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for Economic Cooperation
and Development

Land in German Development Cooperation:

Guiding Principles, Challenges and Prospects for the Future

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Preface

In 1998 GIZ (former GTZ) published the "Guiding Principles on Land Tenure in Development Cooperation" in the form of a handbook. The publication enjoyed a warm reception and quickly became a source book among land experts and practitioners in Germany and abroad.

Since then the relevance, sensibility and complexity of land policy and land tenure issues have even increased, among other reasons, due to a new wave of strengthened interest in land and agriculture as an investment opportunity, a situation often referred to as "land grabbing".

Indeed, many experiences have been gathered, knowledge built up, new challenges arisen and new institutions and activities have been developed, also in German Development Cooperation.

In fact, securing access to land for the rural population in our partner countries has become one of the six pillars of BMZ Special Initiative "One World; No Hunger". This entails a new focus and more resources committed to this crucial thematic area and, therefore, also a need for appropriate orientation, knowledge and guiding principles for practitioners. This is the purpose of the present publication, titled "Land in German Development Cooperation: Guiding Principles, Challenges and Prospects for the Future".

Dr. Stefan Schmitz
Director
Commissioner for the "ONE WORLD - No Hunger" Initiative
BMZ

The publication is not intended to cover all aspects of the highly complex field of land policy and land management, but it offers the reader a number of principles, concrete tools and examples for dealing with land related problems.

Land tenure and land tenure systems are of fundamental importance for efficient agricultural production, stemming poverty and conflicts and attaining social equity. Thus, they are essential for securing enduring, self-supporting and sustainable development. This has also been duly acknowledged in various international fora, including the Committee on World Food Security, the European Union, the African Union, the G7 and G20 and the Sustainable Development Goals of the United Nations.

Through development cooperation we need to transfer this high-level political commitment to implementation and impact on the ground for the benefit of the poor and marginalized in developing countries.

We would like to sincerely thank the multidisciplinary group of experts that has prepared this publication for their excellent work, as well as the BMZ funded Sector Project Land Policy and Land Management at GIZ for coordinating the process.

1. Land Policy and Land Management: Problem outline and introduction

"Land matters" – more than ever! Can land be dealt with like other resources or – in terms of an economic perspective – forms of capital. Or does it attract particular meanings, sentiments, interests, acquisition strategies or social relations? What is particular to the production and dissemination of knowledge and capacity building about "land"? Is the influence of donor agencies, cooperation partners, NGOs and of science on decision-making meanwhile stronger on land than in other policy fields of development cooperation as it is embedded in numerous value judgments on justice, fairness, equity and inclusion of the poor and other disadvantaged groups like indigenous people and women?

Through the looking-glass of the dominant economic system, which has emerged over the last centuries, land acquisition and use of land are largely about economic values, land valuation and demarcation of diverse production areas – for food, energy, shelter, mineral commodities, border and buffer areas, etc. As the global competition on land is undoubtedly growing and the key question of how land might be managed best – with a side-view on land as a common, non-replaceable, non-producible, indispensable good – the attention being given to knowledge transfer, "information brokerage" and capacity development on local to global land issues, is increasing. Concerns about the economic, social and environmental impacts of land grabbing, in particular for the poor, are at the forefront of these efforts. Hence, certain uses and "products" of land are being increasingly recognized as a public good, as its properties generate benefits in favor of a vast majority of people beyond mere private profits.

From a development cooperation perspective, as through the scientific lens, land cannot and should not be reduced to a phenomenon such as land grabbing, although this trend is a burning issue. The outrage over "land grabs" involves a fundamental critique of the fast commodification of land and unequal access to global wealth in parts of the world yet rather unknown to it. This goes beyond somewhat practical and implementation-oriented debates on a more pro-poor flexible continuum of land

Integrated Rural Development in Poverty Regions of Laos (NU-IRDP)

rights (developed by the Global Land Tool Network (GLTN), see Figure 1) and the acknowledgement of customary rights and strengthening of indigenous groups' rights.

The "land question" is back, reminding us of David Ricardo's analysis of "unproductive" income from rents of the landowning class, the political conclusions communism (Marx, Lenin, Mao) has drawn from it for expropriation and the leading role of the state, and the "commons" character of land (global commons, global environmental public goods). The statement "Land is life" is more than ever clearly addressed in land reform debates – referring to the ability to control and to own the landed property which gives power, political and territorial influence (Wittfogel, 1957). It is therefore no understatement to claim that the management of land and natural resources is a core issue of development cooperation ever since.

Beyond the "land grabbing" debate, what is the reason for development policy's interest in land management and land policy? The raising global competition for land is connecting individual and common interests in two different ways: one involves the realization of common interests in land that helps to foster such competition; the other responds to the increasing competition by exploring alternatives, new forms of common, global interests

in land tenure (chapter 2), land governance (chapter 3) and land management (chapter 4). "High-speed urbanism", land consumption for settlement, traffic and biomass production, conversion of agricultural land due to industrialization and the degradation of land are rendering land scarce for agricultural and urban purposes (BMZ, 2014; BMZ, 2012). Other concerns that are shared by many at the national and global level are food security for domestic populations, the protection of global biodiversity or the reduction/mitigation of greenhouse gas emissions based on services given by land under responsible governance.

When disputes on access to land, its underlying resources like minerals, gas, oil and coal and its use become violent, the consequences are usually an intransigent enforcement of the existing legal framework. However, deficiencies in existing land tenure systems and land policy then become evident. They often do not enable, in addition to legal security and efficient management, social compensation and the stemming and arbitration of far-reaching conflicts. Land conflicts are central to the civil war-like conditions in some African, Latin American and Asian countries. While violent disputes for the immediate access to land and water in Africa and the Near East, for example, are between livestock keepers and farmers of arable land, in Latin America those conflicts are primarily between the landless or small landholders and large landholders, and between the new, non–indigenous landlords (often private agricultural or forestry companies) and indigenous communities.

Today (2015), there is a multiplicity of different entities and trans-national corporations with large amounts of capital that can be used for investment, purchase and/or lease of land. As of 2010, the global assets under institutional management were estimated at USD 80 trillion, including USD 30 trillion in pension fund assets. Approximately 10,000 hedge funds have capital under management of USD 1.9 trillion (Marcotullio, 2014), in addition to sovereign wealth funds as state-owned investment fund or entity which is established from payment surplus, the privatization of companies and services, and governmental transfer payments. In 2012, these public entities – the world's top 36 wealth funds invested USD 5 trillion – bought or (long-term) leased large tracts of land in foreign locations, called "foreign direct investments" (GRAIN, 2008). Studies show that growth has been robust in Africa despite the economic crisis, particularly in the sectors of mining and metals, oil and gas, construction/real estate, and energy (Ernst & Young, 2011).

Which are the most important problem areas? Experiences – continent-wide and specific to a country – show that a deficient, unequal system of land tenure is an obstacle to development efforts in agriculture and rural development and for overall economic and social change. Presently, adequate and affordable food supplies must be made available to nearly seven billion people. This increase in agricultural production, however, is hindered or even averted by the following land related obstacles:

- Farm size is too small, capital lacking and education and professional training of smallholders insufficient;
- With an increasing tendency for agricultural land to be divided into smaller plots, for example, by inheritance, land concentration is high amongst large landholders often having limited interest in cultivation but more often than ever for speculative investment in lands;
- Ownership rights remain uncertain, leasing contracts and user relationships (usufruct) do not offer tenant farmers sufficient incentives to develop their enterprise further with a long term perspective;
- Considerable limitations on the access to land for the landless;
- Unequal distribution of land-related water and mineral extraction rights;
- Lack of mechanisms for resolving land and resource conflicts;

- Decay of autochthonous land tenure institutions with a latent endangerment of community pasture, water and gathering rights and over-exploitation of natural resources, going hand in hand with insufficient individual or cooperative organization to combat erosion, maintain irrigation systems or infrastructure;

- Inadequate access to technical innovations for smallholders due to insufficient collateral backed credit delivery;

- Lack of workable regulations and limitations on user rights to maintain or restore an ecological balance (fertilizer application, feed supplements, pesticides); and

- Insufficient legal foundation for the mobility of user rights in line with decreasing interest in agricultural land use, especially for large landholders (BMZ, 2014; GTZ, 2004; GTZ, 1998).

This problem outline leads to at least six objectives this document wants to achieve:

1. To show the current global and region-specific explosive nature of the land question in times of rapid economic, social and cultural change.

2. To process experiences of the past in search of solutions to land tenure problems and conflicts, by analyzing their relevance to the current sensible nature of land issues in the context of development policy constellations.

3. To make contributions to improve the conceptual foundations for and appropriate consideration of land tenure in development cooperation.

4. To identify areas and entry points of active development cooperation dealing with this interdisciplinary topic of land management and land policies "for growth and poverty reduction" (e.g. Deininger 2003) by proposing guiding principles, objectives, methods and instruments of support.

5. To create prerequisites to improve the expert abilities of partners involved in land problems in development cooperation.

6. To highlight current initiatives aiming at the establishment of structures that support the implementation of global frameworks (e.g. Sustainable Development Goals)

The guiding principles that are presented in the following chapters are based upon the goals and guidelines of German development cooperation. They are to improve the economic and social conditions for the people in the partner countries and to facilitate the development of their creative abilities (BMZ 2012). These "guiding principles" try to offer support for approaches to reforms for a solution or reduction of land rights problems, such as:

- an improvement of resource allocation by defusing pending land issues, especially for the benefit of small and middle landholders;

- support to the access to land for (rural) groups still living in poverty;

- the creation of higher legal security in the transfer and use of land, especially for women;

- the design of sustainable land use patterns; and

- the demand for education and training in the field of land tenure and land management.

The demand for stronger international connectivity on "burning land issues", support to capacity development of land management specialists and fresh initiatives has been clearly expressed by different working groups in the land sector such as the EU Working Group on Land Issues, the Declaration on Land (African Union, 2009), the United Nations Agency for Human Settlements Providing Adequate Shelter for All (UN Habitat), the Global Donor Platform for Rural Development or the FAO-Initiative Responsible Governance of Tenure and other Natural Resources (see chapter 5).

In this publication, we try to react on this demand. We describe core instruments, mechanisms and strategies to cope with the main problem: Poverty-oriented and conflict-sensitive approaches of land policies and land management are insufficiently embedded, linked and communicated within international cooperation, donor agencies and governmental programs. Hence, the target group of this document is the staff of development agencies in partner countries, governments, academia, civil society groups (NGO's etc.) and consultants engaged in the land sector.

The publication is structured in five main parts: in chapter two, an overview on pro-poor land tenure will be given from existing initiatives and theoretical discussions. Secondly, the question of "land governance" will be highlighted in chapter three and a compilation of land management instruments will be presented in chapter four. Chapter five provides information about initiatives, agreements, guidelines and safeguards for a responsible investment in land. Chapter six closes with an outlook on development cooperation projects, donor initiatives, foundations or platforms on land policies for poverty reduction and secured land tenure.

Enriched by case-studies, text boxes, tables and figures, the "guiding principles" support those having a conceptual and operational, informational and advisory need for the integration of land management and land policy issues in development cooperation. Decision-making bodies in partner countries are a further target group. Its contents are designed to stimulate further in-depth analysis of "their" land issues and for aiding in the decision making of discussions regarding the further development of land policy in their country. The publication is also directed towards politicians and administrators involved in development cooperation at home to make the connection between the shaping of land tenure systems and the attainability of the development policy objectives transparent. In addition, it is a guide for decision making, policy optimization, and offers suggestions for poverty reduction and conflict-sensitivity of global land use in the 21st century.

Land Management and Rural Economic Development (LM-RED) in Laos

2. The Land Question Today: pro-poor land tenure versus large-scale land acquisition?

2.1 Putting large scale land acquisitions into context

Population growth, accelerating conversion of agricultural land due to urbanization or industrialization and the degradation of land resources are rendering land scarce for agricultural or recreational purposes. This is even true in areas that have been regarded as having relatively abundant land, such as some African or Latin American countries. Resulting conflicts between different user groups such as crop farmers, mobile livestock keepers or forest users, and between the indigenous population, immigrants or urban dwellers and agriculturists become intensified. An increase in purchasing power of an ever growing population leads to higher competition for land and a long-term increase in land prices. An emerging middle-class in Asia and Africa wishes to get a foot on the real estate property ladder as old-age security for retirement or as a social safety-net for last resort.

Given the fact that, on average, less than 30 percent of land in developing countries is titled – less than 10% in sub-Sahara Africa – the "land question" remains a challenge. With the exception of South-Africa, throughout sub-Saharan Africa comprehensive national property and tenure registries and cadasters do not exist (Boone, 2014; UN-Habitat, 2012; Payne, 2002). The above mentioned global trends increase land scarcity, drive land sale prices and rental rates up triggering massive foreign and domestic direct investment in agricultural land (FDI) as well as for housing and commercial uses. CB Richard Ellis, the world's leading commercial real estate company, reported USD 159 billion of transaction volume worldwide in 2011, with a strong focus on emerging real estate markets such as South-Africa, Angola, Kenya, Tanzania, and Ghana.

Access to natural resources is mostly guaranteed by leasing agreements between investors and governments and their public investment branches. In this context, it is interesting that contrary to public concerns about investment in agricultural lands, Foreign Real Estate Investments (FREI) for residential neighborhoods, gated communities or commercial assets such as shopping centers are much less in the focus of development and political debates. Regardless of the investment type, the plural-legal landscape in partner countries, where national land-, forest, or water-laws are applied combined with non-formalized customary arrangements that may not have a formal legal status, it is key to analyze and address these challenges. Many case studies of land-grabbing for bio-fuel, timber, carbon trading and public beaches by companies, military officials and international companies supported by governments, highlight the ambivalent, often contradictory, role of the state, particularly in the case of local state elites who have to balance efforts to encourage and facilitate private capital accumulation with efforts to maintain their political legitimacy to their constituencies. Tensions, frictions, even violent conflict or at best synergies among and between private and public actors are known issues. Some key features of reported large-scale land transactions are (de Schutter, 2009; BMZ, 2012; McAuslan, 2013):

- loopholes in customary laws and in national land policies and other land-related legislation;
- lack of knowledge and empowerment of both rural and urban communities to deal adequately with forms of (large-scale) investments; and
- Governments underestimate their significant role in facilitating and setting of institutions for the development and the access to urban and rural lands. Hence, "talking about development in rural and urban areas should not be conceived as an antagonism" (Hutter, 2011, p. 3), particularly in the field of landownership and tenure.

To assess the capacities of land tenure systems to cope with short to long-term challenges, four principles are guiding, which also form an orientation for German development cooperation:

- The meaning of property in a market economy system;
- Rule of law and human rights;
- Certainty of the law and reforms; and
- Participation of the population in the political process of dealing with land issues.

2.2 Property rights, their limitations and the economic system

Property rights structures are a core element of the economic system. Because their manifestation was considered the fundamental difference between market economies and centrally planned economies, historically the "great" theoretical, ideological debates took place especially on the justification of the existence of (private) property. Current debates in transforming societies, however, are no longer about the conflict between having property and not having it, but about the conflict on the relative importance of state versus private individual or communal prosperity (Knieper and Kandelhard, 1995). In concrete terms, the question of how to secure tenure of land and other natural resources as a consequence of large-scale land transactions as the capturing control of vast tracts of land by capital is about appropriate property rights systems.

A central theme of a market economy system is property, including the property of land. This property must be defined uniformly and universally, not according to different subjects (individual, community, state or foundation). Such uniformity should be founded in the constitution. The codification of the term "property" may not be confused with the term privatization as is repeatedly done in debates on land reforms. The transfer of property rights from one person to another and also from the government to new private individual or communal owners (commonly called "privatization") occurs within the general forms of civil law. It is regulated through a (private) contract and the formal transfer of the title of ownership, e.g. through the change in the land registry. If the state decides to transfer former state property, then this must lead to a final transfer of title as well. "Property in land" or "private landownership" is therefore understood as the most comprehensive right a natural or legal person can have in an immovable and movable good. Land or real property is the most famous – and controversial – example for immovable ownership. The owner has absolute control over his/her land and the connected buildings and improvements. Rights in land often include the right of usage. The owner holds all rights on, below or above the land such as air rights, agriculture rights, mineral rights, timber rights, water rights (including ground-water rights and riparian rights) and the right-of-way.

The classical land question about "Who should own the land" has at least partly been substituted by questions on appropriate land management institutions and the right to appropriate the returns from investment rather than the right to sell an asset and to participate in its value (see Table 1 below). It is important for the public reputation of investors to take into consideration moreover perceptions about different value components of land being targeted for investment (religious sites, identity), and the political prominence of critical local responses (Amend et al., 2008; Hunsberger et al., 2014). Therefore, disputes of today are less about who carries the property title, but rather about who has the right to use an asset exclusively and the mechanisms to transfer the title to a third natural or legal person, e.g. to an offshore-company.

Table 1: Property Regimes

Exclusive rights on property	Based on control and use	Based on value and rent
Asset (stock)	Right to control and to change the asset according to one's needs. Latin: *abusus*	Right to sell an asset and to participate in its value (disposal). Latin: *ius abutendi*
Utility (flow)	Right to use an asset. Latin: *usus*	Right to appropriate any returns on the asset Latin: *usus fructus*

(modified from: Löhr 2012)

Property rights in land are transferred through purchase in land markets, i.e. one receives a plot of land for a non-recurring service in return. This is primarily monetary, but it can also be labor. Land markets can make it easier for the owners to have access to credit since land can be used as collateral for the lending institution. It is only lucrative if land markets are active and the land can really be sold without major frictions (resistance of local population to buy land from banks which received the collateral in case of default).

In a situation with massive indebtedness amongst smallholders, land markets therefore relieve the concentration of land into the hands of a few, contributing to asset inequality and stronger poverty incidence. Land markets which are not subject to some regulation (respect of third party interests, easements, "social responsibility of land") remain a controversial issue in international development cooperation and often result in strong state intervention. However, such imposed restrictions are problematic with respect to land allocation efficiency. Normally, they do not prevent informal, "grey" markets from being created if a strong interest in land transactions continues. This can be emergency situations and measures against increasing vulnerability, e.g. to finance a wedding, burial, in the case of illness, as a hedge against inflation or simply for high profit rate expectations and returns on investment. Lacking or insufficient legal foundation only implies legal insecurity which can easily be exploited for the benefit of players with information advantages, such as a corrupt bureaucracy.

Thus, property rights cannot be executed without limitations. How far these restrictions should go has been subject to rapid change and broad debates in the past years. Land stands for property as an asset or real estate object as well as for land tenure regimes as complex institutions (values, rules, and enforcement mechanisms) where the focus is more on benefits from leasing, possession or management rights – it is an object of agricultural and industrial use and still a production factor besides labor and capital. But land embodies many more dimensions such as homeland, real estate investment, place of ancestry, a prerequisite for realizing individual freedom, basis for survival; it mediates ecosystem services, such as water retention capacities or biodiversity. At the same time it is an object that is taxed and desired by governments and influential interest groups. It is a basis of power and dependency and a continuous cause of conflict and war. All these ideas tie the physical object to the human idea of how to monopolize, own, use and secure it. The "social construction of land" (Bromley, 1996) is still being re-examined and re-determined by market economy reforms in most of the partner countries, by a further globalization of national economies, and by a discussion on the social responsibility with respect to property in structural changes of industrial societies (Davy, 2012; Boone, 2014).

Placement of boundary stones in Benin.

It should be noted that property regimes are not necessarily tenure regimes. A property regime is by far a broader concept: it can also refer to intellectual property rights systems registered patents or trademarks, or even traditional, unwritten rights in medical propensities of local plants known to the local population ('devil's claw', 'hoodia' in Southern Africa); it may encompass water rights system (water tenure) as well as collection rights for wood, fishery rights etc. Tenure might be reduced to private ownership or private property; however, the bundles of rights include rights of use, management, temporary or permanent transfer, enjoyment of benefits, or compensation and refer to natural or legal individuals as well as groups. They vary among countries, cultures, or the existing land administration framework (e.g. is there a cadaster?). Hence, property (rights) and land tenure have different meanings, contents and legal implications according to the legal framework (Constitutions, land laws, land-related by-laws, customary law).

The concept of property can only be introduced within the framework of a constitutional order. No rights without restrictions and responsibilities. They are surrounded by the locus of authority, jurisdictional boundaries, citizenship rules, and property rules. These rules can "produce" different forms of land-related conflicts (Boone, 2014). Properties are like fingerprints (Davy, 2012): Each parcel of land mirrors a singular location and is expressed by its address and owners (via land register) and location/geographical and geodetic data (via cadaster).

Box 1: Constitutional safeguards in the Federal Republic of Germany (extracted from the German Basic Law)

Article 14: Property – Inheritance – Expropriation

(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

(2) Property entails obligations. Its use shall also serve the public good.

(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Article 15: Socialization

Land, natural resources and means of production may for the purpose of socialization be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation. With respect to such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply mutatis mutandis

2.3 Rule of Law as core prerequisite for security of tenure

Rule of law means having respect for the constitution and human rights, the creation or reinforcement of independent parliaments and an independent judiciary (division of power). Rule of law is exemplified by courts being bound to the law. It includes the independent judicial review of controversial governmental measures. Thus, criteria for decision-making and processes for awarding land, land valuation, expropriation only for public purpose in a non-discriminatory manner with a fair procedure (Dolzer and Schreuer, 2012), and taxing of land become transparent and controllable. Rule of law is, therefore, able to limit the arbitrariness of governmental and private activities. It makes these activities more predictable and secures an institutionalized enforcement of legal claims. Legal security for which the rule of law is a prerequisite promotes the development of the economic and social potential of the people and investors for their private decisions. International investment law and sovereign regulation of investment disputes should follow the rule of law; they are part of "good governance" mechanisms, a concept which aims at the recognition of institutional effectiveness, and predictability of (land) policies within the governmental framework, for example in enhancing the willingness of foreign investors to enter the domestic market (Dolzer and Schreuer, 2012).

Rule of law offers procedures and instruments to deal with land conflicts. In daily life, formal institutions dealing with land tenure conflicts often do not (yet) correspond to basic legal criteria. Often, disputes over land

issues are processed by the same administration unit that was responsible for the contestable decision. Under such circumstances, favoritism and corruption can hardly be controlled and information advantages offer the well-informed elite a leeway for manipulation. Trust in legal settlement of land disputes and the jurisdiction will not develop within the population under such circumstances. Legal legitimacy can only be attained if a new law, e.g., a land law or laws on expropriation in the public interest, is more differentiated than the old, and if it is understood by those affected by it. It can only be preserved if tasks traditionally bound to land tenure are taken over by other institutions and if legal security is guaranteed by public proceedings and quick, low-cost arbitration or enforcement of the law. Rule of law always enables and requires a more comprehensive participation of the groups involved and affected.

National courts and arbitrators, in hierarchical order, are normally the authorities responsible for arbitration. However, without additional bodies to implement decisions made by the court, these decisions are of little value. As legal pluralism based on statutory law, unwritten customary law, religious law, regulations through programs of development cooperation or international environmental treaties, dominates legal reality in most partner countries, new challenges arise. Legal pluralism, such as competing acts or oral rights in view of the very same pieces of land, might not be appreciated by investors or state agencies, nevertheless, they exist and newly formed autonomous bodies might have a say in shaping such institutions. Water acts or hunting rights might be managed by specific associations which could set up their own statutes, respecting legal pluralism. However, such rules and regulations must be made subject to judicial review and be in line with basic legal principles valid in a country (non-discrimination of women). As long as clear assignments, quick and inexpensive access to public information and clear arbitration are guaranteed, such regional or object-related differentiation may work more smoothly than centrally organized law systems. With large scale land acquisitions gaining in importance, the respect of the rule of law sharply gains in significance.

2.4 Rule of law in a globalizing investment and dispute environment

With widened international trade relations, globalization and new classes of investors, the gap left between traditional methods of dispute settlement by domestic courts and modern requirements has led to the idea of offering investors direct access to effective international procedures, especially arbitration mechanisms. A flexible and effective instrument of "ad hoc arbitration" is based on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (so-called ICSID). By 11th April 2014, 159 states were parties to the Convention. Since mid-1990s, there has been a significant increase in activity of the ICSID which came into force in 1966 (Dolzer and Schreuer, 2012). In summer 2014, 198 interesting investment cases were pending, under which are numerous land-, real estate and energy-related cases between investors and developing countries. The results and effectiveness of these institutions needs to be proved, however, in the future, more and more disputed cases will be solved by the ICSID tribunal.

Beyond direct investment dispute settlement on land issues, assuring the rule of law and providing legal security in assigning and protecting property rights and land tenure regimes have become a global challenge on which several initiatives have reacted on in the recent past. Though the MDGs did not address land rights and tenure security issues directly, the Post-2015 agenda (Sustainable Development Goals) is considering land rights as target indicators. UN-organizations such as FAO and UNDP are more intensively than ever dealing with land rights, when seeking to establish agrarian or land reforms in favor of marginalized and vulnerable groups. In their policy statements, OECD, IFAD and the World Bank support market-based and "negotiated" land reforms, by underlining more than in the past the competitiveness of small and medium farms in the market and their need for better access to financial services, e.g. through mortgages based on titled land.

These initiatives, declarations, agreements and voluntary guidelines are embedded in further internationally binding regimes and conventions which try to strengthen and enforce human and social rights, such as:

- Commission for the Legal Empowerment of the Poor (CLEP): According to the non-binding initiative CLEP, the formalization of assets and use rights of the poor has to be pushed forward including the right to gain the economic benefit from property (through land rental). This will enable poor people to enhance the economic impact of their small land holdings or businesses. What is more, formal property rights are an important leverage for the legal empowerment of the poor as a whole (CLEP and UNDP, 2008).

- Universal Declaration of Human Rights (UDHR): Universal human rights underline the importance of property rights. Following this declaration, everybody has the right to own land (Article 17 UDHR), by non-discriminating by nationality, sex, ethnic background, etc.

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): The government must respect private property in land, and human rights treaties confirm the protection of property of racial minorities (Article 5 ICERD). In addition the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) confirm the protection of property of women (Articles 15 and 16 CEDAW).

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Regional human rights law protects private property (Article 1 ECHR_P1).

- International Covenant on Economic, Social and Cultural Rights (ICESCR): Minimal property is a legal claim against State Parties under Article 11 ICESCR. Persons should not be deprived from access to vital resources such as land (and commodities) and the fruits from the land. Article 11, para 1 ICESCR declares the access to land as the right to adequate food.

- The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) have become maybe the most publicized global initiative for the regulation of land tenure in general and large-scale farm investments in particular. VGGT are congruent with international law, which is of high importance when it comes to topics such as evictions or indigenous people. They are also, by characterizing land rights as "inextricably linked with access to and management of other natural resources" (Preface VGGT), more holistic than many other similar initiatives.

2.5 Certainty of law and reforms

Certainty and security of the law constitute a key concept and guiding principle for policy interventions, such as guided land management changes or redistributive land reforms. When analyzing project failures of initiatives of governments, development agencies or civil society organizations, one is immediately confronted with a lack of security with respect to land. In some societies of the north this security is taken as given so that we hardly take notice of it any more in successful market economies: e.g. the security of being able to keep and bequeath land being used, the security given by collateral based in a land title. The fact that this tenure security is not available in all societies creates not only costly disputes, but often leads to severe poverty, deprivation or marginalization of those suffering from legal insecurity and vulnerability. Furthermore, in quite a number of societies, land law is not yet guided by the new Development Goals. Critical topics of land law reform such as achievement of gender equality, pro-poor legal principles, legal recognition of customary land rights or principles of responsible land governance are key to achieving certainty of law (Bruce et al, 2006). In many cases, the urgent need for land law reform must be seen in the context of achieving the SDG's.

In our understanding 'Tenure security' means that an individual or group is confident that they have rights to a piece of land on a long-term basis, protected from dispossession by outside forces; and it includes the ability to reap the benefits of labor and capital invested in the land (Hanstad et al., 2009).

Land is allocated by local and regional land tenure authorities such as land boards, committees or chiefs. In the course of the life cycle of a family, household heads in Africa receive additional land from a commonly owned reserve. This also applies if married sons separate from their families and establish their own household. Once such land, inclusive of fallows, is thus allocated, it remains their property. In most cases such land may be devised. Arable land no longer needed, e.g. in old age, will again be included in a commonly owned reserve. Families allow individuals or groups to use the land they own for a period of time without expecting a fixed or quantitatively significant return. The borrower has total freedom in deciding how to use the land. However, limitations exist. Investments that would change the character of the land such that the borrower could claim ownership are not allowed (Kirk and Adokpo, 1994). This especially includes the prohibition of planting trees, building houses or digging wells. With the resulting ban on tree planting, customary land tenure often fails to protect natural resources sufficiently. As a result, the lender of the land often reserves the right to spontaneously take it back without announcing it before-hand. Thus, a lack of certainty of the law can present a problem.

Securing land property rights is an essential need of investors. Land property rights are important to investors also because it relates to their ability to access financing, e.g. real estate such as shopping-centers in South Africa. The lack of land property rights security has been a major source of concern in the majority of developing countries simply because there is no developed and well-managed registration and titling system. Investors are concerned also because of the lack of sufficient legal protection or functioning court systems for land disputes settlement. In many transition economies and developing countries, the access to state owned land (State Land Management) is still a "must". This presents a paramount difficulty. The common questions in those places are: who is getting what, by what mechanisms and at what price, e.g., in case of large-scale land investments?

It is also problematic with regard to which part(s), or who, of the "State" has the decision power. Often this is where the problem of corruption becomes most horrendous. In most African countries, and many countries in the Middle-East and Pacific, investors often have to deal with the tribes or local communities when accessing land needed for investment. Getting land from the tribes or "chiefs" as in Ghana is most time consuming and controversial. Investors are further concerned about issues related to land development such as zoning regulation, construction permission, environment clearance, and utility hookups. One key problem is the lack of clear and consistent guidance for compliance; another is the fair treatment and the time and costs related to the multi-agency approval process.

2.6 Role of participation for land tenure

Without participation of all those directly and indirectly affected by a new or modified system of land tenure, rules based on local knowledge cannot be integrated into evolutionary processes, since the respective design of land tenure regulations is always normatively based and sanctioned by values and rules. The law is culturally bound even when the fundamental provisions for land access, its use, its bequeathal or mechanisms for solving conflicts demonstrate predominantly strong cross-cultural parallels as they are based on European inspired legal models. If any reformed legislation will be able to reflect the complexity and differentiation of current land tenure systems in practice they have to integrate diverse actors and interest groups in the process of its formulation. This is not only true for securing the connection of old-established collective property rights with entitlements to benefit streams, e.g. social security but as well as for restricting and regulating private property for the common weal.

It is crucial that rather complex regulations are elaborated with the active participation of the affected members of the community in case of large-scale land transactions in the design of the legal framework which affects the effectiveness of the land tenure conditions. The same applies for participation at different organizational or administrative levels in case of land issues related to rangelands, large irrigation schemes, forests or land use planning. Legal action can be taken in order to obtain enforceable rights to pay for somebody's keep on the one hand and claim encumbrances on land on the other, within a modified system of land tenure and legal and regulatory framework. Actors on the political level and economically active groups striving for the legal rights to

use land must be informed about the many and diverse approaches to solutions in the case of modifications and about the conceivable greater complexities. Blockades that stem from the false alternatives of the status quo on the one hand and a simplified form of privatization and individualization on the other can only be avoided in this way. Both the international comparison of the various agrarian reforms and land tenure concepts and the inclusion of historical experience of present industrial countries are necessary. In the case of land tenure problems that are politically delicate and characterized by serious conflicts of interests, participation is the prerequisite for finding a consensus among those involved and keeping the conflicts within limits (Cole and Ostrom, 2012; Lipton, 2011; FAO, 2008)

2.7 Property Regimes: four idealized types

"Property or private land ownership" means: the most comprehensive right a natural or legal person can have in an immovable and movable good. Land or real property is the most famous – and controversial – example for immovable ownership. The owner has absolute control over his/her land and the connected buildings and improvements. Rights in land mostly include the right of usage. The owner holds all rights on, below or above the land such as air rights, agriculture rights, mineral rights, timber rights, water rights (including ground-water rights and riparian rights) and the right-of-way.

Thus property matters. Clearly defined property rights define the strength of rights executed and enforced with regard to an object towards third parties. Often we read that property rights define who owns which things in what way. This is a shortened interpretation as rights only emerge from social interaction and are shaped by mutual consent on what is allowed by a right holder, what the rest of society accepts and how conflicts are solved by third party intervention, which is often the state with its jurisdiction. In developing countries, unclear and disputed property titles have often hampered development and exacerbated poverty and inequality. In the words of Hernando de Soto: "Property is the realm where we identify and explore assets, combine them, and link them into other assets. The formal property system (...) is the place where capital is born. Any asset whose economic and social aspects are not fixed in a formal property system is extremely hard to move in the market" (de Soto, 2000, p. 47). Experiences from Namibia show that a systematic registration is not only advisable for individual private property but also possible for communal areas.

Case Study 1: Systematic registration of communal land in Namibia

Following the National Land Policy in 1998, which promotes equal rights, opportunities and security of tenure, and the Communal Land Reform Act of 2002, Namibian small landholders and farmers are given the opportunity to formalize their land rights for the first time. The Ministry of Land Reform (former Ministry of Lands and Resettlement (MLR)) is tasked to implement the communal lands registration process and has commissioned the German Federal Ministry for Economic Cooperation and Development (BMZ) to provide support and advisory services.

The multi-level approach consists of legal and policy advice and strategic planning, such as land use planning. It incorporates aerial photos as technical tools for mapping and registration, together with capacity building measures. Experts are integrated as lecturers at the Polytechnic of Namibia, and project staff receives orientation and on-the-job training ('train the trainers'-principle). Land right holders can now apply for land titling at any stage of the process and if their village has been mapped and surveyed, their land rights can be legally recognized in a shorter time.

Types of property such as state property, private property or common/communal property are called "property regimes" by economists and planners (Needham, 2006). Especially the incentives created by private landownership, long-term leasehold rights and by enhanced security dominate the economic theory debate. Property must be defined uniformly and universally for legal understanding, not according to different subjects (individual, community, state or religious foundations). Such uniformity should be founded in the constitution. Property must be available to all market players, i.e. the state as an involved party besides others must also have access to it; so it can purchase property or privatize existing (state) property. Based on this understanding, the four different property regimes can be found in real life.

Table 2: Property Regimes

Property Regime	Rights, Responsibilities and Restrictions
State or Public Property	Individuals have the duty to observe access, use and management rules by (state) land authorities. The legislator has the right to determine these use and access rules, to define an eminent state domain (e.g. by expropriation) or compulsory purchase for the public interest
Private Property	Individual landowners or legal persons, such as companies, have the right to undertake legally (and socially) acceptable uses; they can exclude third parties from the use. Others (non-owners or the government) have legal responsibilities to refrain owners from socially unacceptable uses.
Common or Communal Property	The management group (landowners) has the right to exclude non-members. Non-members have the responsibility to abide by the exclusion. Members of the management group (co-owners) have rights and responsibilities with respect to use rates, rents, and maintenance costs of the property owned.
Non-property or "open access" (terra nullius)	No defined group of users exists. The income stream, e.g., rents, is available to everyone. Individuals have no rights with respect to use rates and maintenance. The property can be defined as "open-access resource" such as the Cyberspace or Antarctica in the past

(compiled by the authors from: Needham 2006; Bromley 2006; Hanstad et al. 2009)

A socio-economic analysis highlighting the strengths and weaknesses of the various land tenure systems can be found in the following synopsis of the key ideas and their institutional foundations (Baland and Platteau, 1996; Bromley and Cernea, 1989; Hardin, 1968; Kirk, 1998; Ostrom, 1992, Falk et al. 2008). These land tenure regimes are characterized by different institutional foundations. In our understanding, institutions "[...] are the humanly devised constraints that structure political, economic, and social interactions. They consist of both informal constraints such as sanctions, taboos, customs, traditions and codes of conduct and formal rules such as conventions, laws, property rights" (North, 1991). Although a strict division between institutions and organizations is often hardly possible to draw, organizations are different from institution. They are created to operationalize institutions in specific situations through businesses, households, land registries or departments for land development.

Whereas the benefits of private property have been praised since the era of Enlightenment in Europe and private property has been accepted as the dominant regime worldwide, in particular after the implosion of the socialist world, the fierce debates on the pros and cons of common property continue. Elinor Ostrom and her school have shown how these resources, held in local commons (e.g., communally owned and used), can be efficiently and sustainably managed (Ostrom, 1992) if some key principles are adhered to (Ostrom, 1990). Although communal systems conforming with Ostrom's attributes have the potential to work effectively in the future, a common property regime is difficult to establish or to maintain in a context of high and ever increasing population density, in cases of strong competition on natural resources or on a global basis in order to protect the global commons sustainably (e.g., biodiversity).

No single institutional form – let alone one set of institutions – has emerged yet as a blueprint for the solution of the global land use problems. Sharply rising competition between food and feed production, the demands of the bio-economy, or between land use in urban and rural areas highlight the new challenges to find the most appropriate tenure regime in different situations and for diverse problem setting. Such challenges are an increasing overlapping of different property rights spheres if, for example, land which is still acknowledged as communal land is silently converted into private property by illegal fencing or registration without considering traditional rights. In the end, a superimposition of oral, informally set bundles of (common) property rights by written, statutory private rights is the result. This happens in particular in peri-urban areas with land prices expected to rise or at the agricultural frontier when forest or open rangeland is transformed into cropping areas, often as a result of large scale investments (see next chapter).

2.8 Tenure Regimes: Varieties, changes and flexibilities

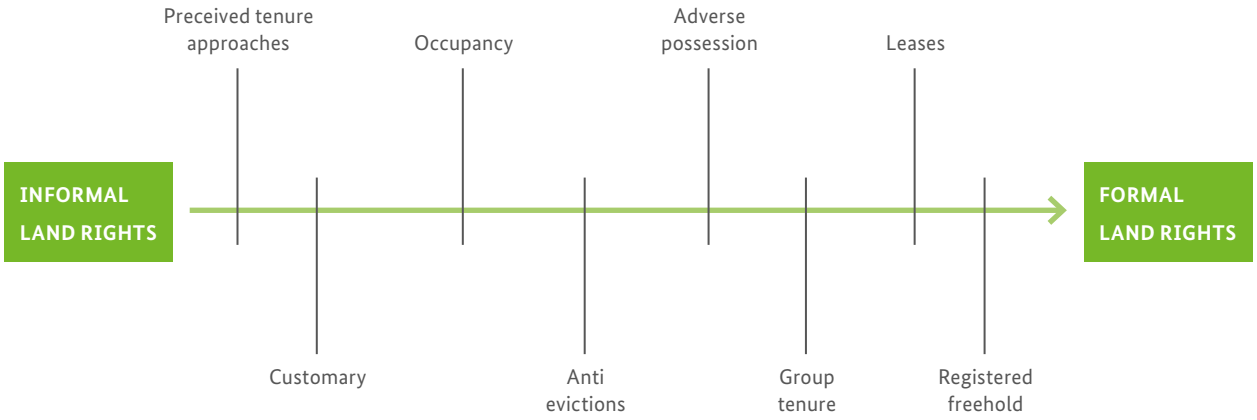
A wide variety of land tenure systems can be found in developing countries and countries emerging from transition from a centrally planned to a market economy. Fundamental elements have continued to develop autochthonous systems on an evolutionary basis; others were introduced by colonial administration, and these were often disposed of and replaced by the independent nation states. Others still were cast out by socialist revolutions and reintroduced in part in recent years after the collapse of socialist systems. Therefore, parallels and overlaps of the different spheres constitute the existing systems of land tenure(s). "In terms of human history, there is no right or wrong tenure" (Wallace, 2010, p. 44). Therefore, societies have developed a large repertoire of legitimate and illegitimate forms of access to land which ranges from land cultivation to formalized rules of purchase. Independent of whether individuals, family groups, communities or the state is the landowner, some fundamental institutional regulations for access to land can be identified worldwide. Most societies differentiate between access possibilities for different groups of people. For example, the purchase of land and other non-renewable resources by foreigners can be subject to special laws and restrictions. Women often only gain access to land through their social relationships with their husbands.

Land tenure must therefore always be considered in the context of all economically used and potentially used natural resources in a particular space. Therefore, like the 1st edition of the GIZ Guiding Principles (GTZ, 1998), this volume always considers land tenure systems along with their interdependencies with other institutional regulations or the use of other natural resources. However, these guiding principles cannot deal with water rights, and the right to use pasture land, trees and forests and their related policies in the same depth as "land" and its directly related uses such as commodities. Therefore, only selected problem areas without claiming to be complete or with a regional emphasis are presented in the following paragraphs with respect to further resources.

The wider spectrum of "land tenure" can further be demonstrated at the "continuum of land rights". Legal pluralism on land tenure varieties is reflected in "future cadasters", avoiding intensive investigations for the guarantee of titles, and accepting imperfections inherent in the recording of transfer documents such as deeds (van der Molen, 2012; Augustinus, 2010; Wallace, 2010; Lemmen, 2010). The Social Tenure Domain Model (STDM) is one of the flagship land tools that GLTN is developing to promote the continuum of land rights approach and to offer an alternative and affordable land information tool to strengthen tenure security, improve livelihoods and empower poor communities (for more details see Chapter 4).

"The range of possible forms of tenure can be considered as a continuum. Each step along the continuum provides sets of rights and degrees of security and responsibility. Each enables different degrees of enforcement" (UN-Habitat and GLTN, 2008, p. 8). Formal land titling and tenure security are seen as key issues of land policy and development, giving various options for tenure security. Also, the continuum implies that more and better – "safer" – rights "mean more spatial power" (Davy, 2012, p. 120).

Figure 1: The Continuum of Land Rights



Source: UN-Habitat and GLTN, 2008; Augustinus, 2010

A system of formalized land rights – not necessarily "freehold" (=100% private property) – based on the national cadastral system may enhance the transferability of land in urban and rural areas, but this occurs at the expense of security of tenure due to superimposing the system of customary and genuine rights. Customary land tenure is very progressive, if it is embedded in national laws, with a fully legal and equivalent route through which land rights may be owned and transacted. Customary rights don't have to be entrenched in formal certificates of titles (Wily, 2011). If customary rights are written down or otherwise determined (restatement), their flexibility may be lost and what is enshrined in the laws is only the momentary status (Boone, 2014; McAuslan, 2013).

The technical-oriented titling-approach that dominated the 1980´s and 1990´s is constantly replaced by softer, more flexible land security tools – such as STDM or the Flexible Land Tenure System in Namibia – and betterment paths. The hope is that people in developing countries might "trade-up" into improved security of tenure (Wallace, 2010), a system that does not necessarily mean private property. Globally, the land titling-programs are embedded.

Case Study 2: The Flexible Land Tenure System in Namibia

Since its independence in 1990, Namibia is facing an increasing urbanization, and it is envisaged, that about 75% of Namibia's population will live in urban areas by 2030. In order to integrate urban land rights into the national land reform program, GIZ supports the Namibian Government in implementing the Flexible Land Tenure System (FLTS), which has been introduced by the Flexible Land Tenure Act in 2012. Under the supervision of the Ministry of Land Reform, the FLTS aims at registering land in urban, informal settlements by a system of different titles and registration methods and with innovative IT-infrastructures. The reason for introducing the FLTS was to create cheaper and simpler forms of land titles, and to provide security of tenure, especially for inhabitants of informal settlements or persons with low-income housing. This can contribute to economic growth and household welfare for the urban poor.

Case Study 3: Tenure rights of indigenous people in The Philippines

There are an estimated 14 million indigenous people from 110 ethnic groups in the Philippines. They constitute 10-15% of the total population. The indigenous peoples in the Philippines have been historically marginalized in terms of property rights, political participation and access to basic services. In 1997, the Philippine Legislature passed the Indigenous Peoples Rights Act (IPRA), aimed at protecting and promoting the rights of indigenous people.

Degradation of natural resources, armed conflict, and marginalization create development challenges for indigenous people in the Philippines. Despite the formal recognition of their rights by IPRA full recognition of ancestral domains by different key stakeholders remains elusive. To formally recognize the native title of indigenous people to their ancestral domain, IPRA provides for the issuance of Certificates of Ancestral Domain Titles (CADTs) by the National Commission on Indigenous People (NCIP) under the Office of the President. Current processes for awarding CADTs are time-consuming, expensive and may even further fragment indigenous communities.

Since 2011, the 'Conflict Sensitive Resource and Asset Management' (COSERAM) Program supports an integrated approach of poverty reduction and peace building in the region of Caraga. COSERAM is a joint undertaking of the Philippine and German Governments, implemented by GIZ, the German Development Bank and local partners. In cooperation with NCIP and the Provincial Government of Agusan del Sur, GIZ supports selected indigenous communities in the Caraga Region as claimants in the formal recognition of their ancestral domain titles, and documents lessons learnt for the enhancement of formal guidelines and processes.

The project focuses on the following:

- Enhancing the competencies of the NCIP personnel, e.g. on culture sensitive tools and methods in the processing of titling claims and strengthening of indigenous governance structures;
- Strengthening the role of Local Government Units as assistors to the titling process and assuming their role as service providers;
- Enhancing the cooperation with other government agencies and stakeholders with mandates complimentary to NCIP, e.g. in the clarification of overlapping tenure claims, representation of indigenous;
- Enhancing awareness of indigenous peoples for their rights and strengthening their capacities in the resolution of internal leadership and governance conflicts.

The benefits of the COSERAM Program are:

- Innovative cooperation between NCIP and Local Government Units: The Province of Agusan del Sur provides more than 50% of the required total financial resources. The Provincial Government established processes and structures for the mainstreaming of indigenous peoples' concerns in its operations.
- Strengthened capacities of duty-bearers: The delivery of services of the NCIP and other agencies are being enhanced from a conflict transformation and cultural perspective.
- Enhanced transparency and recognition of the titling process: The enhanced knowledge of the formal processes and the joint assessment of the current status of their claims deepened the appreciation of the indigenous peoples as rights-holders.
- Resolution of land-based conflicts through customary and traditional practices: Providing venues for dialogue with and among customary and traditional.

2.9 Leasehold: Dynamics and challenges

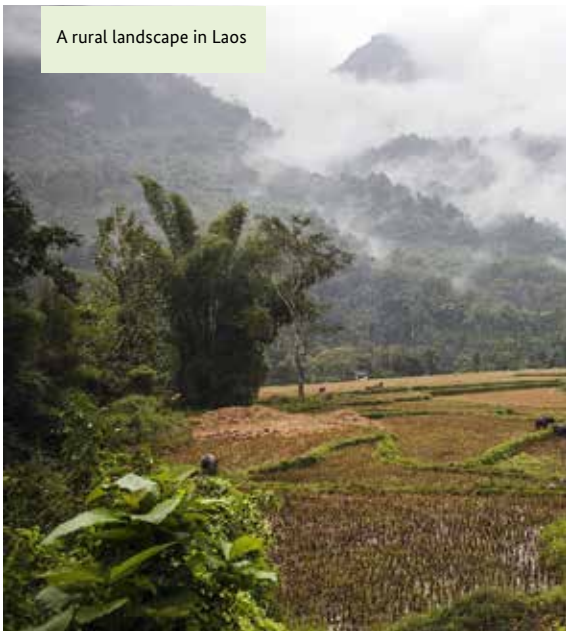
Leasing or renting land is complementary to purchase and it is currently gaining in importance, in particular, in an African context. In the case of land lease or rental, the "lessee" receives the time-restricted right to use (and manage) the land from the lease provider called "lessor". This is mostly a private land owner, the landlord, but it can also be a municipality, the state represented by a Ministry or a religious foundation ("waqf"). In return the lessee pays a fixed monetary payment or payment in kind (fix rent). The payment in kind can be a fixed or a percentage portion of the harvest (sharecropping) or with his or her labor force. Procedures differ between rural and urban areas:

- In the agricultural sector, fixed rent and sharecropping as part of the leasing are possible. In the case of a fixed rent contract, the tenant or lessee must make a fixed payment (money, goods or labor on the owner's other fields) which was set in the contract. In the sharecropping situation, the payment is set as a percentage of the harvest (worldwide often 50% in the past though rates are quickly changing to the disadvantage of the tenant) and thus depends upon the harvest yield (Hayami and Otsuka, 1993). In Asia, sharecropping arrangements are usually for one year or one growing period (irrigated rice production); they are normally extended, but only if the tenant or lessee fulfills the contract duties. Tenancy rules differ strongly and create a subtle incentive and sanctioning system (awarding with long-term contracts, non-renewal).

- In the construction sector, the public principal such as the municipality, awards the contractor not only the construction, but also the financing of the construction or utility. The contractor subsequently leases the construction to the municipality. The main contractual aim is to provide the principal with a building or infrastructure (bridge, road) for his later use. For this reason, the contract for the construction and leasing of a new building or infrastructure utility is to be viewed as a legal building contract, for which an invitation to tender must be issued in accordance with the relevant applicable provisions of the state.

The lease duration is set in advance only in the best situations; it is only then that the tenant has a clear long-term view for making investment decisions. The degree of autonomy with respect to the structure of crop cultivation, land use and management practices are dependent upon the type of leasehold contract and the agreed-upon arrangements. Leasehold has always been a field of state intervention in order to protect vulnerable tenants. Either some forms of tenancy are declared illegal in some countries (sharecropping in Indian states), or its duration and amount are tried to be regulated. Most attempts failed in the long run as they were sidelined by the contracting parties. However, since freely agreed contracts upon lease rules enable the parties to come to a consensus on the amount of other inputs, such as the calculation of local natural risks, labor input, uniform regulations for the entire country may not always be to the benefit of the tenant.

Large scale investments in land have created new dynamics for the institution of leasehold. Many contracts are based on long-term leasehold regulations between state authorities and investors ignoring often existing unwritten land tenure arrangements of the local population. Where land is not sold or leased to investors, the contract parties agree on the concept of "concessions", as in the case of Cambodia.


A rural landscape in Laos

Case Study 4: Land Concessions in Cambodia

The Kingdom of Cambodia serves as an instructive example of the emergence of concession contracts. There, a "concession" means a de-facto leasing agreement between the state – in the land and resources-sector often represented via the Ministry of Agriculture, Forestry and Fisheries – and investors. Two forms of land concessions can be distinguished according to Articles 48-62 of the 2001 Land Law: Social Land Concessions (SLC) and Economic Land Concessions (ELC). Both forms define legal rights to "lease" land for peaceful and uncontested usage. Since 2005, concessions gained enormous popularity in Cambodia. Consequently, the state leased out approximately one-third of its most fertile lands to corporate investors by the legal vehicle of Economic Land Concessions.

Land Related concessions in Cambodia

Economic Land Concession (ELC)

- Restricted to max. 99 years
- Max. 10.000 hectares for agricultural and industrial use
- Cannot be transformed into private property

Social Land Concession (SLC)

- No time restriction
- Inheritable
- Max. 1.250 m² for agricultural use
- Can be transformed into private property

Social land concessions or comparable instruments with different naming play a role in World Bank and GIZ-funded projects for land allocation in development zones on former State public land. This is facilitated by the legal legacy of many Roman law influenced countries such as African francophone countries or Cambodia, where two variations of public property exist: State public land and State private land. State private land is open for privatization, but only after a reclassification process. This means that the former State public land is transformed into and registered as State private land which will be transferred to private ownership. Economic land concessions were planned to respond to an economic demand rather than social benefits allowing foreign and domestic investors to use the land for (agro-)industrial purposes for a maximum of 99 years. In Cambodia, FDI are mostly made in the sectors of agribusiness, mining and forestry, in particular for rubber plantation, rice cultivation, and commercial planting of biofuels and biomass production (Thiel, 2010; Mueller, 2012).

3. Land Governance: drivers, challenges, perspectives

3.1 Land Governance: Key Principles

What is governance and why has land governance come to be at the core of this document? Meanwhile, definitions on governance fill libraries. Governance refers to "all processes of governing, whether undertaken by a government, market or network, whether over a family, tribe, formal or informal organization or territory and whether through laws, norms, power or language" (Bevir, 2013). The World Bank, focusing on a country-wide perspective, sees governance as the way power is exercised through a country's economic, political, and social institutions (World Bank, 1991). UNDP's conceptualization of governance is only partly about how governments and other social organizations interact, how they relate to citizens, and how decisions are taken in a complex world. It is rather a process whereby societies or organizations make their decisions, determine whom they involve in the process and how they render account (Graham et al., 2003)

Why is governance the conceptual backbone of this publication? Land relations are based on "the rules of the game", on formal and informal institutions (North, 1991), in particular on property rights (see Chapter 2). Governance focuses on the processes by which authority is conferred on different decision makers, such as national parliaments, administration at different regional levels, family heads, village elders, elected community leaders or international regimes (WTO, UNCBD) and organizations (FAO). Governance also focuses on the processes by which decision makers design these rules (statutory rules in contract law, land laws, land use regulations or informal, often unwritten rules and codes of conduct summarized as customary tenure), and the processes by which those rules are enforced (e.g. through forest officers, land priests up to FAO 'Voluntary Guidelines") and modified. This modification may refer to new regulations on Foreign Direct Investment (FDI) in land, restricting specific rental contracts in the past, such as sharecropping, but as well as formulating land reform principles (willing seller, willing buyer) and implementation procedures (calculating compensation rates).

Debating on formulating criteria and indicators to measure the quality of governance brought up the normative concept of "good governance". Definition attempts by UNDP together with the analysis of a broad range of sources compiled by the World Bank Institute (Birner, 2007) focus on six dimensions of good governance: political stability and the absence of violence, the rule of law, voice and accountability, regulatory quality, government effectiveness and control of corruption, and environmental governance. Having in mind the historical development of land tenure systems, not only in developing countries, and resulting, violent conflicts about land relations, it becomes intuitively evident that considerations on governance and its quality are the key to understand the functioning and shortcomings of land tenure today and to formulate standards for future land tenure systems.

In countries like Zimbabwe, South Africa or Central American countries the fight about access to land has left a trace of violence and political unrest. Ignoring the rule of law has not only led land reform processes and land expropriation for public purpose (e.g. large dam projects) into a deadlock, but also to the denial of the customary or secondary resource rights of the rural poor and women: Voice and accountability are often ignored principles when it comes to conversion in land use patterns, e.g. as a consequence of deforestation or direct investment in large tracts of land. The regulatory quality in most countries is at best achieved at a national, de jure level, transforming rules and regulation into viable practice at a local user level is often still missing. This is partly due to ineffective, sometimes corrupt government agencies which are allocating land, formulating land use regulations or solving conflicts.

Land governance, just as other forms of governance, occurs in form of three ideal types, which rarely will be found in purity:

State-driven: often identified as top-down or control and command governance, applying instruments like penalties, interdictions, quotas, taxes by state authorities which are often foreign, exogenous to local land owners or user communities. There is a long history of this kind of land governance, e.g. in African states after independence under authoritarian rule (Francophone West and Central African countries, such as Ghana, Nigeria, Kenya, Uganda, etc.). This includes far-reaching revision of property rights and decision making authorities to the advantage of the nation state in the case of common property, following

Rural landscape in Rwanda.

the misleading policy messages of the so-called "tragedy of the commons" (Hardin, 1968). Transition after 1990 and liberalization triggered far reaching reforms in many countries towards more participatory and decentralized state governance, including devolution of state influence while at the same time securing property rights in land and related resources without title or certificates as state land. However, only few reforms could be implemented successfully at lower levels while others cannot respond actually adequately to new challenges, such as large-scale foreign and domestic investment in land, the delivery of ESS, and effective protection of the commons, etc.

Market-driven: here the use of the market mechanism for land and rental markets is guiding rental and sale transactions for land. After privatizing land and setting legal frameworks for liberalized land markets since 1990s, many land transactions in particular those with large-scale domestic and foreign investors are based on private contracts with the state (ideally) offering only legal security, contract enforcement and conflict resolution through this legal system. Furthermore, applying the market principle has strong implication on mechanisms of land administration and land development: land use planning, land valuation, land consolidation or land development schemes are entrusted to private parties.

Cooperation-driven land and resource governance as a hybrid between market and state: for many decades this has been a fiercely debated principle, strongly rejected by orthodox economists, politicians and state bureaucrats. Their arguments were negative externalities (e.g. overgrazing which is in a short perspective beneficial to the individual herder but detrimental to society as a whole), a loss of centralized authoritarian power and of sources for daily petty corruption. Its renaissance was driven by bottom-up experiences, in particular, in developing countries on success conditions for extensive grazing lands, water allocation in irrigation schemes, forest and fishery management, culminating in awarding the Nobel Prize for Economics to Elinor Ostrom in 2009. The arguments fell on fertile grounds as on parallel terms the ideas of subsidiarity, polycentric governance and stakeholder participation gained ground. The cooperation principle takes up strong long lasting traditions of many developing countries in common pool resource management, e.g. all over Africa, in irrigation systems in Asia or cooperative agriculture in parts of Latin America (e.g. the Mexican

"Ejidos"). It considers not only recent experiences with successful community based natural resource management (CBNRM) but also a fresh view on more formalized cooperation in production, marketing, credit for the rural poor (microcredit, service cooperatives, or other hybrids may they be networks, franchising or contract farming). Guiding principles are based on an endogenous development of norms and rules as well as organizations (user associations) and a strong bottom up perspective. It is a rather sensitive principle always being in danger of becoming unstable, eroding, getting dissolved or "crowded out" by exogenous state or market governance initiated by powerful groups. FDI cases in land have shown the risk of privatizing these commons or imposing external management rules by government units.

Target group oriented, effective and sustainable land/resource governance has thus to be embedded into broader systems and contexts, which consider the interaction of an urban or rural population with different resource units and their interactions with human activities (extraction of trees or non-timber products from trees, offtake of water for irrigation, using land to transform seeds into crops, converting rural plots into urban housing areas), within diverse resource systems, such as irrigated agriculture, agro-forestry, national parks, city landscapes. This defines, shapes, and enforces property rights by assigning to different actors rights to use, manage, transform, transfer land or related resources and apply mechanisms to compensate people when being unrightfully alienated from these rights. Different bundles of property rights allow for different governance patterns. Land can then deliver private goods (titled plots), public goods (clean air through CO2 sequestration, biodiversity, aesthetic enjoyment of rural landscapes or forests), club goods (golf courses) and common pool resources (village meadows, sacred groves). One may alternatively focus on the actors holding these bundles of rights, such as natural or legal private persons (individuals, corporations, foundations), the state either on a national or municipal level or joint ownership of village, herder or fishing communities or extended families.

Last but not least, governance is determined by the activities of actors or stakeholders involved in land related transactions. There are established ones, such as land owners in a legal sense including state agencies, farming tenants or – often with contested rights – mobile herders, tenants in urban flats. However, new actors appear and raise their voice on land governance. Examples are foreign and domestic investors in land (state and pension funds), land developers in urban areas, international regimes (access and benefit sharing), donor agencies, NGOs, such as in trans-boundary national parks like KAZA in southern Africa. Not to forget the stakes of affluent consumers in high income societies having a strong interest in traceability of the food and natural products they eat and use. All of them have a direct impact on land governance through changing land use patterns, dilution of local rights, land degradation or conflicts.

Land governance has thus gained a lot in complexity during the last decades requiring a state-of-the-art analysis and policy recommendations that are based on a systems approach and working at multiple levels. Solving land tenure problems and strengthening sustainable land management needs rules and enforcement mechanisms at different administrative levels. Only multi-level or multi-layer governance can adequately meet these challenges. Experiences during the last two decades have shown that setting or reforming constitutional norms, such as a new land legislation (e.g. parts of Africa, Cambodia) is just a first step at a national level to provide for effective governance. Local community-based monitoring and enforcement mechanisms based on statutory and customary norms have to be equally aligned and harmonized with the national level as market mechanisms may be put into force in some instances. Multi-layer governance therefore has to combine control-and-command instruments based on the law, self-coordination and market incentives.

For partner countries, having often hesitantly and skeptically implemented decentralization, allowing for devolution and a deeper division of power between administrative levels, polycentric governance remains a challenge as well as a chance. "Polycentric connotes many centers of decision making that are formally independent of each other [...]." (Ostrom, 2010, p.552). Polycentric systems are thus characterized by multiple governing authorities at different scales and with different reach, rather than a monocentric unit. Each unit exercises considerable independence to make norms and rules within a specific domain, such as an urban based firm, a farm, a local government, a lose network of communities, a region, a nation

state or even an international regime. This means that local knowledge and learning, e.g. on customary land allocation and conflict resolution mechanisms can be applied in a rather flexible trial-and-error process, following the principle of subsidiarity. Those issues which can best be managed at a local, decentralized level will be solved here, others may be transferred to higher instances (often in a different location) whereas improved human capacities at a local level may end up in a re-transfer of competencies down to these levels. There are many examples where land or water management systems have been merged as multi-layer governance structures guided by polycentricism and subsidiarity. Namibian rural water supply is one (Falk et al., 2009).

Land governance is at the core of all endeavors of local to global initiatives to craft favorable conditions for sustainable land and resource use, to allow for structured change and adaptation to newly emerging challenges and to allow for comprehensive stakeholder participation. With the end of the bipolar world followed by far-reaching reforms in the legal and regulatory framework on land but also with the food crisis, the biofuel hype and the renaissance in land investment, land governance has become a highly dynamic process, often generating a mismatch between the needs to protect the poor, to counteract widening inequality and to preserve land resources for future generations.

Therefore, land use and land management cannot anymore be handled in isolation to other natural resources: traditionally the intensity of land use is strongly determined by availability of irrigation water resources and technologies. Integrated agro-forestry and agro-pastoral systems urge a broader view on land. What is rather new in public perception is the fact that land availability and quality is crucial to deliver global environmental goods, such as biodiversity or carbon fixation which has to be considered when crafting multi-level governance systems. Or to phrase it differently: for our future we need governance systems which enable land to supply not only food or space for housing or public technical infrastructure, but also Ecosystem Services (ESS) to human beings as their "end users", and to allow Ecosystem Functions (ESF) to be effective (Millennium Ecosystems Assessment, 2005).

ESS have many dimensions: we are well accustomed to provisioning services, such as food, fuel wood, fresh water, fiber, biochemical and genetic resources; the increasing demand in biofuel and food in the last decade has underlined the key importance of these services for the world population and also the partial lacking of adequate governance mechanisms to enable their supply in a sustainable way. Meanwhile research can inform us a lot about the regulatory services most of which are mediated via land: climate, disease regulation, pollination plus water regulation and purification. Looking at the fierce debates on the importance of land in many societies for culture as the home of ancestors, as a religious place and as a powerful spiritual source, cultural ESS ('mother earth' perception) get a strong saying in the current debates. Land is still a place for spiritual and religious practices, but also becomes crucial for recreation of urban dwellers in modern times.

Taking into consideration this complexity makes governance questions difficult to answer. Sometimes it helps to identify the resource having the highest scarcity with regard to human well-being in order to decide if, for example, in irrigation systems the analytical and policy focus should be more on water or on land governance. Again, ESS may help to structure the cause-effect relations and the involved stakeholders in order to give advice to policy formulation.

3.2 Changing importance of land as factor of production

Industrialization and a growing, often urban based service sector accelerate migration to urban areas and non-agricultural income generation. The formerly critical role of land as a production factor rapidly changes, with rather opposing long-term, evolutionary trends to be observed, for example in China: on the one hand, the young generation shows an ever fading interest in farming and self-cultivation of land. Absenteeism, fading management capacities and productivity losses may be the consequence. Whereas for privately owned land incentives remain strong to achieve high returns on land either by renting out or selling; a major governance problem arises for common pool resources: active community members lose their interest in monitoring and enforcement, partly

due to over-aging and outmigration. This process is reinforced by an ever increasing income and wealth gap between 'traditional' sectors, such as farming, and modern ones. Returns from land will be more and more invested in better education of future generations (Quisumbing et al., 2014), in particular in Asia, instead of reinvesting with priority in agriculture.

On the other hand, however, a continuing interest remains in owning (rural) land for old age retirement (e.g. in Southern Africa), as a security buffer and an inflation prove, low risk portfolio element. As a consequence land governance is challenged to improve the reliability and enforcement of long-term rental contracts on land, in making rental markets and land sale markets transparent and keeping transaction costs low. Furthermore, a better linking of land markets to financial markets helps to channel deposit revenues from land renting as savings and investment in other sectors and to give interested parties a chance to invest in (rural) lands.

Actually, these long-term developments are superseded by a renewed interest in agriculture following well-known mega-trends: still growing world population generating additional food demand, income growth and changing consumption patterns. In China, for example, the dramatically increasing demand for animal-source food is overriding the impact of population growth already. This leads to increasing demand for energy intensive high-quality food (meat, vegetables, and fruits) – not only in China – bio-fuel production, and an additional demand on organic matter for the bio-economy.

3.3 Technological change and innovations

Accelerating innovation in information and communication technology (ICT) has a direct impact on land governance. New ICT tools for land management and land administration have become standard, allowing for significant direct cost reduction, encouraging a stronger role of private service providers, allowing for more cost-effective, decentralized, even tailor-made systems. National governments have to decide what remains genuine state-led service supply to its citizens (land register offices as public good delivery), and to what level privatization and devolution should go.

The "second Green Revolution" intensifying the use of genetically modified organisms (GMO) and the application of biotechnology in agriculture has strengthened the private sector. For land use and land management decisions, private contracts and input markets driven by private intellectual property rights (IPR) gain in importance whereas the supply of products of public research and their dissemination through NARS is crowded out. New land governance challenges arise up to the national or even international level if public awareness of potential negative externalities arising from new seeds urges for a new regulating framework on their potential externalities. The way this framework is designed has, in turn, an immediate impact on the profitability of GMO seeds depending on liability regulations in case of infestation of neighboring fields.

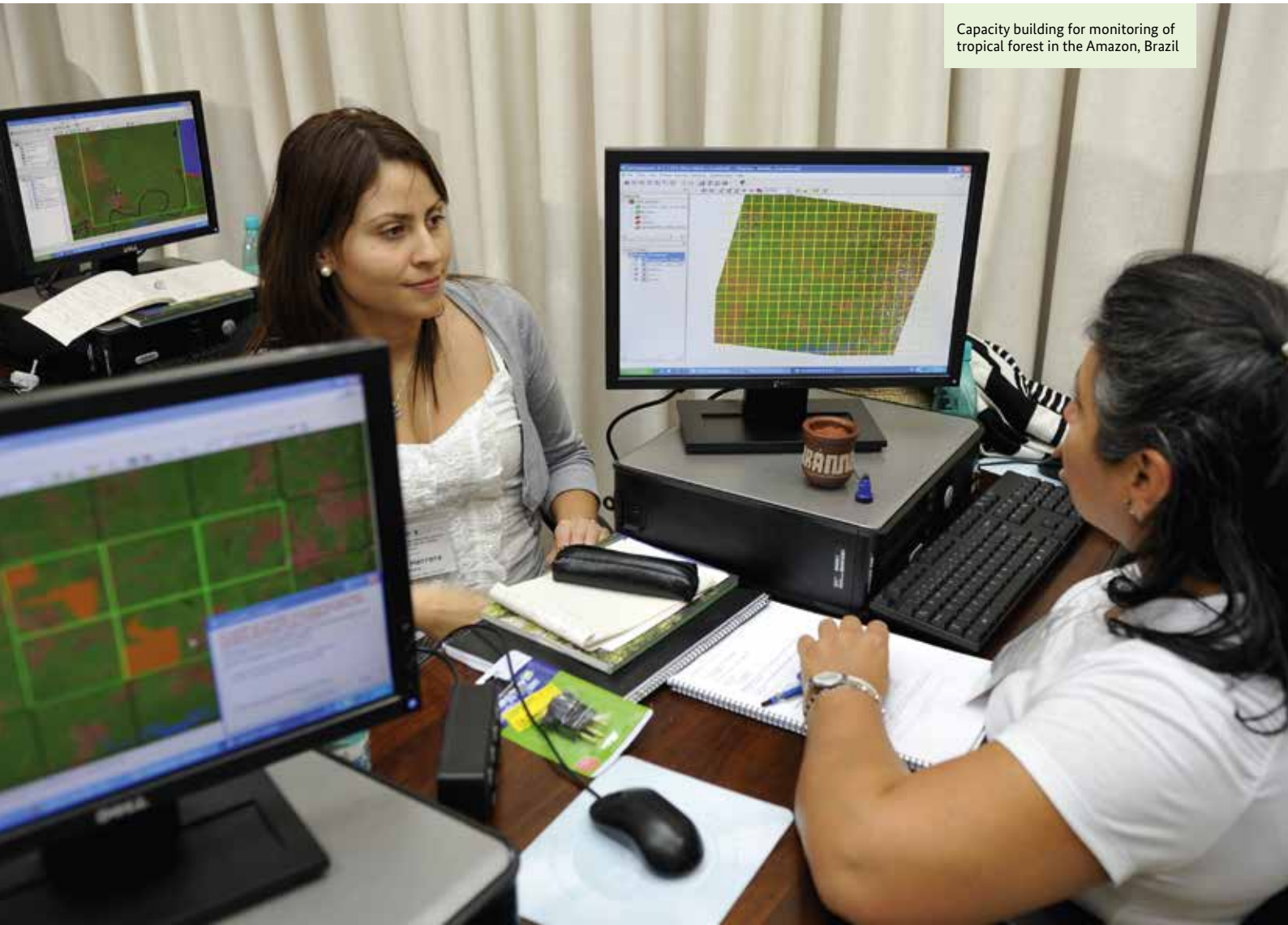
Whereas these land saving innovations create completely new challenges on land governance, continuous technical change in labor saving technologies, in particular in farm mechanization, strengthens the interest of farmers in land acquisition through rental and land sale markets as well as on land consolidation and readjustment. Combined harvesters, new generations of tractors allowing for precision farming are heavy, lumpy investments requiring large plots with secured rights in order to lower per unit costs of production. Pressure on land administration from lobbying associations of large farmer will increase. Alternative business models, such as organic farmers, have an interest in better secured, long term land rights, as conversion to organic farming and the built-up of more integrated farming systems including trees and shrubs asks for stable long-term use or ownership rights.

3.4 Changes in farming models: the raise of contract farming

Looking back into the transition of land relations in former socialist countries, large collective farms have not necessarily been dissolved into small- to medium-scale family farming; large units prevail and will even grow. The inverse farm size- productivity hypothesis seems to be challenged partly in former Soviet Union states (Ukraine, Kazakhstan), whereas in other parts of the world, farm sizes are continuously shrinking due to population growth, inheritance and lack of non-agricultural income.

For both extremes, new contractual schemes gain in importance: large farmers have to decide between employed casual or permanent wage labor, pure tenancy contract (fixed rent or sharecropping), or hybrid solutions such as out-grower schemes (=contract farming). With the boom in FDI in land, contract farming as a land management/governance model gains in importance. Implications go far beyond its original character as a private contract between a land owner and land users as they raise concerns on equity and social justice of land relations as well as sustainability. A pure market based land governance model is criticized; a stronger state influence in regulation and minimum standards supported by voluntary self-binding mechanisms of international development organizations and regimes are asked for. This is underlined by several documents on good land governance in the context of FDI in land (see Chapter 5).

Where out-grower schemes or cooperative structures do not develop, large scale farming faces a renaissance of plantation-like agriculture in the course of biofuel production. If new plantations are established, the danger of forced expropriation of customary land rights of the local population and a re-employment as wage laborers becomes a new challenge for good land governance.



Capacity building for monitoring of tropical forest in the Amazon, Brazil

Case Study 5: Learning from large-scale land investment in Ghana

As of January 2015, more than 38 million hectares of land have been given out to investors worldwide (Land Matrix, 2015). After decades of neglecting the agricultural sector, investment is urgently needed to commercialize food production and to promote rural development. It is therefore up to host countries and development partners to ensure that large-scale investment in agricultural land benefits both, the investor and the local population. The media, scholars and activists have indicated diverse negative consequences of such investments on rural smallholder farmers, ranging from displacement, dispossession and destruction of livelihoods to ecological degradation of natural resources. Thus, more guidance on how to realize win-win situations for both investors and the resident population is urgently needed.

As part of the research project 'Regional Networks of Excellence on Land Policy and Land Administration' commissioned by GIZ, the Institute for Cooperation in Developing Countries of the Philipps-University Marburg carried out a qualitative and quantitative study in Ghana, a country affected by large-scale land investments. The project aimed at acquiring a better understanding of sustainable land investment by utilizing the lessons distilled from the experience of a large-scale, land-based investment in the Kwaebibirem District in the Eastern Region of Ghana (Väth and Gobien 2014)

Established as a state-owned enterprise in 1976, but privatized in 1995, the Ghana Oil Palm Development Company (GOPDC) is the biggest palm oil investor in Ghana – managed by a Belgium investor. As the largest employer in the Kwaebibirem District, GOPDC employs roughly 2,000 workers. Moreover, it introduced a contract farming scheme with more than 7,000 contracted farmers, who offer GOPDC land and labor in return for receiving inputs, credit and extension services. In addition, the company purchases oil palm fruit from roughly 3,000 independent farmers who can freely choose to sell their produce to GOPDC or on the local market.

Qualitative analysis revealed that key stakeholders perceived GOPDC as an important partner. On the positive side, the company was associated with benefits like integration of rural farmers in the economy, secure markets for oil palm fruit, introduction of the contract farming scheme, spread of agricultural techniques, employment creation, better road infrastructure, as well as improved health and schooling facilities. On the negative side, there were complaints about decreasing access to agricultural land, low wages, weak corporate social responsibility mechanisms, and increased food prices in the area.

The analysis showed that the effects of large-scale investments on different sub-groups of the local population vary, depending on factors like location of households, size of land plots, employment or opportunity to participate in the contract scheme. Consequently, the qualitative analysis indicates that large-scale land-based investment can yield a wide range of positive and negative impacts for various sub-groups.

The quantitative analysis showed that large-scale land-based investment can contribute to enhancing the living standards of contract farmers in a competitive setting if the investor offers long-term contracts for tree crop production to rural households whose land rights remain untouched.

Moreover, in-depth analysis reveals that the implementation of an unambiguous land governances system had significant effects on the outcomes. If formal legislation is not fully harmonized with the informal rules of the customary tenure system, negotiating parties have the chance to exploit legal grey areas and poor legal enforcement. In order to create positive outcomes for the participating farmers, land tenure security and a safe legal framework can be seen as preconditions for contract farming schemes that benefit all participants.

3.5 Land conversion

Urbanization, deforestation or the encroachment of agriculture into regions with a low natural potential not being appropriate for cropping accelerates processes of land conversion. Some of these changes are of an evolutionary kind such as the continuing creeping of urban land into the urban fringe and rural lands, others are accelerated by policy priorities, such as subsidies for beef, soy bean, or sugar cane production in Latin America which is severely endangering the Amazon forest.

WBGU (2011) has projected that in 2050 as many people will live in cities as currently live on earth and cities will occupy an area of 7% of the world's arable land compared to 3% now (Angel et al. 2005). In India and China megacities are mushrooming; while focusing mainly on these the thousands of mid-cities developing at the same time is often neglect. Their impact on peri-urban land will be far reaching: assignment of new development areas for residential, industrial or public purpose (roads, airports, shopping centres) with significant increases in land sale and rental prices, rapid conversion from more extensive to intensified agriculture (vegetables, dairy farming, poultry) for a growing urban population, crowding out former tenants and landless (as shown in the debate on the formula 1 racing course near New Delhi), changing employment opportunities and, last but not least, a heavy pressure on existing ecosystem services deriving from land.

In all cases, land governance must be flexible enough to accompany these changes by offering for example urban planning instruments for formerly rural sites. This includes, in particular, concepts to buffer these processes for the poor and to avoid major frictions for them in case they rely only on informal or customary land or resource rights. This includes informal urban settlements as well as agricultural land which gain in land value and where no compensation must be paid as plot have not been registered in the past in favor of the poor. Normally, these processes are conflict ridden and ask for conflict resolution mechanisms, such as round tables, mediators, advocacy for the powerless following the principle of subsidiarity starting from the local village level to higher levels, and relying on statutory as well as on more informal rules and regulations.

3.6 Changing role of the state in land governance

After a period of state divestiture, decentralization and withdrawal of state agencies from land governance, requests for a stronger regulation of land matters arise, in particular on FDI in land, while at the same time the governments of many partner countries seem to be either unwilling or unable to react on these requests substantially. We see an ambivalent development: in the 1990s local decision-making on land issues was strengthened in many counties, customary and minority rights were at least formally acknowledged, communities were entitled to manage land questions on their own. Nowadays many of these lower level entities appear to be inactive, unwilling or, understandably, overcharged to negotiate contracts with powerful foreign investors adequately. Often national authorities are no help at all as often hidden economic interests within government or administration support only the interests of investors. Here, multi-layer land governance does not (yet) work well and has not been prepared for on-going challenges from investments. As, however, many of these contracts ignore basic legal settings of the hosting state and are often closed against the explicit will of the local population, the cry for the state to intervene comes up without being echoed.

Whereas the liberalization period has shifted responsibility on land governance to non-government units, environmental concerns still require a strong state involvement which has not yet materialized in many countries due to the complexity of the challenges, financial and human capacity constraints or diverging policy priorities. It remains the genuine role of a state to deliver public goods which are related to land access, land use and management. This is a key requirement for good land governance. Putting it into a nutshell this refers to the following issues:

- Improving legal security of property rights in land and assuring the application of the rule of law in case of land acquisition for all parties involved. In concrete terms this means also to offer different arenas for conflict resolution from a local to international level.

- Ensure transparency in land sale and rental markets, in particular in fast growing urban areas and support participatory land development instruments and mechanisms.

- Enabling the delivery of ESS, e.g. in preserving the global commons by encouraging robust local level resource governance (through CBNRM, cooperatives, private public partnerships etc.),

- Ensuring gender equality with regards to land acquisition, land use and land transfer, an issue which has been largely neglected in the FDI debate until now.

- Develop further the harmonization between statutory and customary land related rules and the statutory legal framework, in case of cross-border activities also on a regional level.

- Working together in international organizations and regimes, for example, by implementing the Voluntary Guidelines on Land and other mutually binding agreements (see Chapter 5)

- Cooperating in case of financial and human capacity constraints of the nation state with international agencies in order to get support for its citizens.

This listing is not complete but shows future challenges for re-balancing the role of the state, the private sector and civil society organization with regard to land matters and land governance.

3.7 Future role of private actors for land governance

More than ever the private sector will play a key role in implementing and further developing new land management models and therefore having a strong impact on the land governance of the future. All hybrid governance forms between pure market contracts and firm solutions either in a rural or urban context will gain importance. In rural areas this includes contract farming but as well as cooperative solutions or joint ventures. The same applies for better integration into value added chains, including the keeping of quality and environmental standards in these chains up to the end consumer. It has a direct impact on man-land relations, if former small-scale farmers now work as plantation workers, as tenants or as outgrowers, sometimes superseded by cooperative structures.

Private sector representatives will increasingly quarrel with local communities and the state on land governance and property rights allocation, with questions such as the following ones arising: should common pool resources be privatized in order to make them part of export oriented food or biofuel production? How to define the terms on which to convert forests into farmland, give compensation to indigenous groups when loosing rights of gathering these forests or on shares of harvest when entering into rental contracts?

Parallel changes happen in an urban context: private land developers gain in importance compared to state agencies when development cooperation urges stronger private sector involvement or governments are reluctant to take a lead in land development, land adjudication, zoning, etc. The upgrading of former informal settlements is laid in the hands of private investors, contributing to phenomena like “gentrification” and a neglect of respect for social policy and housing objectives. Conflicts in particular with grass-root organizations, NGOs and other civil society movements are inevitable.

3.8 Civil society contribution to land governance development

More than ever, civil society organizations have taken over responsibility as advocates of the landless and the rural and urban poor who are side-lined by described processes. They are not only forming new interest groups and associations to protect the rights of the disadvantaged in these periods of quick change but they are also addressing neglected social, ecological and gender concerns related to land matters. Besides their "traditional" focus on local-level, target-group specific activities, some world-wide operating organizations have significantly contributed to support the interests of the land-poor and endangered groups at a global scale. The Land Matrix project strongly benefits from the input of the International Land Coalition, NGOs play a significant role in drafting and implementing the VG of FAO, or are long-term drivers in agrarian and land reform processes (See also Chapter 5.4).

Land governance is therefore more than ever before in history, a joint governance endeavor of state, private sector and civil society interaction. The more land becomes attractive as a means of investments due to lacking alternatives on financial markets the more market forces and untamed private initiatives need clear rules and regulation by the state. If this state, however, is not capable or willing to execute and enforce these rules, civil society organizations at all levels will play a stronger role.

Technical advisor from Iteracre shows the parcel to a rural owner during an intergrated campaign for land tenure and environmental regularization in Brazil (Mutirões Integrados)

4. Innovative Land Management and Land Administration

4.1 Land Policy and Land Governance

A land policy that is rational and transparent to the population must fulfill particular conditions. It must be based on fundamental guiding principles and it must follow clearly defined, in part universal and in part country-, region- or group-specific valid objectives. Its target conflicts must be made public and a bundle of far-reaching non-contradictory land policy instruments should be developed from them. The instruments' direct and indirect effects should be recognized as widely as possible.

Land policies are in fact a fundamental component of political strategies to achieve sustainable development. Numerous organizations thus currently place the development of sound land policies at the center of their agendas. This applies not only to internationally operating organizations such as GIZ, the United Nations, the World Bank, and FIG among many others, but also research and capacity building institutions and, fortunately, governments around the world.

As shown by Zimmermann (2013) in Figure 2, a land policy should, first of all, set the objectives that shall be achieved through the implementation of the policy framework. The primary objectives look at securing land rights for all, improving livelihoods and socio-economic development and in general, a sustainable management of land and related resources for effectively contributing to sustainable development.

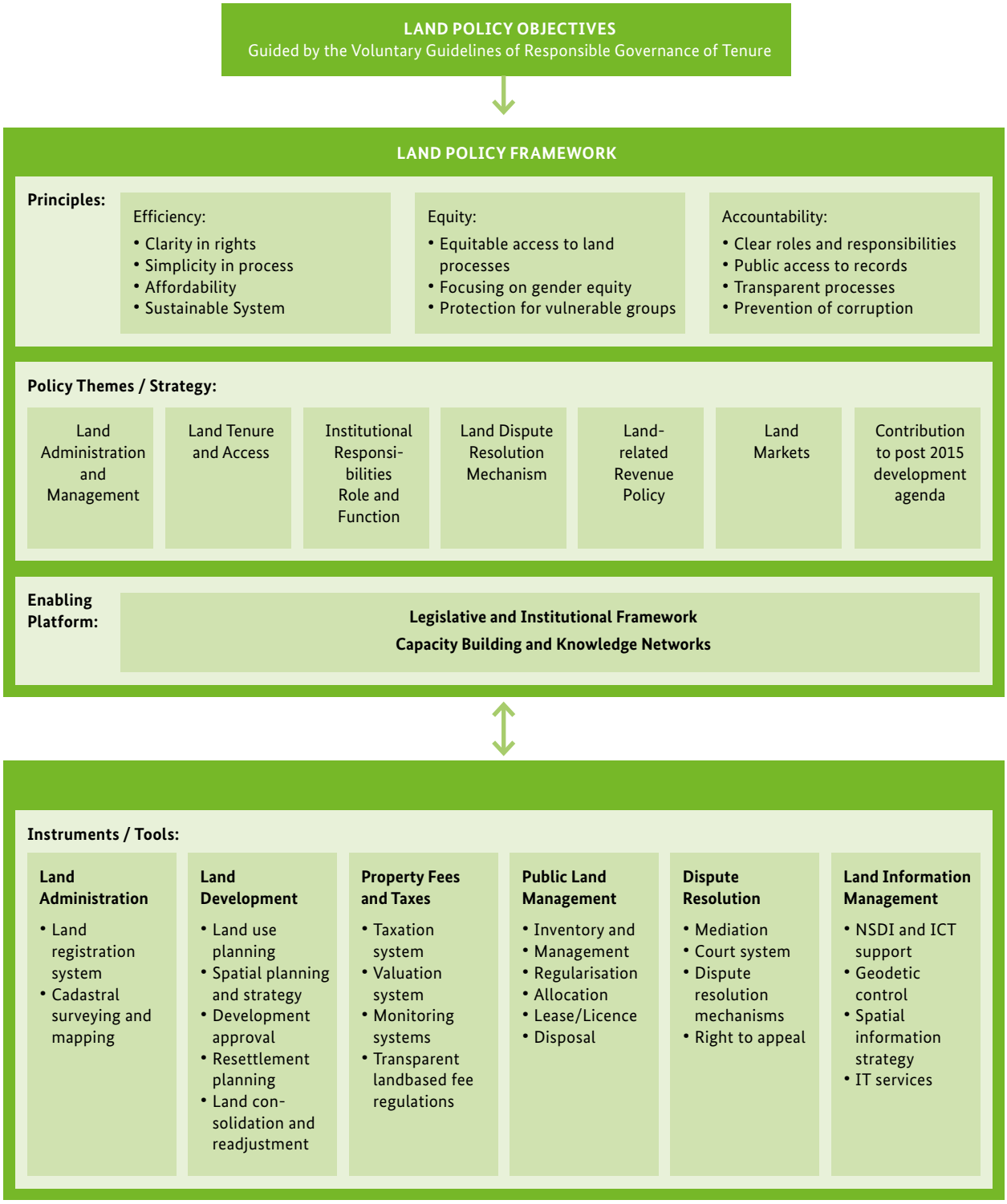
In concrete terms, three main superordinate guiding principles are necessary for a rational land policy. However, each country will have a different emphasis based on its situation.

- Efficiency and promotion of economic development,
- Equity and social justice and
- Accountability with clear responsibilities and transparent processes.

Many land policy strategies and instruments are required to reach the objectives. They primarily belong to the field of policy systems. Development cooperation partners should work out and examine the approaches with respect to urgency, consistency and conflict risks. The following list of starting points is open-ended and requires supplementation or amendment:

- Develop a legal and regulatory framework providing equal access to and use of land for all private and legal persons, collectives and the state;
- Differentiate precisely between private contract law (civil law) and public law (e.g. land use planning);
- Generate clear responsibilities and liability regulations for private and public persons;
- Improve the efficiency of land and tenancy markets;
- Allow for sectorial changes (industrialization and multiple employment) through land policies and anticipation of new land functions (environmental and recreational value, etc.);
- Create legal and institutional structures for land readjustment and spatial as well as land use planning;
- Secure the financial base for public land administration;
- Assure that land is transferable under the principles of efficiency, transparency and accountability, and with due consideration of transition regulations which may require temporary restrictions (e.g. in the case of land reform);
- Land tenure reforms should not only be utilized as a threat, but implemented consequently when they are seen as necessary due to extremely unequal distribution of land.

Figure 2: A comprehensive land policy framework



Source: Zimmermann, 2013

The aim of contributing to equity objectives through land policies and to promote social stability involves controversial decisions. Thus, the question is whether the constitution or laws recognize the social responsibility of property.

Dealing with the conflicts of interests between urban and rural areas, "modern" and "traditional" and wealthy and poor population is necessary.

- Recognition of the importance of land as the basis for employment and income in rural and urban areas;
- Analysis of the current and even future importance of land and related real estate for social security (old age and illness);
- Recognition and consideration of traditional, autochthonous and secondary rights including those of ethnic minorities within a state land policy for all persons;
- Attempts to craft consistent policies with respect to the future role of local land tenure and land management authorities;
- Regulation (temporarily) of land transactions in specific sectors ("ceiling" for the sale and leasing of land after land reforms and in settlement programs or pre-emptive rights in favour of smallholders);
- Creating legal security for informal settlements;
- Promoting programs for disadvantaged groups such as the landless and women, if necessary, including land tenure reforms primarily for the redistribution of land and land management reforms for an increase in productivity.

In the model depicted in Figure 2, the land policy framework is composed by a set of thematic areas which are interrelated and operate side by side on the basis of an enabling platform constituted by legislative and institutional frameworks and consequential capacity development activities to cope with the challenges which constantly arise as a result of the complex nature of the land sector.

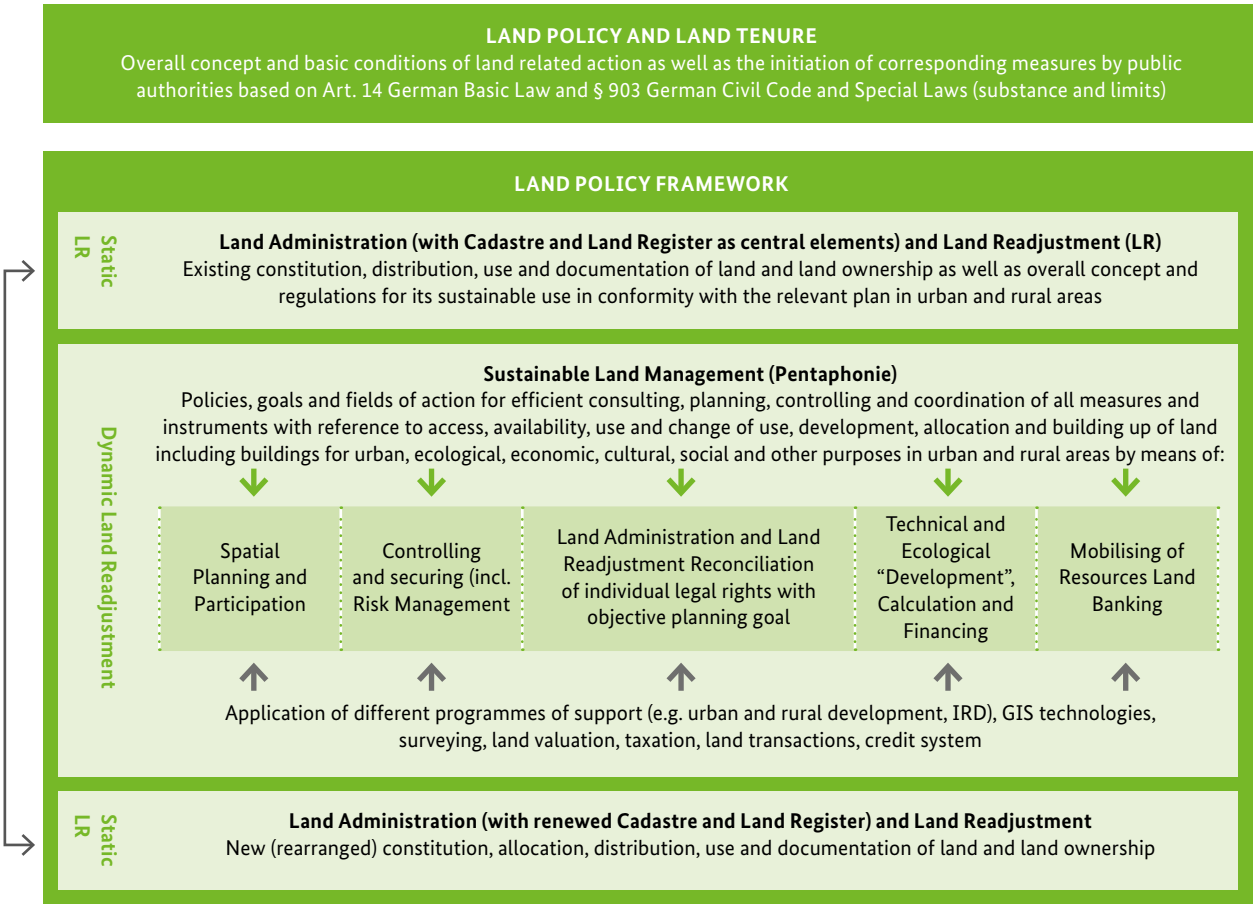
However, any land policy without good instruments for its implementation is not more than a piece of paper. This is the reason why these situation-specific instruments for land administration, land use planning, property valuation and taxation, public land management, land information management and land conflict resolution must be developed and implemented.

Figure 3 depicts the complex arrangement of land policy, land tenure, land management and land administration in a German context as explained by Magel (2013, based on Kötter, 2001). In this model, the overall concepts and basic conditions for land related activities are deducted from the legal framework on land and land tenure. It is interesting to note that in Germany, as in many other countries, there is no formal document called "land policy". Nevertheless, a coherent set of legal bodies and instruments exists that – as a whole – constitutes the "German land policy".

It is worth to have a closer look on how the interrelationship of land management (the dynamic part) and land administration (the static part) operates. In this understanding, land management refers to dynamic processes which affect the territory and induce changes motivated by various reasons (e.g. conflict resolution, land development, nature protection, etc.) and which are subsequently reflected in the land administration system (cadaster and registry). Therefore, there is virtually a constant cycle of more dynamic and static phases in accordance with local contexts, demands or pressure and with the land policy targets.

In this context, land policies are seen as a catalyst in development processes as they draw the attention of stakeholders to the need for secure land rights as a basis for the establishment of "healthy" land markets, promoting economic growth and thus reducing poverty. But land policies imply much more than that. As stated by the Land Policy Guidelines by the EU Task Force on Land Tenure (2004, p. 3):

Figure 3: Relationship of land policy, land tenure, land management and land administration in Germany



Source: Magel, 2005, based on Kötter, 2001

Land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources, as well as it bears the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts".

Development cooperation can support the formulation of policies when the partner explicitly requests it, and can reduce the danger of policy failure along with negative economic, social and ecological effects. Development cooperation supports approaches to reform processes, especially when they contribute to implement action plans from international conventions and the development cooperation principles of democracy development, rule of law, decentralization and combating poverty.

These aspects lie at the center of the discussions with regard to land governance and how land professionals can contribute to strengthen governance in general through sustainable land policies and the associated institutional and regulatory frameworks

Participatory planning in Costa Rica

Nevertheless, land policy models are controversial and differ in various cultures, religions and political systems. Discussions between the partners about these models in the policy dialogue or in national forum discussions are necessary.

Development cooperation should help to clarify when and to what extent an active land policy is required. During transition processes (e.g. in former Soviet Union states), in the case of a market economy reforms (e.g. African countries), or in countries with a very dynamic economy, an active anticipatory land policy is especially required. If, however, a consistent and recognized system and an effective land administration exist, then the chance exists for the involved parties to legally make private contracts of various sorts themselves on transparent land and lease markets. Since the results of these land tenure agreements do not necessarily conform to the society's objectives – in case they force land concentration, land grabbing or accelerate the rate of environmental destruction – the government should not leave everything to the forces of the market. The government should intervene in the land policy and at least set a binding framework, as the market is commonly blind to disadvantaged groups.

Consequently, over the last 10 years, the expressions "land governance" or "governance of the land sector" and "good land governance" have been raised by the international community of land-experts as concepts emerging from a series of principles, preconditions or success factors necessary for the establishment of sound land sectors.

A number of institutions – governmental and non-governmental – argue that good land governance is a crucial pre-requisite for sustainable development and that the old fashioned concept of government in the context of land issues should no longer be the focal point of international discussions, but rather the processes behind and how these perform and contribute to the achievement of broader objectives (see Chapter 3).

These discussions have paved the way for the development of concrete tools for guiding and assessing governance of land and determining priority areas for intervention. Currently, one of the most visible initiatives is the Land Governance Assessment Framework (LGAF). The World Bank and its partners have developed LGAF as a diagnostic tool for evaluating land governance at the national level. The instrument provides governments with an objective assessment procedure that can be used to identify areas where improvements are required as a result of, for example, "rapid changes in land use associated with economic development (or the lack thereof), climate change, urbanization, growth of demand for food and industrial materials, and the need to feed a rapidly growing population" (Deininger, Selod, & Burns, 2012).

The overall diagnostic is made through the assessment of Land Governance Indicators that are grouped into five main thematic areas as explained in Box 2.

Box 2. The Land Governance Assessment Framework

The Land Governance Assessment Framework (LGAF) is a diagnostic tool for assessing the legal framework, policies, and practices regarding land governance at country level in a participatory process of 3-6 months that draws systematically on local expertise and existing evidence rather than on external experts.

It was borne out of the collaborative efforts of the World Bank and its partners based on the recognition of the increasingly important role of land governance in helping countries deal with the challenges of climate change, urbanization, disaster prevention, and management of increased demand for land in an integrated way that provides a basis for demonstrating progress over time.

It focuses on five (5) key thematic areas: Recognition and Respect for Existing Rights, Land use planning, management, and taxation, Management of public land, Public provision of land information, Dispute resolution and conflict management and an optional thematic module for other topics (large scale land acquisition, forests, urban land markets) to identify key areas in need of reform. The overall diagnostic is made through the assessment of twenty-seven core Land Governance Indicators (LGI) embedded in the five thematic areas. The indicators are further broken down into about two to six dimensions making a total of 80 dimensions within the framework (Deininger et al. 2012). The dimensions are pre-coded questions and answers which can be pieced together to give an indication of the Land governance situation of a specific area.

It was piloted in 2009 in five countries (Ethiopia, Indonesia, the Kyrgyz Republic, Peru, and Tanzania) with varying degrees of success. Mention can be made of benefits such as the ability to systematically identify good practice in specific countries, identify global best practice in specific areas, and point toward good practice in policy reform (ibid). The experience from these pilot projects provided key inputs into the design and refinement of the instrument and is expected that experiences from successful completion in 25 countries (status July 2015) together with ongoing implementation in 14 other countries globally can become a valuable source of good practice information.

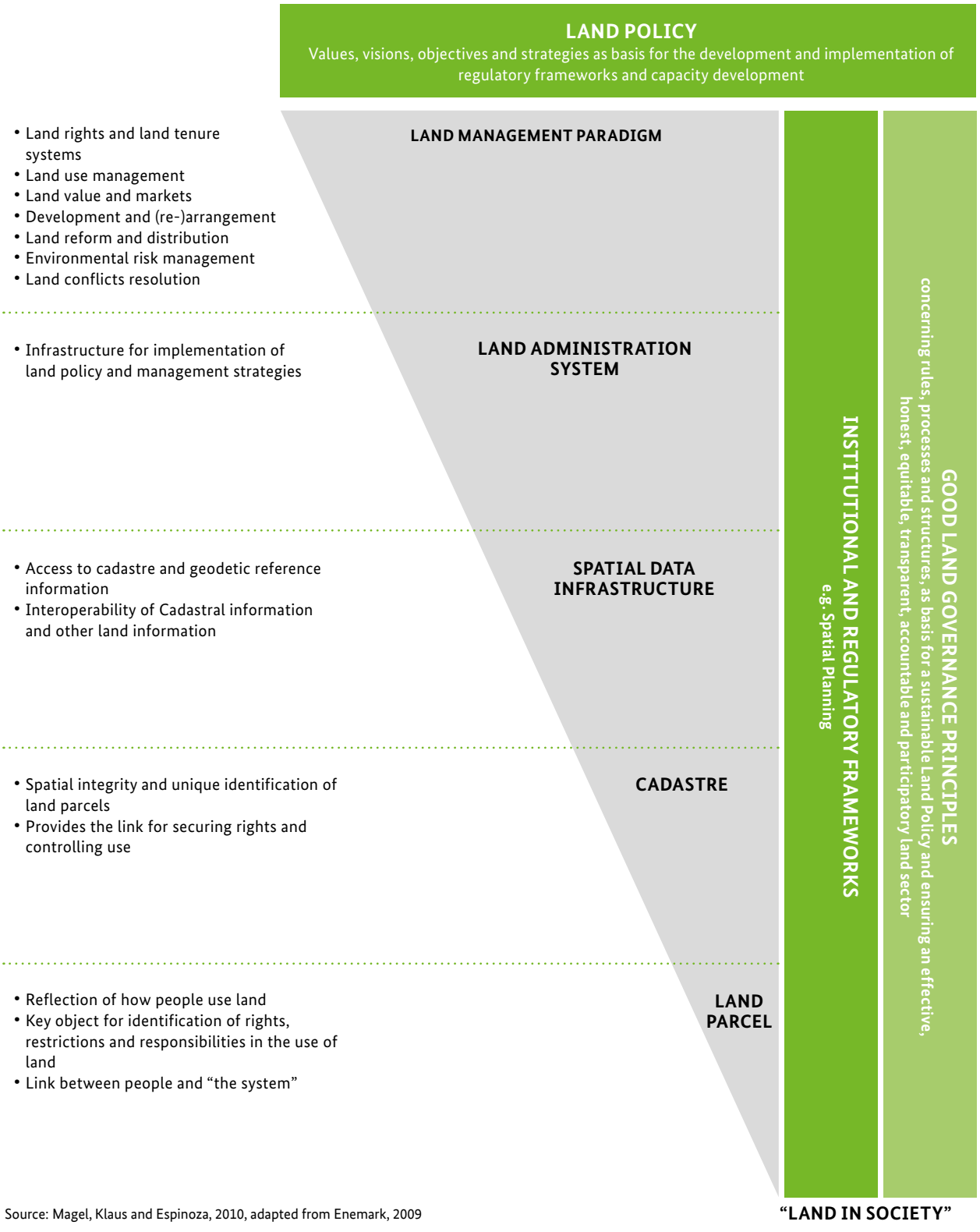
The next step is to improve the LGAF as a diagnostic land governance tool by broadening the scope of the framework to include a broad spectrum of (land governance) issues drawing on experiences from implementation (in different countries), as well as establishing ways of using it to measure land governance on continuing basis. This is expected to enhance the relevance of resulting analysis and the credibility of the resulting recommendation.

Source: World Bank 2015

These five thematic areas, each of them broken down into 3-4 so-called dimensions, are intended to consolidate accurate information about the land sector. These dimensions may be seen as specific research questions, which need to be answered in order to get the "big picture". Within the framework, the answers to these questions have already been pre-coded in order to facilitate and standardize the implementation process. As described by the World Bank (2015), "through a consensual and participatory assessment by local experts of this core set of indicators, the LGAF serves to map out key information on land governance and define actionable paths for policy interventions, all in a contextualized and country-driven manner". The participation of local experts in the thematic panels is crucial for a successful implementation of LGAF, for without local knowledge and consensus it is hardly possible to estimate the quality of land governance in an accurate manner (World Bank, 2015).

In general, it is understood that the land sector of a particular country should contribute to the achievement of sustainable development. As wide-ranging and thus unspecific as this might appear at first sight, the central message in this line of argument is that a functional land sector can support quite strongly the attainment of the political goals set by a particular country, then again, only on the basis of a coherent governance framework.

Figure 4: A comprehensive representation of the land sector



Source: Magel, Klaus and Espinoza, 2010, adapted from Enemark, 2009

It must be said though that good governance in the land sector is but a component of a wide ranging multi-sectorial approach, which should come along with good practices, and therefore good governance, in all other sub-systems composing a particular society. A single sided approach would certainly be insufficient given the complexities and interrelationships leading to the success or failure in the achievement of political, social, environmental and economic goals.

The land sector in a particular country is evidently a complex system composed by quite an extensive list of technical and legal aspects that have direct impact on economic development and environmental as well as social dimensions. Land policy, as the overall guideline for the formulation of regulatory frameworks and tools with respect to land and stating the values, objectives and strategies to be followed by the land sector, sets the basis for the construction of healthy land tenure systems.

As shown in Figure 4, under these frame conditions, there are a number of hierarchical levels. In this regard, Enemark (2009) argues that this hierarchy shows the complexity of organizing policies, institutions, processes, and information for dealing with land in society. This conceptual understanding provides the overall guidance for building a land administration system in a given society, independent of the level of development. The hierarchy should also provide guidance for adjusting or reengineering an existing land administration system.

Institutional and regulatory frameworks originating from good land governance principles for the organization, implementation and proper operation of the land sector should compose the backbone of this hierarchical structure. A failure in this arrangement leads to a malfunctioning system with consequences that can be quite dramatic, for instance, insecurity of land tenure, unsolved land disputes, unbalanced development of rural and urban areas and subsequent increasing poverty and rural-urban migration (Magel, Espinoza, Masum, & Klaus, 2010).

Development cooperation should therefore contribute to the identification of essential land policy instruments. It should also contribute to further developing and modifying land policy instruments according to the framework conditions and needs of the partner countries and, if necessary, the development of new concepts. The following sections will highlight a number of instruments or tools that have been implemented in countries around the world and that have presented land professionals with extremely relevant lessons to be learned.

Case Study 6: Developing a Comprehensive Land Policy in Cambodia – The "White Paper"

Since many years, GIZ has been supporting the Royal Government of Cambodia in their land reform efforts. After adopting a new Land Law in 2001, which provided the legal basis for the management and administration of land use and ownership rights and built the starting point of Cambodia's comprehensive land reform, the government developed and adopted a new Declaration on Land Policy with GIZ support in 2009.

After five years of consultations and discussions among experts, policy makers as well as CSOs, the "White Paper on Land Policy" is close to finalization. The document will outline the course of action of the Cambodian government on land administration and land management and underline Cambodia's commitment to the land reform process.

In a consultation workshop in Sihanoukville in May 2014, more than 80 experts from ministries, NGOs and universities came together to discuss the final "White Paper" draft. The "White Paper" is seen as an important policy document for sustainable and equitable land use and land rights. It further reflects most of the relevant international standards in land governance and land tenure. Moreover, the high level of transparency and the broad participation during the whole consultation process sets an example for good governance. The "White Paper" also shows potential to achieve far-reaching multiplier-effects throughout the country and to become an important basis for the implementation of the upcoming Cambodian Sustainable Development Goals.

Land surveying campaign in Benin

4.2 Land Administration

Land administration provides the infrastructure for the implementation of land policies and strengthens land governance through regulations and technical instruments/tools which allow for documenting and managing land rights. It provides the background information for structural change and transformation processes. Therefore, the establishment of an efficient comprehensive structure for land administration has become a central part of development cooperation.

Land registration and cadaster are the cores of land administration. In some countries these components are separated technically and institutionally, in others, they may be integrated into one comprehensive system, depending on cultural and technical aspects.

In general, the legal status of parcels of an administrative unit is described in the land register (To whom does the land belong and with what rights and responsibilities?) and the cadaster describes the location, size, use and possibly the value of parcels.

Some examples of the advantages for the individual owners or the community based on a systematic establishment of the land register are: improved certainty in law with respect to land, stimulation for investments and sustainable use, improved access to credit, security and efficiency of property transactions and minimization of land conflicts and the costs associated with them.

Some advantages for the government may be: an efficient basis for raising a land tax, a basis for structural adaptation like land reform, land redistribution and rehabilitation of urban areas, control over land transactions, efficient basis for planning (land use planning, effective procedures of land allocation and permission for specific land use) and effective management of information in the public administration.

On the other hand, some possible concerns regarding the establishment of land administrations systems include: high institutional and financial cost for the establishment of the land register and especially its maintenance, the concern that the establishment of a land register may strongly change or manipulate autochthonous land

tenure, the concern that the establishment of a land register may mean that land ownership becomes individualized and secondary rights will be ignored and the concern that the land register will soon be out-of-date because changes are not recorded due to different reasons which may include, but are not limited to, corruption, inaccessibility of land administration services, high transaction costs, etc.

Land is a contested issue in Cambodia. During the terror of the Khmer Rouge regime, all cadastral records were destroyed, private property was abolished and large parts of the population were forcibly resettled or forced to flee due to the war. In the 1990s large-scale refugee repatriation programs were implemented. Over the next decades, mainly due to population growth, spontaneous settlements developed on land that was either formally part of the state domain, or of which the legal status was unclear. With the aim of legally securing access to land and land tenure, as essential steps in realizing basic human rights, GIZ's Land Rights Program has supported the Royal Government of Cambodia in their ambitious reform from the outset. GIZ is providing advisory services and training at national level and in the provincial and district administrations.

Since 1995, GIZ has supported the government in registering individual households' private land ownership rights. Today more than 1,000 Cambodian surveyors are systematically carrying out initial land registration on the basis of clear regulations and legislation. As a result, until 2014 more than 2.2 million private land ownership titles have been issued by the state, the majority of them to women (Performance rate: 20.000 titles per month and average cost per parcel in 2014 of 10 US$). More than 1,600 previously landless families have been granted land by the Cambodian Government for the first time and the first indigenous communities have received collective land titles. GIZ has also assisted in training a large number of municipal counselors in conflict settlement. This has improved the population's access to effective out-of-court settlements in the case of conflicts over land. During the course of the systematic registration process, about 11.000 land conflicts were solved.

Case Study 7: Systematic land registration in Cambodia

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Well-conceptualized systems for land registration, however, do not alter any rights. Instead, they describe legal and objective facts. The challenge is found in the attempt to register undocumented complex land tenure contents, norms and secondary rights, as they exist.

Despite the numerous potential advantages, many countries lack the infrastructure to administer land in an effective and efficient way. In fact, only around 30 countries worldwide have a functional system with nationwide coverage and which recognizes the local tenure rights in a comprehensive way (i.e. customary and statutory regimes) (Lemmen, 2010). Naturally, one of the major constraints to the implementation of a land administration system is the lack of financial and human resources. The Social Tenure Domain Model (STDM) is an attempt to close this gap.

STDM is an initiative of UN-HABITAT with the aim of supporting land administration in developing countries, countries with little cadastral coverage in urban areas with slums, or in rural customary areas as well as for post-conflict areas (Lemmen, 2010).“The focus of STDM is on all relationships between people and land, independently from the level of formalization, or legality of those relationships” (Lemmen, 2010, p.2). This is of course a major advantage, particularly in countries where multiple forms of land tenure regimes (statutory, informal, and customary) exist.

The International Federation of Surveyors (FIG) is currently devoting considerable efforts to mainstreaming the concept of “fit-for-purpose” throughout land-professionals. Traditionally, accuracy used to play a central role in the decision-making processes in the context of land administration projects. Nowadays, although accuracy certainly continues to be a matter of concern, the focus is shifting to how to establish land administrations systems in a faster, cheaper and “context-intelligent” way, particularly in the case of poor communities or countries that can’t wait any longer for the initiation of a land administration project.

Public announcement of an integrated land tenure and environmental regularization campaign (Mutirão Integrado) in Araguaína, Brazil; an approach developed in the context of a German-Brazilian cooperation project

Box 3: FIG-World Bank Declaration on Fit-for-Purpose Land Administration

There is an urgent need to build cost-effective and sustainable systems which identify the way land is occupied and used and accordingly provide for secure land rights. When considering the resources and capacities required for building such systems in less developed countries, the concepts of mature, sophisticated systems as predominantly used in developed countries may well be seen as the end target, but not as the point of entry. When assessing technology and investment choices, the focus should be on a "fit-for-purpose approach" that will meet the needs of society today and that can be incrementally improved over time.

A fit-for-purpose approach includes the following elements:

- Flexible in the spatial data capture approaches to provide for varying use and occupation.
- Inclusive in scope to cover all tenure and all land.
- Participatory in approach to data capture and use to ensure community support.
- Affordable for the government to establish and operate, and for society to use.
- Reliable in terms of information that is authoritative and up-to-date.
- Attainable to establish the system within a short timeframe and within available resources.
- Upgradeable with regard to incremental improvement over time in response to social and legal needs and emerging economic opportunities.

A country's legal and institutional framework must be revised to apply the elements of the fit-for-purpose approach. This means that the fit-for-purpose approach must be enshrined in law and that the information be made accessible to all users.

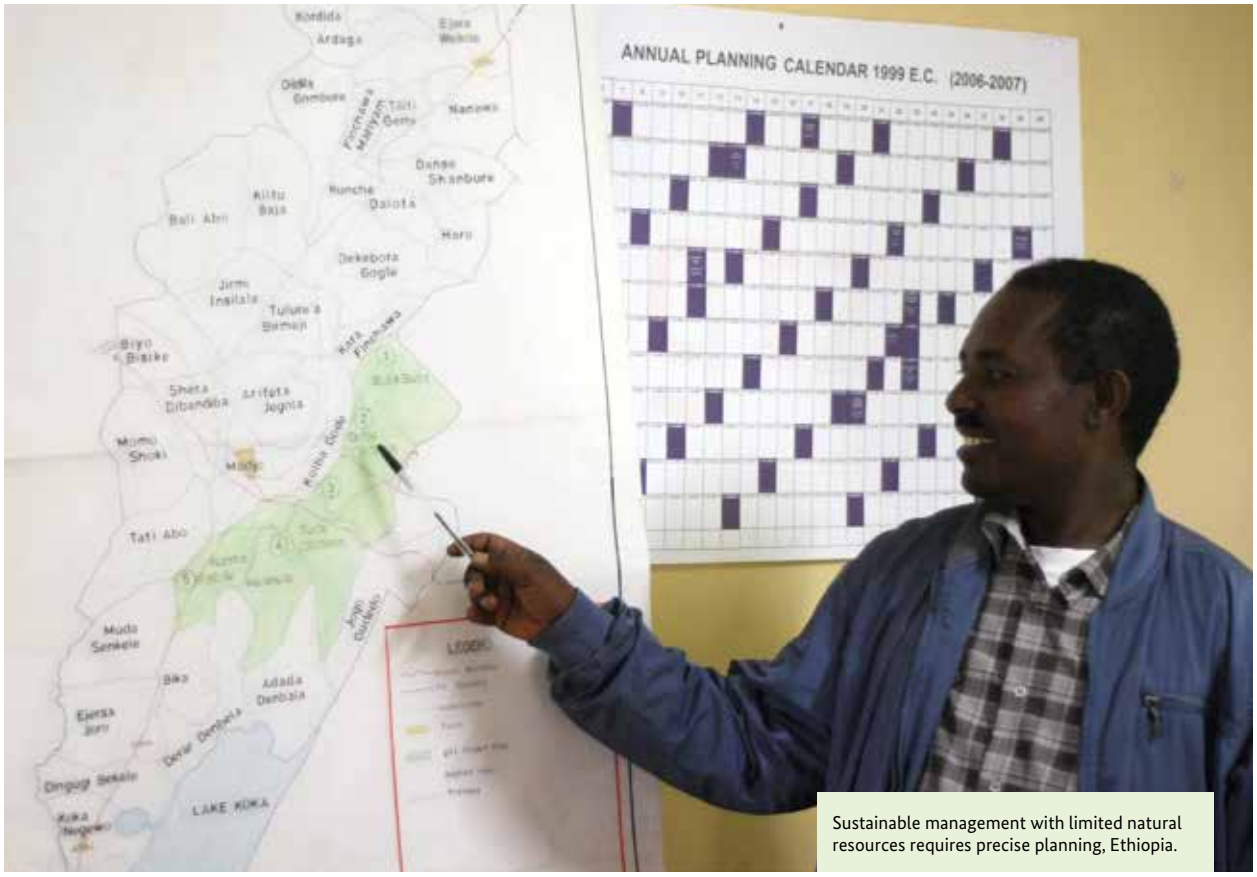
A fit-for-purpose approach will ensure that appropriate land administration systems are built within a relatively short time frame and affordable costs. The systems allow for incremental updating and upgrading. This approach will facilitate economic growth, social equity and environmental sustainability to be better supported, pursued and achieved.

However, there is often considerable resistance from traditional land administration institutions for consequently reforming by-laws and official instructions. The technical assistance through development cooperation should therefore provide comprehensive assistance in adaptation and capacity building.

(Enemark, Bell, Lemmen, & McLaren, 2014)

Land valuation is a procedure for determining a well-supported estimate of the value of a property taking into account all pertinent data like the type of property, location, potential for development and special risks. The market price can be derived from different methods of land valuation and is the basis for the following:

- Land tax,
- Basis for granting loans on mortgages,
- Compensation for restricted use and expropriation,
- Decisions for stemming land price speculation,
- Decisions on urban planning,
- Investment stimulation,
- Inheritance regulations,
- Transparency and efficiency of land markets,
- Land consolidation, land readjustment and land reform.



Sustainable management with limited natural resources requires precise planning, Ethiopia.

The promotion of basic structures for land valuation (individual experts, institutions and regulations) and the development of methods and clear rules can help mobilize land markets and revitalize the investment climate considerably.

The **land and property tax** can be an important source of income for the public budget. The land tax is especially relevant for community management with respect to decentralization. It is important as an instrument for supporting the communities' budgets for maintaining, for example, land administration systems[1].

Besides its importance as a source of income, taxation of land can also be a fiscal steering instrument:

- Production of incentives,
- Provision of land for construction,
- Reduction of land speculation,
- Mobilization of the land market,
- Guiding of land use.

This is especially the case when the basis for calculation of the tax is not the *current* use value, but the *potential* market value.

Production and guiding of land use can be influenced by the land tax. A high land tax based on the potential soil capacity should urge the farmers to use the land optimally, thus contributing to an increase in productivity per unit area (e.g. in the case of irrigation).

1 See Bahl, R. and J. Martinez-Vazquez (2007): The Property Tax in Developing Countries: Current Practice and Prospects. Lincoln Institute of Land Policy Available at https://www.lincolninst.edu/pubs/dl/1256_Bahl%20Final.pdf

Case Study 8: Land Tenure Regularization and the Rwanda Initiative for Sustainable Development

With a current population of 10.5 million and a growth rate of 2.6 percent (2012), Rwanda has a population density of 416 inhabitants per square kilometer – an intense density for a predominantly rural population. Currently, land is the most frequent cause of legal disputes among rural Rwandans. Population growth and multiple claims on land due to episodes of war-related populated movements (1959, 1970, and 1994) are the underlying causes of these disputes.

The Land Tenure Regularization Program (LTRP), a national land registration program, was introduced in 2007 with the aim of titling every plot of land within the terms of Rwanda's Land Law. The general goals of the LTRP are to reduce disputes over land, to decrease gender inequality regarding access to land, and to foster economic growth through property rights and security. However, the number of land disputes has actually increased as a result of the LTRP implementation. This can be explained by the increased awareness of the population of their land rights and by increasing land value. Over 48% of recorded disputes take place on an intra- and interfamily level, and are mainly inheritance related. This explains why managing such land related disputes is outside the scope of LTRP.

For more than seven years, GIZ has been supporting an NGO called Rwanda Initiative for Sustainable Development (RISD), mainly by seconding Technical Experts. RISD has over 14 years of experience in policies related to land, through action research approaches, and advocacy and networking at local, regional and international levels. RISD follows a community-based approach. Field staff members live within the communities over a time period of more than two years. This allows for building trust and confidence with community members, reporting their cases and analyzing shortcomings in the land dispute management processes.

At the national level, the success factor of RISD is cooperation with other civil society organizations within the LandNet Rwanda Chapter. Invitations to the parliament to contribute to the formulation and adjustments of relevant land laws are frequent and show a strong effort to maintain a good cooperation with the Rwandan government. At the local level, RISD brought together different stakeholders to interlink their institutions and to enable an exchange of experiences. Trainings of local mediation committees are implemented, for example in cooperation with the 'Maison d'Accès à la Justice', a decentralized legal aid structure. Some benefits of the work of the RISD are:

Training of people in charge in land dispute management skills and basics land related laws; Documentation of land disputes; Supplying mediation committees in the project areas with different tools and mechanisms to better document and resolve land disputes; Organization of community meetings on land rights as part of the public information and awareness campaign; A toll free facility where people can call for assistance on land related disputes.

The best-placed strategy to handle the majority of land related disputes is the establishment of an institution of Mediators (Abunzi), which is part of the community and rich with cultural understanding of community values. The evident tension between the need for a tenure program like the LTRP and its unintended consequences requires close scrutiny. If this tension is ignored and written off as the normal result of a transition period, conflicts over land pose a very real risk of reaching crisis proportions. More focus should be put into strengthening the capacity of mediators to curb down community and family disputes, which are the majority, and yet are outside the scope of LTRP.

4.3 Land Development and Management Instruments

The need for improved land management is obvious in a changing environment. A set of instruments can facilitate the development processes with focus on participation and the principle of subsidiarity.

Land consolidation and land readjustment are the most comprehensive of all land management instruments. They are applied for the development of rural and urban areas respectively, for example, for the elimination of deficiencies in the agrarian structure and urban tenure considering the existing ownership, for matching the land use patterns with land tenure structures, or for

making land available for the realization of infrastructure projects.

Germany has over 100 years of experience with the legal and technical aspects of land consolidation and land readjustment. The relatively high costs and long time needed for the realization of land consolidation or readjustment projects are a consequence of the comprehensive legal, organizational and financial framework.

Land consolidation and land readjustment generally:

- Regulate the use of land on the basis of a land use and infrastructure plan agreed upon by all affected institutions and serves to reconcile the interests of regional development, land use planning and those of the individual land owners;
- Eliminate the deficiency in the utilization of land parcels such as fragmentation of property and the poor development of the project area;
- Regulate the ownership, user and protective rights to land and water and contributes considerably to settling conflicts of use and for harmonization of interests;
- Mobilize the change in structure additionally through project-related land banking, lease regulations and efficient regulations for avoiding expropriation in the public's interest such as for the construction of infrastructure and protected areas;
- Guarantee democratic rules for the active participation of the target group as individuals and as a mutually supportive group (participants in the association);
- Make a diverse range of processes available for the different challenges which include the voluntary exchange of land, simplified types of land consolidation and the comprehensive readjustment of the planning area;
- Create a comprehensive legal and organizational context for those land development and infrastructure planning measures that have a far-reaching intervention in the ownership structure.

Urban development poses particular challenges to land administration and development. High rates of urbanization have outgrown the management capabilities of cities in the developing world. The existing formal urban planning standards and tenure regulations have in most cases proven inappropriate to meet the challenges. Informal and often illegal urbanization processes are bypassing formal planning regulations and creating parallel structures in order to tackle their existential problems. The need for better and more flexible land management is obvious, particularly for the strengthening of urban/rural linkages.

In many regions, the rapid increase in the rate of urbanization has placed growing demands on the city and national administrations. Up to now, settlement projects and projects for the improvement of technical infrastructure were often planned ad-hoc, and their effects on the city and the environment have been insufficiently considered.

In addition, clear information on the land tenure situation in urban areas is often lacking. Therefore, the first step is to obtain and/or improve the information base on the availability and use of land in the city and on its fringes for dealing with the resource "land" more efficiently before introducing new regulations. An important measure is the establishment of a land administration system as the foundation for efficient urban planning and development, which makes the diversity in land tenure arrangements transparent and accessible.

Development in the cities and on its fringes is often unplanned and uncoordinated. In many cases property on the fringes are arbitrarily divided and the plots are transformed by unregulated construction.

Land use planning is another fundamental instrument of land management. As clearly stated by GIZ's Land Use Planning manual (GIZ, 2011[2], p.11) "Achieving food security, mitigating and adapting to climate change, protecting biodiversity while at the same time initiating economic growth, protecting people from natural disasters, preventing and settling land conflicts or initiating

2 Available at: http://www.giz.de/expertise/downloads/Fachexpertise/giz2012-en-land-use-planning-manual.pdf

development in a drugs environment are just a few of the many challenges rural areas in developing countries are currently facing. Land use planning is one of the tools that can help to meet them as it focuses on negotiating future land and resource uses by all relevant stakeholders".

Case Study 9: Best practices for land consolidation in Serbia (EU/BMZ/GIZ)

The fragmentation of agricultural land is one of the major problems of Serbia's agricultural sector. Compared to EU countries, Serbia's agricultural holdings are highly fragmented and their production is less efficient. Average parcel sizes in South East Serbia amount to less than 0.30 ha and many parcels are not accessible by roads. Experience from other European countries suggests that investing in land consolidation, although costly, can have high returns.

In the past, Serbia has conducted a large number of land consolidation projects, predominantly in the Northern region (Vojvodina), a highly productive area in the Danube basin. Practices like clearing large areas of bush, shrub and trees and using high amounts of pesticides and fertilizers have led to degraded, imbalanced ecosystems and a loss of biodiversity. Applying these practices in the south, which is still rich in biodiversity, would contradict current EU practices, as stated for example in Flora and Fauna Habitat Regulations, Natura 2000, and others. Serbia has now started negotiations for EU accession, and faces the challenge to comply with EU standards and regulations, which emphasize sustainable agricultural production in balanced eco-systems (GIZ, 2015, p.14).

The project Strengthening Municipal Land Management, commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ), has recently begun implementing land consolidation programs in seven pilot municipalities in South East Serbia. It closely cooperates with the Serbian Ministry of Agriculture, Forestry and Water Management (MAFWM), in particular with the Directorate for Agricultural Lands, and it is funded by the European Union (2.8 Mio EUR), the German Government (1 Mio EUR) and MAWFM (0.1 Mio EUR). The project aims at "introducing the land management tools that are needed in the context of a democracy and market economy", such as "participatory planning [...], smart growth [...], land valuation, and land readjustment that only became relevant after the reintroduction of private land ownership" (GIZ, 2015, p.11) .

At national level, the project supports the review of the current legal framework according to EU best practices. The following EU best practices have been prioritized for Serbia and are being gradually introduced and tested with the support of national and international experts:

- Active participation of the involved farmers and other stakeholders to ensure a fair and transparent process;
- Preparation of a plan for common and public facilities with a landscape development plan;
- Introduction of additional checks and balances on local and national level;
- Elaboration of a vision and strategy in order to contribute towards a municipal and regional economic development strategy.

At local level, several EU standards are being tested within the workflows of the land consolidation programs of the seven pilot municipalities.

The project has now initiated the implementation of land consolidation processes in all pilot municipalities. The new approach, with a focus on participation and inclusion of EU best practices, is widely accepted by the involved actors as well as by the participants in the pilot municipalities. Many farmers have learnt that land consolidation is the entry point for achieving a more efficient production and becoming active entrepreneurs ready to compete in the European market. It is expected that as a result of the land consolidation process the average parcel size will grow by at least 40% and will significantly reduce the costs for agricultural production.

Local target groups with the support of state offices and regional development organizations, as "lead agencies", should implement the land use plans. Technical cooperation projects support the planning process by assisting with the development of strategies for implementation and the establishment of efficient monitoring and evaluation systems.

The implementation of land use planning usually affects the rights of individuals or communities by setting clear restrictions. Reconciling the interests is, therefore, only possible on the basis of a consensus and the total acceptance of rules. Matching land use patterns and the land tenure structures is an on-going process, which can be supported by land consolidation and land readjustment.

Planning meeting in Chad.

Case Study 10: Integrated Ecosystem Management and Land Use Planning with the "SIMPLE"-Approach

The Philippines suffer from scarce land resources and continuing resource degradation due to increasing population pressure as well as fragmented planning and management of lands and water bodies. Many municipalities and cities have outdated or no land use plans at all. Local governments often lack the capacity and expertise to formulate them. The GIZ-supported land use planning and management tool "Sustainable Integrated Management and Planning for Local Government Ecosystems" (SIMPLE) attempts to respond to those challenges. It connects provincial spatial plans with municipal land use plans and integrates them into a consistent structure. SIMPLE is implemented in the national "Environment and Rural Development Program (EnRD)", commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) and in close cooperation with other GIZ Programs in the Philippines.

SIMPLE contains process descriptions, 12 training modules on different topics (conflict, GIS, gender, climate change, etc.) and management instruments for provinces, municipalities, cities and villages (barangays). Local planners and facilitators can independently apply all tools provided, such as software solutions, guidebooks or ready-to-use facilitation techniques.

As of April 2014, 105 rural municipalities and cities in ten provinces have applied this training and capacity building tool. 28 comprehensive land use plans were formulated and integrated into the provincial physical framework. More than 700 villages have developed and implemented their community plans. 56 municipalities and cities now have functioning GIS units and produce and publish necessary maps.

The national agency Housing and Land Use Regulatory Board (HLURB) that oversees land use planning has started to update its planning guidelines on the Comprehensive Land Use Plan and integrated lessons learnt from the implementation of the SIMPLE tool. This might provide the opportunity to train many more Philippine local governments so that land and water use in the country will be improved in the long-term.

Source: Lange, Astilla, Nuevas and Moyano, 2012

4.4 Instruments for Disaster Risk Reduction and Management

The frequency of natural disasters has been steadily increasing in the last decades, putting substantial pressure on land management and land administration systems. "Nearly 1,2 million people have lost their lives in natural hazard-related disasters over the past two decades. Associated economic losses are estimated to total approximately 70 billion USD per year, with poor countries bearing the bulk of the losses" (UN Development Group, 2009).

Indeed "disaster risk is increasingly global in character. Factors, such as climate change and globalization mean that actions in one region may have an impact on disaster risk in another – and vice versa" (ibid.).

One of the most relevant challenges in this regard is to provide security of land rights and land tenure to all citizens, for without good governance in this area, disaster prevention and mitigation actions are seriously hindered.

Land management and land administration have a key role to play in environmental risk management, both in terms of prevention and mitigation measures. Ideally, considerable efforts should be devoted to activities leading to a reduction of disaster risks and increasing preparedness to such events, such as the documentation of land rights through the establishment of land registration and cadaster systems. Clear records on land are crucial for developing effective and efficient prevention (potential relocation or upgrading of infrastructure in disaster prone areas) and recovery (reconstruction and possible

temporary or permanent resettlement). In this regard, it is important to highlight the crucial role of capacity development at individual, institutional and societal levels for, in order for these and other activities to be carried out, there is a need for qualified professionals in the fields of land management and land administration. But, considering the complexity of the issues at hand, there is little chance for isolated capacity development efforts to be successful; therefore, collaborative approaches are required. Unfortunately, disciplines such as geomatics, land management and land administration, are still incipient in many disaster prone countries and much stronger efforts are needed in order to cope for the enormous need for qualified land-professionals.

4.5 Governing redistributive land reforms

Redistributive land reforms, if implemented successfully, have a deep impact on existing land governance; they shorten otherwise evolutionary processes dramatically by changing land ownership structures, (im-)balance of rural power relations, farm sizes, public and private support services, productivity of the agricultural sector, people's livelihoods and rural poverty patterns.

"Land reforms" describe measures for revising the distribution of property in land, thus realigning property rights in land. They should be part of a broader concept of "agrarian reforms" being characterized as a bundle of measures for overcoming socio-economic obstacles that are based on shortcomings in the current agrarian structure. They include both the conditions for land tenure (ownership, leasehold, inheritance) and of land use (farm size distribution, supporting institutions, and delivery of eco-system services). These elements are often called management reforms (GTZ, 1998). Land reforms are intended to serve many objectives at once: reduction of inequality in landholdings, overcoming quasi-feudalistic ownership structures, democratization of society, protection of tenants, promoting small scale family farming or creating cooperative large farms, intensification of agricultural production, new employment or improvement of social status of beneficiary families.

Land reforms have a long history and have never fully disappeared from the development agenda (GTZ, 1998): some reforms with a strong re-distributional effect were rather successful in Asia after WW II (Korea, Taiwan, Japan). Reforms in India, Pakistan or The Philippines only showed limited success due to weak government enforcement, powerful opposition of mighty landowners, lack of funding for compensation and management support. Land reforms in Southern Africa mainly try to heal injustice of former apartheid regimes and to reduce rural poverty; in East Africa, Kenya implemented a far reaching land reform after independence reallocating large tracts of land in the fertile highlands from former colonizers to the national elite; whereas attempts in Tanzania to reform the results of the "Ujamaa" policy of the past partly failed due to administrative opposition and weak enforcement at a local level. Orthodox socialist land reforms with expropriating without compensation were most intensively implemented in Ethiopia, Mozambique and Angola and have been reversed largely after the end of the Cold War. In West Africa mainly the conflict-ridden co-existence between farming and herding societies in the Sahel region was addressed by re-allocating land ownership and use rights between both parties ('Code Rural'). In general, reforms of land ownership in Africa have had less impact than those in Asia or Latin America but continue to have high political priority in the SADC region.

Due to the historically antagonistic land distribution between latifundia and minifundia, Latin America shows the richest experiences in land reforms. Mexico still stands as a kind of laboratory for socialist redistributive land reforms in the early 20th century (the 'ejidos') and recent attempts to reform them in a way to allow for productivity increases through careful re-privatization of common lands without losing equity consideration out of sight. Cuba, Bolivia, Peru, or El Salvador are countries with severe changes in rural governance through different land reform phases. All reforms have been disappointing from the view of the "campesinos" since land was reclaimed by changing government or juntas, reforms were watered down dramatically.

Reconstruction after a Tsunami in Indonesia; local citizens are involved in the planning

Many stakeholders try to influence the drafting, instruments, implementation and enforcement of land reforms (GTZ, 1998):

- National to local governments with different ministries involved (agriculture, rural development, labor, infrastructure, social affairs, finance)
- Large landowners fearing for old-established privileges having good networks in parliament and military, and being resistant against reforms with all means (Pakistan, The Philippines, Chile)
- Commercial, progressive and innovative medium-sized farmers who want to enlarge and consolidate their farms, like the Affirmative Action Loan (AALS) beneficiaries in Namibia.
- Smallholders being a rather heterogeneous group with a strong interest in increasing their farm size but with different ideas on market integration, specialization and farming intensity.
- Landless people having the highest hopes in land reforms. For land reform implementation satisfying the landless is rather costly as they do not only need land but also access to capital, equipment, extension and business management training (such as the Farm Unit Resettlement Schemes (FURS in Namibia).

In cases redistributive land reforms do not aim at giving ownership rights as titled private property to the landless and land-poor, access to tenancy contracts can also be an objective of land reforms (as lease agreements in Namibia show). They are interested in secured, stable leasehold conditions, either based on fix rent or sharecropping which avoid hidden contract side arrangements that weaken their economic position (labor supply on landlords' fields, land rental cum credit contract with high interest rates).

With regard to the heterogeneous international donor community, some donors are reluctant in supporting the redistribution process itself as often property rights of the expropriated will be violated (forced expropriation).

They only support management reforms. Bilateral donors often have limited options to contribute due to financial constraints which urges for a strong donor coordination or basket funding under the heading of an international organization, such as the World Bank or regional development banks.

Civil society organizations like NGOs: Many of them have become very influential in the land reform process, such as in Brazil, The Philippines or India. Often they protect the poor, in legal conflicts, bring the reform needs to the media or help to build up new land governance structures (e.g. cooperatives, protection of customary rights).

In practical terms, a wide range of strategies has been tested in the last decades, from rather costly models adhering to a voluntary "willing buyer, willing seller" principle (South Africa, The Philippines, Namibia), via pilot projects of allocation of state lands to the rural poor (Cambodia) as a social fig leaf complementary to massive private direct investment in land, up to attempts of violent expulsion of former owners without considerable compensation and installing beneficiaries which are supportive to the government in power (Zimbabwe). Success and resulting land governance differ considerably depending on beneficiary groups addressed, intensity of intervention, co-ordination with other policies, resistance and conflict solving abilities in the political arena, enforcement means and available funds.

The risks of land reforms to fail or to be completed only half-heartedly are manifold (GTZ, 1998): A key question is always from where the land for redistribution comes from. State land can be distributed to the landless, as in Ethiopia or the Philippines, in other cases the state buys up farms at the willing buyer-willing seller principle and redistributes it to its beneficiary groups (Namibia, Mexico, partly in South Africa). This quickly generates a high financial burden for the government leading in the medium and long run to a drying out the land reform initiatives as in The Philippines. Often only land of inferior quality is offered on this market, leading to unsuccessful farming and indebtedness of the beneficiaries. If land has to be expropriated from the land-rich, resistance grows as compensation rates are often below market value or paid under unfavorable conditions (state bonds being eaten up by inflation). The major risk however comes from shortcomings in implementation (Aliber & Cousins, 2013, Binswanger-Mkhize, 2014, Keswell & Carter, 2014): lack of financial resources and new budget allocation priorities under changing governments, unclear legal framework creating time consuming court cases, lack of water tight titles and uncertainties about land rights of beneficiaries, or unsatisfactory competences of administration involved. All these factors together with corruption of civil servants at all levels allow that opposing activities gain momentum up to extremely violent reactions as in the military coup d'etat in Chile in 1973 for which the socialist land reform was a trigger factor.

Future pathways of land reform still have largely ignored the strong influence of large-scale foreign and domestic direct investment in land. Large tracts of state land or even private lands being in principle suitable for land reform projects will be rented-out or even sold to them narrowing the room for maneuvering of the state. Promises of employment and income for the poor in these large schemes will most probably not be fulfilled which means just postponing the need for the state to act with redistributive land reforms for rural poverty alleviation and to heat up further the tensions on land.

4.6 Implementing Agrarian Reforms and Transformation Processes

Agrarian reform is usually part of extensive political and economic reforms. For the reform of land ownership, besides the necessary legal regulations, a large number of administrative measures and complementary support is necessary to reach the objectives set by the particular country/project, e.g. the expropriation of large landholdings and their redistribution in favor of the landless and the smallholders. First the ownership conditions of the large landholdings have to be investigated and registered (inclusion or update in land administration system). Also, plots of the new owners have to be identified and registered.

The simple redistribution of land is no guarantee for an increase in production and income for the reform's beneficiaries, although this is often aspired to with the implementation of land reforms. A recent global study (Lawry et al., 2014) driven by highest methodological standards

has asked to what degree secured land tenure (titling, leasehold contracts) promotes investment, enhances productivity of land use, income and consumption of beneficiaries and gender equity: Clear benefits arise in terms of productivity, consumption expenditure and income and long-term (farm) investments are made. However, it is not guaranteed that new credit channels are opened (the collateral problem) and formal borrowing is significantly facilitated. Results are weaker for Africa than for Asia which is partly due to the fact, that pre-reform tenure security was already higher in Africa under existing tenure systems.

The new cultivators usually lack knowledge and experience in land management. It is necessary to support the inexperienced farmers appropriately with the supply of inputs, loans, etc. The essential supportive actions contain the usual instruments of agricultural policy like extension services and further training, establishing credit and market systems for the sale of the products and the purchase of production factors and supporting the creation of cooperative structures.

All of the above measures should be integrated into the process of the reform of land ownership. In countries where these elements of a reform were inadequately or not taken into account at all, inexperienced farmers were often not able to efficiently utilize the land allotted to them. The degree to which the objectives of numerous agrarian reform programs are fulfilled is limited due to the resistance of influential large landholders, lengthy and cumbersome expropriation and re-distribution processes, and an inefficient reform administration.

Therefore, monitoring of performance is fundamental. Assessing and controlling the performance and impacts of agrarian reform programs include the collection of data, the interpretation of results, and an analysis of the constraints encountered.

For a comprehensive impact assessment, it is not sufficient to only consider intended effects and expected outputs of the measures of cooperating institutions and other external factors. One also has to be aware that there are a number of effects that may not be anticipated or intended, but which are nevertheless attributable to the measures implemented.

Political and socioeconomic development processes lead to interim periods and represent a permanent legal and political challenge. The privatization of state lands, the formal or informal urbanization or the formalization of autochthonous rights are examples of interim periods.

The outstanding importance of unambiguous interim regulations for the rapid implementation of transformation processes is extremely underestimated by many executive agencies. The result of this situation can be land speculation, land grabbing, informal land markets and collapse of production with all of their socioeconomic consequences.

Interim regulations must have an interdisciplinary concept. The desired social, economic and political results should harmonize with the challenge of feasibility, rapid implementation, consideration of the interests of the concerned parties and legal security.

Case Study 11: A decade of communal land reform in Namibia

In the early 1990s, the new Government of Namibia embarked on an ambitious land reform program, seeking, among other objectives, to redistribute commercial land in a fair and equitable way, and to improve the system of land tenure security for inhabitants of communal areas. The overall goal of the land reform program is a more equitable distribution of land and access to land, so as to promote economic growth and reduce income inequalities and poverty.

GIZ started to support Namibia's land reform process in 2003 through the GIZ Support to Land Reform (SLR) Program. As from June 2014, GIZ discontinued the SLR Program support to the Communal land Rights Registration (CLRR) process, but started supporting land reform in urban areas through the SLR Program, by supporting the government in implementing the Flexible Land Tenure Act 4 of 2012 (FLT).

The Communal Land Reform Act 5 of 2002 is the guiding law that allows for every Namibian citizen to register both existing and new communal land rights in order to acquire tenure security over the given piece of land. Before the enactment of this law in 2003, Traditional Authorities allocated land mostly verbally. The last 11 years have seen considerable achievements in communal land reform, including putting in place a unique Namibian Communal Land Administration System, and capacitating key stakeholders, such as the Communal Land Boards and Traditional Authorities, who are tasked with the tedious work of verifying 245.000 existing land rights.

The CLRA laid the foundation for a standardized land-allocation process aimed at providing equitable access to land, in compliance with the constitutional requirement of "fair and reasonable" administration for all. The Act has thus standardized administrative procedures for all regions and all Traditional Authorities. However, this has not taken away the Traditional Authorities' decision-making powers as it only requires that the Traditional Authorities abide by uniform administrative procedures. This has clearly improved the general situation.

Women have definitely benefited from the CLRA and its implementation. They are no longer dependent on male family members for accessing land; they have equal rights when applying to register a land title and the Act protects widows and their children.

The potential benefits of CLRR have not been exhausted, and it is recommended that the Ministry of Lands and Resettlement encourage other institutions to make use of land right certificates to increase the range of potential benefits.

Already now it can be observed that the pressure on the unregistered land in many areas, and on the more remote and less densely populated regions, has increased over the years. The current status of land occupation, the allocation of new land rights, the growing demand for commonage due to increasing numbers of livestock, and the wish for diversification through other land-use models, are issues which raise the question of how much unoccupied land will be available for future generations.

The perspective of the local communities has often been neglected in the discussions on the development of communal land, yet their views and aspirations should be among the key factors considered in determining the future of communal land in Namibia.

Source: GIZ, 2014

4.7 Conflict management and resolution

In many partner countries new innovative institutions for conflict resolution and conflict arbitration are created, or inactive ones reactivated. This can be done through state initiation or through autonomous self-help of the concerned parties. On national, regional and local levels, structures have to be created that are suitable to contribute to the conflict resolution between the different interest parties (e.g. the state's and the smallholders' interests).

Land conflicts are often heard in courts. This is usually very costly and time-consuming. Additionally, the number of suitable courts on a local level is often not sufficient, and appropriately educated judges and lawyers are scarce.

Out-of-court reconciliation of interests presents itself as a complementary activity according to the motto "settling before judging". In this process corresponding arbitration procedures can be developed and round-table conferences with the different parties (state authorities, local authorities, affected persons and mediators) can be established.

Important procedures that serve as a voluntary resolution process with all the affected participants are facilitation, mediation and conciliation. Another significant aspect is the education and further training of governmental and private mediators who can conciliate resource conflicts. Traditional conciliation structures on local level exist in most cultures. But they are often ignored by the "formal" administration. Development cooperation can help to build a bridge between judicial institutions and traditional conciliation structure.

In numerous countries non-governmental advisory services are of importance. For example, NGOs give information and advisory services free of charge and legal assistance for the enforcement of rights of the local population.

In many regions local authorities have many years of experience in conflict resolution and arbitration. They can usually offer more suitable solutions than the official legal system. In West Africa, for example, numerous traditional conflict resolutions by village chiefs are really a combination of the elements of negotiation, mediation and the final arbitration result.

Box 4: Customary Land Secretariat in Ghana

In Ghana, the Customary Land Secretariat (CLS) is a decentralized land administration unit established by local land owning communities (who are recognized by the constitution as managers of their land) with the support of the central government through the Land Administration Project (LAP). As part of the broader institutional reform and development component of LAP, CLSs serve as a link between the landowning communities and the public land sector agencies. It is aimed at establishing a unified, decentralized public record of land availability, use and transaction at the local level (Ubink, 2008). Their role is to provide land administrative services for holders and seekers of customary land rights working under the direct authority of traditional authorities. Manned by local people (mainly volunteers), CLSs preserved records are available to all members of the community and the public in general. They operate under a well-constituted land management committee (LMC) appointed by the traditional authorities. The LMC has the responsibility of decentralizing the activities of the CLSs to the other communities in the traditional area. They appoint local officers in all the communities who will be responsible for the land transactions and records in their respective communities. On the issue of minimizing land- related disputes and conflicts in the districts and local communities, the CLS is one institution that the locals can look up to for resolution. Employing Alternative Dispute Resolution (ADR) mechanism, the secretariats are able to manage land conflicts at the grassroots level without recourse to the magistrate court. In support of good land governance, they also help in clarifying land rights and ownership especially for the vulnerable, in areas where gender disparity is high.

4.8 Capacity development and applied research

Fundamental objectives of land management and land administration projects are to impart knowledge and exchange experiences. Part of this is the awareness creation of all affected persons, capacity development measures and forum discussions for the exchange of experiences.

The profile of requirements for long-term and short-term experts has changed over the years. Nowadays, capacity development programs should create more awareness and foster understanding of the complexities of the field of land management and land administration for decision and policy makers. Besides the teaching of knowledge, obtaining formal qualifications (Diploma, B.Sc.; M.Sc.; Ph.D.) is a major objective for sustainable capacity development. Project personnel or counterparts can be sent to relevant Diploma, M.Sc. courses or Ph.D. programs for further education, thus fostering career development for key actors and leaders. Nevertheless, the middle level (land manager, land administrator, etc.) is an essential part of education too. This is especially valid for decentralized systems.

A regional potential for advisory services can be mobilized by supporting universities and research institutions in the region to accompany programs in the field of land management and land administration scientifically.

Case Study 12: Graduate Program „Land Administration and Management“ at the Visayas State University in the Philippines

The Philippine government has envisioned a long-term program on land administration and management. In fact, it has declared its 20-year commitment to alleviate poverty and enhance economic growth by improving land tenure security, and fostering development of efficient land markers in rural and urban areas through the development of an efficient system of land titling and administration; and a uniform valuation system based on clear, coherent and consistent policies and laws supported by appropriate institutional structure.

In support of this commitment, the government has initiated the Land Administration and Management Project (LAMP) in 2001 with support from the World Bank and the Australian Agency for International Development (AusAID). One of the components of this project was to establish a study program on land administration and management (LAM) at the Visayas State University in Leyte.

Highly qualified and internationally trained VSU faculty members from a variety of relevant disciplines are faculty of the LAM graduate program. The seven core faculty members of the LAM graduate program worked with experts from two foremost geodetic and land management institutions—the University of Twente, Faculty of Geo-Information Science and Earth Observation (ITC) in the Netherlands and the Technical University Munich (TUM), Faculty of Civil, Geo and Environmental Engineering in Germany, to develop the course materials for the program. The faculty also embarked on a project to document land management experiences all over the Philippines to serve as localized case studies for use in the lectures, seminars and exercises.

For more information please visit www.lamvsu.com

Dissemination of knowledge in the field of land management and land administration is an important task that can be promoted by technical cooperation. In particular, the following topics have to be considered:

- Support for obtaining, translating and distributing text books, teaching material and information material related to land management and land administration,

- Promotion of networks for obtaining and distributing information,
- Support the organization and implementation of field work and excursions concerning land issues (e.g. land survey, readjustment, etc.),
- Promotion of contacts and of exchange of experiences with and between cooperating countries,
- Support of the use of modern information technologies, like the Internet, online collaboration and social networks.

The implementation and promotion of academic programs in the field of land management and land administration in Germany or the cooperating countries support the exchange of experiences and can contribute to the development of context-intelligent approaches.

In many partner countries the capacity for research is (still) limited and offers various approaches for improvement. Therefore, these countries should be supported in the strengthening of their research efforts especially in the field of applied research by the creation and the expansion of appropriate research infrastructures. A contribution to this objective is the education of scientists and technicians from the partner countries.

Case Study 13: M.Sc. Program „Land Management and Land Tenure“ at the Technische Universität München

The 18-month intensive postgraduate course is offered to international students with professional experience in the field of land management. The Master's Program aims to qualify students in interdisciplinary approaches to land management and land administration in an international context. One aim is to place the role of land rights and land management in the broader context of good governance and sustainable development. Another objective is to provide students with a profound knowledge on the complexity of land issues in the rural as well as in the urban context. All courses combine theory and practice. Students are trained in the application of practical methods and tools. Case studies, field trips and lectures given by experts with practical international experience will complete the formation. For more information please visit http://www.landmanagement.bgu.tum.de

Intense cooperation can occur in applied research in the field of land management and land administration between scientists from cooperating countries, because land issues require especially detailed knowledge of country- and culture-specific structures. This is to ensure the scientific accompaniment of reform processes in the land sector and to achieve the rapid integration of scientific results into the development cooperation.

Partnerships like the one between the Technische Universität München and the Royal University of Agriculture in Cambodia have proven to be very useful instruments for institutional development and improving qualifications. The reason is that these partnerships are laid out for a long period of time and are based on mutual confidence and personal relationships.

Case Study 14: Technical Cooperation Program "Strengthening the Advisory Capacities for Land Governance in Africa"

The program is part of the BMZ special initiative 'One World, No Hunger' and contributes directly to achieving the objectives under its Action Area 6 (promoting responsible land use and improving access to land). It is thereby also making a significant contribution to improved global food security. The project partners are the Land Policy Initiative LPI (UNECA, African Union Commission and African Development Bank), the World Bank and GIZ.

The overall objective of the program is: "The Human and institutional capacities for realizing sustainable land policies that pay particular attention to the rights of marginalized groups like small-scale farmers, pastoralists and women are strengthened across Africa."

The program will work in the following areas:

- Provide institutional and specialized support for LPI to establish the Network of Excellence on Land Governance in Africa (NELGA)
- Collaborate in the development and implementation of short and long term capacity development measures together with LPI, World Bank and Universities in Africa, Europe and USA.
- Promote Policy dialogue, South-South and North-South exchanges.
- The accompanying research program, conducted by institutions comprising the NELGA spearheaded by the World Bank, will generate evidence-based findings and recommendations that will feed into the policy dialogue and other policy-making processes.

4.9 Land policy and regularisation in post conflict environment

In most of today's conflicts, violence is linked to land issues. Thus, at the least to avoid causing additional harm, but as well in efforts to design effective programs, an adequate understanding of Land tenure issues is central[3]. Land policy and land regularization as an element of peace-building tends to be under-rated and has received insufficient attention in the development cooperation. Yet land policy clearly plays a fundamental role both in recovering from conflict, and ensuring that further conflict does not follow. In the first instance, land policy must deal with the immediate chaos of property destruction and population displacement caused by conflict. Returning refugees require shelter and incentives to return to their original areas. Disputes over remaining housing stock and irrigation infrastructure and illicit land taking need to be minimized. Humanitarian and peace-keeping agencies require sites for their operations.

The presence of mine contamination and UXO has a major impact on livelihoods by blocking access to fields, villages and collecting fire woods. Records relating to land need to be collected and restored. A functioning system of land administration needs to be re-built. All these issues require urgent attention, not simply to provide humanitarian relief and allow economic reconstruction, but to prevent a new round of land transactions causing further uncertainty to develop[4].

Secondly, land policy must work to create institutions and laws to meet claims for property restitution. Such claims will come from returning refugees, those who acquired titles under the previous regimes, and those who lost lands under them. Establishing certainty of titles will require resolution of these claims. Without that certainty, investment will be deterred, reconstruction slowed, and social and political peace and stability put at risk. Yet resolving property restitution claims presents a host of difficult and complex issues. Experience shows that there is no magic wand solution to intractable land conflict.

3 ICRC, Land tenure issues: Fuel for conflict, food for thought, Geneva 2009

4 Fitzpatrick D., Land policy in post-conflict circumstances: some lessons from East Timor, 2002

Certainty of titles cannot be restored simply through state fiat. Because land is life in most countries suffering from violent conflict, community acceptance and political support are essential components of a viable system of land administration.

Third, land policy and land regularization fundamentally shape future social and economic structures. Should land management be organized on a collective, cooperative or individual basis? What restrictions should be placed on private property? Is land reform necessary to achieve social justice and reduce poverty traps? What relation should land policy bear to investment, family and inheritance law? How can agricultural productivity be increased without threatening environmental degradation? How can mineral, marine and forest resources be managed and biodiversity maintained? How should traditional tenure systems be incorporated into the formal legal system? What safeguards should be introduced to prevent abuse and inequality, including gender discrimination, at the community level? How can urban land policy prevent overcrowding, public health risks and the development of informal settlements and "shanty towns"?

These land policy issues are not only central to reconstruction and restoration of security, but they form in themselves something of a continuum. In particular, it is important to recognize that, unless the immediate issues of property destruction and refugee return are handled well, resolution of more long-term issues relating to property restitution and land administration in general will be greatly complicated.

Carrying out an analysis of the conflict actors, causes, profile and dynamics in a given context can help ensure that projects or programs do not inadvertently increase the likelihood of violent conflict, but rather serve to reduce potential or existing violent conflict. Planning a conflict-sensitive intervention requires careful and detailed exploration of the potential impacts, direct and indirect, of the proposed activities on the actors, causes, profile and dynamics relating to conflict or potential conflict within the context, and the impacts of the actors, causes, profile and dynamics on the proposed activities[5]. Emerging good practices (for example Liberia: Land dispute task force under the land commission) and the development of tool kit (UNHCR, UN HABITAT et al) is providing guidance and technical support.

5 International Alert; Practice note 7: conflict-sensitive land policy and land governance in Africa

5. Investment in Land: A New Arena for Development Cooperation

"Since the year 2000 more than 30 million hectares of land have been acquired globally by transnational investors in almost 1000 different investments, mostly in the agricultural sector (Land Matrix). Agrofuel production is one of the main drivers of the global rush for land. Over 20 percent of the concluded transnational deals include plants intended for agrofuel production, and European investors top the rankings of investor countries for agrofuel projects" (GIGA, 2014).

This high number of reported large-scale land acquisitions, in the media often referred to as cases of "land grabbing", led to very high media attention, several NGO campaigns and also increased political sensitivity on investments in agriculture that entail conversion of land tenure and land use on a large-scale.

Box 5: The Land Matrix

The Land Matrix is a global and independent initiative to monitor the extent and nature of large-scale land acquisitions in low and middle income countries since the year 2000. The Global Observatory (www.landmatrix.org) includes intended, completed and failed land acquisitions over 200 ha that have been made for agricultural production, timber extraction, carbon trading, industry, renewable energy production, conservation, or tourism. Sources include research papers, government records, company websites and media reports.

While the launch of the database in 2012 met with high public attention on land acquisitions and created a big response in the media, the Land Matrix is constantly seeking to find more and better sources for information on land deals. One approach is the decentralization of the data collection by supporting or establishing regional and thematic Land Observatories and focal points.

The Land Matrix is a partnership between the German Institute of Global and Area Studies (GIGA), the French Agricultural Research Center for International Development (CIRAD), the International Land Coalition (ILC), the Center for Development and Environment (CDE) of the University of Bern, and the GIZ sector project Land Policy and Land Management (on behalf of BMZ.)

Of course, land governance is much broader than regulating investments that involve transfer of land rights on a large-scale (see chapter 4). The phenomenon of land acquisitions, however, has created a momentum of high public and political attention to aspects of land governance and tenure security. Already an increase in international development cooperation's portfolio on land governance programs is foreseeable. And the link between investments in agriculture and land governance offers new entry points for development cooperation.

5.1 Development of safeguards and minimum standards for investments in land

Many voluntary standards for agricultural investments include safeguards on land tenure. Perhaps most prominently, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT, see box) set out internationally accepted standards and practices for responsible tenure governance. Even though originally not focusing on large-scale land acquisitions, the VGGT in the course of their negotiation became one central document outlining responsible governance of land tenure in the context of such investments. Many governments, organizations of international development cooperation and also companies have now committed themselves to implement the VGGT.

Box 6: The Voluntary Guidelines and the Committee for World Food Security

With the aim of providing concrete guidance on responsible governance of tenure of land, fisheries and forests, the Food and Agriculture Organization (FAO) in 2009 started to conduct broad thematic and regional consultations. Based on these consultations, a zero draft was produced, which then was handed over to the Committee for World Food Security (CFS) in order to finalize the document.

The CFS was set up in 1974 as an intergovernmental body to review and follow-up on food security policies. After its reform in 2009, when membership was broadened to also include civil society organizations, the CFS has become the most inclusive international and intergovernmental platform working on food security and nutrition. In 2011 and 2012 the CFS conducted intergovernmental consultations and negotiations on the Voluntary Guidelines, finally endorsing them in May 2012.

Not only because of this inclusive development process, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) have become maybe the most publicized global initiative for the regulation of land tenure in general and large-scale farm investments in particular. Through legal advice during their negotiations, the VGGT are congruent with international law, which is of high importance when it comes to topics such as evictions or indigenous people. They are also, by characterizing land rights as "inextricably linked with access to and management of other natural resources" (Preface VGGT), more holistic than many other similar initiatives.

Meanwhile FAO is implementing a global program to support the implementation of the VGGT including components of awareness raising, capacity development (with country-based learning programs) and direct support at country level. Technical guides provide more detailed information on various aspects (e.g. the concept of free, prior and informed consent, forest tenure) or specific sectors (forest tenure governance) related to the implementation of the VGGT.

Criticism on shortcomings of the VGGT include their almost exclusion of water resources, as well as their voluntary nature, not providing for enforceable rights and responsibilities on actors involved in land deals. Mulleta (2012) argues that the VGGTs, by regarding states as neutral and main agents of change, simplify problems around land deals into investment externalities and regulatory failure, and ignore the prevailing socio-institutional power asymmetries around land issues.

Other safeguards / minimum standards in the context of sustainable investments in agriculture that do not compromise on local land tenure security are:

a. Several commodity standards such as the Roundtable for Sustainable Palm Oil (RSPO), the Forest Stewardship Council (FSC) or the International Sustainability and Carbon Certification (ISCC) system for biomass include criteria related to land rights. These may include respect of local land rights, the right of (mostly restricted to indigenous) communities to give or withhold their free, prior and informed consent (to planned interventions), the observance of ecological high conservation value areas, and the duty to conduct ex-ante environmental and social impact analysis.

b. The *Principles for Responsible Investment that Respect Rights, Livelihoods and Resources*[6]: these seven principles have been developed in 2010 by FAO, IFAD, UNCTAD and the World Bank. They are the result of a request from the Government of Japan on what principal safeguards should be applied when agricultural investments entail acquisition of land rights on a large-scale.

6 http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf

c. The *Performance Standards of the International Finance Corporation*[7] of the World Bank Group: these eight standards were designed specifically for the private sector to manage environmental and social risks, were last reviewed by IFC in 2010 and are of significance as they are being taken as benchmarks by many other banks and initiatives.

d. The *Safeguard Policies of the World Bank*[8] generally are applied in public sector lending. They are currently undergoing update to consolidate the safeguard policies that have evolved over the last 20 years. Most likely an additional environmental and social standard on land acquisitions will be introduced.

e. The *Principles for Responsible Investments in Agriculture and Food Systems*[9], approved by the CFS in October 2014, are supposed to guide agricultural investments and aim at assuring that investments contribute to improved food security, nutrition and social and environmental sustainability, especially for the most vulnerable groups of society.

f. The *UN Guiding Principles on Business and Human Rights*[10] (Ruggie Principles) outline the current most forward understanding of human rights compliance in the context of international investments and transnational companies. It is based on three pillars, the State duty to protect against human rights abuses by third parties, corporate responsibility to respect human rights, and access to remedy.

g. *Minimum principles and measures*[11] to address the human rights challenge during large-scale land acquisitions and leases developed by the UN Special Rapporteur on the Right to Food, Olivier de Schutter.

h. The UN Global Compact (UNGC) was initiated by Kofi Annan in 1999 and officially launched in 2000 by a group of 36 private sector companies. In 2012, UNGC launched the development of the *Food and Agriculture Business Principles*[12], seeking to address the need for more specific sustainability principles for activities along the agricultural value chain. Private sector signatories include e.g. Nestle, Danone, Syngenta and Yara.

i. The so-called "*Farmland Principles*[13]" were developed and launched in 2011 by a group of six pension funds. Currently, there are 17 signatories (roughly 50% pension funds / 50% asset managers) to the six principles. In September 2014 the Farmland Principles were incorporated into the UN Principles for *Responsible Investment as Guidance for Responsible Investment in Farmland*[14].

j. Following an African Union conference of ministers responsible for agriculture in 2010, the Land Policy Initiative (see next chapter) developed the *Guiding Principles on Large Scale Land Based Investments in Africa*[15]. In order to enable African States to make informed decisions and derive the most benefit from investments into large-scale agriculture, six fundamental principles have been formulated as guidance for such investments processes.

7 http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012/

8 http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies

9 http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf

10 http://business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

11 http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf

12 https://www.unglobalcompact.org/Issues/Environment/food_agriculture_business_principles.html

13 http://www.focusonland.com/download/52022b6828811/

14 http://d2m27378y09r06.cloudfront.net/viewer/?file=wp-content/uploads/Guidance-for-Responsible-Investment-in-Farmland.pdf

15 http://www.uneca.org/sites/default/files/publications/guiding_principles_eng_rev_era_size.pdf

k. The Interlaken Group, a multi-stakeholder group composed of representatives from companies, investors, international organizations, and civil society groups seeks to provide practical guidance for companies and investors for how to support improved land and forest governance and the tenure rights of rural populations. Supported by the Rights and Resources Initiative (RRI), a report with detailed guidance for companies at both, corporate and project level, has been published in August 2015.

All these safeguard initiatives are similar in that they seek to ensure that investments into the agricultural value chain meet certain environmental, social and governance standards. They differ, however, in details of implementation and the specific requirements for the investor to document (and make available) information on certain steps and aspects of the investment process: how to conduct and document the consultations with local communities, how often and what point in time consultations should be conducted, the level of self-regulation versus independent supervision, obligations related to environmental safeguards, applicable standards before, during and after the investment, only to mention a few (EBG Capital, 2014).

One effort to consolidate the various safeguards and develop a harmonized set of operational guidelines for investors has recently been initiated following a commitment made by the New Alliance Leadership Council in 2014. The framework builds upon the efforts of several donors and multilateral institutions including the African Union who have released operational tools to help the private sector and other actors operationalize the principles of the VGGT. The aim is to contribute to and follow the structure of the UN FAO's draft technical guide, titled Operationalizing the Voluntary Guidelines on the Responsible Governance of Tenure: An Operational Guide for Investors.

While most of these safeguards and minimum standards apply in the country where the investment is taking place, the *UN Guiding Principles on Business and Human Rights*[16] encourage States also to set clear expectations for businesses, which reside in their jurisdiction, to respect human rights abroad. And this aspect of regulating extraterritorial activities has also been included in the VGGT: *"When States invest or promote investments abroad, they should ensure that their conduct is consistent with the protection of legitimate tenure rights, the promotion of food security and their existing obligations under national and international law (...)." (VGGT 12.5)*

This concept of extraterritorial state obligations is discussed controversially and is not international law. However, in the light of international large-scale land acquisitions its relevance and potential application have been discussed, e.g. in the context of EU regulation for biofuels. The operationalization of this concept, firstly for business owned or supported by the government of a country and subsequently for all companies residing in that country, is so far at the initial stages, and it is not clear if political willingness is sufficiently high to develop and enforce legislation on it.

5.2 Selected Initiatives with a Focus on Africa

Focusing on supporting responsible land governance especially on the African continent, there are a number of relevant initiatives and programs. Without being exhaustive, the most recent and relevant ones providing policy frameworks, support mechanisms and financing in the context of responsible investments in agriculture and land are described below.

The **Comprehensive African Agriculture Development Program** (CAADP), endorsed by the African Heads of State in 2003, provides a policy framework for agricultural development. CAADP outlines a set of principles and targets – such as a governmental budgeting of 10% on the agricultural sector in order to achieve at least a 6% growth rate of agriculture production/productivity – to guide policy and investment decisions at national and regional level. CAADP is based on four thematic pillars: (i) sustainable land and water management, (ii) rural infrastructure and trade-related capacities for market access, (iii) food supply and hunger, and, (iv) agricultural research. The implementation at national level follows a sequenced process by which supporting institutional structures (focal point, steering and technical committees) are es-

16 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

tablished and several policy and technical documents (country compact, stocktaking and diagnostic reports and investment plan for agriculture sector) negotiated and signed. In March 2014, the governments of 41 African countries had signed country compacts, and national agricultural investment plans had been finalized by 33 countries. Sourcing of funding for such investment plans are the national government budgets, bi- and multilateral channels, trust funds and programs as well as private sector investments.

Another African-wide program is the **Land Policy Initiative** (LPI) of the African Union Commission, the African Development Bank and United Nations Economic Commission for Africa which aims at enabling "the use of land to lend impetus to the process of African development". After having developed the Framework and Guidelines on land policy in Africa, and receiving the mandate from the African Union to use it in support of national and regional land policy processes, the LPI is now moving towards assisting AU Member States in developing or reviewing their land policies as well as in implementing and evaluating them.

While both, CAADP and LPI, aim at supporting national governments in developing sound policies and implementation structures for the agriculture respectively land governance sector, the following two initiatives that have emerged from commitments during G8 summits in 2012 and 2013 use the structures provided by CAADP and LPI in their support at national level.

The **New Alliance for Food Security and Nutrition** was one of the outcomes of the G8 summit 2012 in Camp David (USA). The initiative's overarching goal is to pull 50 million people out of poverty until 2022 by using a 'collective approach of pro-poor policies committed to by African governments, substantial private sector investment in order to increase agriculture productivity and farmer incomes, and development partners aligning behind country-led plans, mainly by supporting the national implementation of the Comprehensive African Agriculture Development Programme (CAADP). In 2014, the partnership included ten African countries, 180 African and international companies and various development partners (New Alliance Progress Report, 2013-2014).

The G8 summit in June 2013 in Lough Erne (Northern Ireland) focused on trade, tax systems and transparency. Also in response to the fact, that many companies engaged in large-scale land acquisition have their home base in G8 countries, commitments to support more responsible governance of land were included under the transparency chapter. In order to *"support greater transparency in land transactions including at early stages, and increased capacity to develop good land governance systems in developing countries"*, the G8 countries committed to support implementation of the VGGT. Further, they announced the establishment of several partnerships with developing countries and relevant international organizations *"to accelerate and target support to countries' existing land governance programs in conjunction with businesses, in particular farmers and civil society"* (G8, 2013). These **partnerships on land** are implemented in partnership with the governments of:

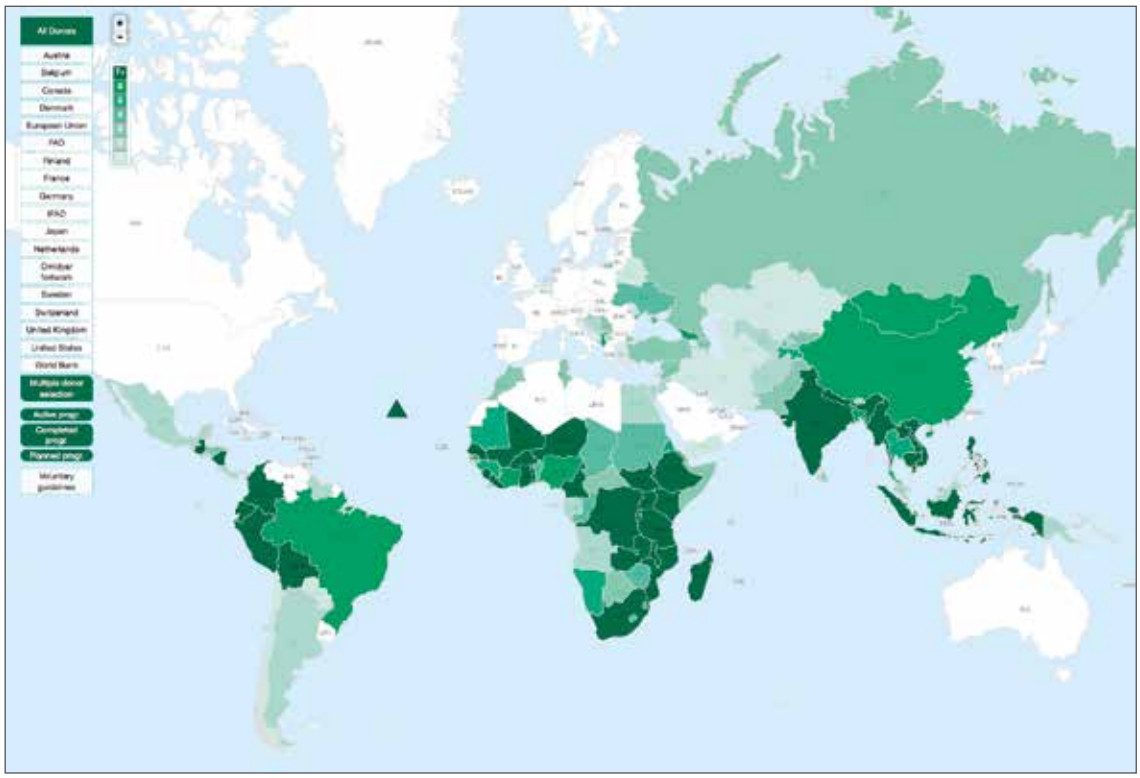
- Burkina Faso, supported by the United States of America;
- Ethiopia, supported by the US, United Kingdom and Germany;
- Niger, supported by the European Union;
- Nigeria, supported by the United Kingdom;
- Senegal, supported by France;
- South Sudan, supported by the European Union;
- Tanzania, supported by the United Kingdom.

5.3 Improving Donor Coordination and Transparency

In order to better coordinate and cooperate, bi- and multilateral donors and development organizations have, in 2013, established a Global Working Group on Land. One of the first exercises of this group has been a mapping and visualization exercise of ongoing and completed programs in the area of land (and resource) governance, in order to support the implementation of the Voluntary Guidelines for the Responsible Governance of Tenure of

Land, Fisheries, and Forests in the Context of National Food Security. The database contains information on the location, duration, funding and scope of each program, as well as on the specific aspects of the Voluntary Guidelines it supports. Currently (March 2015) the database contains 560 projects in 126 countries with a total value of 4.7 billion dollars, based on information submitted by 13 donors and development agencies.

Figure 5: Global (Land) Program Map



Source: https://www.donorplatform.org/land-governance/programme-map

Other working areas of the Global Donor Working Group on Land are the expansion and deepening of the country partnerships developed under the G8 (see 5.2), to work increasingly with the private sector to contribute to improved land governance, and also, to engage with home governments on implementation of the VGGT on such aspects as extraterritorial investments, open contracts and policy coherence.

Another transparency initiative is the development of an open repository of land contracts, led by the Vale Columbia Center on Sustainable Investment and the World Bank Institute. By making contracts on large-scale land acquisitions available to the general public, the platform seeks to provide concrete support for greater accountability around land transactions, better negotiation and monitoring capacities, and reinforcement of commitments to transparency and openness (*http://www.columbia.edu/cu/openlandcontracts/*).

5.4 Non-Governmental and Civil Society Organizations

NGOs and civil society organizations in Northern and Southern countries can differ substantially in terms of their size, organizational degree, fields of work, aims, and approaches. The focal areas however, are generally similar to the ones of a pro-poor development cooperation. NGOs support self-help groups and initiatives of the local population with whom they cooperate in the planning and implementation of activities. In the context of land governance, NGOs in many countries focus on the promotion and organization of small-scale farmers and the rural landless. In many instances, NGOs at the national and international level aim at exerting public and political pressure through direct campaigns to give a voice to the marginalized and poor.

At the international level, several NGOs have through their profound and professional work contributed substantively to recent developments in the context of land governance and shaped the international discourse. Examples are those NGO and CSO that participated in the development of the VGGT. Often they are members of the International Land Coalition (ILC), a coalition of civil society organizations, inter-governmental organizations and research organizations, working together to promote secure and equitable access to land for rural people, mainly through capacity building, knowledge sharing and advocacy. ILC's membership today comprises 152 organizations from 56 countries. Through the work of its Secretariat (based in Rome), ILC is represented and taking part in many of the global discussions and development of lands, and has also managed to successfully tap international funding sources which are used to fund activities of its members and the Secretariat.

One outcome of ILC's partnerships is the Land Portal (*http://landportal.info*), a web portal for simplifying the access to information on land governance at global and national level. Based on various databases, information on specific topics and countries can be assessed, and discussions between users and organizations working on land are facilitated through thematic working groups and online discussions

An example for the high publicity (and pressure) that can be created by NGO campaigns is OXFAM's recent *Behind the Brands*[17] campaign, which scored the ten largest food and beverage firms on their policies in seven areas (women, small scale farmers; farm workers; water; land; climate change; and transparency) that Oxfam described as "critical to sustainable agricultural production, yet historically neglected by the food and beverage industry". With respect to (policies on) respecting local land rights, several of the approached companies have in fact responded and publicly announced the inclusion of land issues into their safeguard mechanisms (see below).

Another approach is taken by Transparency International which started a project on land and corruption in several Africa countries. Through its national chapters and contact groups in 25 countries in Africa the project addresses corrupt practices in land administration in order to improve policies and legislation and their implementation practice, as well as the behavior of officials and citizens.

17 http://www.behindthebrands.org

When highlighting the NGOs and initiatives above, it must be stated that there are far more contributions from other organizations that are also relevant, yet due to the nature of this document, they cannot all be described here.

5.5 Private Sector Cooperation

The VGGT are only one of various international instruments creating non-binding responsibilities for the private sector to respect legitimate tenure rights of people and communities, including customary and informal rights. Maybe due to the public pressure that emerged from the high media coverage as well as NGO campaigns on "land grabbing", several companies with agriculture holdings, including Cargill, Coca-Cola, Unilever, and Nestle, have voluntarily agreed to adhere to the VGGT.

Nestle, for instance has, in an *Appendix*[18] to its Policy on Environmental Sustainability, made commitments on land rights in agricultural supply chains: (1) to follow all applicable national laws and respect international human rights standards relating to the rights to land and natural resources (also adopting the VGGT), (2) continuous improvement through a variety of measures related to integrating land rights into due diligence processes, sourcing guidelines and reporting mechanisms, (3) stakeholder engagement and advocacy, and (4) reporting on progress (Nestle 2014).

After similar commitments on land rights and adoption of the VGGT, Pepsi and Coca-Cola are initiating studies of their supply chains and the conduct of companies from which they buy sugar. But sugar supply chains – just as palm oil supply chains - are often difficult to trace down to producer level. Whether or not these companies will be able to enforce their "zero tolerance policies on land grabbing" is not entirely in the scope of action of these companies – to succeed it will also enquire action from governments of the commodity producing countries.

However, the private sector does not only consist of very large transnational companies but is a far more heterogeneous group. A broad categorization of investors along the agricultural value chain is as follows (EBG Capital, 2014):

- Farmers: the largest groups of investors
- Farmers associations and cooperatives: often a significant investor in production but usually not land acquisition. Cooperatives often purchase and supply inputs (seed, fertilizer) to their members and own or manage a downstream asset (e.g. a sugar mill or a creamery).
- Asset owners: Individuals or companies that own capital and have full discretion over the way it is invested. Asset owners may choose to manage the investments on their own or delegate this task to asset managers. Asset owners include but are not limited to private investors, insurance companies, pension funds, and private foundations.
- Asset managers: manage investments on behalf of the asset owner, they may focus on one asset class (listed equity, real estate) only or across a range of asset classes. Asset owners include but are not limited to investment fund managers, private banks, private equity funds, and hedge funds.
- Land aggregators: listed companies with the core strategy of investing in land.
- State-owned investors or sovereign wealth funds: often seeking to secure access to an underlying commodity.
- Strategic companies including food companies: national, regional or multinational corporate enterprises, private or state-owned.
- Bilateral and multilateral development banks: provide financing to projects, but, under specific circumstances, can also take equity.
- Financial services sector, incl. commercial banks: arrange financing for clients investing in agriculture.
- Commodity traders: can provide trade finance and hedging instruments, they rarely invest directly in land, fisheries or forests.

18 http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pd

6. A Brief View into the Future of Development Cooperation in the Land Sector

As discussed in previous chapters, it is widely recognized that secure and equitable rights to land and natural resources are essential for the achievement of the Sustainable Development Goals (SDG's). Solid international consensus on land rights has been built during the last decade and is reflected in the Rio+20 Outcome Document, the endorsement of the VGGT (2012), the Open Working Group proposal for the Sustainable Development Goals (July, 2014), the UN Declaration on the Rights of Indigenous People (UNDRIP 2007) and the African Union Framework for Land Policy in Africa (2009) as well as its implementation, which is supported by the Land Policy Initiative LPI.

Box 7: UN General's Report December 2014, The Road to Dignity by 2030[6]

"We are at a historic cross road. The year 2015 is the time for global action. In the course of this single year we have the unequivocal opportunity and responsibility to adopt the sustainable development goals, to restructure the global financial system in line with our needs and to respond finally and urgently to the challenge of human-induced climate change. Never before has the world had to face such a complex agenda in a single year. And this unique opportunity will not come again in our generation."

There is currently a growing number of promising long-term commitments by institutions involved in international development cooperation, such as the "Global Donor Working Group on Land"[20], and the BMZ Special Initiative "One World without Hunger"[21] consisting of land governance-related programs in several countries and supporting the establishment of a Network of Excellence on Land Governance in Africa, among many other projects. Consequently, measuring progress on land related projects will be an important and challenging task in the future, which is why the need for land indicators has been raised in different platforms at various geographic and political levels.

The Post-2015 Agenda should clearly advance and monitor progress, for example, on secure women's land rights. Supported by a robust body of evidence, the UN Secretary General has recently emphasized the role that secure women's rights to land and natural resources play in ending poverty and achieving a life of dignity for all.

The International Land Coalition (ILC) for instance championed the inclusion of gender equality and women's empowerment in all targets related to land. The Gender Justice Charter is an agreement adopted by ILC's African members in October 2014 that commits them to the principles of gender justice and to drawing up and implementing Gender Justice Action Plans. Endorsed by 41 members from 23 countries, the Charter emphasizes that women are the primary users of land in most African communities, and that social reproduction critically depends on the realization of women's land rights.

The Gender Evaluation Criteria (GEC)[22] is a practical tool to strengthen analysis of land-related administration systems, laws and policies from a gender perspective. Designed by ILC, the Global Land Tool Network and the Huairou Commission, the GEC has been well-received by a wide range of stakeholders from government, civil society and other partners.

Explicit reference to women and men in all the land-related targets is a necessary safeguard to ensure that the gender gap is not inadvertently exacerbated and goals are met for all. FAO's VGGT Program has mainstreamed gender into many of its components and is piloting gender-focused capacity development materials and approaches. The excellent guide on gender equitable governance

19 http://www.un.org/apps/news/story.asp?NewsID=49509#.VWV2YEbo64g

20 http://www.donorplatform.org/land-governance/global-donor-working-group-on-land

21 http://www.developpp.de/en/content/new-ideas-competition-world-without-hunger-0

22 http://huairou.org/gender-evaluation-criteria-gec-matrix-brochure

(Governing land for women and men) was one of the first technical guides to be produced by the VGGT Program[23]. The Program has since used this guide to generate materials for a blended gender learning program with an e-learning component, a person-to-person component, a mentoring component, and a Training-of-Trainers component, to be piloted in four countries (beginning with Mongolia and Nepal in June and July 2015). And in the Western Balkans, FAO — together with the World Bank — is piloting a promising new approach to gathering sex-disaggregated data for monitoring and evaluating progress on tenure governance[24 25].

Box 8: Best practice on capacity building

FAO, along with other partners, has initiated a massive capacity development campaign to expand the use of the set of ten e-learning materials, ten technical guides (work in progress) and case studies, utilizing approaches such as training of trainers, replication and adaptation of country-focused learning programs gender-focused learning programs, and civil society-focused learning programs. The Technical Guides on (1) Gender-equitable governance of land tenure, (2) Practical Guide in relation to land acquisition, (3) Pastoralism and range land management, (4) Legal implications, (5) Tenure of the commons, (6) Application of VGGT in peri-urban and urban environments (developed by UN HABITAT) are excellent learning materials, although translation to local languages and the adaptation to local conditions remains work in progress. The learning material is considered as global public good and is extensively used by the international community and partners at local level.

Endorsement of the VGGT in May 2012 certainly signaled an unprecedented breakthrough in the global consensus around tenure policy for land, fisheries, and forestry. The VGGT have emerged at a time when global, regional, and national development communities are recognizing in a new way the centrality of natural resource tenure to broader development goals. This window of opportunity comes not a moment too soon and brings new prospects for broad VGGT application and commitments emerged as a result of the Post-2015 agenda and the discussions around the SDG development process. The call by the UN family for mainstreaming of VGGT principles, for generating synergies, for complementary action plans of development partners and initiatives resulted in substantial commitments, for example by:

- Global Donor Working Group on Land
- CSOs such as ILC and the Global Land Forum
- Partners of the International Year of Soils and the Global Soil Week Berlin
- Partners of the private sector (selected partners)

The broad application of the VGGT is organized in different ways: (1) By FAO and development partners through the VGGT program (phase one 2012 to 2016), by (2) development partners within their own mandates and programs and (3) by mainstreaming the VGGT principles and call for action in the portfolio of development partners, CSO's, academia and private sector.

23 http://www.fao.org/docrep/017/i3114e/i3114e.pdf. The guide is officially available in English, French and Spanish.

24 For a synthesis of gender disaggregated data from the Balkans, see: FAO and World Bank. 2014. Land and Gender: Improving Data Availability and Use in the Western Balkans, at http://www.fao.org/fileadmin/user_upload/nr/land_tenure/E_LandAndGender_Leaflet_Web.pdf.

25 See also the FAO and World Bank film (2014) addressing challenges to increasing women's land ownership in the Western Balkans https://www.youtube.com/watch?v=52B1oElGtCo.

Box 9: Best practice example on country level application in Sierra Leone

FAO's targeted VGGT program in Sierra Leone is funded by Germany (BMEL). The engagement in Sierra Leone includes five components:

1. Legal framework assessment—for land, fisheries, and forestry sector with gender equity as a cross-cutting theme;
2. Land administration—guidelines for LSLBI, land administration enabling technologies;
3. Fisheries and aquaculture—roadmap for improved tenure governance with baseline assessment;
4. Forestry—strengthen rights of indigenous peoples, promote sustainable forestry management for poverty reduction and food security; and
5. Rights to food—pilot grievance mechanisms allowing Civil Society to inform the government on areas of potential conflict.
6. A learning-needs assessment, and support for multi-sector learning on VGGT

Box 10: Best practice example on regional level support

Beginning in June 2014, FAO attached two land tenure officers to the Land Policy Initiative (LPI) in order to provide services related to:

- Transversal support for the EU's "ten-country" VGGT Program in Africa providing capacity development, a monitoring and evaluation framework, and communications platform for sharing lessons learned. Countries include Angola, Burundi, Cote d'Ivoire, Ethiopia, Kenya, Malawi, Niger, Somalia, South Sudan, and Swaziland.
- Advocacy and support for land policy development for the implementation of the VGGT and the Framework and Guidelines for Land Policy in Africa ("F&G") at Pan-African level.

Support to LPI also includes developing and piloting a monitoring and evaluation framework and indicators at the transversal level (for the ten-country project). This framework will be closely integrated with Comprehensive Africa Agriculture Development Program's (CAADP) Monitoring and Evaluation Framework.

On the one hand, impressive progress is being made, however, the challenge remains for broad country level application by building the capacities and by matching principles and actions for food security, climate change adaptation/mitigation, large scale investment programs of development partners (such as the CAADP) and VGGT application. The principle of collaborative VGGT ownership will have to gain increased recognition in the near future.

On the other hand, there is a very clear correlation between countries with a high prevalence of corruption and poor land governance. Existing initiatives, like the G7 Land Transparency Initiative, the Land Policy Initiative, the VGGT, the TI/FAO cooperation on corruption in the land sector[26] and land questions to the Global Corruption Barometer 2009 and CSOs[27] address petty and grand corruption in land matters as critical.

Each of the countries leading on the Corruption Perception index CPI has serious issues with corruption in the land sector and there is clearly a need for a legal aid model suitable for the community level. The enhancement of secure tenure for communities can only be achieved by ensuring that communities are well placed to negotiate

26 http://www.transparency.org/whatwedo/publication/working_paper_04_2011_corruption_in_the_land_sector
27 Corruption and Large-Scale Land Acquisitions, Global Witness 2012

for their best interests whenever any policy decision is made affecting their tenure rights.

Transparency International's Advocacy and Legal Advice Centers support citizens' access to justice and tenure security by professional free legal advice to clients, providing easy to-understand documentation on legal matters, analyze cases and refer clients to relevant offices that directly deal with land issues, assisting clients to explore Alternative Dispute Resolution (ADR) especially if issues are within the family set up.

Building on TI`s Land and Corruption in Africa Project co-funded by BMZ (2015 to 2019), TI is working to intensify and scale up activities around advocacy, research and development of solutions at country, regional, and international level[28].

The overall goal of the Land and Corruption in Africa Project is thus to contribute to improved livelihoods of men and women adversely affected by corrupt practices in land administration and land deals, and thereby to enhance security of tenure, as well as to ensure equitable and fair access to land, and ultimately sustainable and inclusive development and growth.

Projects and programs are encouraged to cooperate locally with National anti-corruption departments, TI National chapters, conduct customer surveys in land projects (including questions on corrupt practices) and to deal with corruption in capacity building initiatives[29] making use of the VGGT e-learning program "addressing corruption".

Furthermore, the following three examples demonstrate the great potential of innovation in selected areas of land-related programs with opportunities for wide replication:

Firstly, the innovative VGGT Learning Program for key actors, tailored to country situations and country capacities, which is proposed for Ethiopia, Liberia, Mongolia, Nepal, and Sierra Leone and will be delivered first in Mongolia in 2015. The German Government (BMEL) finances the generic learning program.

The learning programs will include an assessment of national issues and the development of action plans for application of the VGGT. The modality used to deliver the learning programs is a multistage approach:

- Self-paced e-learning –The project will make use of the extensive suite of VGGT e-learning courses and technical guides.
- Online workshops – A three-week online workshop will be offered as the first segment of the VGGT learning programs to participating national VGGT actors (change agents). The online workshops will use selected e-learning materials, tutored discussions, and online group work activities under the guidance of VGGT experts.
- Face-to-face workshops – A two-week intensive face-to-face in-country workshop will follow as the main segment to the VGGT learning programs. Participants will further their country specific analysis under the tutelage of VGGT experts, and group work will focus undertaking a baseline assessment and action plans.

The second example has to do with innovation by matching UNCCD/REDD+ principles and land tenure security in favor of local communities in Madagascar, where the program supported by BMZ/GIZ[30] is contributing on a large scale to:

- Reverting land degradation through land rehabilitation and reforestation,
- Provide access to land and resources through regularization of degraded state land and allocation to local communities, cooperatives or small holders
- Provision of security of tenure through land registration.

28 TI, Land & Corruption on Africa Project, March 2015
29 http://www.fao.org/nr/tenure/e-learning/en/?no_cache=1

30 BMZ/GIZ; "Land Rehabilitation through reforestation", The Power of Property Rights, Example of Madagascar

- The value chain is creating alternative livelihood systems for the populations affected

The third example has to do with innovation through ICT application. Debates on how best to promote sustainable and inclusive development in the land sector are incomplete without a full consideration of issues of technology (ICT) and innovation.[31] The rapid spread of new technologies is transforming the daily lives of millions of poor people around the world and has the potential to be a real game changer for development in the land sector. Some trends are the following:

- The increasing convergence of the three core ICT technologies for land, the Internet, global navigation satellite systems (GNSS), and geographic information systems (GIS), are converging and creating huge opportunities to manage land and property using ICT in much more thorough, inexpensive, and effective ways.[32]

- High-resolution (less than 1 meter) satellite imagery, digital terrain models, and new software techniques are increasing the availability of reasonably priced orthophotos, presenting opportunities for more cost-effective, efficient, and participatory ways of registering the boundaries of land rights.

- The rapid spread of the mobile phones is having profound effects on people's lives, even in the most remote communities of Africa, Latin America, the Middle East, and Asia. Innovations in technologies are empowering citizens to make their voices heard and to better participate in political decision-making processes in the governance of villages, cities, states, and countries.

- Free open-source systems - Over the past decade, free open-source systems have come to prominence. These are increasingly being used in developing countries that cannot afford the high costs of licensing commercial solutions. Good examples are the "LandManager"[33] (BMZ/GIZ supported land project Mongolia), the STDM developed by GLTN and the FAO's Solutions for Open Land Administration (SOLA)[34] project that are offering open-source solutions for land administration.

- Crowdsourcing - Mobile phones are progressively integrating satellite positioning, digital cameras and video capabilities. They provide citizens with the opportunity to directly participate in the full range of land administration processes from videoing property boundaries to secure payment of land administration fees using 'mobile' banking.

- Designing a Pro-poor Land Recordation System is the first attempt to fill the gaps in the development of new forms of land recordation to assist the implementation of a continuum of land rights approach at scale[35].

- Open government policies - Improved access to public sector information is being enhanced by the increasing adoption of Open Government policies and the right to access information across the world.

A number of critical challenges need to be resolved; especially around authenticity of information and sustainability and scalability of the initiatives. However, there are great opportunities in reducing the distance between government service provider and user by providing greater access to decision makers, reducing costs and increasing efficiency, providing the potential for all parties to be transparent and accountable, providing visual tools for citizens to access government data and, as a result, simplifying traditionally presented government information, producing real-time opportunities for citizen interaction and feedback.

31 A World that Counts: Mobilising the Data Revolution for Sustainable Development

32 World Bank, ICT for land administration and management

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Registered offices
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Sector Project Land Policy and Land Management
Dag-Hammarskjöld-Weg 1-5
65760 Eschborn
Germany
Tel. +49 (0) 6196 79 - 0
Fax +49 (0) 6196 79 - 1115

info@giz.de
www.giz.de

Edited by
Jorge Espinoza, Eschborn; Christian Graefen, Eschborn; Michael Kirk, Marburg; Antti Seelaff, Frankfurt am Main;
Fabian Thiel, Frankfurt am Main; Willi Zimmermann, Leipzig, Germany

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Addresses of the BMZ offices

BMZ Bonn
Dahlmannstraße 4
53113 Bonn
Germany
Tel. +49 (0) 228 99 535 - 0
Fax +49 (0) 228 99 535 - 3500

BMZ Berlin
Stresemannstraße 94
10963 Berlin
Germany
Tel. +49 (0) 30 18 535 - 0
Fax +49 (0) 30 18 535 - 2501

poststelle@bmz.bund.de
www.bmz.de