactions are carried out directly between seller and buyer). Accountability and the fight against corruption cannot be effective if this law of secrecy covers up the land acquisitions of the corrupt.

- Corruption exists in the DLS and in the land market in general. For example, concessions for mining and oil shale have recently been given to foreign companies. Other concessions have been made in the areas of cement production, marble, petrol and natural gas. Procedures for obtaining permits and authorizations are usually (and rightly) long and time consuming, given the extent to which industrial activity can alter land forever. However, large companies' economic power and lobbying skills are great, consequently opening the door to corruption. However, transparency and changing some laws would help:
  - When the buying or acquiring of land is decided uniquely by the law, and not by requiring the signature of an official or a committee, corruption can be reduced.
  - When land ownership information becomes public, corruption and forgery will also be reduced.
  - When land values (which serve as a basis for taxation) are defined for a fixed period of time and publicized, corruption in this domain will also end.
- Registering of rights in land and water was first implemented in the west regions (the inhabited and agricultural lands) in application of the 'Land and Water Settlement Law'. Recently, settlement works were expanded to the eastern region, where lands were claimed mainly by Bedouin tribes. In 2006, a decree issued by the Prime Minister stopped all the land settlement works in this region. However, many Bedouins still sell lands which they claim are theirs, but which have not yet been registered in their names. Such sales transactions are not registered in the DLS, because the vendor does not formally own the land. In this case the sale deed is called 'hijja'. The person who buys such land is tempted by the cheap price. If the land bought by hijja is in populated areas, such as those between Amman and Az Zarqa', the buyers will usually go ahead and build their house on the land. However, they will face problems when trying to obtain municipal services such as water and electricity, as they do not have a valid title deed issued by the DLS. The DLS has tried several times – the last attempt being in 1998 – to solve this problem by surveying these lands and registering the lands in the names of those

occupying them, after they pay a nominal sum to the government. But many of the beneficiaries did not pay, and the issue remained pending until 2008 when His Majesty King Abdullah the Second offered them the land for free (Actually for a nominal fee of 1 JD). This offer concerned mainly the Az Zarqa' region.

- Housing companies in Jordan enjoy great influence, which enables them to obtain preferential treatment for their housing projects. They are exempt from the country's 4 percent sales tax, and the beneficiaries of their housing projects are exempted from the 6 percent registration fee for the first 120 m² of a property. The buyer of an old and used apartment or an independent house (i.e. from a private owner and not a housing company) does not benefit from this tax exemption.
- A recent amendment by Prime Ministerial decree concerning this issue has given housing companies even greater advantages. The fee exemption now applies to more than one apartment bought by the same Jordanian family; before it was applicable only to a first apartment. Additionally, the maximum area subject to tax breaks has been increased to 300 m² from 150 m², in order to benefit from the fee exemption for the first 120 m². However, this amendment is valid only until the end of 2010. The buyer of an old and used apartment or an independent house (from a private owner and not a housing company) does not benefit from this tax exemption.

In the *Doing Business 2010* report issued by the World Bank, Jordan ranked 106th out of 183 countries in registering property (*vis-à-vis* a Jordanian company buying land from another Jordanian company in the vicinity of Amman). Jordan's rank seems to decrease each year. Five years ago, the country was ranked 75th. The ranks are calculated according to three criteria: the number of procedures involved in land title transactions (7 for registering property in Jordan), the time required (22 days), and the cost (7.5 percent of the land value, though this is expected to revert to its 'normal' value of 10 percent as of 1 January 2011). Although these figures have not changed during the last five years – except for the percentage

In the Doing Business 2010 report issued by the World Bank, Jordan ranked 106th out of 183 countries in registering property

cost, which was temporarily reduced – Jordan's rank has been dropping because other countries are improving their own performances.

The non-Jordanian investor who wants to buy land in Jordan must wait even longer (1–2 months) because he or she needs to obtain the approval of the Ministry of Interior. The cost, i.e. the sales tax plus the registration fees (4 percent + 6 percent = 10 percent) is one of the highest in the world. Jordan's rank in this criterion in 2009 was 140th of 180, another very poor showing.

One negative consequence of the high cost of property transfers is the widespread notion of the 'house for life'. Most Jordanian people cannot afford to buy and sell houses frequently, so families try to buy a large house, of 150 m² or more, even if they do not need this large area for the time being, e.g. when they are newly married. It is possible that they may never need such a large area, hence this phenomenon results in sometimes excessive and unnecessary spending on houses, causing economic difficulties for those concerned, and by implication the country as a whole.

DEMOGRAPHIES

A deeper understanding of land issues in Jordan is aided by a look at the area's demographic history.

A deeper understanding of land issues in Jordan is aided by a look at the area's demographic history

One significant indicator of the miserable situation of ordinary people during the Ottoman era was the depopulation of Jordan. The Swiss traveller Johan Ludwig Burckhardt mentioned in his 1812 book, Travels in Syria and the Holy Land, that the city of Al Karak only had three populated villages near it (compared with 400 during the Mamelukes era) and that there was not even one inhabited village between Al Karak and As Salt. (This distance of 150 km includes Amman and Madaba, which were ruins at the time). He estimated the settled population of East Jordan at 20 000, in addition to 7 000 Bedouins.

A question clearly arises: Where had the entire region's population gone and how had they disappeared? Was this due to earthquakes, or the plague and other epidemics? Was it political mismanagement and lack of security that enabled Bedouins to attack local villages, causing the collapse of agriculture and leading to farmers' immigration? Was it the compulsory

conscription needed to supply men for the continuous Ottoman wars? Was it the feudal system?

Peake (1934) suggests that most of the tribes in this area had come to Transjordan less than 300 years before. It seems that there was a period when the country was almost deserted. Later, the depopulation of Transjordan during the Ottoman regime helped to facilitate the absorption of several immigration waves, such as the Circassians and the Chechens, who were installed by the Ottomans at several ruined or deserted sites. At that time these included Amman, Suwaylih, As Zarqa, Na'ur, and Al Azraq. The first group of these immigrants arrived around 1880. The Duruz also came from Syria to Al Azraq. Internal emigration of tribes was also common for a variety of different reasons, such as Bedouin attacks or threats, drought, or quarrels between clans or families involving the act of killing. One significant example is that of some of the biggest Christian tribes in Al Karak, who emigrated to Madaba and Ma'in around 1880, which again were ruins at that time. In all these immigrations, the immigrants could possess land for building houses and for agriculture.

When settlement works began in the early 1930s, it was not unusual for individuals to refuse to register land in their name, because they could not pay the annual taxes levied on the land. This also happened, and more frequently so, during the Ottoman era, when registering of land properties began in the last decades of the 19th century under the Ottoman Land Code. People's reluctance to register their land property was partly explained by their fear that this would be followed by conscription in the army.

In the late 20th century came the two great waves of immigration by Palestinian refugees, in 1948 and 1967. Most of them went to Amman and Az Zarqa' and some lived in refugee camps. Part of the land where these camps were built belonged to private owners, and some of these owners have never been compensated for their use. Once settled, the Palestinian refugees could buy the lands they needed since many of them were better off than most East Jordanians, or became so: they either worked in the Gulf States, or with the UNRWA, and had better salaries compared with the public sector or the Army. They were also active in the private sector in Jordan, which helped them achieve higher incomes. Over the past 20

years, Jordan has also accommodated several hundred thousand Iraqis, who settled down 'temporarily' as refugees from the various wars that ravaged their country. These immigrants, like others before them, have added to the already substantial land pressures in this small country.

Female land ownership is another interesting demographic issue in Jordan. One source suggests that the number of female landowners represents just 4.9 percent of the total female population (Haddadin, 2009). However, religious laws and land laws theoretically guarantee women the right to inherit land either in equal shares as males, or at least in half the share of males, according to whether the land is miri or owned, respectively. In reality, many Jordanian women surrender their property to their brothers, with little or no compensation given. If a man has only daughters, it is even possible that he might disinherit his own daughters and pass his lands to his brothers or even cousins.

Bedouin range lands also contribute to demographic considerations in Jordan. Originally, Bedouins were not used to cultivating land, shunning farming and its associated way of life. They used to own herds of sheep, goats and camels, and moved them continuously looking for pasture and water. But Bedouins' lives have changed radically since the establishment of the state of Transjordan and the other countries of the region, after the dismantling of the Ottoman Empire. The newly established borders between these countries interrupted their traditional way of life and their free movement in the region, a practice they had enjoyed unhindered for thousands of years. Legally each tribe has its own domain of pasturing or control, albeit not formally registered in DLS. In recent years, many Bedouins have been tempted to sell their lands at high prices. Most Bedouins have settled down, leaving behind their traditional way of life. With the money that came from land sales they began building houses and buying modern goods such as cars. This practice has created difficulties for the Bedouin: apart from the 'one-off' economic value of their land, they have found it hard to find other sources of income to finance their new lifestyles. This has led them to sell more land, if it is available, or to face financial ruin.

One of the peculiar ways for appropriating land was that used by Sheikh Sattam Fandi Al Fayiz, at the end of the 19th century. He would take two

witnesses with him when visiting a location (usually the ruins of an ancient village), build a small cairn, and fire a bullet in the air to declare that he owned the place. In this way, he became the owner of 250 000 dunums (250 million square metres) around Madaba (Abu Jaber, 1985). The significance of such an anecdote arises from several points: It indicates the extreme authority that a tribe's chief has, and which he uses to acquire much more land than an ordinary tribesman could ever acquire. It is also an indicator of the epoque when the Bedouins began to show interest in possessing land for agricultural purposes. Finally, it underlines the fact that almost all old villages in Jordan were ruins at that time.

SOME ECONOMIC AND SOCIAL ASPECTS OF LAND TENURE

Land is the most valuable asset in Jordan. This is strikingly true even if there is no potential use for the land in the foreseeable future, and was especially the case during the last land market price bubble (2005–2008) when land prices increased dramatically, especially in the Amman region. Speculation raised land prices in some places by up to 10 times or more: often, the same parcel of land would be bought and sold several times in a short period. Land transactions and speculations became a subject of conversation among the country's professional elite. It was not unusual to see professionals such as doctors, engineers or lawyers neglect their practices to engage in land speculation activities. Many people made considerable profits, but there was no increase in national wealth or gross national product. What made things worse were the associated exaggerated spending trends that became the norm, as people felt richer in general and bought additional luxury goods.

The price bubble was caused by several factors: the huge increase in money transfers from Jordanians working in the Gulf state; the increasing numbers of Iraqi guests who settled temporarily in Jordan and put pressure on available land space; money laundering; non-Jordanians buying

Jordanian land in an increasingly internationalized market[3]. DLS assessors and management played an important role in this land market price bubble for different reasons. For example, DLS usually assesses sold properties at more than their actual market value, in order to realize more revenues for the Government in the form of land sales taxes and registration fees. Another possible reason for the DLS valuer to increase the assessed value is to entice the land buyer and/or seller to offer some kind of favour to the value assessor, in order to readjust the estimated taxable value. Lawyers and judges also played a role, because lawyers asked for, and judges usually decided in favour of, high values for expropriated lands. This practice helped inflate the land market bubble and added to the financial burden of the Government, due to the increasing cost of compensation for these expropriated lands. Some municipalities even went bankrupt because of the exaggerated compensations required for expropriated lands.

Several qualified industrial zones (QIZ), industrial estates, free zones and developmental zones have been established. The labour force in the QIZs is mostly foreign (e.g. Chinese, Bengali), helping to make industrial investment in the area cheap. Consequently, any announcement of the intended establishment of a developmental zone in a certain region (e.g. Al Mafraq, Irbid) caused land prices in that region to increase dramatically.

But like all speculative financial bubbles, this one was bound to burst: the collapse was triggered by the global financial crisis that began in 2008. The enormous hike in land prices created a critical and dangerous social situation. The average Jordanian's individual income had not increased; consequently many people were unable to buy or even rent a house, or to buy land and build their own house on it. A basic need for the Jordanian citizen was becoming out of reach. Consequently, His Majesty King Abdullah launched his initiative, 'A decent housing for a decent living', offering cheap houses for the needy.

When the bubble burst, many people in Jordan lost huge sums of money. Consequently they now offer their land properties for sale in order to

3 Only Arab nationals are authorized to buy miri or agricultural land, although this does not apply to citizens of the National Palestinian Authority, who are currently not allowed to buy land or houses.

recoup at least some of their losses. But buyers are few: as an indicator of this imbalance between supply and demand in the land market, one only needs to look at the weekly classified advertisement newspapers, in which 50–80 percent of pages are given over to land sales. Presently there are many vacant apartments in Amman. They were bought as speculative investments, or by Jordanians working in the Gulf states, who usually occupy their apartment for at most 1 or 2 weeks each year.

Perhaps the most serious point related to apartments in Amman concerns those bought or rented by several hundred thousand Iraqis. If the situation in Iraq stabilizes and Iraqis return to their country, the prices of apartments in Amman may collapse even further.

As expected, this land market bubble delivered a hard blow to agriculture, whose financial yields became negligible compared with the profits realized by speculations in the land market. However, there is a wider and more long-standing trend in agricultural decline in Jordan. Wheat production has dwindled to the point of satisfying only 10 percent of actual needs. According to the Al Arab Al Yawm newspaper (15 December 2007), in 1984 just 40 000 hectares were used to grow wheat, compared with more than 200 000 hectares in 1954. In 2006, 449 000 dunums (44 999 ha) were sown with wheat, but as a result of drought, only slightly more than half of this area was cultivated (Al Liwa' newspaper, 21 July 2009).

The productive use of arable land is decreasing by 1.2 percent annually according to the Minister of Agriculture. Many water springs have dried up or have become very weak; Al Azraq oasis soils and water have become salty. Jordan now suffers from a shortage of drinking water: imported drinking water bottles are sold in almost every supermarket in Jordan. A large project is under way to bring potable water from Ad Disi, near Jordan's southern borders with Saudi Arabia. This area contains a huge underground fossil water reserve. However, about 30 years ago, thousands of hectares of Ad Disi lands were leased to influential persons to grow crops such as wheat (although they actually planted orchards), and they got the land and the water practically free.

There are several nature reserves in Jordan, such as the Ash Shomary Wildlife Reserve (22 sq km, established in 1975), the Dana Biosphere Reserve (320 sq km) and the Al Mujib Nature Reserve (220 sq km). Wildlife is practically non-existent outside of these reserves. Grazing reserves have also been established, such as those of Al Lajjun and Al 'Ayishiyya. These reserves are an attempt to save a small part of Jordan's forests and pastures from the rapidly expanding trend of 'urban desertification'.

CONCLUSION

To halt the degradation of limited arable lands in Jordan – essential to the basic provision of food for future generations – substantial measures must be taken. No further construction projects (including individual houses) should be allowed in the entire western regions, including Amman, where traffic congestion has become unsupportable. A viable alternative would be to build new cities to the east; Treasury lands there should be made available for this purpose.

Land laws and DLS procedures should change, allowing for greater transparency, a faster service, lower taxes, and consequently less corruption. Although a new unified land project has recently been proposed by DLS, it is not much of an improvement on actual laws, except in unifying them into one law.

Advances can be made in the field of control and accountability. Institutions and individual employees (and this applies to DLS and its employees) should be held responsible for their mistakes and should compensate their clients fairly for any resulting damage.

Current information included in cadastral maps is insufficient. There is a large and justifiable demand for additional information. In Jordan, basic information such as buildings and street names are missing from current cadastral maps. In more developed systems a multi-purpose cadastre would be used, providing all the information needed by all parties that have an interest in land transactions and other land issues. Orthophoto maps might offer an appropriate solution.

Doubts about the fairness and justification of current taxes and fees for different land transactions are widespread. This could be interpreted in either of two ways: that these taxes and fees genuinely are not fair, or, that the authorities concerned have not made the effort to explain the reasons for imposing these taxes, and the methodology for calculating them. At the very least, there should be greater transparency in explaining the approach by which these taxes are defined.

The main obstacles slowing down the current process of land transactions in Jordan are: rigid and old laws and regulations; long and complicated procedures; lack of qualified personnel; favouritism, whereby relatives and private relations of DLS officials have priority. All of these situations should be addressed.

Joint property is a widespread problem. Some land parcels have tens or even hundreds of co-proprietors. This situation complicates any transaction carried out on this kind of property, and hence affects the land value. Legislators should endeavor to solve this problem, e.g. by recategorizing and redefining land parcels.

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Al Arab

Al Yawm

Al Liwa'


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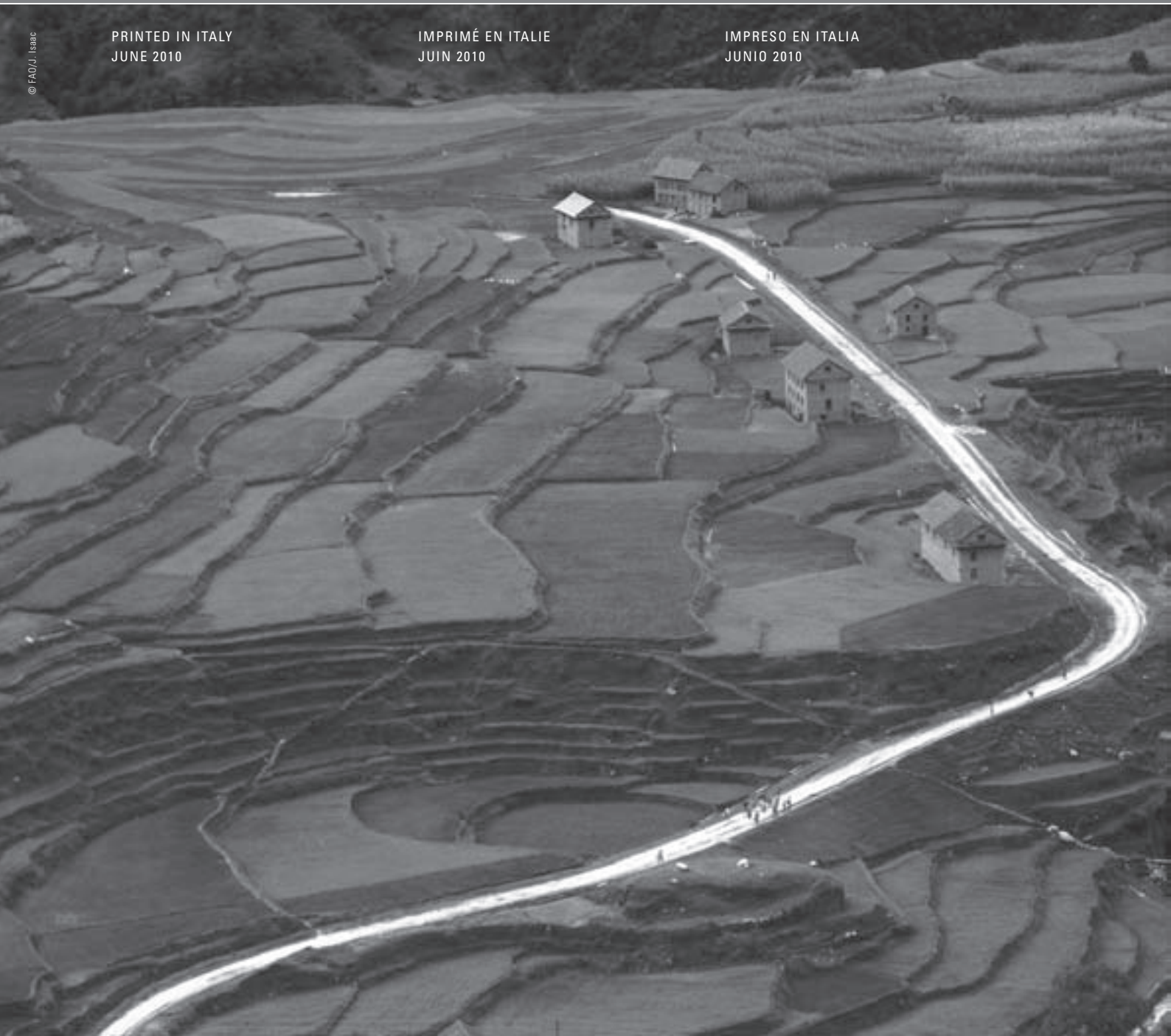

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La Revue des questions foncières publie des articles relatifs aux régimes fonciers, aux politiques foncières et à la réforme agraire, qui n'ont pas encore été publiés dans (ou soumis à) un autre journal. Les auteurs sont invités à rédiger des articles en anglais, français ou espagnol. La longueur maximale des articles est de 40 000 caractères espaces compris, à l'exclusion des notes de bas de page et des références. Tout manuscrit doit s'accompagner d'un résumé (1000 caractères au maximum espaces compris) et les auteurs sont invités à proposer quelques mots-clés qui définissent au mieux leurs articles.

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Normas para autores/as

La Revista sobre Tenencia de la tierra recibe los artículos sobre la tenencia de la tierra y la reforma agraria que no han sido presentados en ninguna otra publicación. Se invita a los escritores a que presenten artículos en inglés, francés o español. La extensión máxima de los artículos presentados es de 40 000 caracteres con espacios, exceptuando las notas finales y las referencias. Un manuscrito debe incluir un resumen que compendie los resultados más importantes (1000 caracteres con espacios, como máximo) y se anima a los autores a que proporcionen tres a cuatro palabras clave que definan mejor sus artículos.

Los artículos se deben presentar a través del sistema de propuestas on line o, si no es posible, por correo electrónico a Land-Tenure-Journal@fao.org. Los formatos preferidos son Microsoft Word y Open Office. Los escritores deben proporcionar su nombre completo, afiliación, organización, así como la dirección de correo electrónico. Todas las referencias se deben citar entre paréntesis en el texto con el autor y el año, por ejemplo, (FAO, 2007). Se proporcionará una bibliografía ordenada alfabéticamente al final del artículo, por ejemplo. FAO. 2007. *El buen gobierno en la tenencia de la tierra y en la administración*. FAO Estudios sobre tenencia de la tierra No.9, Roma. 57p.

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