LAND TENURE JOURNAL

REVUE DES QUESTIONS FONCIÈRES

REVISTA SOBRE TENENCIA DE LA TIERRA

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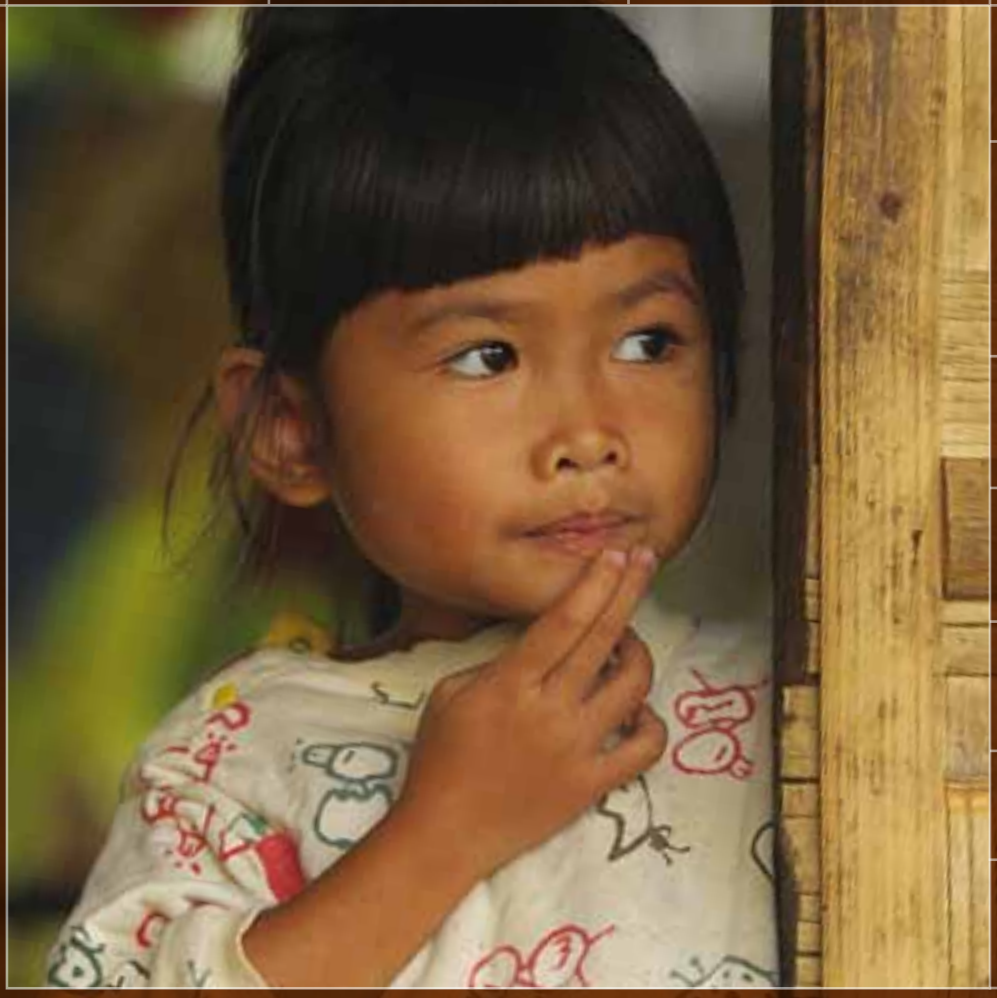

LAND TENURE JOURNAL

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

REVUE DES QUESTIONS FONCIERES

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

REVISTA SOBRE TENENCIA DE LA TIERRA

La *Revista sobre tenencia de la tierra* es una revista insignia, de libre acceso, revisada por pares de la División de Clima, Energía y Tenencia de Tierras (NRC) de la Organización de las Naciones Unidas para la Agricultura y la Alimentación (FAO). Es la sucesora de *Reforma agraria, colonización de la tierra y cooperativas*, que se publicó entre 1964 y 2009. La *Revista sobre tenencia de la tierra*, cuyo primer numero apareció a comienzos de 2010, es un medio de difusión de información de calidad que proporciona opiniones diversas sobre la tenencia de la tierra y los recursos naturales. Aspira a ser una publicación líder en el sector de la tenencia de la tierra, la política agraria y la reforma agraria. Los principales beneficiarios de la revista son los administradores de la tierra y los profesionales del sector aunque también da espacio a contribuciones académicas relevantes y análisis teóricos.

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LAND TENURE JOURNAL

REVUE DES QUESTIONS FONCIÈRES

REVISTA SOBRE TENENCIA DE LA TIERRA

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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

ORGANIZACIÓN DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACIÓN

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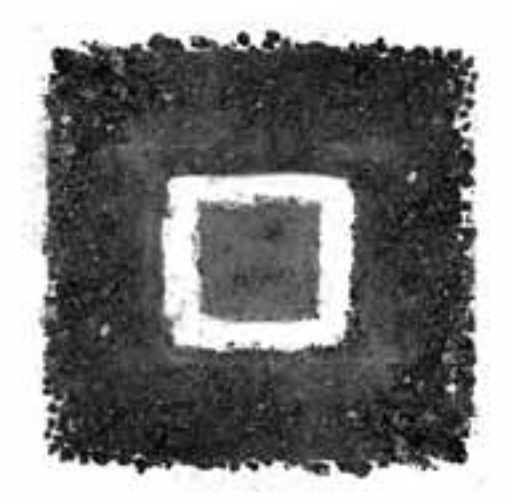

Preface

We are pleased to present the second issue of the *Land Tenure Journal*, which is now published in both hardcopy and in electronic formats and provides an open, impartial and practice-oriented global forum for promoting the latest knowledge in land tenure. This issue features five continents and subcontinents exploring common challenges including tenure governance, the legal recognition of customary tenures, land scarcity and redistributive reforms, and the increasing role of information technology in tenure systems.

The issue opens with an assessment of the efficiency and social legitimacy of intermediate instruments to improve tenure security in Laos and the Philippines. It is followed by an analysis on land legislation in Uganda and its ability to ensure the rights of lawful, bona fide and customary tenants. Building on trends in Europe, the third article focuses on the role of spatial data infrastructure in decision making and the fourth on the sustainability of land consumption in Germany. Searching for ways forward, the next two articles focus on governance. The first reviews the situation in the Middle East and North Africa and the second calls for new approaches to governing land markets and agricultural land in Brazil. The final

Préface

Nous avons le plaisir de vous présenter le deuxième numéro de la *Revue des questions foncières*, que nous publions désormais à la fois en version papier et électronique. Notre revue, qui a l'ambition d'être un forum mondial ouvert, impartial et pratique, vise à promouvoir les connaissances les plus récentes en matière du foncier. Ce numéro couvre cinq continents et sous-continents pour y explorer un certain nombre d'enjeux communs comme la gouvernance foncière, la reconnaissance juridique des régimes fonciers coutumiers, la pénurie de terres, les réformes redistributives et le rôle croissant des technologies de l'information dans les systèmes fonciers.

Ce numéro s'ouvre sur un article consacré à l'évaluation de l'efficacité et de la légitimité sociale d'instruments intermédiaires mobilisés pour améliorer la sécurité foncière, au Laos et aux Philippines. Il est suivi par une analyse de la règlementation foncière en Ouganda et de sa capacité à garantir les droits des occupants légitimes et authentiques, ainsi que des locataires coutumiers. Le troisième article s'appuie sur les tendances observées en Europe pour examiner le rôle des infrastructures de données spatiales en tant qu'outil d'aide à la décision et le quatrième article se centre sur la durabilité de la consommation foncière en Allemagne. Explorant les voies du futur, les deux articles suivants

Prefacio

Tenemos el agrado de presentar el segundo número de la *Revista sobre tenencia de la tierra*, que ahora se publica tanto en forma impresa como en formato electrónico. La revista constituye un foro global abierto e imparcial, orientado a la práctica, que persigue promover los conocimientos más recientes sobre la tenencia de la tierra. En esta publicación se abarcan cinco continentes y subcontinentes, y se estudian temas que representan retos comunes; por ejemplo, la gobernanza de la tierra, el reconocimiento jurídico de las formas consuetudinarias de tenencia, la escasez de tierras y las reformas redistributivas, y la función siempre mayor de la tecnología de la información en los sistemas de tenencia.

El número se abre con una evaluación de la eficiencia y legitimidad social de los instrumentos intermedios para la mejora de la seguridad de la tenencia en la República Democrática Popular Lao y en Filipinas. Se presenta a continuación un análisis de la legislación agraria en Uganda y su capacidad para asegurar los derechos de los arrendatarios tradicionales legítimos que actúan según el principio de probidad. Basándose en las tendencias observadas en Europa, el tercer artículo se centra en la función de la infraestructura de datos espaciales en la adopción


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article, on Latin America, looks into agrarian reform, stressing the importance to find a common platform between stakeholders.

Land tenure issues, including particularly those relating to large scale investments on land, are at the forefront of current political and economic debates. We are witnessing simultaneously an escalation of demand for land for food and energy production, and a reduction in the available supply owing to the expansion of urban and industrial areas coupled with the impacts of droughts, floods, degradation and migrating populations, some of which are climate change induced. There are opportunities – and threats, and land tenure issues are at the very center. The demand for discussion on the roles of tenure in meeting the challenges of today is

sont consacrés à la gouvernance. Le premier examine la situation au Moyen Orient et en Afrique du Nord et le second invite à de nouvelles approches en matière de gestion des marchés fonciers et des terres agricoles au Brésil. L'article final examine la réforme agraire en Amérique Latine en insistant sur l'importance de trouver une plateforme commune entre les acteurs.

Les questions foncières, et en particulier les investissements fonciers à grande échelle, constituent le cœur des débats politiques et économiques actuels. Nous observons simultanément une intensification de la demande de terres pour satisfaire les besoins en alimentation et en énergie et une réduction de l'offre disponible, en raison de l'expansion des zones urbaines et industrielles, conséquence des

de decisiones, y el cuarto en la sostenibilidad del consumo de tierras en Alemania. Buscando orientaciones hacia adelante, los dos siguientes artículos tratan de la gobernanza. El primero examina la situación en el Medio Oriente y África del Norte, y el segundo plantea la necesidad de encontrar nuevos enfoques para gobernar los mercados de tierras y las tierras agrícolas en el Brasil. En el artículo final, sobre América Latina, se examina la reforma agraria y se hace hincapié en la importancia de encontrar una plataforma común entre las partes interesadas.

Las cuestiones relacionadas con la tenencia de la tierra, incluidas en particular las que se vinculan con las inversiones en tierras en gran escala, están a la vanguardia de los actuales debates políticos y económicos. Somos testigos de una simultánea

higher than ever. The *Land Tenure Journal* is your avenue to contribute; we hope to hear from you.

Finally, we would like to take this opportunity to express our gratitude to the writers and many others, who have contributed to this issue of the new *Land Tenure Journal*.

Paul Munro-Faure
Principal Officer
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Mika-Petteri Törhönen
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Climate, Energy and Tenure Division

sécheresses, des inondations, de la dégradation de l'environnement et des migrations des populations, certains de ces phénomènes étant eux-mêmes liés au changement climatique. Des opportunités – et des menaces existent à cet égard et les questions foncières sont au cœur de cette problématique. La nécessité d'un débat sur les rôles des régimes fonciers face à ces défis est aujourd'hui plus pressante que jamais. La *Revue des questions foncières* est à votre disposition pour y contribuer; merci de nous adresser vos contributions.

Nous souhaitons enfin profiter de cette occasion pour exprimer notre gratitude à tous les auteurs, ainsi qu'à tous ceux qui ont contribué à la réalisation de ce numéro de la *Revue des questions foncières*.

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escalada en la demanda de tierras para la producción de alimentos y energía, y de una reducción en el suministro de las tierras disponibles, debida a la expansión de las zonas urbanas e industriales junto con las repercusiones de fenómenos como las sequías, inundaciones, degradación y migraciones — que, en algunos casos, son inducidos por el cambio climático. Se presentan oportunidades pero también amenazas; y los asuntos relativos a la tenencia están en el centro de ambas. Es mayor que nunca la urgencia de entablar debates sobre las funciones de la tenencia a la hora de hacer frente a los desafíos que surgen en la actualidad. La *Revista sobre tenencia de la tierra* constituye el canal a través del cual podrá usted formular su aportación; quedamos pues a la espera de recibir noticias suyas.

Por último, deseamos aprovechar esta oportunidad para expresar nuestra gratitud a los autores y a muchas otras personas que han colaborado en la realización de este número de la nueva *Revista sobre tenencia de la tierra*.

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INTERMEDIATE LAND TENURE
Inferior instruments for second-class citizens?

DROITS FONCIERS INTERMÉDIAIRES
Instruments au rabais pour citoyens de seconde zone?

TENENCIA INTERMEDIA DE LA TIERRA
¿Instrumentos inferiores para ciudadanos de segunda categoría?

ABSTRACT

INTERMEDIATE LAND TENURE INSTRUMENTS

CONTINUUM OF RIGHTS

EQUITY

SECURITY OF TENURE

An increasing number of intermediate tenure instruments has been identified, further developed and promoted, aimed at improving the tenure security of the poor in both urban and rural areas. For the poor, intermediate tenure instruments are generally easier to access and acquire, less cumbersome, faster and more affordable, than conventional methods. For the government, intermediate tenure instruments are generally simpler, cheaper and less contentious. In exchange for these advantages, the bundles of rights provided by intermediate tenure instruments are generally limited as compared to freehold titles. Nevertheless, the authors believe that the advantages of such a system outweigh its constraints. At the same time, the

RÉSUMÉ

INSTRUMENTS FONCIERS INTERMÉDIAIRES

ENSEMBLE DE DROITS

ÉQUITÉ

SÉCURITÉ FONCIÈRE

Un nombre de plus en plus important d'instruments fonciers intermédiaires ont été identifiés, élaborés et promus, dans le but d'améliorer la sécurité foncière des populations pauvres, dans les zones urbaines comme dans les zones rurales. Pour les populations pauvres, les outils fonciers intermédiaires sont généralement plus simples, plus faciles en termes d'accès et d'acquisition, moins lourds, plus rapides et économiquement plus abordables que les instruments conventionnels. Pour les gouvernements, les instruments fonciers intermédiaires sont généralement plus simples, moins chers et moins générateurs de contentieux. En revanche, l'ensemble des droits générés par les instruments fonciers intermédiaires sont généralement

SUMARIO

INSTRUMENTOS DE TENENCIA INTERMEDIA DE LA TIERRA

ESPECTRO CONTINUO DE DERECHOS

EQUIDAD

SEGURIDAD DE LA TENENCIA DE LA TIERRA

Existe un número siempre mayor de instrumentos de tenencia intermedia de la tierra destinados a aumentar la seguridad de la tenencia de las personas pobres tanto en las zonas urbanas como en las rurales que son objeto de un desarrollo y campañas de promoción. El acceso y adquisición de los instrumentos de tenencia intermedia por las personas de escasos recursos es por lo general un procedimiento más fácil y rápido y menos engorroso y oneroso que los métodos de tenencia convencionales. Para los gobiernos, estos instrumentos resultan por lo común más simples y baratos y dan lugar a menos contenciosos. A cambio de estas ventajas, los paquetes de derechos que proporcionan los instrumentos de tenencia intermedia suelen ser limitados si se los coteja


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authors would like to broaden the discussion to reflect human rights and equity issues in the policy debate. What do the poor think about these second level tenure instruments? Is it justifiable that poor people have to accept limited bundles of rights and lower tenure security than the rest of society? The authors explore these issues through two case studies on Laos and the Philippines.

plus limités que ceux qui découlent de la pleine propriété foncière. Les auteurs estiment néanmoins que les avantages d'un tel système l'emportent sur ses inconvénients. Par ailleurs, les auteurs souhaitent élargir le débat pour prendre en considération les questions relatives aux droits humains et à l'équité au sein du débat politique. Que pensent les populations pauvres de ces instruments fonciers de seconde catégorie? Peut-on justifier que les populations pauvres soient contraintes d'accepter un système qui limite leurs droits et leur confère une sécurité foncière inférieure à celle dont bénéficie le reste de la société? Les auteurs proposent une exploration de ces questions, à travers deux études de cas, au Laos et aux Philippines.

con los derechos de plena propiedad. Los autores sostienen sin embargo que las ventajas que supone este sistema tienen más peso que sus restricciones. Al mismo tiempo, los autores desearían ampliar esta discusión para que en los debates políticos quedasen reflejadas las cuestiones relacionadas con los derechos humanos y la equidad. ¿Qué piensan los pobres de tales instrumentos de tenencia de segundo nivel? ¿Es acaso justificable que, respecto al resto de la sociedad, ellos deban acatar un conjunto de derechos restringido y aceptar un grado inferior de seguridad de la tenencia de la tierra? Los autores analizan estas cuestiones a la luz de dos estudios de caso realizados en la República Democrática Popular Lao y Filipinas.

INTRODUCTION

For De Soto (2000), demystifying the mystery of capital means that property only becomes useful capital when it is recognized by a formal legal system. This sounds simple and indeed is simplifying the issue. It has even been made clear and simpler by de Soto's detractors. De Soto suggests that a detailed analysis of extralegal norms is necessary at the outset, in order to understand them and to include them in the new legal framework. The old framework has to be changed to reflect the entire reality of all assets and social contracts in a given society. De Soto's approach is threefold:

- first, an initial analysis of the situation
- second, changing the legal framework
- finally, introducing a suitable technology or system that allows extralegal or informal tenure to be formalized, reaching the same status as formal tenure while maintaining the characteristics of the extralegal norms.

In practice, De Soto's approach often results in simple land titling projects, without the initial analysis or the development of an appropriate system or technology as suggested above. On the ground at the outset, the system or technology is often found to be established already and in use. Generally this is a land registration system allocating land through land titles or deeds. However, such a system only works as long as comprehensive resources are available. Because resources are usually limited, this land registration system rarely reaches the poor. In effect, the very existence of the system often precludes the poor from gaining access to land, and it destroys their existing traditional tenure systems. The legal framework is normally adopted on a piecemeal basis, if at all, and an analysis of extralegal norms hardly ever takes place.

By contrast, De Soto's detractors favour intermediate tenure instruments and the 'continuum of rights' approach. This focuses on the development of adapted land tenure systems and instruments; the tenure solutions provided have lower status and lower security than those provided by full land titles. In practice, this approach is almost the same as De Soto's, at least in terms of its initial approach: fundamentally, a recognition by the legal system and/or legitimate authorities of the extralegal norms and social contracts

concerning land tenure rights. But while De Soto aims to provide the poor with the same level of rights as those provided by the existing system in a quick manner, others promote intermediate tenure instruments, mainly in consideration of the capacity constraints on the ground. These constraints include financial resources, and attempts to prevent the poor from becoming victims of market evictions by not allowing them the right to sell the land on the free market within a certain period but rather promoting an incremental approach to gain a more secure tenure while building their capacities.

Most experts today agree that rights recognition is more important than land titles. What has not been studied in much detail to date is how poorer people react to the difference in status attached to intermediate tenure instruments as compared to freehold titles. Do these instruments make a real difference to these people in practice?

There are a wide variety of intermediate tenure instruments covering a broad range of demands, from very limited use rights to the full bundle of property rights (Payne 2001 and 2002, UN-HABITAT 2003, 2004 and 2008, Home and Lim 2004, Williamson et al 2010, Palmer et al 2009, Lemmen 2010, Wehrmann, Souphida and Sithipanhya 2007, Antonio 2007; see Figure 1). How do people feel about these rights, particularly the poor? Do the poor receive sufficient tenure security? Might outsiders deprive the poor of the opportunity to increase their incomes from their land (e.g. by selling or mortgaging it), by imposing these intermediate instruments on them, albeit with the good intention of protecting them from risks such as market eviction? Should the poor be treated as second-class citizens – only receiving instruments inferior to a freehold title? What can be done about these issues? We will explore these questions in the rest of this paper.

Two country cases have been investigated in an attempt to answer these questions: the land proclamations in the Philippines, and other associated tenure instruments and five different land possession documents in Lao PDR. The investigation has assessed:

- which forms of tenure have been granted to the people (de jure)
- which bundle of rights they can enjoy (de facto)
- how satisfied they are with their tenure status
- whether or not they would prefer another tenure, and if so, which one and why.

Figure 1
Examples of intermediate tenure instruments

Sources: Payne (2001, 2002); UN-HABITAT (2003, 2004, 2008); Home and Lim (2004), Williamson *et al* (2010); Palmer *et al* (2009); Lemmen (2010); Wehrmann, Souphida and Sithipanhya (2007); Antonio (2007).

In the context of this article, the authors have carried out extensive research on land tenure, land markets and land administration in the Philippines and Laos, and worked with the Governments of these two countries (Antonio 2006 and 2007, Wehrmann 2009, Wehrmann *et al.* 2006 and 2007). The authors often discussed tenure issues with the urban and rural poor, and became aware of the psychological dimension of intermediate tenure instruments – particularly as research pointed out that the poor prefer freehold titles rather than intermediate tenure instruments. The authors found that these people simply wanted to receive the best options available under the existing legal framework – the best tenure instruments offered in their country – irrespective of whether additional rights were attached to these at all, and even if they would not make use of all the options that come with these instruments and frameworks.

These issues are described and explained in more detail below. Although the authors know from their own working experience that equity in tenure status matters to the poor in other countries as well (e.g. South Africa, *see* Wehrmann 1999), this may not be an issue in all countries. Hence, this article does not claim that status necessarily always matters. The authors merely wish to point out that in certain cases, this psychological dimension may be a crucial issue. Even within the same country, some poor people may worry about it while others may not.

CASE STUDY 1. LAND PROCLAMATIONS IN THE PHILIPPINES - ONE HUGE STEP BUT ONLY AN INTERMEDIATE SOLUTION?

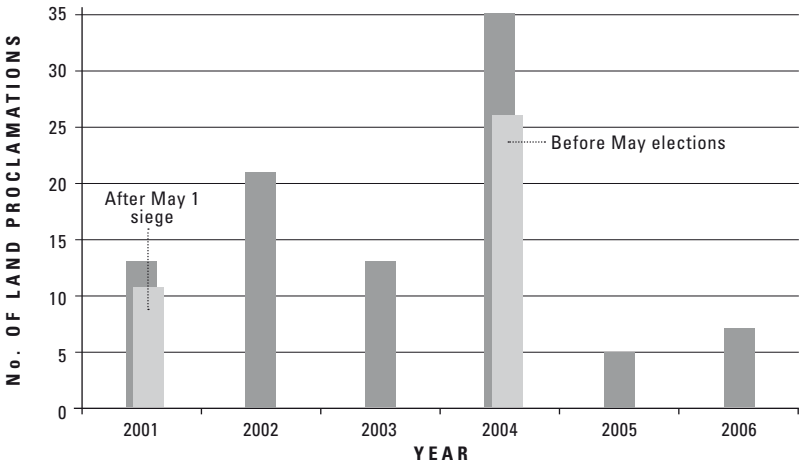
In the Philippines as elsewhere, urbanization is unstoppable. Megacities are sprawling; alongside this development comes the challenge of the 'mushrooming' of informal settlements in and around cities. These settlements rapidly transform city landscapes and result in tremendous new challenges: not only to the practicalities of infrastructure, but also to ideas about land rights. Central to this urbanizing trend is how to secure adequate tenure for the urban poor, particularly those in 'slum' areas and informal settlements.

The Philippines' innovative response, initiated by former President Gloria Macapagal-Arroyo, has been to issue land proclamations. These proclamations are legal instruments issued by the President that reserve the whole or part of an idle government property for use as socialized housing by informal settlers. While UN-HABITAT (2004) has commented on the limitations of these proclamations with regards to scope (because they only focus on informal settlements on government land), it is believed that de facto, 60 percent of informal settlers are situated on government-owned or public lands. The proclamations have been a positive and pragmatic response that has encouraged poor households to improve their homes and neighbourhoods (Antonio 2006).

By the end of July 2006, the Government of the Philippines had reported that about 195 445 poor urban households had benefited from the issuance of 94 land proclamations, beginning in 2001 (HUDCC 2006). However, civil society groups immediately reacted to this press release by stating that empowerment comes with security of tenure and not by issuing land proclamations alone. These groups highlighted the fact that the more formal Certificate of Entitlement for Lot Award (CELA) had only been given to about 14 000 families over a span of five years at that time. CELAs are another form of intermediate tenure instrument issued to families after a land proclamation: they certify that a piece of land is reserved for a family within such a proclaimed area. However, CELAs are yet another instrument that provides perceived increased tenure security, yet hardly add any long-term true legal value to the land tenure process.

A closer look at the issuance of land proclamations reveals that political events – particularly the failed May 2001 Malacañang siege and the 2004 May Presidential elections – triggered a tremendous increase in the number of land proclamations issued for that year (Figure 2). However, the Medium Term Philippines' Development Plan (MTPDP) 2005–2010 decreased target beneficiaries of land proclamations from 150 000 households per year to just 35 000 (NEDA 2004), without the government elaborating the reasons behind the decision. It is also surprising that there is no existing report or public announcement on the number of individual titles issued, even if the intended final outcome of the process seems clear from the plan.

Figure 2
Land proclamations vs. political events



Field research conducted from August to November 2006 on two proclaimed areas, namely Racda (within the National Government Center Housing Project) and Escopa (I–IV) – both in Quezon City, Philippines – has revealed interesting results (Antonio 2007). First, land proclamations, whether intentional or not, not only provide immediate security of tenure for the urban poor but also trigger development in the area. These proclamations encourage the provision of social and physical infrastructure by local government units, private sector and non-government organizations, and concerned national agencies.

The research also confirmed it is unlikely that tenure security alone will have a substantial positive impact on people's livelihoods and development in general. Once again this suggests that providing tenure security is a means to an end and not an end in itself.

Second, the research findings also highlight that land proclamations, including their derivative intermediate tenure instruments (e.g. CELA), definitely increase tenure security in the short to medium term, but may reduce its usefulness in the long-term, and may even cause some backlash if the promised form of tenure (individual titles) is not offered in a reasonable time. In fact, when asked whether they felt more secure after land proclamations, almost half of the respondents said that there was no improvement in their tenure security because they had been promised more and therefore still wanted more – namely, individual titles. While it is true in the strict legal sense that land proclamations may be changed, amended or repealed by a future President, it is statistically (and politically) inconceivable that politicians would modify its basic noble intention – to provide security of tenure to urban poor citizens. Clearly, this would be tantamount to political suicide. To date, no issued land proclamation has ever been reversed in the Philippines. In practical terms, once a land proclamation has been issued informal settlers are already 'secure' on their plots. However, most settlers still yearn for a proper, legal, individual title – the instrument that is recognized by existing law and society as the ultimate form of land tenure security.

While they may not feel especially positive about the impact of land proclamations on their tenure security, the urban poor definitely recognize the positive impact of land proclamations on their livelihoods. Through the application of the sustainable livelihoods framework, it was found that about 95 percent of the respondents in both proclaimed sites have recognized the positive impact of land proclamations on their livelihoods assets, as represented by the 'asset pentagon': namely, human capital (HC), social capital (SC), natural capital (NC), physical capital (PC) and financial capital (FC). The community is now more able to confront related risks and threats such as fire, floods, evictions and so forth. In this context, *livelihoods* are defined as the capabilities, assets and activities required for a means of living. A livelihood is sustainable when people are resilient to external shocks and stresses and do not compromise the capacity of others' livelihood options (DFID 2001; Chambers and Conway 1991). Figure 3 represents the degree of impact of land proclamations (defined as the influencing policies, institutions

and processes) on the responding slum dwellers, using the asset pentagon. For both sites, it is noticeable that impacts were felt to be greater on physical capital (e.g. improved access roads, lighting, water, sanitation), social capital (e.g. increased community cohesiveness, improved access to authorities, social inclusion) and human capital (e.g. psychological effects, access to education, health, information services), and lesser on natural capital (e.g. tenure security, land allocation) and financial capital (e.g. increased access to formal and informal lending institutions, increased savings).

The study also concludes that intermediate land tenure instruments (not land titles yet!) act as a 'trigger' in stimulating both the formal and informal land and housing markets, particularly in the Racda area. However, it is important to note that the increasing attachment of people to their land and communities serves as a 'natural' extinguisher of informalities in the area. The longer they live there, the more settlers invest in house improvements, and the more resources and time they spend on social networks and community

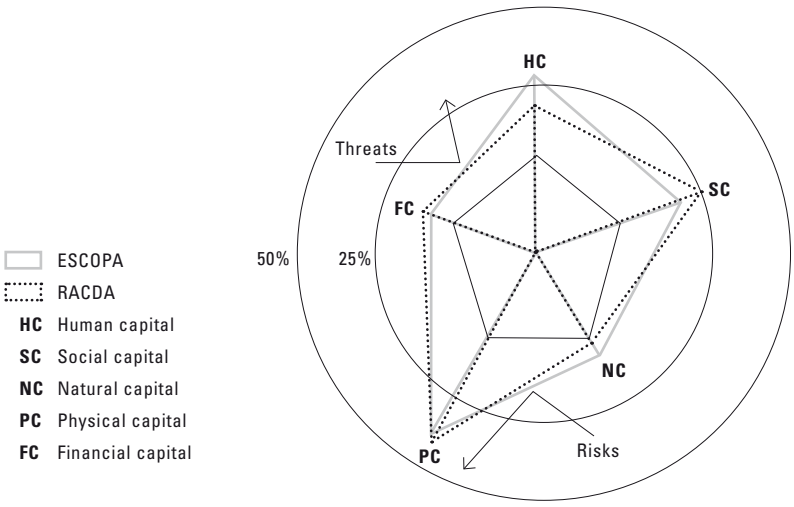


Figure 3
Impact of land proclamations on households' livelihood assets

activities. Their established presence enables them to prevent further informalities that may affect the community: including controlling the influx of new slum dwellers, and reducing violations of community rules on housing expansion, sanitation, safety and security.

Conclusion of Case Study 1

The Philippines study suggests that the urban poor accept intermediate land tenure instruments only as a solution in the short to medium term. Even in some 'established' informal settlements like Escopa, perceived tenure security is already high, even without the intermediate tenure being provided by the government through land proclamations. In the long run, however, these proclamations need to be transformed or upgraded into individual titles as intended and promised – even if this will incur significant resource and time costs and does not bring additional advantages in the short term. Essentially, this is what the people, the poor, want. The question that remains is: who should bear the additional cost? Should it be the government or the people themselves?

Urban poor accept intermediate land tenure instruments only as a solution in the short to medium term

CASE STUDY 2. LAND TITLE IN LAO PDR – THE BEST YOU CAN GET[1]

As in many developing countries, the rural population in Lao PDR has no option to apply for a land title, and instead has to live with a wide range of intermediate tenure instruments guaranteeing different degrees of tenure security (from 0 to 100 percent), some of which facilitate access to credit and others of which do not (Wehrmann *et al* 2007). In spite of the many options provided by intermediate tenure instruments, people's practical choice is limited, especially among the poor mountain-dwelling populations whose livelihoods rely on shifting cultivation.

Some time after the reintroduction of private property, the Lao government started a land titling program several years ago. To date, only urban and part of the peri-urban areas of nine of the 18 provincial capitals have been

1 This research was carried out in 2007. Recent changes and improvements in rural land tenure have not been considered in this paper as they do not have an impact on the key message of the case study.

covered. The high standard and accuracy of systems such as Geographic Positioning Systems (GPS) and permanent boundary markers are crucial and beneficial to defining urban properties, but these also slow down the titling process and make it almost impossible to cover the whole country, even within the next 50 years. However, given the much lower rural property values, standards and accuracy in titling rural areas do not have to be this sophisticated. What is important for the rural population is to protect them from expropriation as land grabbing is a widespread phenomenon in Lao PDR (GTZ 2009, Wehrmann 2009). For some people access to credit matters as well. Currently five different documents are found in rural areas that prove possession rights on land and provide for different sets of property rights (Wehrmann, Souphida and Sithipanhya 2007):

- Land Survey Certificates (mainly for construction land and rice fields)
- Land Tax Declarations (mainly for construction land, rice fields, and gardens)
- Temporary Land Use Certificates (mainly for shifting cultivation to be converted into permanent use)
- Naiban's Certificates on Land Ownership (for any legitimately-used individual land)
- Land Tax Receipts (for shifting cultivation).

B. Wehrmann

Picture 1
Land Tax Declaration

While the land title provides its holder with the complete bundle of rights, i.e. the right to use, control, manage, transfer (i.e. inherit, lease, sell, mortgage), exclude others, and to receive compensation, the other documents are lower in legal status and only allow for a limited bundle of rights. The Land Survey Certificate is the highest available land possession document in rural areas and people consider it and call it the rural 'title'. It is the only officially accepted document proving land ownership in rural Lao PDR. In addition to providing for use and inheritance of land it can also be used to sell and mortgage land. The Land Tax Declaration, meanwhile, only allows for use and inheritance. Both documents – Land Survey Certificate and Land Tax Declaration – are generally recognized as an acceptable base for compensation. Both documents include a scratch of the property. In the case of the Land Tax Declaration this is carried out either by the local tax collector or an officer from the District

Land Office, based on estimations. In the case of a Land Survey Certificate, the land will have been measured by a provincial or district land officer and is therefore more accurately assessed – realistically establishing the true size and measurement of the plot.

The Temporary Land Use Certificate only states that the land has started to be used permanently. The land is still considered to be state land and therefore cannot be sold or mortgaged; also no compensation is paid in case of de facto expropriation. Temporary Land Use Certificates are supposed to be converted by the state into Land Survey Certificates after 3 years of permanent use of the land. However, they are rarely upgraded and when so, they are generally only converted into Land Tax Declarations.

The Land Tax Receipt is mainly given for tax on shifting cultivation land, and is based on the amount of yield and not on the size of land. This explains the absence of any spatial reference or location on the document. Hence, the Land Tax Receipt is not considered to be a document able to prove land possession. Neither the Temporary Land Use Certificate nor the Land Tax Receipt qualifies as a basis for compensation in case of de facto expropriation through, for instance, the delimitations of state concessions.

The ownership certificate issued by the *naiban* (the village head) has a long tradition. Today, it is mainly used as additional proof and security, in combination with the Land Tax Declaration, when people apply for a Land Survey Certificate to get access to a bank loan.

Comparing all documents proving land possession in rural areas, it is clear that the Land Survey Certificate is a kind of 'rural title' granting all property rights, while the Land Tax Declaration is the most crucial document in terms of tenure security for the majority of the rural population. The Temporary Land Use Certificate and Land Tax Receipt don't have any value as a land possession document.

There is a wide gap between legal rights and tenure rights as perceived by the landholders: villagers only possessing Land Tax Declarations generally feel that they can do anything they like with the land, apart from mortgaging it. However, as they easily can apply for a Land Survey Certificate when seeking a mortgage, they don't even feel limited by restrictions on land use that may be mortgage-related. Still, they feel the

need for and want a 'title' – for some of them this means a Land Survey Certificate, for others the real title which, as noted above, can so far only be obtained in selected urban and peri-urban areas. Rural people generally prefer the title because they have been told by friends, officials or the media that only a title is an accepted document, or because they want to have access to credit (in that case, they are often in reality looking for a Land Survey Certificate, calling it 'title'). Another reason is that titles are actually cheaper at present than Land Survey Certificates due to government/donor support (titling project).

When people who held a Land Survey Certificate were asked about their property rights, they generally replied that this certificate gave them all the rights imaginable. When asked if they were satisfied with the Land Survey Certificate, they answered yes. However, if they were asked if they would wish for another document, the typical answer was, "yes, the title!" "What can you do with a title that you cannot do with the Land Survey Certificate?" was our spontaneous follow-up question. "I don't know …" they would answer. "But why do you want to have it?" "People say it's the best you can get!"

Conclusion of Case Study 2

Our investigation of Lao PDR shows that the rural population disposes of very different documents guaranteeing different degrees of tenure security and different combinations of property rights to their holders. The most significant conclusion is that the Land Survey Certificate, which in rural areas grants de facto the same rights as a title in urban areas, is actually considered to be the title by many people who are unaware of the existence of another document called 'title' – and, they are happy with it. However, those who are aware of the existence of a title are not satisfied merely with a Land Survey Certificate – they are keen to obtain full title. It was obvious from our research that this is not just about tenure security or accessibility to land and capital markets. It is also about a psychological dimension – rural people's pride and their desire to be treated and respected in the same way as urban citizens. They do not accept that the best tenure option should only be available to urban citizens.

Those who are aware of the existence of a title are not satisfied merely with a Land Survey Certificate – they are keen to obtain full title

THE BENEFITS OF INTERMEDIATE TENURE IN RESPECT OF TENURE SECURITY

Intermediate tenure instruments are, in many but not all cases, sufficient in terms of improving tenure security. In the Philippines, land proclamations provide for 100 percent protection from eviction and it is very likely that land proclamations will eventually provide full security of tenure through the issuance of individual titles in the long term. In Lao PDR, Land Tax Declarations and Land Survey Certificates entitle land dwellers to compensation, and this demonstrates their contribution to tenure security. However, Temporary Land Use Certificates and Land Tax Receipts do not protect people from eviction. According to the Lao situation, higher-level intermediate tenure instruments do provide tenure security, while lower level instruments do not.

THE BENEFITS OF INTERMEDIATE TENURE IN RESPECT OF THE AVAILABILITY OF CREDIT

The Land Survey Certificate in Lao PDR opens access to credit. The Land Tax Declaration does not, but it can easily be converted into a Land Survey Certificate – against payment. Temporary Land Use Certificates and Land Tax Receipts are useless when applying for a formal credit. According to the Lao situation, higher-level intermediate tenure instruments do facilitate access to credit, while lower level instruments do not.

Land proclamations in the Philippines (including issuance of CELAs) only result in indirectly-increased access to formal and informal lending institutions. In this case, the intermediate tenure instruments do not directly provide access to formal credit, but rather help in providing some degree of confidence and 'identity' as a community. This results in an increase in the number of available lending institutions – both formal and informal.

In conclusion, some forms of intermediate tenure directly or indirectly provide access to credit, while others do not. Given the fact that a title alone may still not provide the poor with access to credit – other factors such as regular income from the formal sector may count as well (Wehrmann 2004,

Gilbert 2001) – it may seem reasonable to suggest that there is no need to provide the poor with a form of tenure that allows mortgaging of their land. It could even be argued that it may be better to give them intermediate tenure instruments, with the objective of keeping the value of the land low and to protect the poor from market evictions. This argument may be true in the case of the Philippines to some extent, but studies on urban and rural land markets in Lao PDR have shown that there was no increase in land value due to titling. All increases in land values were caused by provision of new infrastructure or increases in prices for agricultural products, e.g. the increase in rice price (Wehrmann, Soulivanh and Onmanivong 2006, Wehrmann, Souphida and Sithipanhya 2007).

CONCLUSION

Intermediate tenure instruments are very diverse. Many of them provide for tenure security, others only to some extent, and yet others not at all. The level of discerned security mainly depends on individuals' perceptions, the specific context of the country and/or the community, the government and/or legitimate authorities protecting such rights, and the real 'intentions' behind the initiative. In some cases they guarantee access to formal credit, in other cases they facilitate access to formal or at least informal money lending institutions, but still in other cases they don't allow for any access at all, although private money lenders ('loan sharks') can be found almost everywhere – imposing (extremely) high interest rates.

The question therefore arises: What are the benefits of intermediate tenure instruments compared to a land title? In many but not all cases, intermediate tenure instruments are affordable and simple, making it possible to implement them on a relatively large scale in a short period of time. Common sense dictates that these advantages of intermediate tenure instruments make them attractive to government authorities and to the poor. However, there are cases – as shown in this paper – where the poor are not satisfied with an intermediate tenure system, even if this seems to offer the same bundle of rights and advantages as freehold titles.

There are cases where the poor are not satisfied with an intermediate tenure system, even if this seems to offer the same bundle of rights and advantages as freehold titles

The urban and rural poor interviewed in the Philippines and Laos want the best tenure document available. People in land proclamation areas in the Philippines want a title: they believe this will make them as secure as the rest of society, particularly the wealthy. They also want these titles as a legacy for their children. The rural poor in Lao PDR also want a title because they believe that this is the best legal documentation they can get. However, those who 'mistakenly' think that the Land Survey Certificate is the title are happy enough with it. We conclude that these perceptions and desires on the part of poor land dwellers in these countries are not only about tenure security and/or access to credit, but also about equity, self-esteem and pride. This reminds us of De Soto's recommendation to give informal and extra-legal forms of tenure the same status as formal tenure.

The authors of this paper support this idea to a certain degree, but not the suggested 'simplistic' solution to it. Issuing intermediate tenure instruments may have advantages, but these also have some limitations as discussed in this paper. The question is whether the advantages outweigh the constraints, and so justify the continued adoption and implementation of such instruments. We strongly believe that that the advantages do, and that providing intermediate tenure instruments is still the best strategy, if not the best option (at least for the poor!) for improving tenure security, particularly in developing countries. However, it is clear that equity in a broader sense, through the 'human rights' lens, has not been considered sufficiently in promoting intermediate tenure instruments. It is imperative that more work and research is undertaken in this area.

Recommendations

Based on our findings and conclusions, we strongly recommend considering psychological effects when deciding on the forms and names of tenure instruments that may be adopted in a particular context. The importance of these aspects should not be underestimated. Rethinking is necessary during the planning and design phase where respect for people's pride and sense of equality must be considered, and prioritised accordingly. We also suggest carrying out further research on these issues from the human rights perspective.

It is recommended to consider psychological effects when deciding on the forms and names of tenure instruments that may be adopted in a particular context

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BETWEEN REALITY AND RHETORIC IN LAND CONFLICTS
An anecdotal anatomy of the lawful, bona fide occupants and customary tenants in Kyenjonjo district, Uganda

DU DISCOURS À LA RÉALITÉ DANS LES CONFLITS FONCIERS
Témoignages d'occupants légitimes et authentiques et de locataires coutumiers dans le district de Kyenjonjo, Ouganda

ENTRE LA REALIDAD Y LA RETÓRICA EN MATERIA DE CONFLICTOS SOBRE LAS TIERRAS AGRÍCOLAS
Un análisis anecdótico de los ocupantes legítimos y genuinos y los arrendatarios consuetudinarios en el distrito de Kyenjonjo, Uganda

ABSTRACT

LAND TENURE

SECURITY OF TENURE

LAND RIGHTS

Security and certainty of tenure have been identified as important catalysts in stabilizing communities, improving shelter conditions, reducing social exclusion and improving access to urban services. This unequivocal role has been recognized by various pieces of legislation in Uganda, including the Land Act of 1998. Central to these provisions is a commitment to ensuring security of tenure, particularly for the poor – here identified as the lawful, bona fide and customary tenants. Moving beyond the ideals inherent in these provisions, the authors provide a practical critique grounded on empirical evidence gathered through fieldwork. The study utilized anecdotal evidence and materials

RÉSUMÉ

RÉGIMES FONCIERS

SÉCURITÉ FONCIÈRE

DROITS FONCIERS

La sécurité et la certitude foncières sont considérées comme d'importants facteurs de stabilisation des communautés, d'amélioration des conditions de logement, de réduction de l'exclusion sociale et d'amélioration de l'accès aux services urbains. Ce rôle est reconnu sans équivoque par divers documents législatifs en Ouganda, et notamment par la loi foncière de 1998. Au cœur de ces dispositions, se trouve l'engagement d'assurer la sécurité foncière, notamment pour les pauvres – ici identifiés comme les occupants légitimes, authentiques et les locataires coutumiers. Cherchant à dépasser le caractère idéal de ces dispositions, les auteurs proposent une vision pratique plus critique, basée sur des témoignages

SUMARIO

TENENCIA DE LA TIERRA

SEGURIDAD DE LA TENENCIA

DERECHO DE TIERRAS

La seguridad y la certeza de la tenencia se han identificado como importantes elementos catalizadores que dan estabilidad a las comunidades, mejoran las condiciones de protección de sus miembros, reducen la exclusión social y facilitan el acceso a los servicios urbanos. Estas funciones inequívocas han sido reconocidas en Uganda en varios textos legislativos, por ejemplo en la Ley de tierras de 1998. En el meollo de sus disposiciones está el compromiso que garantiza, especialmente para las personas pobres, la seguridad de la tenencia - estos individuos son los que aquí se reconocen como arrendatarios legítimos, genuinos y consuetudinarios. Los autores se proyectan más allá de


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from actual cases. Results indicate that the claim of ensuring security and certainty in property rights for lawful, bona fide and customary tenants through these laws has amounted more to lip service than the reality on the ground. Enduring conflict between the registered rights of landowners and bona fide lawful occupants who hold usufruct and occupancy rights is inevitable.

empiriques recueillis sur le terrain. En s'appuyant sur des témoignages et des éléments provenant de cas réels, l'étude cherche à montrer que les proclamations de sécurité et de certitude en matière de droits fonciers – pour les occupants légitimes et authentiques, comme pour les locataires coutumiers – se sont davantage traduites par des annonces verbales que par une action réelle sur le terrain. Dans ces conditions, les conflits entre les droits enregistrés des propriétaires et les droits d'usufruit des occupants légitimes et authentiques ne peuvent que perdurer.

los ideales inherentes a lo que estipula esta legislación y formulan una crítica práctica que se basa en pruebas empíricas recogidas mediante el trabajo de campo. Para la realización del estudio han recurrido a indicios anecdóticos y a materiales provenientes de casos reales. Los resultados indican que la pretendida garantía de seguridad y certeza de la tenencia de los derechos de propiedad de los arrendatarios legítimos, genuinos y consuetudinarios, que se enuncia en las leyes, equivale más a declaraciones de boquilla que a una realidad sobre el terreno. Los conflictos continuados entre propietarios rurales que poseen derechos registrados y ocupantes legítimos y genuinos que poseen derechos de usufructo y explotación son inevitables.

INTRODUCTION

Security and certainty of tenure have been identified as essential catalysts in stabilizing communities, improving shelter conditions, reducing social exclusion, improving access to urban services and the general eradication of poverty (UNCHS 1999, Quan 2000, Deininger 2003, Abdulai 2006). The usual argument is that secure property rights to land provide incentives for investment in land and sustainable development.

Uganda is one among many countries that has recognized the unequivocal role of secure and certain property rights through its various pieces of legislations. A significant legislative instrument is the Land Act of 1998. The Act claims to ensure security of tenure for the poor. In this context, the poor are defined as people whose access to land is mainly customary and lawful and who have bona fide occupancy on registered land (Nsamba-Gayiiya 1999). Empirical evidence of the impact of these laws on the lives of the poor indicates that these legislative provisions fail to deliver their intended goals.

In order to understand the category of people impacted it is important to study two laws that affected their security of tenure. First, the Public Lands Act of 1969 – which vested all land in the Uganda Land Commission – left customary tenure untouched. Land occupied under customary tenure was public land and could be categorized as either freehold or leasehold. The consent of the occupiers to this categorization was required nevertheless, and occupiers were to be compensated where a grant was made. Second, the Land Reform Decree (1975) abolished all *mailo* (*see* note 1) and freehold land tenure. All land was declared public land and leases of 99 years could be granted by the state. Again, customary tenure was not touched, but the situation of occupiers was worsened because the land they occupied could be alienated without their consent.

According to Chapter 15, Article 327 of the Uganda Constitution (1995), land in Uganda belongs to the citizens of Uganda, and can be owned under customary, *mailo*, freehold or leasehold tenure. Section 9 of this article

stipulates that the lawful or bona fide occupants on *mailo*[1] land, freehold or leasehold land, shall enjoy security of occupancy on the land.

According to the Land Act (1998), tenants on registered land have security of tenure and can apply for a certificate of occupation for the land they occupy, and should not be evicted without adequate compensation.

As defined in the Land Act, a bona fide occupant is:

> *... a person who before the coming into force of the constitution (a) had occupied and utilized or developed any land unchallenged by the registered owner for twelve years or more or (b) had been settled on land by the government or an agent of government, which may include a local authority ...*
>
> *Source:* Uganda Land Act amendment 2000, Chapter 227

A lawful occupant refers to:

> *... (a) a person occupying the land by virtue of (i) repealed Busuulu and Envujjo law of 1928, (ii) Toro land lord and Tenant Law of 1937, (iii) Ankole Landlord and Tenant Law of 1937, (b) a person who entered the land with consent of the registered owner and includes a purchaser and (c) a person who occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title ...*
>
> *Source:* Uganda Land Act amendment 2000, Chapter 227

1 *Customary*: is a form of tenure applicable to a specific area of land and a specific description or class of persons. It is owned according to the customs and traditions of a particular society. It can comprise communal ownership and use of land, in which parcels of land may be recognized as subdivisions belonging to a person, family or traditional institution, and which is owned in perpetuity. *Leasehold:* is a tenure system created by contract or operation of the law. The lessor grants the lessee exclusive possession of land for a specified period in return for either rent (premium) or services; sometimes the lease may even be free of any payment. *Freehold:* refers to holding registered land in perpetuity or for a period less than perpetuity, which may be fixed by a condition. *Mailo land:* is holding of registered land in perpetuity also, but permits separation of ownership of land from ownership of developments on land made by a lawful or bona fide occupant. It further allows the holder, subject to the customary and statutory rights of those person's lawful or bona fide in occupation of land at the time the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held by a freehold title.

According to the above provisions in Ugandan law, the occupants' security of tenure is protected. The President of Uganda, quoted in McAuslan (2003:275), affirmed the commitment to protect poor people by indicating that:

> *"Our position has four points and is based on double reform-controlled rent and no power to evict. The points are: recognize ownership of the landlord, accept controlled or nominal rent, a landlord should not evict the tenant as he likes but go through a tribunal and set up a fund so that poor people can also get money to buy land. For me, I am ready to be hanged on those four points."*
>
> *Source:* The New Vision newspaper, 19 May 1998

As evidenced in the formulation of the Land Sector Strategic Plan (LSSP) in 2001, protection of tenants' security of tenure on registered land and of people on customary land was, among others, one of the main concerns of the land sector (LSSP 2001–2011).

MATERIALS AND METHODS

This study analysed the life history of land cases drawn from Kyenjonjo district to determine the applicability of the provisions of Ugandan land law, by examining the extent to which the land rights of bona fide, lawful occupants and customary tenants are protected as provided for in the law. Figure 1 shows the location of the study area.

The histories of land cases encompassing freehold, leasehold and customary tenure were analysed. The claim of some scholars that indigenous systems of land ownership deliver greater security was tested by contrasting the impact of the tenure system on security of tenure with findings from an examination of unregistered land.

Persons affected were visited and interviewed and land records were accessed from the district land tribunal, lawyers representing different parties, and the land office. The defendants in the first and second cases and the

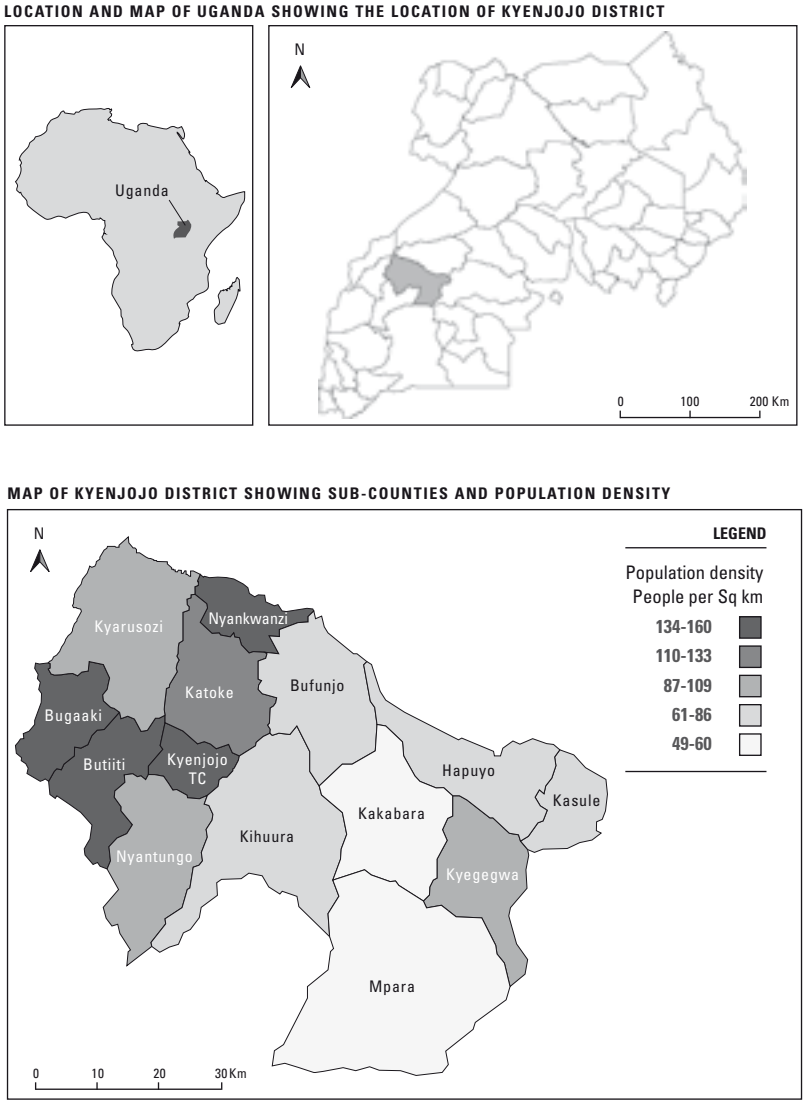


Figure 1
Location of Kyenjonjo district, Uganda

Source: Uganda 2002 Housing and Census Analytical Report (MoFPED).

applicant in the third case were visited. Detailed discussions were initiated about the causes of the land conflicts, ownership, the nature of complaints, progress in attaining justice, and the status of the cases where a court ruling remained outstanding. To cross-check the facts, the land officer in one case provided more specific insight into the case. In addition, the local[2] council chairperson(s) of the two villages investigated were interviewed to confirm the information given by the defendants about the case. Advocates representing the applicant and the defendant in two of the studied cases were consulted. To verify the information contained in land case files, an analysis of the rulings, the time the cases had taken in court, and the number of hearings involved was made. The names of applicants, defendants and other persons interviewed in these cases were changed for confidentiality.

ANALYTICAL FRAMEWORK

Measurement of tenure security in this paper is based on the extent to which lawful, bona fide occupants and customary tenants have an enforceable right to use, own and dispose of their interest in land. A right is defined by Becker as:

> *The existence of a right is the existence of a state of affairs in which one person (the right-holder) has a claim on an actor or forbearance from another person (the duty-bearer) in the sense that, should the claim be exercised or in force, and the act or forbearance not be done, it would be justifiable, other things being equal, to use coercive measures to extract either the performance required or compensation in lieu of that performance.*
>
> *Source:* Becker (1977:8)

Becker further illustrates that having a right to a thing not only precludes others from claiming the thing, but should enable the right-holder to protect the thing, restore it when it is lost and prevent interference with it

2 Uganda's local council system of administration, which ranges from 'local councils five' at district level to 'local council one' at village level. For more on this see Ahikire, J. (2002:4–9) *'Decentralization in Uganda today: Institutions and possible outcomes in the context of human rights'*

(ibid: 21). By this illustration, having a right to a thing presupposes recognition by society that the holder actually owns the thing.Palmer shares the same view that "a person may acquire security from a number of sources" (Palmer 1998). First, the community provides security when neighbours recognize and protect a person's property. Agarwal (1996) defines rights as "claims that are legally and socially recognized as enforceable by an external legitimized authority". What is clear overall is society's acceptance of possession of property by an individual.

By this illustration, having a right to a thing presupposes recognition by society that the holder actually owns the thing

However, recognition by society alone cannot constitute full ownership. Honore gives more strands to claim full ownership of property. According to Honore (1961) in Becker (1977), certain rights ought to be present to claim full ownership of property, including:

- *The right to possess:* This implies excludability in the use of the thing.
- *The right to use:* This concerns deriving satisfaction from the use and without interference.
- *The right to manage:* This is about exercising agency over how and by whom the thing is to be used.
- *The right to income:* This is the utility accruing to the owner as a result of use of the thing by another person.
- *The right to capital:* This entails transferability, consumption, ability to make changes or destroy the thing.
- *The right to security:* This is freedom from appropriation.
- *The right to transmissibility:* This is about passing on the thing to the next holder.
- *The prohibition of harmful use:* This is using the thing without causing negative externalities for other people.
- *The absence of terms:* This is perpetual ownership of the thing.
- *The liability to execution:* This implies that the thing can be taken away to repay a debt.
- *Residual character:* This is the existence of rules governing the reversion of lapsed ownership rights.

These eleven levels of ownerhip, as exposed by Honore, are summarized in the Table 1.

Table 1
Eleven levels of ownership

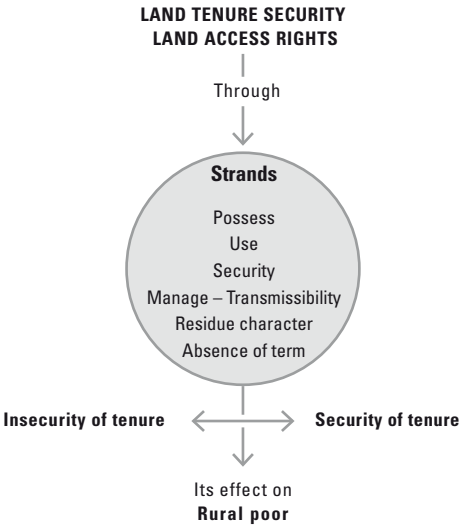
OWNERSHIP CHARACTERISTICS	THE LAND GROUP	THE GROUP MEMBER
The right to possess	The group possesses the entire landholding.	The member possesses that land individuated out of the commons.
The right to use	The group only uses the remaining commons.	The member has full rights to use that land allocated under any form of customary mandate.
The right to manage	The group has the right to manage the entire land holdings. The 'first families' or the 'title holders' have the most say and the last say.	The member manages the land allocated.
The right to income	The group has rights to income for customary activities designed to strengthen the group. These include: exchanges, bride payments, compensation and mortuary payments, and bigman supported by trading cycles. The income can be generated by individual hard work and exploitation of products taken from the commons.	The individual has the right to income from hard work on land allocation as conditioned by group responsibilities and obligations.
The right to the capital: the power to alienate, consume, waste, modify or destroy the land	Only the group has this ownership characteristics.	There is no unrestricted right to alienate land parcels. The impact on the group is paramount.
The right to security	The group assumes the right to defend its security to its land. The state is supposed to guarantee security of tenure to the customary group, the former 'mini state' in exchange for the cessation of tribal warfare.	The individual enjoys security as part of the land group.
The power of transmissibility	Only the group can bequeath such rights to its future members. It is more like a duty than a right.	An individual can only bequeath improvements, and where it exists, land that has been individuated for centuries.
The absence of term	Enjoyed by the land group.	Individuals have terms. Gardens recycle back into the commons. Females have lifetime terms to use rights in patrilineal societies. Everyone has a finite lifetime.
The prohibition of harmful use	Very much the right and responsibility of the group.	The same responsibility would be enjoyed only by the individual.
Liability to execution	The liability to execution by default under mortgage or lien. The land group cannot provide securities that can threaten its title.	Individuals enjoying certain types of tenure executed under custom can mortgage that tenure.
The residual character	Enjoyed by the group. This could be the oft named 'spiritual identity' of the group to their ground.	The individual identifies with his/her natal land and always states that last place of refuge from the troubles of life in the modern sector.

Source: A.P.Power and Wewak, PNG 07/2003 in www.pngbuai.com

The 'thing' in this paper is land. For any person to claim ownership of land, the above rights, or at least some of them, ought to exist. As Honore (1961) hastens to add, a person can enjoy some rights but others may be subject to restrictions. For instance, bona fide and lawful occupants may possess use rights over land, but do not have the right to possess the land. Lastly, customary tenants may enjoy use rights – including managing and being able to transfer such rights to their children – but they may be restricted as regards rights to income, especially for women in patriarchal societies.

The analysis made is based on Honore's strands described above and the meanings given by other scholars about what constitutes a right to land. Absence of a strand implies insecurity of tenure, while its presence indicates security of tenure. Figure 2 summarizes the major components of the adopted analytical framework.

Figure 2
Adopted analytical framework



The empirical evidence, and discussion

A case of freehold tenure

This case was analysed in detail to understand the fate of the bona fide occupants who had lived on this land for a long time.

Box 1
Land case 1.
Company Pusi vs. 36 bona fide and lawful occupants

The land where people were evicted is situated in Linda village, Katooke sub-county, Kyenjojo district, owned under freehold tenure. Company Pusi (a tea company) purchased land from the original registered proprietor, a grandchild of a chief for the Omukama (King) of Toro kingdom. However, tenants had lived on this land for a long time.

In this scenario, Company Pusi evicted over 36 people, mainly poor peasants who derived their livelihood from tilling the land. The tenants assumed tenancy at different times as summarized in the table below. The dates of assumption of tenancy for the other 30 respondents could not be ascertained because they moved to other locations.

Some of the tenants were permitted to live on the land by one individual entrusted by the registered owner. Others simply assumed tenancy customarily (locally known as Kutembura), a practice prevalent in the past by which people

TENANT (T)	YEAR
T1	1967
T2	1974
T3	1974
T4	1973
T5	1967
T6	Bought from T4 in 1967

Source: derived from the interviews with the tenants

→

occupied any vacant land and defined their own boundaries apparently without opposition, because the population was still low. Such lands constitute the customary land ownership in the area – locally known as ebibanja – that is bequeathed to the next generation.

On assuming tenancy, Company Pusi summoned the tenants to leave after compensation was paid for the developments made on the land. Attempts by the tenants to seek legal redress from the local council courts proved futile, because the courts did not venture to interfere in what they thought was decided by the national court system. At its own discretion the company valued the affected person's property without following a clear and transparent process. The tenants interviewed did not seem to know whether an appropriate expert such as a land valuer or agricultural officer had been invited to do the valuation. For instance, only one tree species was compensated for (locally known as emitoma) and the rest were not valued at all. Therefore appropriate overall compensation was not made. Additionally, the tenants affected did not know exactly what they were being compensated for. Copies of documents they had signed in order to receive the compensation were not availed to them.

Furthermore, the evicted people were obliged to accept any amount of money offered to them, yet the amount was not commensurate with the value of their development, because they had been forbidden from planting any more crops on the land for three months prior to the compensation being paid. The inadequate recompense did not allow them to acquire new plots of reasonable-quality land. Consequently, the majority ended up selling their labour to the same company, which had put up camps for whoever was interested in working on the tea estate. Many former tenant farmers had no choice but to accept these new jobs. However, according to those interviewed the salaries were not enough to feed their children and send them to school.

The poor not only lost their land, their cattle and their perennial crops – the essence of their income – they were also subjected to accepting low-paying jobs at Company Pusi, their evictors.

In view of the above case, and referring to Honore's adopted strands, the land rights of the poor have diminished in many ways. The occupants' *right to use* the land they had lived on and toiled for over three decades was interfered with, since they were prohibited from using the land for three months before compensation.

Other rights, for instance *right to transmissibility* and *right to manage, which are possible under usufruct,* were also extinguished. The inability of the local council courts to intervene in the situation despite the occupants' pleas attested to the diminished *residuary character*.

Although the occupants had developments on land these did not serve as security, and not all developments were valued and recovered after the loss of land in this case. This alone challenges the argument advanced by Sjaatad and Bromley who observe that investment on land is security itself, and such investment can be recovered even when the land is lost (Sjaastad and Bromley, 1997: 553). A view that Woodhouse (2003:1713) also notes in the context of Botswana is that "... investment is a key factor in strengthening claims over land. At its simplest, investment in clearing land by cutting and burning vegetation forms the basis of all customary authority––usually held by (or transferred from) the descendents of the first settlers who cleared the land."

Investment is a key factor in strengthening claims over land

A case of leasehold tenure

Box 2
Land case 2.
One applicant vs. 44 defendants

In this case, one claimant (rich and famous) accuses 44 defendants of trespass and encroachment on his land, yet, as revealed by the purchase agreements, they had lived on the disputed land since 1960. According to the applicant's claim, the respondents (44 people) trespassed and erected structures on his land without any claim. He prayed that court would grant an injunction and stop respondents from carrying out any activity on the disputed land.

The respondents (only ten), setting out their stall in their statement of defence, challenged the applicant's claim and indicated that they had been in occupation of the land for a long time. Some acquired the land customarily through inheritance and others bought it from customary tenants. The table below indicates the time when each assumed tenancy on the disputed land.

→

→

DEFENDANT (D)	YEAR
D1	1960
D2	1960
D3	1992
D4	1992
D5	1993
D6	1980
D7	1990
D8	1980
D9	1995
D10	12 years

Source: extracted from the statement of defence.

Dates for commencement of tenancy for those who did not contribute to the statement of defence could not be established, but interviews with the local area chairperson indicate that 33 people had lived on the land for long periods. The applicant purchased the disputed land in 2006 from the registered proprietor, who held a leasehold title obtained from the Uganda Land Commission in 1989.

The respondents further noted that the plaintiff had neither stayed on that land nor made developments on it, and prayed for the dismissal of the claimant's action.

Consequently, an injunction was passed that prohibited the 44 people from using the land, an idea that the defendants' counsel challenged on grounds of their dependence on their pieces of land for subsistence purposes. This resulted in a ruling that permitted the defendants to use the land under their occupation only for subsistence purposes and restrained them from planting eucalyptus trees, cutting valuable trees, or extending the area now under their occupation until a final judgment was made.

Interestingly, some of the respondents are situated in a different place. While the location of the disputed land is plot 1, block 50 at Bwere hill Migogwe, Kyaka county, some of the affected defendants were situated in Kisagani village, Kabwera village, Kyanyarugabwa in Rwibale parish, and Kihuura sub-county, on land that is not even surveyed and is unregistered. Extension of registered land boundaries to incorporate land that does not even belong to the registered proprietor is therefore evident in this case.

The findings as regards *right to possess, right to use and right to security* reveal that the land rights of the poor have weakened. In this case, 44 people in both Kyaka county and Kihuura sub-county have lost their land rights even when the law recognizes them as customary tenants, lawful and bona fide occupants. The right to manage has also been affected since an injunction was passed stopping any developmental activity (save for subsistence purposes) on land that the defendants had freely owned and used since the 1960s, long before the claims of the applicant in 2007.

Although 44 people were summoned in this case, only 10 were able to jointly engage the services of a lawyer to make a statement of defence. By law, in the event that a defendant does not make a statement of defence in the stipulated time, the court decides in favour of the applicant by granting the prayers of the same, hence diminishing the rights of the defendant in terms of residuary character. In this particular case, the 30 people's fate is at stake because they have not submitted a statement of defence. According to the area local council chairperson, the respondents cannot afford the legal costs, resulting in the loss of their interest in the suit land. Their *rights to use, right to manage*, *right to security, absence of term, right to divisibility and right to transmissibility* have all diminished.

A case of customary tenure

The customary case presented below has been chosen to ascertain whether security of tenure under customary tenure differs from registered land.

The applicant's *liberty to use* and enjoy his land without interference has been weakened, because he has not been able to use the land productively since 2004, due to the excessive time taken by the land tribunal in making a ruling. The situation is likely to be exacerbated by the suspension of the district land tribunals in the country at the beginning of 2007. Land cases are currently handled by the grade one magistrate's court together with all other categories of cases.

In addition, the applicant's *right to manage* is weakened. The applicant is not in position to decide how and who should use the land; the right to bequeath customary ownership is also not exerciseable on disputed land.

Box 3
Land case 3.
Murungi vs. company Pusi

The case was first filled in Kyenjojo district land tribunal on 13 February 2004. The commencement of occupancy was 1939 through inheritance from the applicant's father, who had lived on that land before the applicant. The disputed land is situated in Butiiti sub-county, Kibirizi parish and Kinyatale village. The applicant accuses company Pusi of encroachment on his land and unlawfully passing a road (approximately 3 acres) through his land, destroying his crops.

The respondent denies all allegations in response, stating that the applicant and his developments are outside the respondent's land. The respondent has not in any way interfered with the applicant's developments and prays that the claims be dismissed.

The case has dragged on to 2007. While Company Pusi engages the services of a lawyer, the elderly, poor and blind applicant represented himself at all hearings. These are punctuated by adjournments on grounds of *inter alia*, the land tribunal not being fully constituted, the respondent not being aware of the hearing, visiting the locus etc. A final judgment may take even longer because land tribunals had been suspended by the Government of Uganda at the time of the study. The land cases were being handled together with other cases in the magistrates court.

In an interview, the applicant indicates that has not yet lost his land, but points out that he has already suffered other loses – time, money and the sheer physical effort involved in the case since 2004.

The findings from this case suggest a view divergent from the argument that African customary tenure is deemed secure, e.g. Noronha (1985) in Atwood (1990). The findings are in agreement with IIED (1999) and Quan (1997), that, as Woodhouse says (2003), " ... neither does customary tenure constitute a guarantor of security for the poor. When competition for land intensifies, the inclusive flexibility offered by customary rights can quickly become an uncharted terrain on which the least powerful are vulnerable to exclusion as a result of the manipulation of ambiguity by the more powerful." The view of the authors is that the claim of customary tenure being more secure does hold and is contextual, even if it does not necessarily materialize in some cases.

From the evidence and discussion of the land cases in this paper it is evident the poor's land rights have diminished in many instances. It also appears that if bona fide and lawful occupants and customary tenants had proof of occupation and possession right (title), or any other similar document recognized by courts of law, they would have stronger claims over the land they have toiled and lived on over so many years.

CONCLUSION

The claim that there is adequate legal protection of tenure security for lawful, bona fide and customary tenants under Ugandan land law is more akin to lip service than the reality on the ground. The sample case laws presented here offer graphic evidence of insecure tenure for lawful, bona fide, customary tenants. The implications are obvious: insecurity and uncertainty of land tenure has often been a disincentive to investment for many poor Ugandans, and has subsequently undermined any efforts by government targeted at improving their well-being.

Protecting the land rights of lawful, bona fide and customary tenants has proved a daunting task for many sub-Saharan governments. There is overwhelming evidence from both anglophone and francophone sub-Saharan countries to suggest that property rights emanating from traditional institutions are insecure and uncertain (McAuslan 2000, West 2000, World Bank 2005, Abdulai 2006). The usual response has been the adoption of the Torrens system's[3] principles and concepts in land title registration.

3 The Torrens system is based on the principle that land title cannot pass and no encumbrance can be enforced, unless it is noted in a land register. The registered title is deemed to be absolute and indefeasible (that is, it is guaranteed or effectively insured by the State). The system provides for the registration of titles to land, as distinguished from other systems that merely provide for the recording of evidence of title and all encumbrances that restrict title, so as to act as a form of notice to any third party who may take an interest in the land (see Abdulai's 2006 article: *Is land title registration the answer to insecure and uncertain property rights in sub-Saharan Africa?)*.

Implied in the Torrens system is that customary ownership of land presents a problem in so far as land is not formally recorded or registered. It then follows that land title registration would be the answer to the plight of lawful, bona fide, customary tenants in Uganda and other sub-Saharan countries faced with similar challenges. However, the translation of the Torrens principles into practice is yet to see the light of the day. The reconciliation of such land title registration principles with practice has not been spontaneous in many land cases. There is a growing pool of evidence in sub-Saharan Africa demonstrating that land title registration has not yet guaranteed greater security and certainty of tenure (Woodman 1988, Agbosu 1990, Wells and Brandon 1992, Becker *et al* 1994, World Bank 2005, Abdulai 2006).

Land title registration has not yet guaranteed greater security and certainty of tenure

Cameroon, for example, committed an elitist fallacy when it introduced its Land Ordinances in 1974, which sought to provide for land title registration, supposedly on an equitable basis. Regrettably, the major beneficiaries of this exercise were the educated local elite, civil servants, politicians and town dwellers, leaving only 2.3 percent of the rural land titles registered (Edge 2002, World Bank 2005).

While land registration and titling of customary land tenure in Uganda may assist in increasing security and certainty of tenure for the majority poor, we argue that such security and certainty of property rights can be successfully provided within customary tenure systems. The failure of the three cases presented above to meet the major requirements of Honore's gamut of rights presupposes the existence of a fractured customary land tenure system that needs to be fixed. What is required is the creation of institutional arrangements that would protect the interests of poor whenever land disputes arise. There is a need to create institutions that would represent and/or champion the cause of the poor in land disputes. The lost cases in this analysis can be dismissed as cases of *constrained mediation* where the lawful, bona fide, customary tenants lacked representation.

There is a need to create institutions that would represent and/or champion the cause of the poor in land disputes

The granting of usufruct and occupancy rights to bona fide and lawful occupants should not wait, however – they should not be a *post*-conflict mediation strategy. There is a need, by government, to recognize

and strengthen existing traditional institutions. The recognition of an individual's right to land by traditional institutions has been recognized as one of the crucial ingredients of security and certainty of property rights to land (Becker 1977, World Bank 2005, Abdulai 2006). Other requirements include the availability of land rights enforcement institutions, duration of property rights to land, a clear definition of property rights to land, and clear boundary demarcation of land. It is the recognition of property rights to land by the community that has seen limited cases of land disputes in both registered and unregistered land in the United Kingdom (Abdulai 2006). There is no evidence of communities rallying behind bona fide and lawful occupants in the cases presented. This is probably a symptom of disempowered traditional institutions characterizing many sub-Saharan countries.

Retaining ownership rights for landowners (registered proprietors) and granting usufruct and occupancy rights to bona fide and lawful occupants implies an enduring conflict between these two categories of citizen. It is therefore imperative that the Government of Uganda enacts stronger legislation that protects the interests of the poor. Such legislative instruments should recognize and strengthen traditional institutions, because these play a central role in the recognition of property rights to land by the poor. Where conflict is unavoidable, mechanisms for fair mediation should be put in place.

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SPATIAL DATA INFRASTRUCTURE AND *INSPIRE* IN GLOBAL DIMENSION

INFRASTRUCTURE DE DONNÉES SPATIALES ET *INSPIRE* DANS UNE DIMENSION MONDIALE

INFRAESTRUCTURA DE DATOS ESPACIALES Y LA DIMENSIÓN GLOBAL DE *INSPIRE*

ABSTRACT

SPATIAL DATA INFRASTRUCTURE

INSPIRE

EUROPE AND CENTRAL ASIA

Spatial Data Infrastructure (SDI) allows geographic information to be combined from a variety of sources to a variety of disciplines, facilitating decision-making processes at all levels and allowing governments, local communities, non-governmental organizations, commercial sector, academic community and common people to make more informed decisions and to cope with disasters. SDI is a framework of policies, institutional arrangements, technologies, data and people that enables sharing and effective usage of geographic information. The European Union INSPIRE Directive for establishing European SDI is a unique example of a legislative 'regional' approach. The international community could

RÉSUMÉ

INFRASTRUCTURE DE DONNÉES SPATIALES

INSPIRE

EUROPE ET ASIE CENTRALE

Une infrastructure de données spatiales (IDS) permet de combiner des informations géographiques provenant de toutes sortes de sources avec toutes sortes de disciplines, dans le but de faciliter les processus de prises de décision à tous les niveaux et de permettre aux gouvernements, aux communautés locales, aux organisations non gouvernementales, au secteur commercial, au monde universitaire et à la population générale de prendre des décisions mieux informées et de faire face aux catastrophes.

L'IDS constitue un ensemble de politiques, d'arrangements institutionnels, de technologies, de données et de personnes qui permettent le partage et l'utilisation

SUMARIO

INFRAESTRUCTURA DE DATOS ESPACIALES

INSPIRE

EUROPA Y ASIA CENTRAL

Gracias a la infraestructura de datos espaciales (IDE) es posible combinar las informaciones geográficas arrancando de una gran variedad de fuentes para desembocar en una multiplicidad de disciplinas. Se facilitan así los procesos decisorios en todos los niveles y se permite a gobiernos, comunidades locales, organizaciones no gubernamentales, el sector comercial, la comunidad académica y la gente común tomar decisiones informadas y hacer frente a los desastres. La IDE es un marco de políticas, acuerdos institucionales, tecnologías, datos y personas mediante el cual la información espacial se puede compartir y usar de manera eficaz. La directiva INSPIRE de la Unión Europea que ha creado la IDE europea constituye un ejemplo único


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benefit from the experience and good practices of those countries and regions that already have advanced SDIs, saving time, money and effort, i.e. not reinventing that which has already proven to be successful in practice.

efficace des informations géographiques. La directive de l'Union européenne INSPIRE pour la mise en place d'une IDS européenne est un exemple unique d'approche législative 'régionale'. La communauté internationale pourrait bénéficier de l'expérience et des bonnes pratiques des pays et des régions qui disposent déjà d'une IDS perfectionnée, ce qui leur permettrait de gagner du temps et d'économiser des ressources financière et des efforts, en évitant d'avoir à réinventer ce qui est déjà avéré, en termes pratiques, comme un succès.

de legislación «regional». La comunidad internacional podría por lo tanto sacar provecho de la experiencia y buenas prácticas de los países y regiones que ya poseen una IDE avanzada, y ahorrar tiempo, dinero y esfuerzos, es decir no deber reinventar aquellas cosas cuyo éxito se ha comprobado ya en la práctica.

INTRODUCTION

High-quality information and informed public participation are the cornerstones of good policy. In light of the rapid developments in contemporary geospatial technologies – such as satellite imagery, aerial photography, global navigation satellite systems (e.g. the Global Positioning System – GPS), hand-held computers and geographic information systems – unprecedented opportunities to use geographic information have arisen and continue to expand. An estimated 80 percent of information supplied to the public and other government agencies has a spatial dimension, indicating the importance of a new approach that deals with data management and delivery in combination with monitoring and reporting systems, across different levels of government and the private sector. Measures need to be taken to reduce unnecessary duplication of data collection and to assist and promote the harmonization, dissemination and use of data.

Spatial Data Infrastructure (SDI) plays a key role in the organization and harmonization of data, making it available in a time when it is most needed. SDI allows information to be integrated from a variety of disciplines for a variety of uses. It can facilitate the decision-making process at all levels and allows governments, local communities, non-government organizations, the commercial sector, the academic community and the public in general to make progress in addressing many of the world's most pressing problems, such as disaster management, environmental monitoring, protection of natural resources and land use. SDIs facilitate quick data collection and advanced data analysis, and allow for a flexible and integrated approach to information-sharing and dissemination on the basis of a spatial framework. SDI is also about cross-border issues: environmental phenomena do not stop at national borders! About 20 percent of EU member states' citizens (115 million people) live within 50 km of a border and 60 million live less than half an hour's drive (approximately 25 km) from a border. It is not sufficient to use SDI only at European Union level, it also needs to be promoted at a global level.

Spatial Data Infrastructure (SDI) plays a key role in the organization and harmonization of data, making it available in a time when it is most needed

On the European level, the INSPIRE Directive 2007/2/EC of the European Parliament and of the Council (in force since 15 May 2007) binds EU Member

States to establish and provide geographic data in a standardized way. INSPIRE sets the legal framework and the technical specifications necessary to overcome existing barriers in the sharing of environmental information. Such barriers add a significant extra cost to those who need to find, access and use environmental information.

In the USA a critical national need for improved means of finding and sharing geographic data was recognized by President Clinton in Executive Order 12906 of April 1994. This document called for the establishment of a coordinated National Spatial Data Infrastructure (NSDI) "to support public and private sector applications of geospatial data in such areas as transportation, community development, agriculture, emergency response, environmental management and information technology". The NSDI was seen as part of the evolving National Information Infrastructure that would provide citizens with access to essential government information, thereby strengthening the democratic process.

The Canadian Geospatial Data Infrastructure (CGDI) gives decision-makers access to online location-based information that can help them do their jobs better and more efficiently. Often presented in the form of detail-rich digital maps or satellite images, this geographic information enables decision-makers to spot trends, evaluate options, understand trade-offs, avert risks, assess emergencies, and much more.

The United Nations SDI (UNSDI) initiative aims to contribute to the mission of the United Nations to maintain peace and security, to address humanitarian emergencies and to contribute to the realization of the UN Millennium Development Goals by facilitating efficient global and local access, exchange and utilization of geospatial information. It is an institutional and technical mechanism for establishing system coherence for the exchange and application of geospatial data and information, used in UN activities and supporting SDI development activities in Member Countries.

In the context of land administration the information produced and distributed by cadastre and mapping authorities is an integral part of the NSDI and represents above 85 percent of the so-called reference data (base maps) without which the SDI could not be built up.

Information produced and distributed by cadastre and mapping authorities is an integral part of the National Spatial Data Infrastructure

The computerized multi-purpose cadastre is a SDI-related tool, for efficient handling of land and property-related data that has the potential to provide many benefits across all sections of the community, by adding value through combining data sets and making these widely available.

The World Bank and FAO experience in the Bank's Europe and Central Asia (ECA) region (including 30 countries and territories, but excluding countries in Western Europe that do not receive Bank funds), has shown that most countries are already involved in the establishment of SDI, albeit still in the early stages of preparation. In the field of land administration and management the countries in the Bank's ECA region are now requesting support in two key areas:

- improving services and reducing corruption through e-government initiatives
- building up SDI.

The World Bank is also financing land administration and management projects with SDI components in the East Asia and Pacific region (Indonesia, Vietnam, Philippines, Laos and Thailand). These projects are still at the very early stages: the regulatory framework is under development and steering committees have just recently been established. SDI components are included in land projects financed by the World Bank in Africa (e.g. the preparation of a new project in Ghana) and South America (e.g. the early stages of a project underway in Bogota, Colombia).

The biggest challenge during the next several years will be coordinating the cooperation of all key players at all levels. New organizational structures are needed in order to upgrade smoothly from the current cadastral and registration service to an electronic process (e-conveyance) for both private and public customers. The new structures are required not only in the public sector itself but also in its working process with the private sector. This move towards e-conveyance will also involve the security and privacy of personal data, which have to be considered and must be guaranteed.

New organizational structures are needed in order to upgrade smoothly from the current cadastral and registration service to an electronic process

The remainder of this article will discuss the role and status of SDI specifically in the context of the European Union, with additional comparative examples given from other regions too.

WHAT IS THE EUROPEAN UNION?

The European Union (EU) was established in the aftermath of the Second World War to bring peace, stability and prosperity to Europe. The Union is open to any European country that fulfils the democratic, political and economic criteria for membership. Following several enlargements, the EU has increased from six original founding members to 27 members currently. Several other countries are candidates to join. The successive enlargements have strengthened democracy, made Europe more secure and increased its potential for trade and economic growth.

European Union law

European Union law (historically called European Community law) is a body of treaties, law and court judgements which operates alongside the legal systems of the European Union's Member States. It has direct effect within the EU's Member States and, where conflict occurs, takes precedence over national law.

The primary source of EU law is the EU's treaties. These are power-giving treaties that set broad policy goals and establish institutions which, among other things, can enact legislation in order to achieve those goals. The legislative acts of the EU come in two forms: regulations and directives. Regulations become law in all Member States the moment they come into force, without the requirement for any implementing measures, and automatically override conflicting domestic provisions. Directives require Member States to achieve a certain result while leaving it to the discretion of individual States how they achieve the result.

EU relations with non-EU countries

The relations between the EU and its neighbouring countries are based on two parallel policies, depending on whether the neighbour is on the current list of potential candidates or not. These policies are:

- Stabilization and association agreements open up the possibility of a country becoming a candidate for EU membership at the end of a negotiation process.

- Under its neighbourhood policy, the EU has trade and cooperation agreements with non-member countries in the southern Mediterranean and the southern Caucasus, as well as with countries in Eastern Europe whose future relationship with the European Union remains unclear.

Meanwhile the Africa–EU Strategic Partnership (A Joint Africa–EU Strategy from 2007) defines the long-term policy orientations between the two continents, based on a shared vision and common principles aimed at improving the Africa–EU political partnership. These principles include:

- promoting peace, security, democratic governance and human rights such as basic freedoms and gender equality
- promoting sustainable economic development, including industrialization and regional and continental integration.

The principles aim to ensure that all of the Millennium Development Goals are met in all African countries by 2015.

European Union policy areas

The European Union acts in a wide range of policy areas — economic, social, regulatory and financial — where its action is beneficial to the Member States. These include:

- solidarity policies (also known as cohesion policies) in regional, agricultural and social affairs
- innovation policies, which bring state-of-the-art technologies to fields such as environmental protection, research and development, and energy.

In the context of building up a European Spatial Data Infrastructure, the following policy areas are of key importance:

- EU environmental policy, which emphasises the need to mitigate and slow down climate change and global warming, protect natural habitats and wild fauna and flora, deal with problems linked to environment and health, preserve natural resources, and manage waste efficiently.
- EU research policy, which is designed to complement national research programmes. It focuses on projects that bring together a number of

laboratories in several EU countries. It encourages research and technological development in key industries such as electronics and computers, which face stiff competition from outside Europe. The founders of the European Union rightly envisaged that Europe's future prosperity would depend on its ability to remain a world leader in technology.

WHAT IS SPATIAL DATA INFRASTRUCTURE?

SDI is a framework of policies, institutional arrangements, technologies, data and people that enables the sharing and effective usage of geographic information. The goal of SDI is to:

- reduce duplication of effort among agencies
- improve quality and reduce costs related to geographic information
- make geographic data more accessible to the public
- increase the benefits of using available data
- establish key partnerships with states, counties, cities, tribal nations, academia and the private sector to increase data availability.

Spatial Data Infrastructure is a framework of policies, institutional arrangements, technologies, data and people that enables the sharing and effective usage of geographic information

Social benefits

SDI facilitates decision-making processes at all levels and enables governments, local communities, non-governmental organizations, the commercial sector, the academic community and the public to address many of the world's most pressing problems, such as climate change, disaster management, environmental issues and sustainable development issues. Different sectors such as energy (electricity distribution), mining (resource mapping), agriculture (fisheries and irrigation), property (route and site selection), government (service improvement), health (asthma control) and others, all utilize spatial information to improve efficiency. Standardization of information infrastructures enables increased exchange and interoperability among sectors and institutions.

The benefits could be seen in: helping citizens, saving people's lives, increasing governments' transparency, improving decision-making processes, exposing public information efficiently, reducing duplication, increasing

competition, creating jobs and improving information accessibility. An important wider social benefit so far has been the narrowing of the digital gap between larger and smaller municipalities. This means that as a result of SDI, smaller municipalities have been able to offer their residents services that had previously only been available in larger centres.

Examples of economic benefits in countries with more advanced SDI

SDI not only brings social benefits but can also bring economic benefits. Several studies estimate that participation in the creation of the European Union SDI would benefit the EU Member States by more than €1 billion per year.

In 2006 the Joint Research Center (JRC) of the European Commission has organised a workshop on "Assessing the Impacts of Spatial Data infrastructures", where 24 studies looking at the cost benefit of adopting a comprehensive NSDI were reported. The studies showed returns varying in cost/ benefit terms from 1:1.8 to 1:23 with a general median value of around 1:4. The studies were undertaken in the US, EU, and Australia/New Zealand. This workshop reported on various approaches to modelling cost-benefit analysis, including the Geo-Value Measuring Methodology (NASA), a Cost benefit Analysis (CBA) method, a physical infrastructure model as developed in Netherlands. There is no single agreed approach to cost benefit of NSDI projects.

Studies in Australia have shown that their SDI has helped to generate a 'spatial' industry worth AUS$1.4 billion and that this contributes AUS$12.6 billion to Australian GDP. If the information is provided for easy access on the Internet – as is now often the case in Europe and North America – it will have a marked impact on transparency, service provision and economic growth.

Better use of spatial data can have a substantial direct impact on the economy. A report prepared by land Information New Zealand in August 2009 quotes a study completed by *Tasman Global* that new Zealand GDP increased by 0.65 percent (or NZ$1 164 million) as a direct result of the uptake of spatial technologies.

An analysis of the Dutch geo-information sector estimated the impact at 0.25 percent of GDP or €1.4 billion (Castelain, Bregt and Pluijmers 2008).

In the Dutch experience with SDI, the two largest direct benefit items are increased property tax recovery (€252 million) and efficiency gains to users (€149 million).

In the United Kingdom a study was published in February 2008 which estimated the benefits to the UK economy if spatial data were available at no cost, compared with the current relatively high cost of availability in countries such as the USA. The study estimates that the gross benefits to the UK economy would be around £168 million per year, with a government subsidy to the Ordnance Survey of something between £12 million and £85 million being a requirement. Overall this implies a net benefit to the UK economy of between £73 and £156 million.

In 2010 the European Commission Joint Research Centre and the University of Cagliari, Italy published a comparative cost-benefit evaluation and impact assessment report, based on two more concrete studies on the socio-economic impacts of the regional spatial data infrastructures undertaken in Catalonia, Spain (2007) and in Lombardia, Italy (2008-2009). In Catalonia an investment in standards-based spatial data infrastructure of €1.5 million over the four-year period 2002–2006 realized efficiency savings of 500 hours per month, equivalent to about €2.6 million for the entire period. The study in Lombardia was based on on-line survey distributed to 60 companies, 27 of which replied to the questioner. The study showed that an expenditure of about €4 million over the period 2006–2008 improved the efficiency of production. It was concluded that the regional SDI resulted in time savings of 11 percent and cost savings of 17 percent, which reduced the cost of preparing Environmental Impact Assessments (EIA), and Strategic Environmental Assessments (SEA) by €3 million annually.

SDI components

The components of the SDI are standards, metadata (data about data), geospatial data themes, legal norms and the organizational partnerships required to implement and maintain such a system (Figure 1).

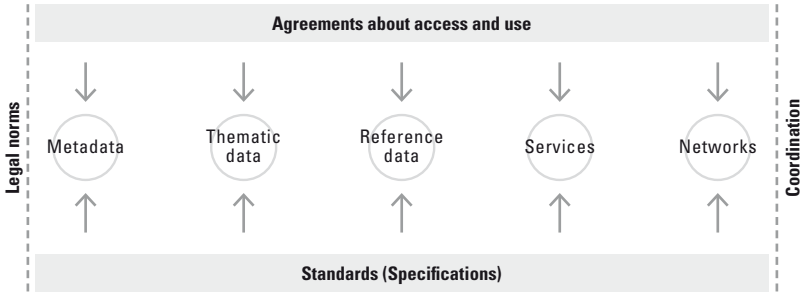

Figure 1
Spatial Data Infrastructure components

From where to start building an SDI?

Four organizational conditions are important for the creation of NSDI: leadership, vision, communication channels and coordination.

In order to achieve these conditions, both legislation (e.g. INSPIRE) and leadership independent of vested interests (e.g. the UK Location Council or the US Federal Geographic Data Committee) are crucial.

Therefore, the first step towards the implementation of the SDI is the establishment of an institution/authority responsible for adopting standards and monitoring whether or not institutions respect those standards. This would be an interagency committee at government level, responsible for implementing the SDI, including promoting the coordinated use, sharing, and dissemination of geospatial data on a national basis.

The first task of the committee is to develop an NSDI Strategy: to know what data is available and avoid duplication; to use common reference data to standardize communications and avoid confusion; to share location-related information easily through a common infrastructure of standards, technology and business relationships; to have the appropriate skills to use location information or support its use and finally, to have strong leadership and governance to drive through the implementation of the SDI Strategy.

Standards are the backbone of a spatial data infrastructure. In order to get online services working satisfactory for multiple users simultaneously, general IT and web standards need to be followed. There are a series of ISO

Leadership, vision, communication channels and coordination are important for the creation of National Spatial Data Infrastructure

standards focusing on different components of the infrastructure. Most of these standards concern the technical operation of services, exchange formats, syntax, language and technical encoding issues.

There is a need not only for harmonization of technical solutions and exchange formats, but also for the harmonization of data content. National organizations need to be stimulated and motivated to work out commonly agreed and durable data models and classification systems in order for SDI to work.

In addition to harmonization, transformation services are also important. Achieving interoperability of data within a theme, between themes, for different applications and at different resolutions, will require that some basic transformation services be in place, including coordinate transformations, generalization and edge-matching.

WHAT IS INSPIRE?

INSPIRE is a Directive (2007/2/EC) of the European Parliament and of the Council dated 14 March 2007, establishing an Infrastructure for Spatial Information in the European Union. This will enable the sharing of environmental spatial information among public sector organizations and will better facilitate public access to spatial information across Europe. A European Spatial Data Infrastructure will assist in policy-making across boundaries. Therefore the spatial information considered under the directive is extensive and includes a great variety of topical and technical themes.

INSPIRE addresses both technical and non-technical issues, ranging from standards, organizational and procedural issues and data policies, to the creation and maintenance of electronic services

INSPIRE addresses both technical and non-technical issues, ranging from standards, organizational and procedural issues and data policies, to the creation and maintenance of electronic services (Box 1).

While INSPIRE focuses on environmental applications, it also defines the important components and functions of the general National Spatial Data Infrastructures. INSPIRE targets spatial data held by or on behalf of a public authority within the area of 34 Spatial Data Themes laid down in three annexes. The first two annexes provide the core geographic information needed for the rest of the themes. Most of the themes in the first two annexes are data typically collected and maintained by the Cadastre and Mapping Authorities.

Box 1
Principles of INSPIRE

What are INSPIRE principles?

- Data should be collected once and maintained at the level where this can be done most effectively
- Spatial data should be collected at one level of government and shared between all levels
- Combine spatial data from different sources and share them between many users and applications (the concept of interoperability)
- Spatial data needed for good governance should be available under conditions that do not restrict its extensive use
- It should be easy to know what spatial data is available, to evaluate its fitness for purpose, and to know which conditions apply to its use.

INSPIRE requires all Member States to designate appropriate structures and mechanisms for coordinating the contributions of all those with an interest in spatial information infrastructure, to actively form a national policy for data sharing within the nation, and to develop practical tools to this end. The INSPIRE Implementing Rule determines the access and rights of use by community bodies and institutions. The EU Member States must report annually on a number of indicators related to the progress of INSPIRE implementation. The INSPIRE monitoring and reporting results from 2010 (ref. year 2009) are now available on the INSPIRE web page (http://inspire.jrc.ec.europa.eu/index.cfm/pageid/182/list/indicators).

INSPIRE legislation

The following types of documentation are produced by INSPIRE:

- INSPIRE Directive – European legislative act. The 'what', not the 'how'. Transposed by the EU Member States and European Free Trade Association (EFTA) countries.
- Implementing Rules – European legislative acts (regulations, decisions, or amendments), which become national law in Member States at the moment they enter into force. To ensure that the spatial data infrastructures of the Member States are compatible and usable in a

Union and trans-boundary context, the Directive requires that common Implementing Rules (IR) are adopted in a number of specific areas (metadata, data specifications, network services, data and service sharing, and monitoring and reporting). The 'Regulation for the Interoperability of Spatial Data Sets and Services' sets out the requirements for technical arrangements for the exchange of spatial data and, where practicable, harmonization of spatial data sets and spatial data services.

- Draft Implementing Rules and Guidelines – Candidate content for legal acts. More detailed information supporting implementation: not legally binding.
- Technical reports and supporting material. – The technical INSPIRE documents are heavily based on ISO standards and are the most up-to-date and detailed specifications for how to organize NSDIs.

Information on the status of the transposition of the INSPIRE Directive in the Member States can be found on the EUR-Lex site.

INSPIRE driving forces

The driving forces of INSPIRE are:

- INSPIRE Expert Group (Member States; umbrella organizations in the environment and spatial information sectors).
- European Commission (Environment Directorate-General, EuroStat, Joint Research Centre [JRC], European Environmental Agency, GMES-Initiative).
- JRC/Institute for Environment and Sustainability [IES] (coordination, technical and scientific steering).

The European Commission Spatial Data Infrastructure Unit coordinates the scientific and technical development of the Infrastructure for Spatial Information in Europe (INSPIRE). The SDI Unit supports its implementation within the Commission and the Member States, evaluates its social and economic impacts, and leads the research effort towards the Next Generation Digital Earth, exploring new approaches to the creation and sharing of environmental information. The Unit works in close collaboration with leading Commission Services and also works with other European Institutions such as the European Environment Agency (EEA) and European Space Agency (ESA).

EC SDI Unit international cooperation

Environmental phenomena do not stop at national borders, therefore information sharing at all levels and across borders is of key importance for the decision-making process. The EC SDI Unit is cooperating internationally by collaborating with various organizations.

Information sharing at all levels and across borders is of key importance for the decision-making process

The EC SDI Unit has established international agreements with organizations leading national SDI development, such as the USA's FGDC (Federal Geographic Data Committee) and GeoConnections of Canada. The Unit also collaborates with the UN Geographic Information Working Group (UNGIWG) for the implementation of the UNSDI.

A United Nations Geographical Information Working Group (UNGIWG) was established in 2000 to address common geospatial issues – maps, boundaries, data exchange, standards – that affect the work of UN organizations and Member States. The UNGIWG is coordinating the building up of the UN Spatial Data Infrastructure.

The USA's Federal Geographic Data Committee (FGDC) is an interagency committee that promotes the coordinated development, use, sharing, and dissemination of geospatial data on a USA National Spatial Data Infrastructure. The USA Federal Geographic Data Committee (FGDC) administers the Cooperative Agreement Program (CAP) to advance the National Spatial Data Infrastructure (NSDI). The FGDC sets geospatial information policy in harmony with overall information policy.

GeoConnections of Canada helps decision-makers use online location-based (or 'geospatial') information, such as maps and satellite images, to tackle some of Canada's most pressing challenges. GeoConnections also strongly advocates the use of national standards so that the standardized data or applications accessible via the Canadian Geospatial Data Infrastructure (CGDI) from one provider can then easily be layered or used with those from another. The standards that GeoConnections advocates for the CGDI mirror many international geomatics standards.

Each year the European Commission organizes an annual INSPIRE conference, which provides a forum for stakeholders from government, academia and industry to hear about and discuss the latest developments in

the INSPIRE Directive. The theme of the INSPIRE 2010 conference was 'INSPIRE as a Framework for Cooperation'. Several key topics related to INSPIRE in the global context were included in the conference programme: global monitoring for environment and security, Global Earth Observation System of Systems, United Nations SDI, and a presentation of trans-national SDI projects.

INSPIRE IN GLOBAL DIMENSION, AND ECA EXPERIENCE IN SDI

What lessons and experiences can the INSPIRE community offer to the development of a global SDI?

INSPIRE is based on the infrastructures for spatial information established and operated by the 27 Member States of the European Union. This makes INSPIRE a unique example of a legislative 'regional' approach. At the INSPIRE 2010 conference the international organizations present, as well as non-EU countries in Europe and beyond, expressed their interest in using the INSPIRE methodologies and good practices. It was recommended that the governments and international organizations:

- maintain their efforts and the investments needed for reaping the social benefits that INSPIRE provides
- increase their international collaboration efforts to create an INSPIREd information society without obstacles or borders
- support the implementation of INSPIREd spatial data infrastructures in non-EU countries.

Six challenges were identified during the INSPIRE 2010 international conference, in which INSPIRE may be able to contribute by building on its initial success, and expanding to the global level. These challenges are:

- Understanding the global landscape by focusing on actions that promote interoperability. Participants in this challenge would include organizations, agencies, industry, specific programmes and so forth.
- Influencing selected initiatives by offering selected practices and guidelines. For example, INSPIRE includes in its repository guidelines for

the development of data specifications, and has also faced the challenge of needing to cater to a diverse multi-lingual community.
- Promotion of INSPIRE as a process, focusing on building a community and a spirit of collaboration.
- Using INSPIRE as a conceptual model, providing flexibility and user freedom, focusing on interoperability of data and services, and allowing for step-wise implementation.
- Internationalizing INSPIRE, providing a unique opportunity to test international standards (such as ISO and OGC standards), thus facilitating global interoperability.
- Advancing research for the next generation SDI, which should be adapted to emerging technologies and new governance models.

In conclusion, INSPIRE is playing an increasingly active role in the international arena, and has the potential for significant influence, but must face the six challenges described above.

Linking land administration, Geoinformation, SDI and INSPIRE

In the context of land administration, the information produced and distributed by cadastre and mapping authorities is an integral part of the National SDI and represents above 85 percent of the so-called reference data (base maps) without which the SDI could not be built up. These data include coordinate reference systems, geographical grid systems, geographical names, administrative units, addresses, cadastral parcels, elevation, orthoimagery, buildings and land use.

The EuroGeographics' *Vision Statement on Cadastre and Land Registration in Europe 2012* states:

> *"Cadastre and Land Registry organizations in Europe will provide state of the art services to the Real Property and land information market within the e-government framework by co-operating in the building of national and European Spatial Data Infrastructures."*
>
> *Source:* Peter Laarakker *et al.*, 2007.

The computerized multi-purpose cadastre is one tool for the efficient handling of land and property-related data. It has the potential to provide many benefits across all sections of the community by adding value through combining data sets and making these widely available. Most of the INSPIRE reference data are typically produced by the cadastre and mapping authorities: coordinate reference systems, geographical grid systems, geographical names, administrative units, addresses, cadastral parcels, elevation, orthoimagery, buildings and land use. It is important that these benefits are widely promoted both to the leaders of government who are responsible for the allocation of resources, and to the users of land and property-related information.

> *"Property is probably the biggest business in the world. By one estimate, construction, the buying and selling and renting of properties and the imputed benefits to owner-occupiers, account for around 15% of rich countries' GDP. Property also makes up around two-thirds of the tangible capital stock in most economies. Most important of all, property is by far the world's biggest single asset class. Investors have much more money tied up in property than in shares or bonds."*
>
> *Source:* The Economist, May 29th, 2003

The successful programme of land and property privatization in Europe, which included establishing real estate registration systems, has helped facilitate the great transformation in living standards seen across the region. *Doing Business 2011* shows that six of the top ten performers *(among 183 countries)* in registering property rights are countries from the ECA region: Georgia (position 2), Armenia (5), Belarus (6), Lithuania (7), Norway (8), Slovak Republic (9) and Azerbaijan (10). The next step is set to consolidate the gains and build upon the results achieved, including building up a National Spatial Data Infrastructure.

Six of the top ten performers in registering property rights are countries from the ECA region

SDI in ECA

Over the past 15 years the World Bank, in cooperation with FAO, has been involved with land administration and management projects in most of the countries in the Eastern European and Central Asia region (excluding those parts of Western Europe that do not receive Bank funds): 40 projects in 23 countries have either been land administration projects or involved major land administration components. US$1.4 billion in loans and grants have been provided by the Bank and 19 projects are currently ongoing. Work in the land administration and management sector is recognized as the leading example of good collaboration between FAO and the World Bank.

The stage of establishing the initial cadastres and property registration systems in the ECA has been largely successful; there are only a few countries left in the region still lacking this basic infrastructure. Countries of the region are now progressing to the next stage, by which the basic cadastre information is made available through the Internet and combined with other spatial information that will enable the provision of more efficient services across government.

Several countries in the World Bank ECA region have already started on the implementation of their own National Spatial Data Infrastructure. It is still early days and work is part of larger government programmes that often involve other donors. However, SDI legal/regulatory base implementation has commenced in Croatia, Macedonia, Moldova, Serbia and Turkey; it has also been planned in Kosovo and Montenegro. SDI coordination mechanisms are established in Albania, Croatia, Moldova, Serbia and Turkey, and are planned in Montenegro, Macedonia and Kosovo. SDI strategies are developed in Serbia and Turkey, and are planned in Croatia, Macedonia and Montenegro. Geoportals are implemented in Croatia, Serbia, Montenegro, Turkey and Moldova, and are planned in Macedonia.

Albania: In Albania a Geoinformation Board was established in 2004. The Albanian Geoinformation Board (AGB) and the Military Geographic Institute (MGI) are working on the development of a National Geographic Information System in collaboration with various ministries, municipalities, institutes and organizations. The amended Law on Geodesy and Cartography defines the National Geographic Information System (NGIS) as a state

register composed of standardized databases holding information about objects on and below the Earth's surface in the whole country. It also defines their location as well as procedures and methods for systematic data collection, updating, processing and accessing.

Croatia: The Government of Croatia has requested World Bank support to build up a National Spatial Data Infrastructure (NSDI). The project is being prepared and is expected to start in 2011. The Law on Cadastre defines the NSDI establishment in line with the EU INSPIRE Directive. Three levels of NSDI management structure are established, with a Council, NSDI Committee and several Working Groups. The State Geodetic Authority (SGA) (the national mapping authority) is a coordination body. The SGA GeoPortal is implemented.

Macedonia: The Government of Macedonia has requested World Bank support to develop a National Spatial Data Infrastructure (NSDI) Strategy, policy and legal framework. Macedonia seeks assistance with training provision to build up capacity for the implementation of the NSDI Strategy and to meet the requirements of the INSPIRE Directive. The project will support the development and implementation of a Government GeoPortal in compliance with INSPIRE. The law on Real Estate Cadastre authorizes the National Cadastre Agency to establish, maintain and provide public access to the NSDI.

Moldova: Moldova has recently begun the establishment of its National Spatial Data Infrastructure with the support of the Norwegian Mapping Authority. The project aims to support the development of e-Governance, providing access to reliable and up-to-date geographical information for governmental institutions at all levels, professional users in the private sector, and for the public in general. Analysis of national needs for graphical data has been completed and an NSDI Act is being developed for the transposition of INSPIRE into national law in 2010–2011.

Russia: Russia is taking the first steps in creating a spatial data infrastructure. Analyses of the situation in several Ural areas show that the procedure should begin with a geoportal designed for specific applications. The major difficulty for producers in Russia concerns publication of data on the Internet. Most Russian GIS do not support open standards and are not usefully able to represent these data on the Web. Transferring established data to a modern GIS is costly and

time-consuming. GIS data producers find themselves in an awkward situation because, on the one hand, they miss the opportunity to profit from providing Internet services now, and on the other hand, a complete reorganization would require considerable financial expenditure, time and effort. So, UralGeoInform has started the development of the Ural GeoPortal Framework.

Serbia: The leading agency for building up a NSDI in Serbia is the Republic Geodetic Authority. NSDI implementation is supported by the Norwegian National Mapping Agency. A good start has been made with legal changes in the Law on State Survey and Cadastre, covering the establishment of a NSDI, its scope and content, a National Geoportal, limitations, and NSDI bodies. The Spatial Data Infrastructure Strategy of Serbia 2010–2012 has been developed and approved by the Government. A proposal for a model of transformation to ETRS89 is also developed. The work on the Initial geoportal has already started and the work on the metadata is underway. A NSDI Council is established, as well as several Working Groups. The national cadastre agency is a NSDI coordination body.

Turkey: The responsible institution for the NSDI implementation in Turkey is the National Mapping Authority. Two studies on the establishment of a Turkish NSDI with emphasis on core data, technical standards, metadata services and institutional and legal frameworks, were completed. A NSDI Strategy has been prepared. The development of standards for geographic data and the development of a nationwide geographic information system infrastructure – which will enable public institutions and organizations to supply geographic data to the common infrastructure – are underway.

Tajikistan and Uzbekistan: Both countries intend to implement NSDI and to benefit from INSPIRE implementation as already seen in the EU Member States.

New Western Balkans Regional SDI Project, EU IPA 2011 Multi-beneficiary Programme: A regional SDI project proposal has been prepared by the cadastre authorities of Albania, Bosnia & Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia, which has been approved for financing by the European Commission under the 2011 IPA Multi-beneficiary Programme. In January 2010 a joint meeting with the beneficiaries, EC and the World Bank was organized to finalize the project proposal, and discuss the World Bank's future involvement in the related activities in the region. The project purpose is to build up institutional capacities for SDI development in the countries involved (in accordance with

the INSPIRE Directive guidelines and other EU legislation), as a background to adjusting the implementation capacities of these countries for the purpose of collecting, processing, exchanging and making available the spatial data. This will better prepare these countries for EU membership, when it happens.

FUTURE CHALLENGES

Coordination and cooperation among all key players at all levels remains the biggest challenge in the years to come. New organizational structures are needed to create an electronically-processed cadastral and registration service for private and public customers (e-conveyance). The new structures will equally affect the public sector and its working models with the private sector. Crucially, the security and privacy of personal data need to be considered and must be guaranteed.

Further efforts will be needed to strengthen the collaboration with the private sector. To achieve this the agencies need to develop appropriate business models. Close collaboration of all the parties involved – public sector, private sector and relevant professions – is a key factor in bringing land administration products and services successfully to the consumer, especially in the context of e-commerce. The table 1 synthesize these challenges.

Table 1
Future challenges

KEY ISSUES IN EU NEIGHBOURING COUNTRIES	KEY ISSUES REPORTED BY THE EU MEMBER STATES
→ Coordination and cooperation among all key players at all levels → Collaboration with the private sector → Institutional and human capacity to implement the nsdi → Infrastructure capacity → Establishment of national standards for digital data → Data quality → Creation of digital data in various strategic sectors – and data conversion where digital data already exists → Geodetic networks and secrecy of the coordinate systems in some countries.	→ Coordination at all levels. The political level is of key importance as it outlines priorities and directions and makes decisions on the financial aspect. Coordination could work only if the necessary financial resources are available. → Payment policy. Inspire's main principle is that the spatial data needed for good governance should be available under conditions that do not restrict its extensive use. This contrasts with the situation in some countries where government authorities that provide data are self-financing, as is the case with private surveyors in those countries too.

CONCLUSIONS

Spatial Data Infrastructure (SDI) plays a key role in avoiding unnecessary duplication of data collection and assisting and promoting the harmonization, dissemination and use of data. In order to play this role, SDI has to be seen as part of wider e-Government initiatives. SDI reduces duplication of effort among agencies, improves quality, reduces the costs related to geographic information, makes geographic data more accessible to the public, increases the benefits of using available data, and establishes key partnerships with states, counties, cities, academia and the private sector, thereby increasing data availability.

No two National SDIs are identical anywhere in the world. It is important that each country develops its own strategy at national level, where experiences from countries with a developed NSDI are taken into consideration. For the creation of NSDI four conditions are important from the organizational perspective: leadership, vision, communication channels, coordination.

First, in order to implement NSDI, the institution/authority responsible for adopting standards and monitoring institutions in respect of those standards needs to be established. The first task of the committee will be to develop a NSDI Strategy.

Second, in order for online services to work satisfactorily for multiple users simultaneously, accepted IT and web standards need to be followed. To this end there are a series of ISO standards focusing on different components of the SDI infrastructure.

Thirdly, harmonization of technical solutions and exchange formats is important, as is harmonization of data content. It is important to stimulate national organizations to work out commonly-agreed and durable data models, and classification systems. For example, INSPIRE prescribes that common European data models (UML) should be developed, and requires EU countries to document how national data models relate to the European data models.

Finally, achieving interoperability of data within a theme, between themes, for different applications and at different resolutions, will require that some basic transformation services are in place, including coordinate transformations, generalization and edge-matching.

The European Union INSPIRE Directive for establishing European SDI is a unique example of a legislative 'regional' approach to developing an SDI. At the 2010 INSPIRE conference, the President of EUROGI (European Umbrella Organization for Geographic Information), Mr Mauro Salvemini, puts INSPIRE in the context of the rest of the world, mentioning a 2010 UN proposal for a world geospatial forum. He argues that INSPIRE creates opportunities for EU countries on the world stage. It is an example of an advanced SDI system that experienced countries and regions can benefit from.

In a time when data is abundant, better data organization and harmonization is needed. Spatial Data Infrastructure plays a key role in this process, focusing on actions that promote interoperability and make data available at the time when it is most needed.

In a time when data is abundant, better data organization and harmonization are needed

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UNCONTROLLED LAND CONSUMPTION VERSUS RESOURCE-SAVING LAND USE IN GERMANY

'CONSOMMATION FONCIÈRE INCONTRÔLÉE' CONTRE 'UTILISATION FONCIÈRE ÉCONOME EN RESSOURCES' EN ALLEMAGNE

CONSUMO INCONTROLADO DE TIERRAS EN CONTRAPOSICIÓN A UN USO DE LA TIERRA AHORRATIVO DE RECURSOS EN ALEMANIA

ABSTRACT

UNCONTROLLED LAND CONSUMPTION

SUSTAINABLE LAND POLICY

RESOURCE-SAVING LAND USE

INNER DEVELOPMENT

LAND CONSOLIDATION

The uncontrolled land consumption in Germany and the political need for appropriate counter measures are described in this article. The findings of many research activities concerning the driving forces and underlying key factors contributing to this trend are reported and summarized.

Two thirds of the conversion of agricultural land is attributed to the housing and human settlements sector. That development is further reinforced by a number of uncomfortable legislative regulations, procedural requirements within the planning and communal fiscal transfer system, and – in particular – through

RÉSUMÉ

CONSOMMATION FONCIÈRE INCONTRÔLÉE

POLITIQUE FONCIÈRE DURABLE

UTILISATION FONCIÈRE ÉCONOME EN RESSOURCES

DÉVELOPPEMENT INTÉRIEUR

REMEMBREMENT FONCIER

Cet article s'intéresse à la consommation foncière non maitrisée en Allemagne et à la nécessité politique de contre-mesures appropriées. Les résultats de nombreuses activités de recherche relatives aux forces motrices et aux facteurs sous-jacents de ce phénomène font l'objet de rapports et de synthèses.

Deux tiers des conversions de terres agricoles sont liés à la construction de logements et à l'installation d'établissements humains. Cette tendance est renforcée par des règlementations législatives gênantes et des exigences

SUMARIO

CONSUMO DE TIERRAS INCONTROLADO

POLÍTICA AGRARIA SOSTENIBLE

USO DE LA TIERRA AHORRATIVO DE RECURSOS

DESARROLLO TERRITORIAL INTERNO

CONCENTRACIÓN PARCELARIA

Se describen en este artículo el consumo de tierras no contenido en Alemania y la necesidad de tomar medidas apropiadas para contrarrestarlo. Se informa sintéticamente de las conclusiones extraídas de varias investigaciones y de las fuerzas que impulsan este fenómeno y los factores subyacentes primordiales que lo determinan.

La causa del 66% de las conversiones de tierras agrícolas es atribuible al sector de la vivienda y los asentamientos humanos. Este hecho se ve aun reforzado por varias rígidas medidas legislativas, por los requisitos de procedimiento

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a lack of consideration in policy and administration of the consequences of private human needs and forms of behaviour.

This article demonstrates how to transform scientific research results into political initiatives and to implement them through good government. However, there is no 'silver bullet' for reducing land consumption – sophisticated approaches and a conclusive set of measures and instruments are needed.

de procédures au sein du système de planification de transfert fiscal communal, notamment à travers la satisfaction de besoins privés inconsidérés et certains comportements politiques et administratifs.

L'article montre comment des résultats scientifiques peuvent se traduire en initiatives politiques et être mis en œuvre par l'administration. Il n'existe pas de remède miracle pour réduire la consommation foncière – il est indispensable d'adopter des approches sophistiquées et d'appliquer une série de mesures et d'instruments concluants.

inherentes al sistema de planificación y de transferencia del presupuesto fiscal comunal, y en particular por el carácter irreflexivo de las necesidades de los privados, las políticas y la administración.

Se demuestra en el artículo cómo transformar los resultados de las investigaciones en iniciativas políticas en vista de su aplicación por las administraciones. Una solución sencilla y eficaz para reducir el consumo de tierras no existe; es preciso recurrir a enfoques complejos y a un conjunto contundente de medidas e instrumentos.

INTRODUCTION

Within the 27 European Union Member States, rural space covers more than 80 percent of the total area; Germany's rural space amounts to roughly 75 percent of its total land. In most countries, this rural space is looked at from the urban perspective: rural areas are considered to be the (available) 'open space' outside towns and cities – a space for recreation, leisure activities, and nature that needs to be protected. This space is connected with thoughts of fresh air and clean water, an area where urban people believe they can find a 'lost paradise'. Urban populations sometimes remember that the rural space is an area for food production, though this may not be their primary perception. In terms of spatial planning, the rural areas of Germany has suffered from a lack of clear and respectful definition – it has been represented merely as the remaining space outside of urban conurbations and agglomerations.

This partial view of rural space has led to a rather unrestricted utilization and conversion of agricultural land. "It's all (and always) about land!" (Magel & Wehrmann 2006). The kind and amount of utilization of agricultural land, together with the daily loss of fertile arable land, determine whether a rural space is simply regarded as the 'front garden' of cities (or perhaps the 'backyard of the nation'), or whether rural areas are accepted within German society and economy as having their own, self-contained, specific role.

There is a broad consensus among administrative experts and NGOs that appropriate counter-measures are necessary to halt the *laissez-faire* conversion of rural space into an extension of the urban sprawl. After a period in which the discussion about 'land consumption' in Germany had been stagnant, the issue has once more appeared on the political agenda in the last three years. A number of important research papers on this topic were published, and the state of rural Germany became a hot political issue at federal and state level.

This article is a preliminary summary of some years' work in policy making at state and federal level. It describes the most important threats to the open space of Germany, investigates the factors contributing to this – particularly for extension of settlement areas – and proposes some possible approaches

to reducing land consumption on the basis of a comprehensive scientific approach to land use.

The article does not aim to demonstrate 'the solution' to the land consumption problem – there may not be one ideal solution, and anyway, its complexity would be impossible to expound in this one short article. Instead the article will give an overview of this politically sensitive topic and demonstrate the state of play in the ongoing debate.

The message of the article is essentially this: in a highly developed state and society there is no one solution to the problem of land consumption. Coordinated and harmonized measures are necessary to change traditional behaviour and trends. Uncontrolled and uncontained land consumption is the result of a lack of legislation, inadequate application of existing laws (which anyway do not fully reflect the situation on the ground), misallocation of subsidies, and the side effects of the general habits and habitudes of the people. Each of these reasons, and each of the remedial measures implied, are worthy of treatment in a specific article based on comprehensive research. The interested reader may investigate further by studying some of the in-depth articles outlined in the bibliography.

DEGREE OF CONVERSION OF AGRICULTURAL LAND IN GERMANY

What threats to land use already exist in the urban/rural interrelationship and how should they be dealt with? In Germany over the last 60 years, the need for land has constantly been increasing, as shown in Table 1.

Year	Settlement area per inhabitant (i)	Year	Dwelling area per inhabitant (i)
1950	198 square metres	1950	15 square metres
2008	518 square metres	2009	42 square metres

Table 1
Change in area use per inhabitant, Germany 1950–2009

The increasing need for human settlements and transport infrastructure, and the accompanying ongoing conversion of agricultural land in Germany, actually amounts to 115 hectares per day on average since 2005; 90 percent of this affects the rural space. Consequently the area of fertile agricultural soils, as well as open space in general, is permanently and often irreversibly reduced.

The need for human settlements and transport infrastructure irreversibly reduces the area of fertile agricultural soils

Two thirds of land consumption is caused by urban sprawl and one third is caused by industry, commerce, trade and transport. Re-thinking is urgently needed. The German Federal Council for Sustainable Development ('Rat für nachhaltige Entwicklung') in 2002 called for a sustainable reduction of land consumption from the current 115 hectares per day to a maximum of 30 hectares per day in 2020 (www.nachhaltigkeitsrat.de). This reduction goal is closely linked to the German National Strategy on Biological Diversity, given that the aim of conserving biodiversity also includes protection of land and sustainable land use (Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, 2007).

Reducing new land consumption from the current 115 hectares per day, to a maximum of 30 hectares per day in 2020, is a German federal target. However, Germany is still a long way away from reaching this goal, as demonstrated in Figure 1.

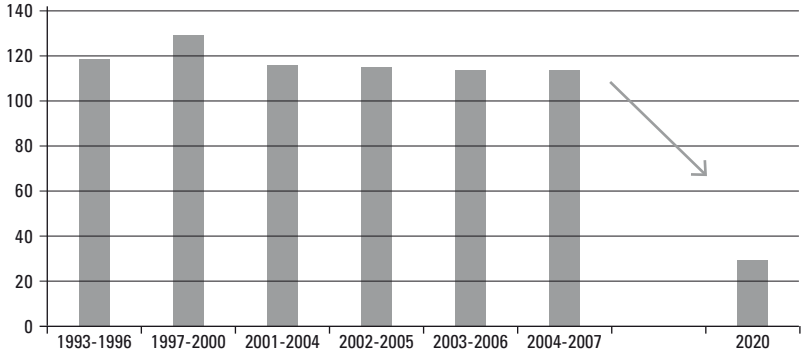

Figure 1
Land consumption 1993–2007 and its proposed reduction by 2020

Source: Ministry of the Environment and Conservation, Agriculture and Consumer Protection of the State of North Rhine-Westphalia

The indicator report 2010 'Nachhaltige Entwicklung in Deutschland' (www.nachhaltigkeitsrat.de/de/der-rat/strategie/indikatorenbericht-2010/) suggests that there has been decreasing land consumption since 2008. However, if that result only reflects the impact of the reduction measures taken so far (described below), the report does not yet confirm a definite and adequate trend in the reduction of land consumption. The trend may also merely reflect a correlation with the decreasing investment in construction in this particular period (cyclically caused), attributed to a general economic downturn.

IMPACT OF CONVERSION OF AGRICULTURAL LAND

The ecological consequences of land consumption are very obvious: alteration and destruction of the landscape, damage and destruction of valuable biotopes and animal habitats, devastation of natural soil functions, reduction of natural replenishment, risk of groundwater contamination, increased danger of flooding, and a negative impact on the microclimate. Disintegration of the landscape is even more rapidly in progress. In order to measure this trend – which has a particularly negative impact on the population of higher mammals – the 'effective mesh magnitude' was introduced as an indicator. This is defined as the remaining area between existing streets and ways that is untouched by houses or any other settlement. For example, in the German state of Baden-Württemberg, the effective mesh magnitude has shrunk from 23 sq km in 1930 to 13 sq km in 2002 (Ministry for the Environment of the State Baden-Württemberg 2008).

Disintegration of the landscape is rapidly in progress

At the same time, the negative economic impacts of land conversion are significant to primary production because fertile agricultural land is lost – this decreases the development opportunities of existing farms. Bearing in mind the consequences of climate change, the protection of agricultural land also becomes an ethical issue. Foreseeable desertification in Mediterranean zones suggests that areas with 'privileged' levels of fertility – such as Germany and other countries in Central Europe – will

be indispensable to global nutrition and food production, and that the progressive loss of these high-yielding lands must be stopped.

In addition, there are economic and fiscal reasons for rapidly reducing the designation of new construction land. The expansion of housing areas implies new investment in public infrastructure – roads, energy, water supply and sewage. This can lead to under-utilization of existing housing stock and too high follow-up costs for the municipalities – unfortunately, with increasing tendency.

KEY FACTORS FOR EXTENSION OF SETTLEMENT AREAS

In order to decide which tailor-made solutions and effective instruments should be adopted as counter-steering measures, it is first necessary to investigate the driving forces behind the current trend towards greater and greater land consumption. Through specific research activities at both federal and state level, interdependencies between legislation, planning principles and planning 'reality', as well as the tax and fiscal transfer system (from state to municipal level), were analysed in some research projects. A few key influencing factors could be determined, and this in turn led to a bundle of recommendations and measures.

At federal level, the programme REFINA (Research for the Reduction of Land Consumption and for Sustainable Land Management), funded by the Federal Minister of Education and Research (BMBF) is part of the German National Strategy for Sustainable Development. In order to provide a scientifically reliable basis for decisions and measures, REFINA supports the development and testing of innovative concepts for the reduction of land consumption. These concepts should help to achieve a multitude of goals, such as the protection of the environment and conservation of nature, economic growth, socially compatible housing, mobility, and specific quality standards in the construction of buildings. The REEFINA programme bundles together the competencies of a large number of institutions, projects and people, cooperating across traditional sectoral and administrative boundaries, with the aim of generating benefits for all.

From 2006 to 2010, innovative concepts for reducing land consumption and promoting sustainable land management were developed and implemented (REFINA 2008a, REFINA 2008b). At the state level, specific, local and politically sensitive questions were asked, analysed and answered (for example in Koetter, Leber 2007, Ministry for the Environment of the State of Baden-Württemberg 2008, Ministry for Food and Rural Space of the State Baden-Württemberg 2009, OP'T Eynde, Koetter 2009).

In any assessment of the key factors contributing to the extension of settlement areas, the legislative side, the demand side and the supply side all need to be distinguished. We will look at these in more detail now.

Legal aspects

Despite comprehensive planning legislation and regulating laws including protecting, conserving and sheltering rules and constraints at European and federal level[1] an about-face concerning 'land consumption' could not be reached until now. Land consumption persists at the rate of 115 hectares per day. The explanation for why these laws are unlikely to reduce land consumption is in the way discretionary powers are executed within a concrete planning project: the open space is not self-contained in the sense of properly defined. The constitution of the Federal Republic of Germany gives considerable powers to the municipalities concerning 'planning competence'. The municipality can decide whether, where and how much land is allocated for building and construction. Its only legal obligation is merely to pay attention to the state spatial plans. If a municipality wants to create a new building area, agricultural land has the lowest level of legal protection and is regularly devoted to building purposes without much resistance.

Current planning legislation is not likely to reduce land consumption

1 For instance: the Federal Building Act (Baugesetzbuch), the Federal Spatial Planning Act (Raumordnungsgesetz), the Federal Nature Protection Law (Bundesnaturschutzgesetz), the Federal Soil Protection Law (Bodenschutzgesetz), the Law on Environmental Impact Assessment (Gesetz über die Umweltverträglichkeitsprüfung), the EU Conservation of Wild Birds Directive and Fauna-Flora-Habitat Directive (Vogelschutz- und Fauna-Flora-Habitat - Richtlinie) and the EU Water Framework Directive (Wasserrechtsrahmenrichtlinie).

Therefore, new and possibly unconventional solutions need to be found regarding the present trend towards greater land consumption and the decrease in available agricultural land.

The demand side

Land consumption is decisively determined by the demand side

The demand side of a market describes the desires, requirements and behaviour of the consumers in that market – in this case, the German homebuyer. In Germany, as in many other advanced societies, the trend is towards a decrease in family households and an increase in single-person households. This has affected the demand for dwelling area per inhabitant (see Table 1) and – in connection with a general long-term growth in wealth – for more settlement area. In addition, during the 1980s and 1990s there was an increased demand for a rural lifestyle: many affluent Germans wanted to live in a farmhouse or a new bungalow (possibly with a swimming pool) in the countryside. Similarly, young families in particular began settling into family houses in low density urbanized areas, on the outskirts of towns and cities, near the countryside. This behaviour was promoted by a specific car-oriented 'mobility culture'. In this context a very interesting trend developed (OP'T Eynde and Koetter 2009): the creation of commercial and residential building areas dependent upon (and strongly correlated with) the distance to the nearest motorway slip road. In practice, this means that people driving each morning to their workplaces (commuters) do not necessarily take into account the entire distance from home to work when calculating the time and effort involved, but rather, only the main road distance they have to cover.

The prices of rural immovable properties were (and are even still) much lower than urban ones; thus, many people – particularly young families again – decide to settle in rural areas. As far as industrial estates are concerned, investors naturally prefer a location close to motorway approach roads. For the development of new estates, the land available is usually outside the densely packed urban centres, in the open space. Investors make their investment decisions based on the 'friendly planning decisions' taken by municipalities.

The supply side

The supply side describes the interventions of government (state or municipality) to stimulate investment in private or commercial activities, with the aim of improving the general living conditions of the people.

Land consumption is also determined by the government supply side

At the outset it is important to state that there is clear competition between German municipalities in designating land for construction, whether for housing or commercial purposes. One of the driving forces is the eagerness of Mayors to enlarge their population – the so-called 'Mayoral competition'. The state's distribution of federal tax shares to the municipalities, not to mention the salaries of German mayors, depends on the number of inhabitants in the municipality concerned. A second factor in designating land specifically for commercial construction is the commercial/ industry tax, which is one of the most important and lucrative communal taxes. This leads to the practice of creating 'land reserves' in each municipality, in anticipation of expected or hoped for further growth and the tax revenues these will achieve.

In Germany in recent years, other socio-political interventions had a negative impact and side effects on land consumption. For example, in order to promote the creation of private property, the state introduced a tax break for owner-occupied homes ('Eigenheimförderung'). The idea was to open up opportunities, particularly for people with low incomes, for more and more citizens to own their own home. This policy manifested itself mainly in rural areas where the land price is relatively low. In conjunction with the policy of 'Pendlerpauschale', by which the cost of driving daily to the workplace is deductible from income tax, a typically 'misallocated subsidy' began to grow and thrive – and clearly promoted an increasing demand for rural construction land.

Finally, state subsidies for suburban and rural infrastructure investments, awarded independently from the extent of their utilization and economic thoughtfulness, fostered an ill-considered designation of construction land for use in construction in rural areas.

LAND POLICY ON THRIFTY LAND USE NEEDS BOTH QUANTITATIVE AND QUALITATIVE APPROACHES

A cohesive policy concerning thrifty land use needs to include both strategic and operational aspects, as well as quantitative and qualitative targets. It needs a spatial coordination at regional level and must be implemented and monitored by local land management instruments, as described below.

Introduce preferential areas for agriculture within regional plans

Preferential areas for agriculture

A formal approach could be to introduce preferential areas for agriculture within Regional Plans and anchor these to the underlying State Development Plan. These preferential areas need to be strictly excluded from municipal planning. Fertile and valuable agricultural soils should be granted a legally determined, properly defined status, and given weight through appropriate use of administrative discretion within formal planning procedures at different levels (national, regional and municipal).

This measure must be accompanied by a systematic monitoring of current land use. Public and political consciousness as regards reducing land consumption has to be based on a precise knowledge of actual land use in the municipality. This makes 'municipal land monitoring and management systems' necessary; they should become mandatory for all municipalities. These would help to make the areas of potential construction that belong to each municipality clearly visible. When suggesting that new construction areas involve an unequivocal necessity to convert agricultural land in its area, each municipality should have to prove and persuasively communicate the reasons for this.

Land monitoring and management systems should become mandatory for all municipalities

Assessment of impacts on agriculture

Physical planning projects such as transport projects, flood protection projects and energy supply programmes need to be critically examined vis-à-vis the amount of agricultural land that is truly indispensable to these. In addition, for every project a 'zero-option' must be seriously considered. Besides the environmental, nature-related assessment, the impact on agriculture and farming also needs to be assessed and evaluated.

According to German planning legislation, for each public physical planning project the so-called 'zero option' or 'zero alternative' has to be assessed: all projects must be fully justified as the only means by which the public objective pursued can be achieved. If such a construction project is proven to be indispensable and land consumption by the project is unavoidable, the project has to be planned and implemented as economically as possible as far as land resources are concerned.

That target could be promoted and concretely supported by accompanying land readjustment measures, in particular through a land consolidation project. By adjusting the traditional parcel structure and the existing rural infrastructure to the planning needs of the new project (motorways, dikes etc.), the creation of unusable or inconveniently-shaped leftover parcels can be avoided (see Figure 2). OP'T Eynde and Koetter (2009) have suggested that there is still plenty of unexploited potential left in this approach.

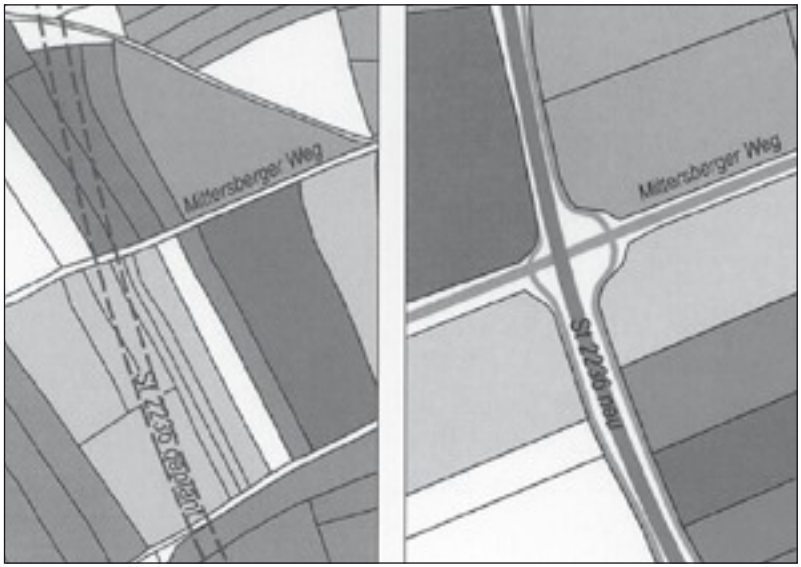

Figure 2
Through land consolidation the land tenure structure is adjusted more efficiently to meet the needs of the construction project

Source: Bavarian State Ministry for Food, Agriculture and Forestry

The principle of resource-conserving land use should also be applied to environmental compensations, which are legally regulated. Often, compensation is given when parcels near the project are excluded from agricultural use and their former ecological value is restored. In practice this amounts to a rededication of agricultural land for nature conservation purposes and biotopes (Thomas 1998). But instead of compensations being specifically directed at agricultural land they should be based on other options. One such option is a compensation based on resealing and regenerating currently sealed areas. This is a 'compensation in kind'.

A second option is recourse to old industrial sites and areas previously dedicated to military use: in many regions such underused or even completely unused lands are widely available. However, until now, there has been no practical and legally-grounded possibility of adapting these zones for environmental compensation purposes. By converting these areas – possibly linked with ecological upgrading via recycling of sealed areas – the consumption of open space and rededication of agricultural lands for environmental compensation could be reduced (Drenk 2010).

The rapid conversion of agricultural lands could be reduced through conversion of old industrial and military areas

A new kind of compensation has already been made possible in 2010 through amendment of the Federal Nature Protection Act, which introduced so-called 'farming-integrated compensation'. On the basis of contracts with the institution that is responsible for the project and has to provide environmental compensation, farmers give up the use of artificial manure, insecticides, fungicides and pesticides vis-à-vis specific crop fields or green plots. This leads to fields and meadows full of flowers and even the reappearance of rare plants, which in turn attract insects and micro-organisms – all in all, a positive impact on biodiversity. Through this approach, areas suggested for environmental compensation are not converted into biotopes but remain in agricultural use; the farmer puts into practice a more ecological and organic way of farming. The reduced harvests and revenues have to be monetarily compensated by the organization responsible for executing the project. Through perennial contracts between the responsible organization and the farmer(s) affected, sustainable ecological farming is guaranteed as a compensation for the interference caused to the landscape.

Inner development of rural settlements

Inner development of rural settlements should be considered prior to external development (Koetter 2009). In many small cities and villages there are many under-used or even unused areas: gaps between existing buildings stay unused, because the owner is not able to or not interested in developing these small areas; as a result of missing access to the interior of building blocks by a public or private road, these areas are used as gardens or remain as fallows.

For this reason, the knowledge base about existing and available construction land within cities and villages (existing settlements) needs to be improved. Furthermore, urbanization potential within existing settlements needs to be investigated (Arnold 2009, Voss 2009). Preferably, un-used land and industrial or commercial fallow land within settled areas should be recovered; un-used or under-used immovable properties within villages should be searched out and made available on the property market – possibly accompanied by land management activities, as shown in Figure 3.

Figure 3
Land consolidation within villages opens up opportunities to develop land for construction

Source: Bavarian State Ministry for Food, Agriculture and Forestry

Mobilizing strategies are necessary to stimulate and achieve the readiness of owners of un-used land to cooperate with these new schemes and sell or lease the land. Advisory services should be available to the land owners, and also to potential 'would-be builders' to convince them to acquire immovable property within a village or city, rather than in the 'green belt'. Financial support of communal initiatives for inner development, as well as making use of existing immovable properties, could further promote this approach (Ministry for Food and Rural Space of the State Baden-Württemberg 2009).

Land readjustment/consolidation instruments can help to mobilize existing potential

As far as inner development is concerned, land readjustment/consolidation instruments can help by mobilizing the potential of existing unused/under-used land. In rural areas in particular, there is often unutilized potential for construction on land. Its utilization mainly fails to materialize because of existing traditional land tenure parcel structures and borders. In these cases too, land consolidation procedures have also proven to be helpful (see Figure 3) (Rill 2009, Thomas 2002).

Investigations in Bavaria and Lower Saxony show that in many villages there is huge potential for making use of this type of land for construction – land that was formally approved by the regional planning authorities responsible for the municipalities concerned (Arnold 2009). Through land readjustment opportunities to develop building land are created, the given settlement infrastructure is best used, and the open space is preserved.

Ecological reform of the communal financing system

Ecologically-focussed reform of the communal financing system can begin by restructuring tax

Ecological reform of the communal financing system could be handled by reorganizing the state tax distribution and subsidy system to introduce a strong ecological component. To the present day, the German economy as a whole and municipal economic development in particular are still driven by a 'philosophy of growth'. The more inhabitants a municipality has, the more financial subsidies it receives from the state (as noted above in 'The supply side'). In order to reduce land consumption, an approach that takes into account the reality of the shrinking availability of land not on the green belt is necessary. Such a new tax distribution paradigm in the municipalities could be related to, for example, the 'percentage of open space' within municipalities: the higher the percentage, the higher the tax share they receive.

Misallocation of state subsidies, such as the owner-occupied home tax break ('Eigenheimförderung'), or tax-deductible commuting expenses for employees ('Pendlerpauschale') must be cancelled. While the 'Eigenheimförderung' has already been modified in order to reduce the land consumption effect, the cancellation of the 'Pendlerpauschale' was stopped last year through the German Constitutional Court. The tax and subsidy system needs to be adjusted in a way that opens up economic incentives for inner development of settlements. Through additional subsidies for demolishing ruins or unused buildings in villages, or subsidies for renovation purposes within specific village ensembles, inner development could effectively be promoted.

Misallocation of state subsidies needs to be abolished

State financial support of inter-communal cooperation in land use planning and land management could promote and optimize unavoidable construction projects at the most suitable location (Voss 2009). The introduction of a 'communal monetary rate' for new construction areas, payable to the state and used (for example) to subsidize the conversion of disused industrial or commercial fallow land ('fallow recycling'), must be considered.

Societal knowledge and awareness

Society's knowledge and awareness of the need for thrifty land use has to be improved, particularly knowledge about the interdependencies between demographic development (decreasing population, ageing societies, etc.), land use and the land market.

A genuinely new approach was started within the State of North Rhine-Westphalia in May 2006. In order to increase sensibility towards the benefits of resource-saving land use and inner development of settlements, the 'Alliance for resource-saving land use' ('Allianz für die Fläche') was established. It is a voluntary union of all relevant stakeholders within the region concerned who are ready and willing to contribute to the reduction of land consumption through their own positive behaviour. The Alliance takes an interdisciplinary, dialogue and consensus-oriented approach at regional level, not dedicated to specific measures or projects. Its implementation is carried out via the stakeholders themselves. No negative consequences

arise in case of contravention or violation of the agreements. Success is only defined on the basis of the transparency of the planning process (see www.allianz-fuer-die-flaeche.de).

An additional analysing instrument is necessary to raise awareness and perform convincing work. Within the REFINA research project (see the section 'Key factors for extension of settlement areas'), a calculation instrument was developed which facilitates a 'fiscal impact analysis' for human settlements and commercial areas, and enables the municipalities to determine the follow-up costs of communal infrastructure if new construction areas are created. As such, the local decision-making process can rely on conclusive economic considerations.

Broad political consensus and support

Above all, to protect open space and economical land use, broad political consensus and support in society is indispensable. To this end, in November 2007 the Federal Minister Conference for the Environment (UMK) confirmed the '30 hectares goal' of the Council for Sustainability. It proposed to the Federal Government that resource-saving land use should be a cross-sectoral political task to be taken into account by all relevant legislative, planning and implementation measures. In addition, the conference demanded that the creation of new building areas on open space should be made illegal, in those cases where municipality recycling measures for former housing, industrial or commercial areas were already publicly financed.

Broad political consensus and support in society is indispensable to protecting open space

CONCLUSION

In all Western European countries, an uncontrolled consumption of open space has been observed now for some decades. This level of land conversion has reached a stage where a change in thinking is indispensable and urgently needed. However, there is no 'silver bullet' solution for reducing the conversion of agricultural land; sophisticated counter-measures and a practical and decisive set of approaches and instruments must be developed, based on a comprehensive analysis of relevant key factors and 'drivers' of the current situation.

The measures should include:
- application of the relevant legal framework
- a focus on the aim of resource-saving land use through implementation of formal planning procedures at different levels
- adjusting of the tax and monetary rate system and reorganizing the financial transfer system, vis-à-vis the negative impacts of 'land consumption' (i.e. misallocation).

The measures should also contain:
- participative and cooperative approaches
- a broad and deep information base (monitoring) at regional and municipal levels
- information campaigns involving all relevant stakeholders
- land readjustment and land consolidation procedures in its voluntary and statutory design, which play an important role in the operational approach, and are considered effective land management instruments at state and communal level.

As a final conclusion it is important to emphasize that rural space is neither the 'urban front garden' nor the 'backyard of the nation' – these two definitions both attempt to compartmentalize this land area too much, and oversimplify what it really is. It is a space of essential and existential relevance to long-term quality human life for the whole of a society. As such, it needs particular care and attention as far as the complete set of land management policies and instruments are concerned.

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TOWARDS LAND GOVERNANCE IN THE MIDDLE EAST AND NORTH AFRICA REGION

VERS UNE GOUVERNANCE FONCIÈRE DANS LA RÉGION DU MOYEN ORIENT ET DE L'AFRIQUE DU NORD

HACIA LA GOBERNANZA DE LA TIERRA EN LA REGIÓN DEL ORIENTE MEDIO Y ÁFRICA DEL NORTE

ABSTRACT

LAND GOVERNANCE

CONFLICT AND POST-CONFLICT SITUATIONS

LAND TENURE REFORM

ISLAMIC LAND TENURE

SUSTAINABLE LAND MANAGEMENT

The Middle East and North Africa region (MENA)[1] covers a vast geographical area and diverse political and socio-economic systems. Land rights in the MENA region are affected by violent conflicts, the impact of climate change and desertification, migration, population growth and urbanization. Rule of power, inefficient State institutions and services, a widening gap between rich and poor, and increasing landlessness are the results of the governance gap in many of the countries in the MENA region.

There is significant progress in modernizing land administration

RÉSUMÉ

GOUVERNANCE FONCIÈRE

SITUATIONS DE CONFLITS ET SITUATIONS D'APRÈS CONFLITS

RÉFORME FONCIÈRE

DROIT FONCIER ISLAMIQUE

GESTION DURABLE DES TERRES

La région du Moyen Orient et de l'Afrique du Nord[2] couvre une vaste zone géographique et divers systèmes politiques et socioéconomiques. Dans cette région, les droits fonciers sont soumis à de violents conflits, aux effets du changement climatique et de la désertification, aux migrations, à la croissance démographique et à l'urbanisation. Le déficit de gouvernance dans la plupart des pays de la région a conduit à un affaiblissement de l'autorité de la loi, à l'inefficacité des services de l'Etat, aux différences entre les riches et les pauvres et à l'accroissement du nombre de paysans sans terre.

SUMARIO

GOBERNANZA AGRARIA

DESPUÉS DE LOS EPISODIOS DE CONFLICTO

REFORMA DE LOS SISTEMAS DE TENENCIA DE LA TIERRA

SISTEMAS DE TENENCIA DE LA TIERRA ISLÁMICOS

GESTIÓN SOSTENIBLE DE LA TIERRA

La región del Oriente Medio y África del Norte[3] abarca una extensa zona geográfica y distintos sistemas políticos y socioeconómicos. El derecho de tierras en la región se ve afectado por los conflictos violentos, las repercusiones del cambio climático y la desertificación, las migraciones, el crecimiento de la población y la urbanización. En muchos países, el imperio del poder, la ineficiencia de las instituciones estatales y servicios, la brecha cada vez mayor entre los ricos y los pobres y la siempre más acentuada falta de tierras resultan de los vacíos de gobernanza.

systems in most countries of the region. However, progress is mainly technology driven (e.g. the geo-industry) and too often not accompanied by progress in reforming land policies, improving the normative framework, involving civil society, and reengineering institutional processes. It is therefore important to facilitate reforms in the land sector, build professional capacities and generate an enabling environment towards improved land governance.

The article identifies major land-related problems and also highlights best practices and work in progress. Lessons learned are identified and recommendations for continued reform processes are summarised.

Dans la plupart des pays de la région, les systèmes d'administration foncière ont réalisé d'importants progrès en termes de modernisation. Mais ces progrès sont surtout imputables à la technologie (géo-industrie) et ne sont généralement pas accompagnés par des progrès correspondants en termes de réforme des politiques foncières, d'amélioration du cadre normatif, d'association de la société civile et de réingénierie institutionnelle. Il est donc important de faciliter les processus de réforme dans le secteur foncier, de renforcer les capacités professionnelles et de créer un environnement favorable à l'amélioration de la gouvernance foncière.

Cet article identifie les principaux problèmes liés aux questions foncières et met en lumière les bonnes pratiques et les progrès accomplis. Il identifie les principales leçons tirées et propose des recommandations pour la poursuite des processus de réforme.

En la mayor parte de los países de la región se han registrado progresos significativos en la modernización del sistema de administración de tierras. Sin embargo, los avances han estado impulsados sobre todo por la tecnología (es decir, la geoindustria) y con demasiada frecuencia no han sido acompañados por reformas de la política agraria, la mejora del marco normativo —que involucra a la sociedad civil— y la reestructuración de los procesos institucionales. Por consiguiente, es importante facilitar las reformas en el sector agrario, crear capacidades profesionales y generar un ambiente propicio para el perfeccionamiento de la gobernanza.

El artículo singulariza los principales problemas relacionados con la tierra y también destaca las mejores prácticas y los trabajos en curso. Se mencionan las lecciones aprendidas y se sintetizan algunas recomendaciones para el proseguimiento del proceso reformista.

1 MENA region in FAO terms is the following countries: Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

2 Pour la FAO, la Région du Moyen Orient et de l'Afrique du Nord fait référence aux pays suivants : Algérie, Arabie Saoudite, Bahreïn, Egypte, Émirats Arabes Unis, Iran, Iraq, Jordanie, Kuwait, Lebanon, Libye, Mauritanie, Maroc, Palestine, Oman, Qatar, Soudan, Syrie, Tunisie et Yémen.

3 Para la FAO, la región del Oriente Medio y África del Norte comprende los siguientes países: Arabia Saudita, Argelia, Bahrein, Egipto, Emiratos Árabes Unidos, Iraq, Jordania, Kuwait, Líbano, Libia, Mauritania, Marruecos, Palestina, Omán, Qatar, República Islámica del Irán, Siria, Sudán, Túnez y Yemen.

INTRODUCTION

"Land is a source of life." With this statement, the FAO Middle East and North Africa regional consultation[4] was launched to discuss the importance of land and other natural resources in securing livelihoods and in ensuring social, economic, and cultural development. Rights of access to these resources and the associated security of tenure are increasingly threatened by occupation, wars, land expropriation and eviction, and centralized power overriding local land rights. All of these are conditions specific to the MENA region. They prevent individuals from enjoying their legal rights to full sovereignty over their land, to control its natural resources and develop sustainable livelihood. There are additional factors that distinguish the MENA region from other parts of the world, such as the impact of climate change, rapid urbanization, the prevalence of the state as the ultimate owner of the land, laws related to natural resources, and growing demands for land for food production.
Other major challenges include:

- the overriding impact of conflicts in the MENA region
- the lack of political will for reforming the land sector
- the absence of land policy orientation
- the weak capacity and lack of service orientation of public administrations
- the lack of trust between government and civil society, often due to corruption
- the paucity of accessible empirical land data.

Land governance can help to reduce poverty, support social and economic development, reform public administration, and contribute to peace-making. The article will review progress made in reforming land tenure aspects, especially:

- land and gender
- common property rights and pastoralism
- land tenure and water rights interdependencies.

4 Regional Consultation Meeting on FAO Voluntary Guidelines on responsible governance of tenure of land and other natural resources 2010 - http://www.fao.org/docrep/012/al304e/al304e00.pdf

Region-specific land issues related to natural resource management, such as management of public land and land management in drylands, will be highlighted. Governance issues in land administration such as transparency, accountability, and efficiency, will be discussed. Progress made in land registration will be identified. Special attention will be given to the consequences of violent conflict, human rights aspects *vis-à-vis* land tenure, and border disputes in the MENA region.

GOOD GOVERNANCE AND LAND TENURE

Gender-responsive land tenure

In most societies women play an important role in agriculture, despite the variations in division of labour from one cultural setting to another. Hence, land is an essential source of livelihood for rural women. Experiences from different countries in the MENA region indicate that women's access to land (and water, which cannot be separated from land issues) is more problematic than it is for their male counterparts. In fact, the question of access is becoming increasingly complex: certain groups in society seem more privileged than others because of coexisting systems – customary or formal – that seem to favour those groups over others, because these systems enable them to negotiate rights and entitlements. Disparity of land access is one of the major causes of social and gender inequalities in rural areas, and as a consequence jeopardizes rural food security as well as the well-being of individuals and families. Research has shown that although land is considered an important issue in the MENA region, gender-oriented land tenure interventions are scant for the following major reasons (Obeid 2006):

Gender-oriented land tenure interventions are scant in the MENA region

- 'Gender-responsive land tenure' is considered a sensitive area because of its link to Islamic law and to customary practices.
- The socio-cultural assumption in the MENA region is often that land is not necessarily a 'question' for women and that land is owned by men as a matter of custom. This is reinforced by the lack of gender disaggregated data and documentation, not only of women's property and access to resources, but also the need for change in their status.

Lack of institutional support

Research needs to address institutional barriers at different levels, from the state and its practices all the way down to local and community based organizations. Why do government organizations in the countries studied endorse a 'gender approach' to agriculture but fail to address the land question as a problem in its own right?

Islamic law provides women with substantial rights to acquire, manage and alienate property. However, under classical Islamic law (*Shari'a*), which governed the devolution of land in full ownership (*mulk*), women were accorded smaller inheritance shares. It is therefore very important to monitor gender-responsive land tenure reforms and draw conclusions for adequate action (UN-HABITAT 2005, Sait and Lim 2006).

Islamic land tenure reform

Land tenure concepts, categorizations and arrangements within the Islamic world are multi-faceted, generally distinctive and certainly varied. This 'web' of tenure regimes is often dismissed as intractable, inscrutable or outdated, but the lack of adequate systematic research hampers our understanding of how Islamic land concepts are manifested on the ground. The evolution of Islamic land tenure regimes from the classical and Ottoman periods to colonial and contemporary times provides vital insights into the dynamics of Islamic land. What emerges is the interplay of a range of Islamic land approaches, state interventions, customary practices and external influences. Too often, global reviews of land tenure are undertaken without taking Islamic laws relating to land sufficiently into account. The Land and Tenure Section of UN-HABITAT therefore carried out in-depth studies of the Islamic land and property rights. (UN HABITAT 2005, Sait and Lim 2006) and organized a first training programme in 2009 (Box 1).

Common property rights and pastoralism

Pastoralists are those communities that rely on mobile rearing of livestock as a livelihood strategy for human survival and socio-economic development on marginal arid and semi-arid lands. Due to low average productivity and

great variance in the productivity of this type of land, animal mobility enables risk to be spread and optimizes productivity by exploiting seasonal pastures and water. Pastoral resource management is based on a complex set of temporary or semi-permanent claims to pasture, water and other resources, as well as on the underlying principles of flexibility and reciprocity.

In the MENA region the relationship between pastoralists and the State must be considered an important but in many cases unresolved governance issue. It has often been characterized by the nationalization of pastoral resources and the state-led organization of herders in collective/associative groupings. The rationale was as follows: by nationalizing natural resource control, organizing pastoral groups into associations, and providing them with services and/or facilities, herders' access to resources would be improved and their identification with State institutions would be facilitated, resulting in less conflictive relationships. Governments either tried to superimpose new institutions on existing ones, or to co-opt traditional ones into state structures. In practice this strategy resulted in the dispossession of pastoralists from their most valuable resources through their incorporation into state and market mechanisms.

The relationship between pastoralists and the State is in many cases unresolved

Box 1
Best practices for Islamic tenure reform and capacity building

In December 2009, the International Islamic University of Malaysia (IIUM), in cooperation with the Global Land Tool Network (GLTN), Training and Capacity Building Branch (TCBB) of UN-HABITAT and the University of East London (UEL) successfully hosted an international pilot training on land and property rights issues in Islamic contexts.

The training attracted participants from 10 countries, including the MENA region. The objectives of the training were to: test the pilot training package for wider dissemination and use; communicate founding principles of Islamic law and how they relate to land and property rights; develop knowledge, networks and capacity on Islamic approaches to land and property rights; generate possible action plans and strategies for use in training and workplace settings. The training was a success in realizing its objectives and building networks.

Source: First Islamic land training successfully piloted in 2009 (UN HABITAT 2009)

Two factors especially contribute to the process of reshaping pastoral livelihoods in the MENA region: the fact that it has never been the focus of mass international development assistance and the weaker capacities of local civil society. It is very likely that these factors are closely correlated. In most MENA countries today, most pastoral communities are organized into 'producers' associations'. About a half of pastoral livestock feed requirements come from grazing on range, stubble and crop residues, while the other half is provided through purchased feed, often subsidized by the government.

By acknowledging herd mobility as a critical factor for sustainable pastoral livelihoods (and as also defined in the UN Convention to Combat Desertification (UNCCD) operational framework), governance and policy imply that:

- Pastoralists' rights to land must be secured (Box 2).
- Authority to administer natural resources must be decentralized; power and responsibility must be devolved to or shared with local institutional levels.
- Within these policies – which are appropriate to the mobility paradigm – legal mechanisms and support systems must be set in place, in order to move away from central and remote control of rangelands and make pastoral communities responsible for their own evolution towards economically, socially and environmentally sustainable livelihood systems. (ICARDA 2007)

This enabling environment should define the operational framework in which resource access, resource use and resource management takes place. This will comprehensively address diverse claims and enable different local institutions to work towards fair negotiation and brokerage of different interests, to avoid conflict and resource degradation. (Ngaido *et al* 2004). Further developments along these lines evolved into so-called co-management systems (Kirsch-Jung *et al* 2006), which suggest that where resources are scarce and variable and income streams uncertain, communal property systems are the most efficient, because the relatively low returns from the arid resource do not warrant the cost of organizing and enforcing more exclusive forms of tenure. Management of livestock mobility involves continuously contested claims and rights, and requires multiple institutions working at multiple levels of

Management of livestock mobility involves continuously contested claims and rights, and requires multiple institutions working at multiple levels

Box 2
Best practice from Mauritania

The Mauritanian Code Pastoral [5] may be considered an example of 'legal best practice' as it is consistent with the local as well as the global environments. It is a well-written, short and clear piece of legislation, formalizing local traditions and outlining the role of different stakeholders. Its content and its application are culturally embedded in the society's tradition. At the same time, it is consistent with three UN Conventions: on Biological Diversity, on Climate Change and to Combat Desertification. The Code incorporates the conventions' objectives by establishing a framework for exploitation of natural resources consistent with the preservation of local ecology, in order to preserve and foster human survival within the environment.

authority, function, and spatial scales. Rather than framing these dynamics simply in terms of aggregate population pressure on a limited natural-resource base, a more disaggregated 'entitlements approach' considers the role of diverse institutions in mediating the relationships between different social actors, and different components of local ecologies.

The water rights and land tenure interface

Land and water rights are instrumental to the realization of fundamental human rights such as the right to food and the right to water. Addressing the problematic areas of the land/water rights interface contributes to the progressive realization of those human rights, which is required by international human rights treaties. Water is not an issue that can be treated separately from land – for the world's poor the linkage between the two is self-evident on a daily basis – land without water is of little use in an arid climate as is access to water without land. Securing access to land can secure access to water too;

5 Available at www.glin.gov or www.glin.mr

this enables farmers as well as urban dwellers to invest with confidence in management practices and technologies that enable them to improve their livelihoods and to use limited water resources wisely. (UNDP DDC 2005)

Four broad areas can be identified in the MENA region for regulating the interface between water rights and land tenure (Hodgson 2004):

- Where customary law has prevailed, the need to clarify the status of existing arrangements and guarantee their stability and transparency will be crucial to ensure that specific users and user groups are not marginalized. It is particularly important to clarify the relationship between statutory and customary rights.
- When we move beyond the generally low-intensity customary use of water in rural settings, and scale up to land tenure and water rights within formal irrigation schemes, the impulse to de-link land tenure and water rights becomes more apparent, particularly with the demise of central planning and command-and-control style water administration.
- Where there is a move away from centrally planned economies, there will be a need for progressive re-regulation of water use rights in support of decentralized land management. In reality there needs to be a clarification of formal and informal rights and appropriate institutions in place to regulate water rights, land tenure, and above all the interface between the two.
- Land and water will continue to be tightly bound and the separation of land tenure and water rights is critical. The economies of the MENA region that are dependent on groundwater are a case in point.

In countries where irrigation systems are being improved or new irrigation systems established, the design and functioning of these systems will be greatly enhanced if pre-existing patterns of land and water rights and established procedures for system operation are taken into account, for example through land consolidation procedures (Essadiki 2005). An appreciation of these rights and procedures can greatly influence the layout of the water distribution network, water and land management practices, anticipated cropping patterns, and the related incidence of project benefits. Failure to do so will almost certainly have an adverse effect on the functioning of the irrigation system, and can often result in serious conflicts.

GOOD GOVERNANCE IN LAND AND NATURAL RESOURCE MANAGEMENT

Sustainable land management in dryland

Land is an essential productive asset on which many livelihoods depend, particularly in the drylands of the MENA region (Box 3). For the poorest populations, land degradation has enormous implications for productivity, food security and sustainable livelihoods. Lack of access to natural capital not only constrains development opportunities at the level of the individual, but also has macro-economic effects at the national scale. There is a strong positive correlation between equity of land ownership and subsequent national economic growth rates. Good governance of land-based resources means positive outcomes of land and related policy in terms of equity, efficiency and environmental sustainability.

Box 3

Statement of the proposed policies and measures for the Arab region on the thematic area Land

Land

Agricultural production and rural farming are not possible without land; therefore, the implementation of a socially-just land policy, land-use plans and sustainable land management practices, continue to represent enormous challenges in sustaining livelihoods. This will therefore require the implementation of the following policies:

Policies

Countries of the Arab region are heading towards establishing and implementing national policies aiming at:

- ensuring socially-just land tenure systems and designing realistic enforceable land-use plans
- enhancing sustainable land management practices and protecting land from degradation
- promoting scientific research in natural resources protection in order to achieve sustainable development
- enhancing the role of the private sector and civil societies in implementing sustainable development programmes and applying integrated policies to eradicate poverty.

Source: UN Commission on Sustainable Development CSD 17, 2009 - www.escwa.un.org/information/meetingdetails.asp?referenceNum=0833E

The ways in which natural capital is managed – including the rules that govern who may use which land resources under what conditions – is central to development outcomes in many societies. This is particularly true where financial capital is scarce, meaning that peoples' welfare is more directly reliant on the management of natural capital (UNDP DDC 2005).

The problem of food insecurity is still largely a rural issue in most Arab countries. Currently, about 44 percent of the population of Arab countries live and work in rural areas and depend on agriculture for their livelihoods. In addition, the development potential of those rural areas is compromised by low education attainment levels, inadequate basic infrastructure, and poor access to health and education facilities. Desertification and land degradation are constraining agricultural productivity in the Arab region. Concerted efforts are therefore needed to combat desertification and reverse land degradation trends through sustainable land management practices, including improved tenure security.

Concerted efforts are needed to combat desertification and reverse land degradation trends

Management of public land

The management of public land across the world is often badly handled and is certainly a major governance issue in which misuse of power and vested interests are constantly involved. The vesting of the ownership or administration of substantial portions of a nation's land in the hands of the public sector is a widespread feature of many land tenure structures in the MENA region, where probably more than 80 percent of all land can be considered as public land (Box 4).

In some countries the new interest in improved and more effective management of public land is mainly driven by public sector and fiscal reform, while in other countries it is mainly driven by devolution of state assets from central to local government or the challenge of governance and accountability (FAO, FIG and LING 2008). There are many good practices, but in the MENA region such examples are scattered, not systematically analysed, and not easily accessible or documented. Not only is there an enormous need and interest for sharing experiences about work in progress in all countries, but also a need and interest in tailoring capacity-building opportunities in effective management of public land (Zimmermann 2009).

Box 4
Governance problems in managing public land in Egypt

Decades of reliance on the sectoral development model have resulted in a complex and fragmented institutional landscape for public land management, characterized by an unusual split between multiple central government authorities controlling public land and local governments controlling public land, divided along geographic lines. This unusual situation is the result of the accumulation of layers of legislation over the past four decades, with as many as 45 directly and indirectly related laws and decrees that are not harmonized and are often conflicting. The problem is further compounded by a multitude of differentiated, non-transparent, complex and arbitrary procedures related to public land allocation, pricing and development controls. Egypt also lacks a coherent public land information system; investors and non-investors alike are often unable to figure out which authorities control public land and where public land is available. In addition, there is ineffective land-use planning, with little gauge of demand and without consideration of the opportunity cost of land development.

Source: World Bank, 2006

Public land will continue to have increasing social and economic significance. Consequently, the related institutional, legal and operational arrangements that should secure multiple rights and interests in specific locations will take on additional political importance. Reforming the management of public land in the MENA region must contribute to a basic set of development principles, namely reduction of severe poverty, sustainable management of natural resources, progress in good governance (Franco 2009) and transparent fiscal management of the public sector. We have only scratched the surface as far as crafting new institutional arrangements pertinent to public land is concerned.

Public land will continue to have increasing social and economic significance

Sustainable urban land management

The forces generating urbanization and urban growth are irreversible, at least in the short and medium terms, and in many respects they are beneficial both to the increased urban populations and national economic development. Climate change, violent conflicts, and a tendency

for globalization to concentrate capital and landholdings in fewer hands all reinforce rural–urban migration and urban growth. In the MENA region, 66 percent of the population is already living in urban space. Although urban areas make a significant contribution to economic growth, many of their existing and projected inhabitants are poor: this is resulting in a growing urbanization of poverty. Policies are required to guide and manage the process of urban growth through effective land management, planning and tenure systems, within a governance framework that advances, or at least protects, the needs of the urban poor.

Urban space provides people with places to build houses, factories, shops and social and service facilities (such as schools, hospitals and movie houses). This space needs to be organized in an efficient way. Around half of the people living in cities in the MENA region live in slums.

However, city authorities tend to view most people living in slums as illegal residents. Because of this, cities do not plan for or manage slums, and the people living in them are overlooked and excluded. They receive none of the benefits of more affluent citizens, such as access to municipal water, roads, sanitation and sewage. This attitude to slum dwellers, and specific policies that disregard them, perpetuate the levels and scale of poverty, which impacts on cities as a whole.

Urban human settlements require a more inclusive approach to planning and land management if they are to sustain all the people who live in them. A basic need for all people living in cities is shelter. Cities that want to meet this need will have to integrate all people and recognize all city dwellers as citizens of the city. The first step in creating sustainable urban settlements is for cities to recognize that people living in slums have a right to be in the city. This recognition will begin to make slum dwellers legitimate citizens, which in turn will start to legalize their tenure.

Forced evictions in urban and peri-urban locations are carried out in both developed and developing countries, in all regions of the world. They are usually directed at the poor, living in informal settlements or in slums. The effect on the lives of those evicted is catastrophic, leaving them homeless and subject to deeper poverty, discrimination and social exclusion. Such communities are invariably evicted against their will, in most cases without any compensation or alternative housing.

Changing official and social attitudes and mindsets about informal settlement, with residents having a 'right to the city', would be a major step towards giving the urban poor some form of tenure security. Their security would be greatly strengthened if the policies and law were made congruent with such a change of attitude (FIG 2008). In some countries this could be more easily achieved than in others. Altering urban law, policy, instruments and procedures would probably take a long time to take effect.

Additionally, climate change poses many challenges to the region's cities, hubs for economic, social, cultural and political activities. Rising sea level could affect 43 port cities – 24 in the Middle East and 19 in North Africa. In the case of Alexandria, Egypt, a 0.5 metre rise would leave more than 2 million people displaced, with $35 billion in losses of land, property, and infrastructure, as well as incalculable losses of historic and cultural assets. Development options for urban planning and financing need to tread a fine line, balancing innovative solutions (such as Masdar, Abu Dhabi[6]) with rehabilitation/regularization of the numerous informal settlements. This remains a pressing need in the MENA region.

Good governance in land administration

Reforming the organizations and practices responsible for land administration is one of the most difficult governance challenges in the land sector. Efforts to improve land governance and land policies will directly target the land administration system. In either case, reform may require the transformation of land administration systems that have been operational in their current form for a long time, and changes to an organizational culture that has developed around existing rules and procedures.

Progress in land registration in the MENA Region

Jordan, UAE and Lebanon, for example, have effectively modernized the land administration system and implemented a modern title registration system (Box 5). In Jordan almost all land is registered and covered by cadastral maps in digital format. A comprehensive land valuation system

The driving force for the modernization of land registration systems in the MENA region is technology and not the reforms in land tenure and land policy orientation

6 http://www.masdarcity.ae/en/index.aspx

Box 5
Tehran Declaration 2009

Both the Land Market Seminar and Land Administration Forum (Tehran 2009)[7] identified the following issues (among others) to assist improvement and management of land administration systems:

- developing a National Land Policy that addresses land-related issues in a holistic way and provides a foundation for economic development, ensures all have access to land, and protects women and vulnerable groups
- taking action to improve the legal and institutional framework for land-related activities
- making land-related information more open, transparent and accessible for the public
- speeding up the processes of core land activities (registrations, plans, valuations, etc.) through process re-engineering, computerization and closer co-operation between all land-related agencies
- developing an information policy to provide a framework for the sharing of data between agencies as part of an e-government strategy and, as appropriate, with the public
- ensuring appropriate institutional and technical arrangements are in place to facilitate the integration of cadastral and topographic data within Spatial Data Infrastructures (SDI) to support sustainable development
- strengthening the relationship and understanding between the land administration and financial sectors.

is operational, registers and cadastral maps are updated and harmonized, services and professional capacities are strengthened and the private sector is playing an increasing role. However, state land is badly defined and there is still a wide gap between de jure and de facto land rights on public land. In summary, the driving force for the modernization of land registration

7 http://www.fig.net/news/news_2009/tehran_may_2009.htm

systems in the MENA region is technology (geo-industry) and not the badly-needed reforms in land tenure and land policy orientation.

The Chapter 'Registering Property' in Doing Business in the Arab World (World Bank and IFC 2009) examines the steps, time, and cost involved in registering property, assuming a standardized case of an entrepreneur who wants to purchase land and a building that is already registered and free of title dispute. The study covers a wide range of country situations. The number of procedures legally required to register property ranges from 1 to 11, the time spent in completing the procedures ranges from 2 to 72 days, and the cost (expressed as a percentage of the property value) such as fees, transfer taxes, stamp duties, and any other payment to the property registry, notaries, public agencies or lawyers, range from 0 to 28 percent.

Transparency and accountability in land administration

The absence of corruption is one obvious prerequisite to good governance in land administration. However, features of good land governance also include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. The principles of land governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and tenure security.

Transparency International's Global Corruption Barometer (GCB) 2009 presents the main findings of a public opinion survey that explores the general public's views of corruption, as well as experiences of bribery around the world. It assesses the extent to which key institutions and public services are perceived to be corrupt, measures citizens' views on government efforts to fight corruption, and, for the first time in the 2009 survey (in cooperation with FAO), includes land questions about the level of bribery and political corruption in the land sector. The 2009 barometer interviewed 73 132 people in 69 countries. The results for the MENA region are exposed in the Box 6.

Box 6

Land question (10 B) of the GCB 2009 in selected countries of the MENA region

How serious do you think the problem of grand or political corruption is in land matters in Middle East and North Africa?

Grand or political corruption refers to corruption in the privatization of state-owned land, zoning or construction plans assigned without technical support, and/or land being expropriated (compulsory purchase) without appropriate or even any compensation for actual land value.

ANSWERS	TOTAL SAMPLE	MIDDLE EAST AND NORTH AFRICA			
	69 countries	Iraq	Kuwait	Lebanon	Morocco
1 Not a problem at all	2%	3%	1%	1%	0%
2	6%	11%	7%	1%	0%
3	18%	17%	10%	4%	2%
4	23%	22%	18%	14%	17%
5 Very serious problem	36%	21%	56%	79%	77%

Quote GCB 2009: In the Middle East and North Africa, the most bribe-prone institutions are reported to be those handling procedures related to buying, selling, inheriting or renting land.

Quote GCB 2010: The regional differences are significant. It is notable that in MENA and in Newly Independent States (NIS), the reported bribery in land services is very high.

LAND GOVERNANCE IN CONFLICT AND POST-CONFLICT SITUATIONS

Land tenure in conflict

Land tenure issues in conflict situations are a human right concern as well as a governance issue. Conflict over land is a major cause of poverty, marginalization and debasement of whole societies and economies. Land disputes are particularly problematic in cases of violent conflict. The causes of violent conflicts are typically complex. Some violent conflicts are directly linked to competition for land and other natural resources. Growth in population without increases in productivity or new opportunities to

acquire off-farm income tends to place increased pressure on natural resources, and the resulting environmental degradation may cause still greater competition for the remaining natural resources. As access to land is often related to social identity, the rights of people to land may be used in the political exploitation of tenure. Other violent conflicts arise without scarcity of land and other natural resources being a fundamental cause, although land disputes may merge with other issues, and different sides in the conflict may attempt to gain control over natural resources (Unruh 2004, FAO 2006).

Land tenure issues can be a source of tension (in the case of competition over essential natural resources, for instance), and can equally fuel violence once it has erupted (e.g. dominance of valuable resources such as water and oil). Land and its resources are often used to fund conflict. Land and natural resources can be implicated in all phases of the conflict cycle, from contributing to the outbreak and perpetuation of violence to undermining prospects for peace. In addition, land resources and the environment itself can fall victim to conflict, because direct and indirect environmental damage, coupled with the collapse of institutions, can lead to environmental risks that threaten people's health, livelihoods and tenure security. Land tenure is also often a critical element when designing and implementing humanitarian responses to the consequences of armed conflict and other situations of violence (GLTN 2009).

Land tenure can be a source of tension and fuel violence once it has erupted

The Rio Declaration (1992) states in Principle 24 that "Warfare is inherently destructive of sustainable development." This is nowhere more apparent than in the MENA region, where wars and conflicts have set back sustainable development gains, with significant repercussions for the region as a whole. While developments since the 1992 Earth Summit have brought calm to parts of MENA, the lack of equitable peace and security has been a major constraint to achieving sustainable development.

The specific plight of Internally Displaced Persons (IDPs) as regards land access requires particular analysis. Land tenure is a critical element throughout all phases of displacement, but is particularly challenging in relation to the return, reintegration, and sustainable resettlement – including the resolution of tension – of displaced persons. From another perspective, it is arguable that land tenure is also a socially contested issue, and thus

largely a human rights concern. Nonetheless, there is wide agreement that unresolved land tenure issues (e.g. return, integration and reintegration, and compensation) can result in resumed violence.

After years of discussion and input from experts involved in property restitution programmes in such areas as the former Yugoslavia and Middle East, the 'Pinheiro Principles, new housing, land and property restitution rights', were formally endorsed by the UN Sub-Commission on the Promotion and Protection of Human Rights, in 2005. They provide practical guidance to governments, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. The new Pinheiro principles[8] are currently applied in the MENA region in Iraq, Palestine, Sudan and Western Sahara. The ongoing case of Iraq[9] illustrates how extensive the problem of unresolved restitution claims is.

Border issues are land governance issues[10]

Since their independence, borders have been a recurrent source of conflicts and disputes between countries in the MENA region. Most of the borders are poorly defined. The location of strategic natural resources in cross-border areas poses additional challenges (Box 7). Large tracts of land cannot be registered in a systematic manner, and are not accessible for the local population to the benefit of their livelihoods, because of security restrictions. People are forcibly evicted from critical border areas and are losing their traditional land rights without being compensated. On the other hand, secure and demarcated borders can be an enabling infrastructure for sustainable development, new access to land and tenure security.

Borders are often perceived by borderland populations as imposed barriers which rarely reflect local realities. Strategies need to be developed by Governments to involve borderland populations in delimitation and

8 http://www.sheltercentre.org/shelterlibrary/items/pdf/PinheiroPrinciples.pdf.

9 Conference 2010 on 'Towards a land policy for Iraq', UN HABITAT/World Bank; http://www.gltn.net/en/newspage/conference-on-toward-a-land-management-policy-for-iraq.html

10 Conference of African Ministers in charge of border issues, March 2010, http://www.africa-union.org relevant for Arab countries in Northern Africa.

Box 7
The second conference of African Ministers in charge of border issues

The Conference was expected to:

- prepare and adopt an Action Plan for the Implementation of the Border Delimitation and Demarcation programme
- publish books on AUBP entitled 'From Barriers to Bridges…' and a Good Practice Handbook on Delimitation of African Boundaries (in Press)
- launch a continent-wide survey of African borders by means of a questionnaire sent to all member states
- establish the Boundary Information System (BIS) a data bank of information on African boundaries
- encourage the Commission to take initiatives to develop cross-border cooperation, both as an indispensable complement of delimitation and demarcation of African borders, where this has not yet been done.

Source: Conference of African Ministers in charge of border issues, March 2010, Addis Ababa, Ethiopia (www.africa-union.org)

demarcation exercises, to ensure that clearly delimited and appropriately-demarcated boundaries are regarded as a valuable foundation for borderland development, rather than a threat to local communities. Borderland populations also have much to contribute to the development and implementation of effective border management strategies.

CONCLUSION

Governance, human rights and sustainable development

It is crucial to understand the nature of the relationship between socio-economic development, respect for human rights, good governance and conflict in the MENA region. The new paradigms for looking at governance in general and land governance specifically may hold promise for creating enabling environments and enabling infrastructure for reform processes and generating an atmosphere of change in the land sector. It calls for greater and non-discriminatory inclusion of the full range of social actors in the land sector, the increased recognition or re-establishment of the rule of law, strengthening of service-oriented institutions, building professional capacities, and civilian oversight of development processes.

Land governance may hold promise for creating enabling environments and infrastructure for reform processes

The ways forward

There are many promising best land governance practices in the MENA region, such as the development of the 'code pastoral Mauritania' for recognizing pastoral land rights and strengthening local level participation in managing land and natural resources, or the transparent and modern land administration systems in Jordan and the UAE Municipalities. However, pressing needs for reform in the land sector are clear and obvious in the following fields:

- developing frameworks for land policy, including public consultation
- reforming the normative framework (human rights/gender issues, law enforcement, access to justice, Islamic tenure reform, gender, recognition of customary land rights)
- reforming the institutional infrastructure for land administration (transparency, accountability, service-orientation, effective public land management, access to land information, the role of the private sector)
- linking land issues more systematically with water resource management, with UN CCD and climate change actions, with food security, with peace-building processes, with urban development/rehabilitation and with the finance sector
- supporting the reparation of war and political conflicts in the MENA region through international partnership in the land sector (Conference on 'Toward a land management policy for Iraq 2010')[11]
- documenting and disseminating best land governance practices and lessons learned in MENA
- fostering public awareness regarding land governance and land rights in appropriate language and media to reach all relevant groups
- facilitating civil society engagement and strengthening professional associations in the MENA region
- modernizing professional education and training programmes in the land sector and strengthening institutions for applied research
- eventually marketing the idea of establishing an Arab Land Tenure Centre for post-graduate studies and research in the land sector
- establishing mechanisms in the Arab region and beyond for exchange of experiences, action-oriented research and enhanced cooperation.

11 http://www.gltn.net/en/newspage/conference-on-toward-a-land-management-policy-for-iraq.html

Compared to other regions in the world there is a lack of international partnership and international engagement in the land sector involving local and regional partners, as well as a lack of cross-country cooperation in the MENA region. The international community (multilateral and bilateral development institutions, research associations, education associations, professional associations, private sector, NGOs) should play a pro-active and facilitating role in engaging with new regional MENA partners (such as the League of Arab States, UN-ESCWA and the Islamic Development Bank) in land matters, streamlining the often scattered efforts of the international community, supporting systematic capacity building programmes, co-organizing regional and national land governance/policy conferences and offering support to reform processes in the land sector, as well as filling the obvious research gaps. The FAO initiative for developing the *Voluntary guidelines on responsible governance of tenure of land and other natural resources* could thus be considered as promoting the new era of international partnerships, including partnering more with the MENA region (FAO 2010). The democratic governance movements and initiatives currently being observed in a number of Arab countries are calling for a new commitment culture and partnerships with the international community to enable land governance reforms in the region.

There is a lack of international partnership and international engagement in the land sector

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THE AGRARIAN ISSUE IN BRAZIL REQUIRES LAND GOVERNANCE

LA QUESTION AGRAIRE AU BRÉSIL APPELLE UNE GOUVERNANCE DE LA TERRE

LA CUESTIÓN AGRARIA BRASILEÑA NECESITA GOBERNANZA DE TIERRAS

ABSTRACT

LAND GOVERNANCE

AGRARIAN ISSUE IN BRAZIL

LAND OWNERSHIP

This article seeks to demonstrate that land governance is needed to raise the effectiveness of government policy on the use and conservation of resources, and to achieve greater fairness in land access and more efficient land use. While there may be high land concentration and idleness and demand for land by social movements, one still unresolved issue is the juridical insecurity of land ownership.

The principal problem is the absence of concrete mechanisms to govern the ownership, use and occupation of Brazil's rural and urban land. This lack of effective regulation arises from and is determined by the opportunities that exist for land speculation, that is, making money from the purchase, holding, conversion and

RÉSUMÉ

GOUVERNANCE DE LA TERRE

QUESTION AGRAIRE AU BRÉSIL

PROPRIÉTÉ FONCIÈRE

L'article se propose de démontrer qu'il faut instaurer une gouvernance de la terre pour améliorer l'efficacité des politiques de l'État relatives à l'utilisation et à la conservation des ressources, et pour assurer un accès plus équitable à la terre et une exploitation plus rationnelle des sols. Au-delà des problèmes de forte concentration et de sous-exploitation des terres, et de la demande de terres émanant de groupes de la société civile, la question de l'insécurité juridique associée à la propriété foncière reste à ce jour irrésolue.

Au Brésil, le principal problème est qu'il n'existe pas de mécanisme concret de gouvernance de la propriété, de l'utilisation ou de l'occupation des terres rurales et urbaines. Cette absence de

SUMARIO

GOBERNANZA DE TIERRAS

CUESTIÓN AGRARIA BRASILEÑA

PROPIEDAD DE TIERRAS

El artículo tiene por objeto evidenciar que la gobernanza de la tierra es un requisito para mejorar la efectividad de las políticas del Estado sobre el uso y conservación de los recursos, así como para lograr mayor equidad en el acceso a la tierra y mayor eficiencia en su aprovechamiento. Más allá de la elevada concentración y ociosidad de la tierra, y de la demanda de tierra por parte de los movimientos sociales, la inseguridad jurídica asociada a su propiedad es una cuestión aún no resuelta.

El principal problema del país es la ausencia de mecanismos concretos de gobernanza de la propiedad, del uso y la ocupación del suelo rural y urbano brasileños. Esa falta de reglamentación –efectiva y no formal– emana y es determinada


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subsequent resale of land in any of its forms. The proposal is therefore for effective land governance in which society can define the appropriate use of rural and urban land, while at the same time safeguarding the environment.

réglementation ou d'autres mécanismes non formels tient aux possibilités de spéculation foncière qui existent dans le pays, à savoir les profits pouvant être tirés de l'achat, de l'exploitation, de la transformation puis de la revente de terres, quelles qu'en soient les modalités. L'auteur propose donc de mettre en place une gouvernance effective de la terre, qui permettrait à la société de définir la meilleure utilisation possible de cette ressource, en milieu rural ou urbain, tout en préservant l'environnement.

por las posibilidades de especulación con la tierra –o sea, ganar dinero con la compra, mantenimiento, transformación y posterior reventa de tierras en cualquiera de sus formas–. Por lo tanto, la propuesta a presentar es una efectiva gobernanza de la tierra, en la que la sociedad pueda definir su uso adecuado, sea rural o urbano, preservando simultáneamente el medio ambiente.

INTRODUCCIÓN

En este inicio de siglo, Brasil presenta por un lado un gran crecimiento económico, instituciones sólidas en varias áreas y una mejor situación social; pero, por otro lado, existe una situación de gobernanza inmobiliaria rural y urbana todavía precaria, con cuestiones elementales sin resolver que la mayoría de los países desarrollados ya resolvieron en los siglos XIX y XX.

Más allá de la elevada concentración y ociosidad de la tierra, y de la inmensa demanda de tierras por parte de los movimientos sociales, la inseguridad jurídica asociada a su propiedad es una cuestión aún no resuelta. Es cierto que también hubo un intenso proceso de reforma agraria que asentó a aproximadamente un millón de familias en tierras expropiadas. Asimismo, en el área urbana, el país tiene casi el 40 por ciento de su población viviendo de forma precaria en favelas establecidas mediante ocupaciones ilegales. La ausencia de una gobernanza efectiva de los mercados de tierras es el principal determinante para la presente situación, sea rural o urbana.

La inseguridad juridical asociada a la propieded de la tierra es una cuestión aún no resuelta

El problema agrario brasileño del siglo XXI encuentra sus raíces en el patrón de ocupación y de desarrollo del país y en sus soluciones legales e institucionales, y por más que se intentó hacerle frente, el problema sobre todo se agravó. Históricamente, la realidad del mercado de tierras brasileño fue marcada por la existencia de una regulación formal, pero su aplicación no resultó en un efectivo control sobre la propiedad, haciendo que las reglas reales sobre el acceso a la tierra fueran demasiado frágiles. La Ley de Tierras de 1850 tenía como objetivo regular la propiedad de la tierra por medio del: i) ordenamiento de la apropiación territorial brasileña y determinación de la finalidad de la tierra; ii) registro de tierras; iii) uso de la tierra como garantía confiable para operaciones de crédito.

Sin embargo, no fue lo que ocurrió en realidad: la tierra, rural o urbana, tiene en general[1] garantías legales poco confiables y ausencia de reglamento

1 Como en Brasil la tierra se registra por los notarios y estos no garantizan la propiedad, se dice que existen niveles de incertidumbre en relación a la propiedad. Cualquier adquisición de tierra necesita una investigación más allá del registro llevado a cabo por los notarios, para saber si el origen de la propiedad es el que consta en el registro. Normalmente, en áreas con intensa producción agropecuaria existe una mayor certeza en cuanto a los derechos de propiedad. Pero en las regiones de frontera agrícola, como los estados de Pará, Maranhão, Mato Grosso, Rondônia, Amazonas, Tocantins y Roraima la incertidumbre es mayor. Y en las fronteras internacionales del país la incertidumbre se eleva porque existen restricciones sobre las propiedades de extranjeros.

para su uso. Hasta el presente no hay catastro de los inmuebles privados ni registro y catastro de las tierras públicas (devolutas[2], u otras), ni una efectiva reglamentación social para su uso[3]. En este escenario, hay en realidad poco control sobre el uso de la tierra por sus propietarios, lo que incluye la especulación y la actividad predatoria, más allá del uso productivo. A la fecha, mediante los mecanismos existentes no se conoce la dimensión de las tierras pertenecientes al Estado; ni siquiera las tierras *devolutas* –definidas en la Ley de Tierras– fueron discriminadas.

Pero el principal problema del país es la ausencia de mecanismos concretos de gobernanza de la propiedad[4], del uso y la ocupación del suelo rural y urbano brasileños. Esa falta de reglamentación –efectiva y no formal– emana y es determinada por las posibilidades de especulación con la tierra –o sea, ganar dinero con la compra, mantenimiento, transformación y posterior reventa de tierras en cualquiera de sus formas. Esto ocurre principalmente a través de: i) la obtención de posesiones de tierras gubernamentales (*devolutas*), ii) la transformación de bosques en tierras para ganadería (en la Amazonia principalmente), iii) la conversión de tierras rurales en urbanas.

El primer paso para el desarrollo de la gobernanza del mercado de tierras brasileño pasa por la comprensión de la estructura actual de gobernanza y del potencial de transformación para alcanzar los objetivos aquí comprendidos. El principal objetivo de este estudio es presentar las políticas agrarias recientes y exponer que: parte significativa de los problemas crónicos del uso y ocupación del suelo rural y urbano en la realidad brasileña emana de la falta de una reglamentación/gobernanza adecuada de esos mercados.

Problemas crónicos del uso y ocupación del suelo rural y urbano emana de la falta de una reglamentación/gobernanza adecuada de esos mercados

2 La categoría de tierras devolutas en Brasil se aplica a las propiedades del Estado que nunca pertenecieron a un particular o que no tuvieron un título legítimo de propiedad privada.

3 Las APA y otras áreas protegidas son la excepción porque la opinión pública se está mostrando muy cuidadosa al respecto, al menos en el corto plazo. Varias áreas urbanas con conflictos insolubles en la ciudad de San Pablo, son descriptas por Holston (1993) como originalmente áreas indígenas protegidas, posteriormente ocupadas y revendidas en lotes urbanos. En el área rural sucedió lo mismo con la región del Pontal del Paranapanema en el estado de San Pablo, que también era una reserva ambiental que posteriormente fue ocupada por latifundios que hasta hoy no la regularizan.

4 Polanyi (1980) en su obra aclara que las tres mercancías ficticias: dinero, tierras y trabajo, al contrario de las demás mercancías, necesitan obligatoriamente de regulación. Históricamente las regulaciones se establecieron en varios países, principalmente en los europeos y en los Estados Unidos. En cuanto a los países de América Latina, Asia y África, esto no ocurrió.

Por lo tanto, la reglamentación ideal es aquella en la cual la sociedad puede definir el uso adecuado del suelo, sea desde el punto de vista rural y productivo, o sea para domicilios, preservando simultáneamente el medio ambiente: i) en el ámbito rural, se logra por medio del efectivo control de la ocupación de las tierras *devolutas* y también por medio del control de las transformaciones sobre estas tierras, así como mediante la división en zonas; ii) en el ámbito urbano, se logra creando espacios de especulación aplicando capital en esta esfera –normalmente en áreas destinadas a clases de ingresos elevados– y, simultáneamente, preservando el medio ambiente y creando espacios de formación de zonas para las clases media y baja.

El artículo cuenta con otros cuatro apartados. El que sigue trata la situación del mercado de tierras brasileño en la actualidad. El tercer apartado muestra la evolución institucional y legal para la actual situación de este mercado. El siguiente, el cuarto, trata de forma resumida las principales y más recientes políticas de tierras. Y, en el quinto apartado se argumenta la necesidad de concretar una efectiva gobernanza del mercado de tierras brasileño, destacando sus principales contribuciones.

LA SITUACIÓN DEL MERCADO DE TIERRAS BRASILEÑO

Brasil presenta todavía en el siglo XXI un alto grado de concentración de la propiedad de la tierra, como se puede verificar en la Tabla 1 debajo. Posiblemente es uno de los países con mayor índice de concentración de tierras del mundo[5], a pesar de los esfuerzos recientes para su democratización/distribución. El índice de Gini de la propiedad sigue en un nivel elevado de 0.85, sin presentar una tendencia de baja. La participación del área total de los establecimientos agropecuarios menores correspondiente a un 50 por ciento sigue siendo de 2,3 por ciento, mientras que el 5 por ciento que corresponde

5 Según la FAO (http://www.fao.org/economic/ess/world-census-of-agriculture/additional-international-comparison-tables-including-gini-coefficients/other-international-comparison-tables-of-agricultural-census-data-explanatory-notes-and-comments/en/), Brasil tiene uno de los más elevados índices de Gini del mundo.

Tabla 1
Estructura del mercado de tierras de los establecimientos agropecuarios en Brasil

	1975	1985	1995-96	2006
Número de establecimientos (millones)	5,0	5,7	4,8	4,9
Área total (millones de ha)	323,9	369,6	353,6	294,0
Área Promedio (ha)	64,9	71,7	72,8	67,1
Índice de Gini	0.855	0.859	0.857	0.856
Participación del área de los establecimientos menores correspondiente a un 50 por ciento (%)	2,5	2,4	2,3	2,3
Participación del área de los establecimientos mayores correspondiente a un 5 por ciento (%)	68,7	69,7	68,8	69,3

Fuente: Censos Agropecuários, IBGE 2006

a los establecimientos mayores suma más de 69,3 por ciento del total de tierras. Los datos demuestran el elevadísimo grado de concentración de tierra en este país, que, a pesar de la extensa reforma agraria, no se ha modificado.

A esto se suma el hecho de que el país posee mucha tierra ociosa o con un bajo grado de utilización. Una importante demostración de lo anterior es que la ganadería todavía presenta una carga promedio inferior a 1 cabeza de ganado por hectárea, significativamente por debajo de los índices ajustados por los órganos técnicos.

Por otro lado, Brasil tiene muchos trabajadores rurales sin tierra que demandan tierras. Únicamente entre los ya establecidos en campamentos, según el Movimiento de los Trabajadores Rurales Sin Tierras (MST), existen más de 50 mil familias, indicando que la demanda de tierras, además de ser elevada, se lleva a cabo mediante una fuerte movilización política.

La ausencia de catastro y de reglamentación efectiva de la propiedad de tierras en Brasil puede evidenciarse por el trato de las tierras en la Amazonia. Los datos catastrales existentes, basados en las declaraciones de los usuarios, muestran que, en 2003, el 35 por ciento de las 509 millones de hectáreas de tierra en la Amazonia Legal[6] estaba ocupado bajo el derecho de propiedad privada, sea como propiedad registrada o como posesiones.

6 La Amazonia Legal es el área que engloba los territorios de nueve estados brasileños que pertenecen a la Cuenca Amazónica; o sea, la totalidad de Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima y Tocantins, y parte de Maranhão, y corresponde al 61 por ciento del territorio brasileño.

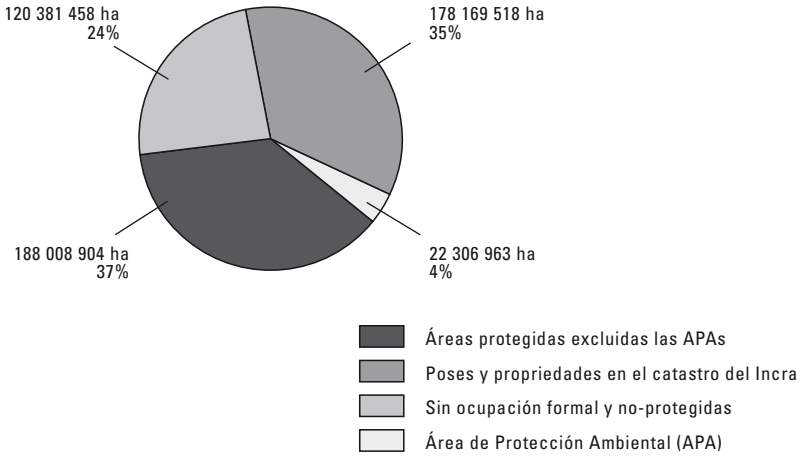


Figura 1
Situación de la tierra en la Amazonia Legal, considerando datos del Sistema Nacional de Catastro Rural (2003) y Áreas Protegidas (2006)

Fuente: catastro auto declaratorio del INCRA.

Por otro lado, el reciente proceso de creación de reservas federales de diferentes tipos, llevó a que hoy el 42 por ciento de la Amazonia Legal esté bajo algún tipo de protección: aproximadamente la mitad del área son tierras indígenas, y la otra mitad, unidades de conservación de varios tipos. El 24 por ciento restante no entra en ninguna de estas categorías y, por lo tanto, son técnicamente consideradas tierras públicas sin destino (Figura 1).

Pero la situación es más compleja e incierta de lo que estos números indican. Muchas de las áreas protegidas están físicamente ocupadas por usuarios privados, cuyas reivindicaciones de ocupación pueden no tener validez de acuerdo a la compleja legislación previamente mencionada. La gran zona descrita como privada por el sistema de registro también se pone en duda. De las 178 millones de hectáreas declaradas propiedad privada, 100 millones pueden estar basadas en documentación fraudulenta. Otras 42 millones de hectáreas de esa zona son clasificadas, a partir de declaraciones catastrales, como posesiones, que pueden o no ser susceptibles de regularización, dependiendo de sus circunstancias de tamaño, historia y localización. De esta forma, el 30 por ciento del área puede ser legalmente incierta o ilegítima.

SÍNTESIS DEL PROBLEMA DE LA TIERRA BRASILEÑA: BREVE HISTORIA DE LA AUSENCIA DE GOBERNANZA

Desde el descubrimiento de Brasil, pero más intensamente desde la colonización en el año 1530 hasta la Ley de Tierras, las reglas de ocupación del suelo urbano y rural eran definidas por el rey, la Iglesia y el poder político y físico de los ocupantes. Desde la fase de ocupación inicial por medio del poder otorgado por el rey, hasta el surgimiento de agentes especializados en la especulación de tierras, se fue dando gran parte de la ocupación del espacio urbano y rural próximo al litoral.

La Ley de Tierras brasileña (1850) debe ser pensada en un contexto más general en el que se establecen leyes que colocan restricciones al acceso a la tierra en todo el mundo colonial[7].

En función de los intereses de los propietarios del país, la Ley de Tierras mantuvo la posibilidad de reglamentación de las posesiones, posibilitando la ocupación de tierras *devolutas*, y creó desinterés por el catastro de tierras. Pues con un catastro y la definición de las tierras *devolutas,* se tornaría imposible apoderarse de más tierras *devolutas*. La ausencia de catastro también imposibilitaba la creación de un registro completo. Por lo tanto, siempre existía la posibilidad de regularizar las posesiones derivadas de la ocupación de tierras *devolutas*. Más allá de la usucapión (que establece que una vez transcurrida cierta cantidad de años el ocupante de las tierras puede regularizar su propiedad), los propios estados (principalmente durante la creación de la república) en algunos momentos históricos concedieron propiedades con o sin títulos. Ese es el mecanismo básico que hizo y hace que nunca se haya establecido un catastro efectivo que permita definir las áreas *devolutas*, pasibles de utilización de acuerdo a otros tipos de políticas de tierras.

Antes de la Ley de Tierras, el registro de las propiedades se realizaba básicamente junto con los registros parroquiales de tierra, bajo responsabilidad del vicario local. Ese tipo de registro fue utilizado durante mucho

7 Como en Australia, por ejemplo.

tiempo después de la promulgación de la Ley de Tierras. Los cambios institucionales posteriores a 1822, como por ejemplo la abolición de la esclavitud (1888) y la proclamación de la república (1889), lejos de cuestionar la dinámica de apropiación de tierras del período anterior, la estimularon, principalmente en el ámbito institucional establecido por la República Vieja.

Pero, en 1864, una nueva obligación institucional acabó por establecer una tradición que perdura hasta nuestros días y que logró generar una mayor indefinición e incapacidad de regular efectivamente el mercado de tierras: la necesidad de registrar las posesiones y las propiedades en registros públicos. De forma que la inscripción en el registro público le otorga al inmueble un nivel de legalidad sin que exista un mecanismo que lo garantice[8].

La proclamación de la república en 1889 y, con ella, la instauración de la autonomía de los estados, también generó la posibilidad de que estos estados demarcaran sus tierras *devolutas* y concedieran títulos. Esto ocurrió con más intensidad en algunos estados que en otros, pero independientemente de eso, se estableció otra ambigüedad en la concepción de títulos y, consecuentemente, la incapacidad de regular el mercado de tierras[9].

La institucionalización del Registro público de tierras, en 1900, fue posiblemente el principal paso hacia el actual sistema de registro de

8 Las irregularidades más comunes en los registros públicos (en los notarios) son la superposición de varias áreas y el registro de tierras inexistentes. En la primera, varios propietarios se dicen dueños de la misma tierra. Respecto al segundo caso existe un ejemplo de intervención judicial en 17 registros públicos en el estado de Amazonas que canceló 43 480 hectáreas de propiedades registradas. El gobierno federal está dando un paso decisivo en la reglamentación del mercado de tierras rurales y urbanas al lograr aprobar la Ley 10 267/2001, en la cual los registros públicos obligan a los propietarios a efectuar un registro cartográfico (latitud y longitud) con los límites de su propiedad cuando se efectúe cualquier cambio sobre la misma. Estas notificaciones serán transferidas al INCRA para que en el largo plazo establezca un catastro.

9 A pesar de eso, existía una preocupación por regular las tierras, manifestada en la tentativa fracasada de regulación de la propiedad por medio del Registro Torrens (1891) en el cual los ocupantes y propietarios podrían obtener el título definitivo por medio de petición no contestada. Y, por otro lado, la posibilidad de legalización de las posesiones en 1895 y en 1922 (referentes a las posesiones entre 1985 y 1921) acabó por crear las condiciones para que las posesiones perduren y para que se debilite la regulación del mercado de tierras como se expresa en la Ley de Tierras de 1850.

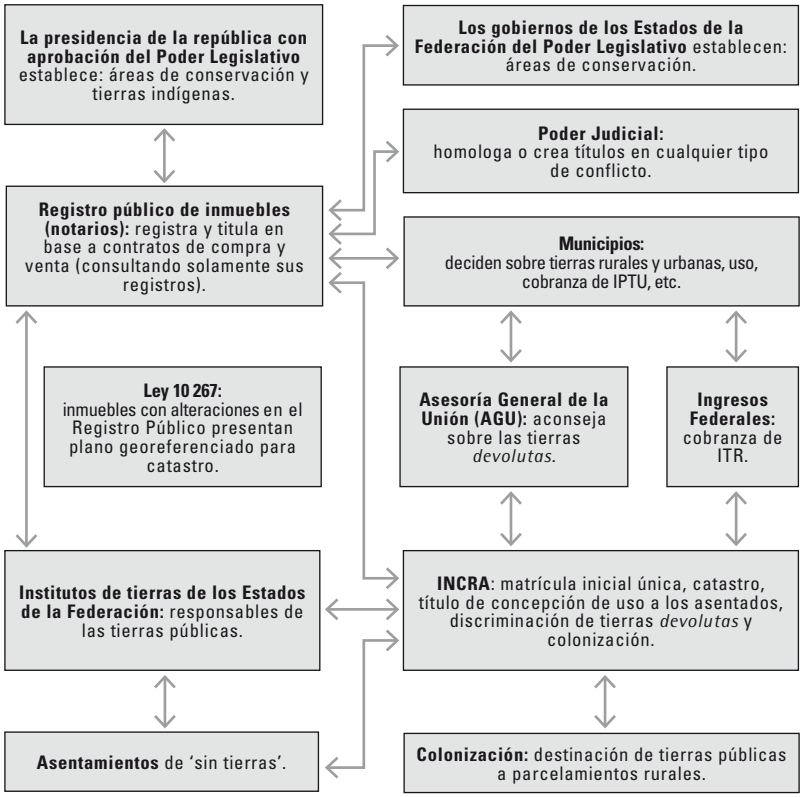
inmuebles en vigor. Según esa regla, todos deben demarcar y registrar sus inmuebles, sean rurales o urbanos, pero sin fiscalización y sin un catastro. El Estado, como también debería demarcar y registrar sus tierras (*devolutas*) –lo que es impracticable ya que sus tierras son definidas por exclusión– actúa, por lo tanto, ilegalmente. Esa obligatoriedad acaba por ampliar las posibilidades de fraude en los registros públicos de la propiedad.

Pero fue la promulgación del Código Civil de 1916 que generó la incapacidad de regular efectivamente los mercados de tierras en Brasil, tanto por reafirmar el registro público como la institución de registro, como por posibilitar que las tierras públicas fueran objeto de usucapión. En las palabras de Osorio Silva (1996): *"Con eso se completa el cuadro para la transformación del Estado en un propietario como los otros. Y así queda sustentada la doctrina de prescribilidad de las tierras devolutas. O, en otras palabras, la posibilidad de usucapión de tierras devolutas".*

Por lo tanto el Código Civil, por motivos no necesariamente vinculados a los intereses de los propietarios de tierras, acabó por establecer el gran marco de la institucionalidad del acceso a la tierra en Brasil, al definir que la inscripción de la propiedad de inmuebles en registros públicos era necesaria (y a veces también suficiente) para comprobar su titularidad.

La gran innovación institucional en el ámbito de la política y administración de tierras brasileñas es el Estatuto de la Tierra de 1964[10], cuyas reglas y conceptos siguen siendo válidos hasta la fecha. Para orientar la implementación de la política agraria y agrícola, el Estatuto de 1964 creó el Catastro de inmuebles rurales. De acuerdo a este catastro todos los inmuebles privados o públicos deben ser registrados, incluso las posesiones. Los propietarios deben proporcionar información sobre la situación de la documentación y uso de la tierra (utilizada para estimar la productividad) con el objetivo de facilitar la reforma agraria. El Instituto Nacional de Colonización y Reforma Agraria (INCRA), creado en 1970, se tornó responsable de la gerencia del Sistema Nacional de Catastro Rural (SNCR), el cual mantenía el Catastro de inmuebles rurales.

10 En gran medida basado en World Bank (2007).



Esquema 1
Situación actual de la administración de la tierra en Brasil

Fuente: legislación actual y Reydon (2006).

Una vez que el inmueble era registrado, el INCRA emitía el Certificado de Catastro de Inmueble Rural (CCIR) exigido para cualquier tipo de transacción de tierra. Los ocupantes de las tierras registradas por el INCRA también recibieron el CCIR y debieron pagar el impuesto sobre el inmueble rural, aunque el valor de ese impuesto se conservó en un nivel bajo. El Estatuto de la Tierra, una vez más, mantuvo la legitimación de la posesión, permitiendo así la titulación de tierras públicas ocupadas informalmente.

El Esquema 1 procura sintetizar por medio de una visión esquemática las interrelaciones entre los órganos del sistema de administración de tierras de Brasil. Se observa que no hay vínculos entre el INCRA y los municipios, lo que causa muchos problemas en la relación entre tierras rurales y urbanas. Además, no hay una institución que centralice el catastro y establezca un enlace entre los órganos judiciales que no son responsables de la titulación de los inmuebles. No se manifiesta en el cuadro, pero gran parte de los problemas de las tierras brasileñas rurales y urbanas, cuando no se resuelven en la esfera administrativa, acaban en la justicia; y la justicia, por tener muchos procesos en todos sus tribunales, tarda años en juzgarlos, lo que lleva a que casi siempre los casos relativos a las tierras rurales o urbanas se juzguen como hechos consumados.

Gran parte de los problemas de las tierras brasileñas rurales y urbanas, acaban en la justicia

LAS RECIENTES POLÍTICAS DE TIERRAS

El gobierno brasileño, después del final de la dictadura, orientó toda su política de tierras y su estructura institucional a la reforma agraria –asentamiento de 'sin tierras'–; lo que en la realidad consiste en la institucionalización de posesiones de 'sin tierras' que ocuparon tierras ociosas[11], por medio de la creación de asentamientos. El proceso de asentamiento, más allá de garantizar la indemnización a los antiguos dueños de las tierras, garantiza beneficios sociales como la infraestructura (terraplenado, carreteras, construcción de áreas comunes, obtención de agua, planeamiento del uso del suelo, estudio topográfico y división de los lotes), así como la obtención de financiamiento subsidiado para su implementación (Procera). El INCRA informa que entre 1985 y 2009 (más de 20 años), se llevó a cabo una verdadera reforma agraria, con más de 906 mil familias asentadas en 84 millones de hectáreas incorporadas a los asentamientos.

La reforma agraria en la realidad consiste en la institucionalización de posesiones de 'sin tierras' que ocuparon tierras ociosas

11 La ironía es que los movimientos sociales que demandan tierras para asentamientos se basan en el mismo principio que usaron los latifundistas durante años: ocupar tierras ociosas y después regularizar su posesión. En el caso de los trabajadores rurales sin tierra, ocupan las tierras y el INCRA –o a veces un órgano estatal– desapropia la tierra y legaliza la posesión por medio de los asentamientos.

Aunque no se trata propiamente de una política de democratización del acceso a la tierra, se viene llevando a cabo una política de crédito inmobiliario que benefició a 54 mil familias entre 1995 y 2009. Esta modalidad, también conocida como reforma agraria del mercado, consiste en la concesión del crédito subsidiado a los grupos de familias que quieran adquirir tierras de forma conjunta. En algunas situaciones impacta sobre los precios de las tierras, aunque generalmente son menos costosas, pues sus precios por hectárea son menores de los de las expropiaciones[12], dadas las elevadas indemnizaciones de la reforma agraria.

Reforma agraria del mercado, consiste en la concesión del crédito subsidiado a los grupos de familias que quieran adquirir tierras de forma conjunta

Por otro lado, debido a la ausencia de un catastro adecuado y a la incapacidad de regular el uso de la tierra, el gobierno brasileño tomó las siguientes acciones concretas con el propósito de disminuir la deforestación de la Amazonia y elevar la gobernanza del mercado de tierras:

- Estableció la ley 11 952/09, regularizando las posesiones de hasta 400 hectáreas a costo cero y vendiendo las posesiones de entre 401 y 1 500 hectáreas (los ocupantes deben comprobar que viven en el lote desde 2004).
- Implementó el Programa tierra legal, decreto n.º 6 992, del 28 de octubre de 2009. Reglamenta la ley n.º 11 952, del 25 de junio de 2009, para disponer sobre la regularización inmobiliaria de las áreas rurales situadas en tierras de la Unión, en el ámbito de la Amazonia Legal, definida por la Ley Complementaria n.º 124, del 3 de enero de 2007, y otras.
- Creó innumerables APA (Áreas Protegidas) en forma de unidades de conservación (en base a la ley n.º 9 985 de julio de 2000) para la protección de los márgenes de las principales carreteras en construcción en la región amazónica.

Este conjunto de acciones, principalmente en la Amazonia, muestra una vez más la gravedad de la situación de la tierra, en un contexto de gran afluencia de capitales hacia el campo, para adquirir y explotar la tierra. Estudios recientes revelan que ha tenido lugar una valorización de la tierra en el orden de hasta un 600 por ciento en algunos estados del país, principalmente en la frontera de expansión agrícola.

12 En Reydon (2000), en base a los casos de Paraná, evidenciamos que los costos judiciales de las expropiaciones elevan de sobremanera los costos de los asentamientos expropiados.

CONCLUSIONES: LA GOBERNANZA DE TIERRAS Y LA CUESTIÓN AGRARIA BRASILEÑA

Después de casi 20 años de gobiernos democráticos comprometidos con las poblaciones menos favorecidas, que realizaron una de las mayores reformas agrarias del mundo, la propiedad de la tierra continúa siendo uno de los principales cuellos de botella de la realidad brasileña, sea urbana o rural.

La propiedad de la tierra continúa siendo uno de los principales cuellos de botella de la realidad brasileña, sea urbana o rural

Sigue habiendo 'sin tierras' pidiendo tierras, grandes propietarios ocupando tierras *devolutas*, deforestación en la Amazonia, innumerables ocupantes sin título legal, registros públicos de propiedad inscribiendo inmuebles inexistentes, extranjeros adquiriendo tierras sin control, entre otros problemas.

Simultáneamente, la agricultura brasileña presenta una performance ejemplar, con un crecimiento de la producción de alimentos, energía y divisas; y mayor inserción internacional, entre otras cosas. Pero la seguridad asociada a la propiedad de la tierra sigue siendo un gran problema, tanto en el área rural como urbana. Su solución requiere una adecuada gobernanza[13] de la tierra, según la FAO (2007) y Deininger (2010) entre otros.

Los beneficios que se obtienen de un adecuado sistema de gestión territorial dependen de la clara identificación de los inmuebles registrados y de un mecanismo sencillo y efectivo para obtener y actualizar la información correspondiente a esos inmuebles. Este proceso necesita iniciarse sin que se torne dependiente de las informaciones de los títulos u otros documentos formales, que pueden ser utilizados siempre que haya conflictos sobre la propiedad. Es necesario iniciar un proceso de titulación que capture la información de las propiedades por medio de satélites[14], registrando las propiedades junto a los propietarios y ocupantes legítimos (posesión indiscutida).

13 La FAO (2008:9) maneja una definición adecuada de gobernanza de la tierra: "Adoptaremos como punto de partida la definición conceptual propuesta por la FAO en sus recientes análisis de este tema: *'La gobernanza es el sistema de valores, políticas e instituciones por el cual una sociedad maneja sus asuntos económicos, políticos y sociales a través de las interacciones dentro y entre el Estado, la sociedad civil y el sector privado. La gobernanza de la tierra refiere a las reglas, procesos y organizaciones a través de las que se toman las decisiones sobre el acceso a la tierra y su uso, la forma en que se implementan esas decisiones, y la manera en que se manejan los conflictos de interés sobre la tierra'*".

14 Las innovaciones tecnológicas de captación de informaciones por medio de satélites, según DOELINGER (2010), permiten adelantos que pueden revolucionar el sistema de registro de inmuebles existente.

La preocupación por el tema ha logrado experiencias exitosas del punto de vista institucional y operacional en varias municipalidades del estado de Pará[15], a través de la acción del Instituto de Tierras de Pará (ITERPA) –que lleva a cabo los procesos de catastro y de regularización– con la participación e integración de todos los órganos afectados[16]. Se ha logrado identificar las tierras públicas, titular a los propietarios e identificar que los conflictos entre los poseedores de tierras es pequeño. Pero se presentan dos problemas: no es un proceso de apoderamiento de los propietarios y es muy costoso[17].

Por lo tanto la propuesta del estudio es que se lleve a cabo un proceso masivo de catastro y regularización de la propiedad de tierras en el país, a partir de algunos casos pilotos en base a la experiencia de Pará. Lo único que se necesita es un cambio en las reglas de uso de las tecnologías GPS, el permiso de uso de imágenes de satélite, y la efectiva participación de los propietarios y ocupantes en el proceso. Según el estudio de Gessa (2009), con la regularización participativa se logra un efectivo conocimiento de la realidad y por lo tanto el apoderamiento de los propietarios de tierras, principalmente los pequeños[18]. Dependiendo del compromiso gubernamental y de la capacidad de descentralización del proceso, con la efectiva participación de las municipalidades el intento será exitoso. Las municipalidades se interesan en la medida que puedan beneficiarse doblemente de esto: al pasar a tener un mayor control sobre la propiedad en general –y la agrícola en particular–, y al poder cobrar y apropiarse del presupuesto correspondiente al impuesto sobre la propiedad territorial rural (ITR).

Por lo tanto, el Esquema 2 presenta una propuesta de la estructura institucional a largo plazo para garantizar una efectiva gobernanza de la tierra en Brasil.

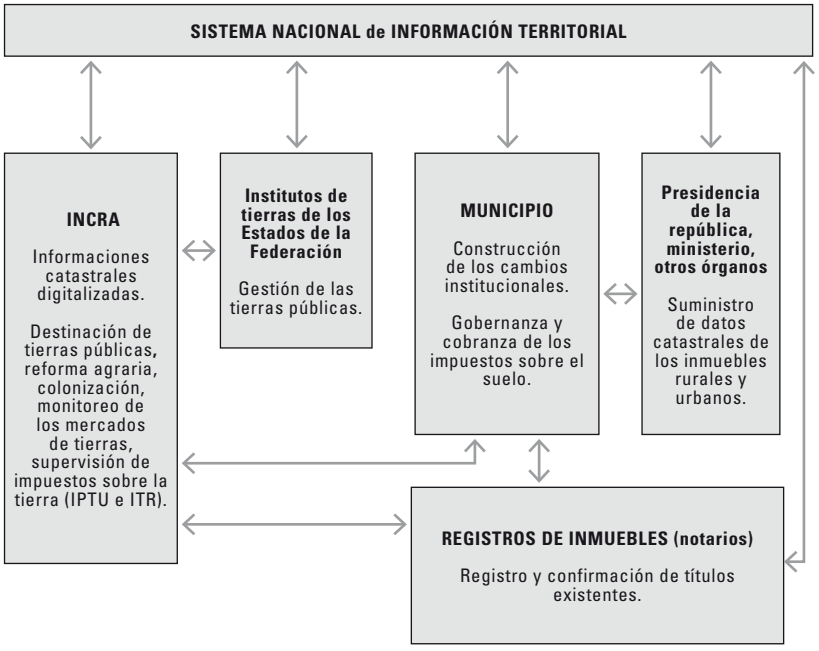
15 Para obtener más detalles: Instituto de Terras do Pará. ITERPA. 2006.

16 Se puede citar: el INCRA, las municipalidades, los órganos ambientales, la Justicia y el Gobierno estatal, los propietarios.

17 Reydon y Costa (2010), más allá de relatar la experiencia, analizan sus costos y evidencian que el costo de aplicarla en todo Brasil bajo la presente legislación es inviable.

18 Con base en el estudio de Gessa, S.D. (2008), que propone que la regularización participativa es un instrumento importante para asegurar los derechos de propiedad y para apoderar a las poblaciones menos privilegiadas.

Las cinco instituciones deben funcionar de forma integrada y con actualización automática. Ciertamente los registros públicos de inmuebles (notarios) conservarán su rol junto al Poder Judicial. El catastro debería ser una actividad conjunta y, en la medida que se consolida, debería ser transferida a las municipalidades. La idea es que las municipalidades puedan, a medida que dispongan de más recursos, estructura y personal capacitado, coordinar los catastros y todas las otras actividades de gobernanza y regulación del uso de la tierra, particularmente la cobranza de los impuestos sobre el suelo (IPTU e ITR).



Esquema 2
Propuesta institucional del sistema de gestión territorial

Solamente con la efectiva gobernanza de la tierra, en especial mediante la creación de un catastro moderno, autoalimentado y participativo, será posible:

- Garantizar los derechos de las propiedades privadas para los diferentes fines: negocio, arrendamiento, garantías para la obtención de crédito, concesión de pagos por servicios ambientales, entre otros.
- Identificar las tierras públicas y garantizar su adecuado uso para: creación de reservas, asentamientos o colonización.
- Establecer con mayor seguridad las demás políticas de tierras: reforma agraria, crédito inmobiliario, tributación sobre la tierra.
- Regular los procesos de compras de tierras para limitar el acceso a extranjeros, a propietarios con muchas tierras o a otros propietarios.
- Dividir por zonas el uso de la tierra – definir y regular colocando límites a la producción agrícola y pecuaria en regiones específicas.
- Regular los procesos de conversión de tierras agrícolas en urbanas y así también llevar un catastro actualizado del Impuesto sobre la propiedad predial y territorial urbana (IPTU).
- Tener catastros actualizados para viabilizar la cobranza correcta y efectiva del Impuesto sobre la propiedad territorial rural (ITR).

La efectiva gobernanza de la tierra permitirá por lo tanto realizar un seguimiento específico de todo lo que ocurre con las propiedades agrícolas y urbanas en todo el país, garantizando su adecuado uso económico, social y ambiental. Lo más importante del proceso de obtener la gobernanza sobre la tierra será que la sociedad brasileña, en conjunto con el Estado, pasarán a tener un control efectivo sobre la tierra, uno de los mercados (conjuntamente con el del dinero y el del trabajo) que según Polanyi (1980) no se autorregula y por lo tanto necesita regulación.

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WHY THE NOTION OF AGRARIAN REFORM IS LOSING CURRENCY IN LATIN AMERICA

POURQUOI L'IDÉE DE RÉFORME AGRAIRE EST EN PERTE DE VITESSE EN AMÉRIQUE LATINE

POR QUÉ LA IDEA DE REFORMA AGRARIA ESTÁ PERDIENDO VIGENCIA EN AMÉRICA LATINA

ABSTRACT

AGRARIAN REFORM

SOCIAL MOVEMENTS

TERRITORIAL NEGOTIATIONS

LOCAL MANAGEMENT

The topic of agrarian reform in Latin America has undergone significant change in recent times. Although social movements have been active, the governments of the region have adopted a more prudent approach. The result has been a wider disconnect between rural and indigenous populations and their government representatives.

The quest for market competitiveness and political stability cannot overshadow the poverty and wretched living conditions of many of the marginalized, who want to participate in the decision-making processes, both locally and at higher levels.

Paradoxically, the risk of greater tensions over natural resources also carries a message of hope: it is

RÉSUMÉ

RÉFORME AGRAIRE

GROUPES DE LA SOCIÉTÉ CIVILE

NÉGOCIATIONS TERRITORIALES

GESTION LOCALE

En Amérique latine, le concept de réforme agraire a considérablement évolué ces derniers temps. Si la société civile a joué un rôle actif en la matière, les gouvernements de la région se montrent de plus en plus prudents, si bien que les paysans et les populations autochtones se sont détournés de leurs représentants gouvernementaux.

La quête de compétitivité sur les marchés et la nécessaire stabilité politique ne sauraient faire oublier la pauvreté et la misère dans lesquelles se trouvent un grand nombre d'exclus, qui entendent participer à la prise de décision, tant sur le plan local qu'à des niveaux supérieurs.

Paradoxalement, le risque d'exacerbation des conflits liés aux ressources naturelles est aussi

SUMARIO

REFORMA AGRARIA

MOVIMIENTOS SOCIALES

NEGOCIACIONES TERRITORIALES

GESTIÓN LOCAL

El tema de la reforma agraria en América Latina ha venido sufriendo cambios importantes en los periodos más recientes. A pesar del protagonismo de los movimientos sociales, se constatan actitudes más prudentes por parte de los gobiernos de la región. Esto ha resultado en un aumento de la disidencia de los campesinos e indígenas hacia sus representantes gubernamentales.

La búsqueda de competitividad en los mercados y la necesaria estabilidad política no pueden ocultar la situación de pobreza y miseria que padecen una gran cantidad de excluidos, que pretenden participar en los mecanismos de toma de decisiones, tanto localmente como a niveles superiores.


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no longer possible to envisage the management of natural resources without involving the local actors. The author proposes a territorial social pact drawn from a common platform of representatives of the weakest and/or most marginalized actors.

porteur d'un message d'espoir: il n'est aujourd'hui plus possible d'envisager la gestion des ressources naturelles sans dialogue avec les acteurs locaux. L'auteur propose un pacte territorial social à partir d'une plateforme commune de représentants des parties prenantes les plus faibles et/ou marginalisées.

Es paradójicamente a partir del riesgo de un posible aumento de los conflictos ligados a los recursos naturales que surge un mensaje de esperanza: ya no es posible pensar en una gestión de los recursos naturales al margen del diálogo con los actores locales. El autor propone contemplar un pacto territorial de sociedad a partir de una plataforma común de los representantes de los actores más débiles y/o excluidos.

INTRODUCCIÓN

Hubo un tiempo, digamos hasta la revolución mexicana, cuando en América Latina nadie se preocupaba por las condiciones de vida en el campo, sus desigualdades y miseria. Es con la llegada de Pancho Villa y Emiliano Zapata, que estos 'miserables' entran en la historia por la puerta grande. Sus reivindicaciones ganan legitimidad y la clase política empieza poco a poco a darse cuenta de que existe un problema de hambre y de tierra.

Varias investigaciones demostraron las relaciones profundas existentes entre el hambre en las zonas rurales y la mala distribución de la tierra, dándole así argumentos fuertes a la necesidad de implementar reformas agrarias como medidas para luchar contra el hambre (de Castro 1946).

Con el pasar de los años, en particular al final de la Segunda Guerra Mundial, la cuestión agraria cobró intensidad en varias partes del mundo. Estados Unidos, fuerte en su posición de vencedor de la guerra, ordenó una reforma agraria profunda en Japón, en contra de aquellos grupos sociales que habían conducido al país a la guerra. Del mismo modo, otras reformas agrarias fueron impuestas en Taiwán, Corea del Sur y Filipinas. En los países del recién creado bloque socialista también se llevaron a cabo varias reformas agrarias, al igual que en la China comunista y en Italia.

Al final de la Segunda Guerra Mundial la cuestión agraria cobró intensidad en varias partes del mundo

En la región latinoamericana recordamos la reforma agraria de Bolivia y el intento de hacerla en Guatemala durante los años 50. Bolivia vivió una profunda conmoción social a causa de las generalizadas ocupaciones de haciendas en regiones de los valles y del altiplano a principios de la década de 1950. Cuando el Movimiento Nacionalista Revolucionario tomó el poder en abril de 1952 no tenía claro su programa respecto a la cuestión de la tierra; aunque había formulado varios diseños provisionales, éstos no llegaban a la propuesta explícita de una reforma agraria. Dicha reforma se realizó como consecuencia de la rebelión indígena y de la toma de tierras. Un año después de que el Gobierno Revolucionario entrara en funciones, se promulgó el Decreto que dio legalidad a la liberalización de la fuerza de trabajo rural-indígena y al reparto de tierras.

En el caso guatemalteco, el tema agrario apareció durante la presidencia de Jacobo Arbenz entre 1951 y 1954, siendo uno de los temas centrales de

su programa. El objetivo era modificar una estructura agraria dominada por grandes terratenientes, en particular por las compañías extranjeras.

El Decreto de reforma agraria indicaba como prioridad "desarrollar la economía capitalista campesina y la economía capitalista de la agricultura en general" (Decreto 900, Artículo 3). Las dificultades surgieron en el momento de valorar la tierra a expropiar debido a que el Gobierno de Guatemala propuso usar los mismos valores catastrales declarados por la empresa, que eran muy bajos, y pagarle en bonos de la reforma agraria. Esto provocó una inmediata reacción del Gobierno estadounidense que montó una operación para derrocar al Gobierno guatemalteco, cosa que logró hacer en 1954.

Las tensiones sociales eran fuertes en muchos países y cuando Fidel Castro derrocó la dictadura de Batista en Cuba, una de las primeras leyes que firmó fue la Ley de Reforma Agraria en mayo de 1959. Esta ley propuso, entre sus principales objetivos formales, la diversificación de la industria y la supresión de la dependencia del monocultivo azucarero. El Gobierno Revolucionario, con la implantación de esta ley, pretendía dar resguardo y estímulo a la industria e impulsar la iniciativa privada mediante los necesarios incentivos, la protección arancelaria, la política fiscal y la acertada manipulación del crédito público, el privado y todas las otras formas de fomento industrial.

Los términos en que se planteaba la reforma del régimen de tenencia de la tierra, tal como los concebía la ley, condujeron al deterioro de las relaciones diplomáticas y comerciales con los Estados Unidos. Los dos aspectos conflictivos del texto legal fueron el límite máximo de extensión de tierra que podría poseer una persona natural o jurídica (Artículo 1) y la forma de pago por las expropiaciones (Artículo 31). El Artículo 31 de la Ley de Reforma Agraria estableció que las indemnizaciones por concepto de expropiación se cubrirían mediante bonos de la deuda pública pagaderos a 20 años, con un interés anual no mayor del 4,5 por ciento. Esta disposición era inconstitucional, pues violaba el Artículo 24 de la Ley Fundamental, que había puesto en vigor el Consejo de Ministros del Gobierno Revolucionario, que exigía el pago previo y en efectivo de la indemnización fijada judicialmente en caso de expropiaciones realizadas por causas justificadas y utilidad pública o interés social. Lo que hubiera podido resolverse en la mesa

de negociaciones se convirtió en un enfrentamiento ultranacionalista con los Estados Unidos, bajo los gritos de "¡La reforma agraria va!", trayendo como consecuencia una escalada de mutuas represalias y de enemistad entre ambas naciones.

A partir de los sucesos cubanos la política pasa a mezclarse definitivamente con la cuestión agraria. El miedo inspirado por la Revolución y el fracaso de Playa Girón obligaron a Estados Unidos a imponer a sus aliados en la región unas seudoreformas agrarias a través del programa 'Alianzas para el Progreso' que fue lanzado en Punta del Este en 1961 (Alegrett 2003).

Los procesos reformistas que de allí en adelante se dieron fueron en su mayoría relativamente blandos, debido a que el propósito principal no era liquidar los sistemas agrarios existentes, sino estimular modificaciones para reducir la presión social y evitar que ésta se uniera a movimientos políticos de corte revolucionario.

El listado es bastante largo y un recorrido ideal podría empezar con la minimalista reforma de Alessandri en Chile en 1962, seguida por la Ley de Reforma Agraria de Frei Montalvo, que culminó en la profundización del proceso expropiatorio y reformador por parte del Gobierno del presidente Salvador Allende entre 1970 y 1973. En Perú se realizó una de las reformas agrarias más radicales de América del Sur. El Gobierno del general Juan Velasco Alvarado culminó en un ciclo que puso fin al largo periodo en el que las haciendas tradicionales organizaban la sociedad y la economía provincianas en gran parte del país. La radicalidad de la reforma es mejor apreciada si se considera que el 71 por ciento de las tierras de cultivo bajo riego, que habían sido de propiedad privada, fueron expropiadas y adjudicadas; lo mismo ocurrió con el 92 por ciento de las tierras de cultivo de secano y el 57 por ciento de los pastos naturales. El porcentaje de beneficiarios, sin embargo, no fue tan espectacular: alrededor de una cuarta parte de familias rurales (370 mil) (Eguren 2006).

En Perú se realizó una de las reformas agrarias más radicales de América del Sur

Como se puede ver se trató de procesos distintos, con visiones y modalidades diferentes en los distintos países. Los resultados de estas reformas son heterogéneos, ya se analicen bajo los aspectos económicos, sociales y/o políticos. Se recomienda la lectura del artículo de Kay (1998)

para hacerse una idea bastante objetiva y completa. Es opinión compartida entre los especialistas que se puede considerar cerrada la primera gran etapa de la reforma agraria en Chile tras el golpe militar de 1973.

Durante la 'década perdida[1]' de los años 80 la cuestión agraria perdió importancia en la región latinoamericana y en el mundo en general, a pesar de los esfuerzos realizados con la Conferencia Mundial sobre Reforma Agraria y Desarrollo Rural (CMRADR) celebrada en 1979 en Roma por parte de la FAO.

Durante los años 80 la cuestión agraria perdió importancia en la región latinoamericana

Sin embargo, es durante este mismo periodo que se gesta el proceso de reforma agraria que más ha marcado el imaginario colectivo en estas últimas décadas: el caso de Brasil. A partir de 1983, diversas entidades (Contag, CPT, Cimi) lanzaron una campaña nacional para la reforma agraria, hasta que el tema fue incorporado en el programa de campaña de Tancredo Neves en 1984 y al año siguiente, el nuevo presidente de la República José Sarney anunció el Primer Plan Nacional de Reforma Agraria, combatido duramente por parte de los grandes propietarios reunidos en la Unión Democrática Ruralista (UDR).

Emerge en este contexto el que será uno de los grupos más organizados en torno al tema agrario: el Movimiento de los Trabajadores Rurales Sin Tierra, más conocido como MST. Los movimientos sociales rurales de los años 80 y el MST en particular, se constituyen como un campo de resistencia política contra el orden social y asimismo contra las organizaciones formales de representación social que no los aceptan. "La resistencia, de esta forma, se caracteriza por un fuerte resentimiento, que busca amparo en la lectura de la Biblia [...]. El misticismo retorna como energía moral de los segmentos sociales que se sienten abandonados. De allí su nítido carácter autónomo, frente a los partidos políticos y a las estructuras formales de representación. De allí también un discurso inundado de simbología, la naturaleza teleológica (casi profética) de las consignas. De allí la preferencia por estructuras de

1 'Década perdida' es un término empleado para designar un periodo de estancamiento en un país o región. Se utilizó por primera vez en Gran Bretaña para designar al periodo de la posguerra (1945–1955). Se volvió a usar para describir la depresión económica de América Latina en la década de 1980. http://es.wikipedia.org/wiki/Decada_perdida consultada el 13 de agosto de 2010.

organización horizontales, el *asamblearismo* en la toma de decisiones, la fuerte desconfianza con relación a las instituciones públicas" (Ricci 2005).

La caída del Muro de Berlín en 1989 y la subsiguiente desaparición de la Unión Soviética provocaron unos cambios importantes en el tema. El reconocimiento de la existencia de un problema ligado a la concentración de la tierra por parte de organismos internacionales como el Banco Mundial estimula a varios países a retomar el interés por esta cuestión. La tierra es vista como un bien económico (dicho de otro modo: como un activo, algo que se puede valorar en términos monetarios) como cualquier otro y la modificación de las estructuras agrarias ya no son políticas de gobierno sino operaciones de mercado que hay que estimular para una mejor eficiencia económica. El ejemplo paradigmático es la modificación en 1992 del artículo 27 de la Constitución mexicana de 1917[2] que abre las puertas a las ventas de las tierras ejidales y rompe uno de los tabúes principales de la reforma agraria mexicana (Barahona 2002) .

El modelo propuesto va asumiendo una connotación bastante clara a pesar de los cambios continuos de nombre: 'reforma agraria negociada', 'community-based', 'community-managed', 'market-friendly' y 'market-assisted', 'market-led', 'market-based', 'willing-seller-willing-buyer', 'non-confiscatory' y finalmente 'decentralized land-reform' (Lipton 2009). Este modelo implica un papel central del mercado y uno muy secundario del Estado.

Por su parte, los movimientos campesinos vienen elaborando su propia visión del tema agrario: se vincula la cuestión de la distribución de la tierra al tema de la soberanía alimentaria, una visión del campo no solo como lugar de producción económica sino como tejido social, con énfasis en el papel del

Los movimientos campesinos vienen elaborando su propia visión del tema agrario: se vincula la cuestión de la distribución de la tierra al tema de la soberanía alimentaria

2 El símbolo más significativo de las corrientes neoliberales que azotan a América Latina ha sido el cambio en 1992 del artículo 27 de la Constitución mexicana de 1917, que había abierto el camino a la primera reforma agraria latinoamericana y que había consagrado a la petición de 'tierra y libertad' de los campesinos sublevados un papel principal. Antes de 1992 ningún gobierno se había atrevido a modificar este principio clave de la Constitución de México, pero las fuerzas de la globalización y del neoliberalismo demostraron ser demasiado fuertes y el gobierno se arriesgó a abordar la hasta ahora vaca sagrada (Randall 1996). La nueva ley agraria marca el final de las reformas agrarias de México. Permite la venta de la tierra de la zona y el establecimiento de empresas conjuntas con inversores privados incluyendo capitales extranjeros, indicando de ese modo el compromiso de México con el Tratado de Libre Comercio de América del Norte (TLCAN). C. Kay art. cit.

ser humano como actor principal de estos procesos, ya sea de tipo individual o ya sea preferentemente, de tipo cooperativo (IIAR 2006). El país en el que más se han acercado las posiciones entre movimientos sociales y gobierno en torno al tema agrario, a partir del final de los años noventa, ha sido Brasil.

Con la progresiva vuelta a la democracia en este país, se asiste a una general reconsideración de las políticas anteriores: refinanciamiento de la deuda agraria, tasas de interés preferencial para el crédito agrícola con exenciones de impuestos para ciertos rubros, fin del congelamiento de los precios agrícolas, devaluación de la tasa de cambio en 1999, restricción de importaciones de alimentos de países fuera del MERCOSUR y, fundamentalmente, el apoyo financiero creciente, en particular al sector de la agricultura familiar y el aumento relevante de los asentados durante la reforma agraria. Si nos limitamos al periodo 1994–2002 son casi 600 mil las familias asentadas, con un promedio anual de casi 75 mil familias (Guanziroli 2003).

A la creciente importancia del tema agrario en el gobierno de Fernando Enrique Cardoso corresponde un aumento de la violencia contra los líderes campesinos, como confirma la Comisión Pastoral de la Tierra (CPT)[3]: "en los últimos diez años, 8.082 conflictos violentos por la tierra han arrojado un saldo de 379 asesinatos (de líderes campesinos, sacerdotes, monjas, abogados)" (Sampaio 2005). El momento culmen fue abril de 1996 cuando en el municipio de El Dorado do Carajás, en el Estado de Pará, la policía militar estatal mató a 17 campesinos sin tierra.

Las repercusiones mundiales fueron muy fuertes, obligando al gobierno a acelerar sus políticas agrarias. Fue así creado un nuevo ministerio extraordinario para la política de la tierra y el recién elaborado Programa Nacional de Apoyo a la Agricultura Familiar (PRONAF) empezó a recibir recursos y apoyo político.

La victoria electoral de Lula y del Partido de los Trabajadores (PT), con un fuerte apoyo de los movimientos sociales, pareció señalar una victoria general de todos los que abogaban por el tema de la reforma agraria y esto no solo en Brasil.

3 www.cptnacional.org.br/index.php

Sin embargo, pocos meses fueron suficientes para que los movimientos sociales se dieran cuenta de que las condiciones eran mucho más complicadas y de que entre las promesas electorales y la realidad cotidiana había un mar que no cesaría de ampliarse en los años siguientes. En cierto modo, el caso brasileño es paradigmático de los cambios sucesivos: el tema de la reforma agraria, bandera del PT cuando era oposición, cobra una nueva dimensión, más moderada, una vez que el PT llega al poder: las articulaciones de fuerzas, las dinámicas de los mercados mundiales, la necesidad de mantener la 'confianza' de los inversores extranjeros, etc. Todos estos argumentos plantean una necesidad, difícil de admitir públicamente, de repensar a fondo el tema de la reforma agraria.

Desde los primeros días del nuevo gobierno se anunció la formulación de un nuevo plan de reforma agraria, pidiendo a un conocido especialista (un intelectual orgánico de los movimientos sociales, Plinio de Arruda Sampaio) que liderara este proceso. La propuesta proponía como objetivo asentar a 1 millón de familias en los 4 años de la Presidencia Lula, apuntando a un cambio de gran magnitud en la estructura agraria del país. A los pocos días de haber entregado este documento, el gobierno salió a presentar una versión que fue calificada inmediatamente de más realista ya que los objetivos se reducían sustancialmente: 400 000 familias hasta finales de 2006.

Los primeros años del gobierno Lula se caracterizaron por un aumento evidente de la conflictividad en el campo, principalmente en las zonas de agricultura más moderna (Mato Grosso, Goiás, Mato Grosso do Sul, Tocantins, sul do Maranhão, oeste de Bahía, norte de Espírito Santo). El agronegocio aumentó su peso dentro del nuevo gobierno, con el nombramiento del presidente de la Asociación Brasileña de Agronegocio, Roberto Rodrigues, como Ministro de Agricultura y de Luis Fernando Furlan, propietario de una de las mayores empresas brasileñas del sector agroindustrial, como Ministro de Desarrollo, Industria y Comercio. Finalmente, es en este periodo que se libera la plantación y comercialización de productos transgénicos, en particular la soja. (Porto-Gonçalves 2005).

Los movimientos sociales y el MST entre ellos, defendieron al comienzo esta versión realista, basándose en la difícil situación económica y en la

necesidad de mantener los acuerdos con el FMI. Sin embargo, poco a poco la situación cambió y las opciones del gobierno en materia agraria empezaron a provocar posicionamientos más críticos.

Si bien es cierto que los datos sobre la concentración de la tierra confirman una situación similar a la de los años 60, injusticia que los movimientos sociales quieren combatir en todos los países con consignas similares a "¡Reforma agraria ya!", también es evidente que el mundo agrario ha cambiado y que las relaciones sociales en el campo ya no son las mismas que 30 o 40 años atrás. Los procesos de 'modernización conservadora' han llevado a modificar las estructuras agrarias de varios países, no necesariamente a favor de equilibrios más democráticos, con lo que se necesita actualizar las reflexiones y el debate.

Es así como, poco a poco, se viene redescubriendo la necesidad de pensar o, más bien, de repensar la cuestión agraria en América latina y en el mundo. El primer momento clave fue el Foro Mundial de la Reforma Agraria 'Pascual Carrión[4]', organizado en 2004 por un Comité Internacional presidido por el CERAI[5] de España, con una amplia participación de la sociedad civil y de los movimientos campesinos internacionales. El segundo lo protagonizó la FAO, con el impulso de los gobiernos de Filipinas y Brasil, que organizó la Conferencia Internacional sobre Reforma Agraria y Desarrollo Rural (CIRADR) celebrada en Porto Alegre en 2006[6], veintisiete años después de la celebrada en 1979.

En ambos casos se trató de momentos de diálogo y de confrontaciones leales y abiertas, buscando elementos para reconstruir una agenda agraria dentro de las agendas de los gobiernos. El punto central de ambas reuniones fue el reconocimiento del carácter dinámico de estos procesos agrarios. Se constató la necesidad de actualizar el diagnóstico de este tema.

4 Ingeniero Agrónomo, redactor de La ley de Reforma Agraria promulgada en 1932 por la II República Española.

5 Foro Mundial sobre la Reforma Agraria (FMRA), http://www.fmra.org/

6 www.icarrd.org/sito.html

Se reconoció la existencia de factores dominantes, como es el caso de la economía de mercado y se puso de manifiesto la necesidad de aprender a competir internacionalmente, así como la emergencia de nuevos o, si se quiere, viejos actores que demandan una representación social de otro tipo: ya se trate de los pequeños productores familiares o las mujeres rurales, los pescadores artesanales y/o los pueblos indígenas.

LA APARICIÓN DE LA TERRITORIALIDAD Y LA PROGRESIVA PÉRDIDA DE VIGENCIA DE LA REFORMA AGRARIA

El tema de la reforma agraria siempre ha generado discusiones respecto a su definición conceptual, su política y sus resultados prácticos. Por un lado, encontramos partidarios de la necesidad de reformas radicales en las estructuras agrarias y por otro lado quien considera concluido (en la mayoría de los países de la región, no necesariamente en todos) el periodo histórico de implementación de dichas reformas y que prioriza la modernización de las explotaciones de todos los segmentos, especialmente de los más pequeños y de las filiales productivas.

Poco a poco se configura la idea de una reforma agraria no-agrícola. Es decir, la idea de una reforma que traiga consigo un conjunto de medidas que estimulen el empleo a través del apoyo a actividades sin relación con la agricultura. De allí viene surgiendo la discusión sobre el *rurbano* (fusión de normas de vida urbanas y rurales) llegando progresivamente al tema de la territorialidad. Este asunto estaba teniendo un auge importante en Europa, debido a la necesidad de repensar profundamente la política agrícola comunitaria y la cuestión de la territorialidad pasó a ser la nueva frontera del debate. Varios organismos internacionales empezaron a prestarle más atención y rápidamente pasó a formar parte del debate regional latinoamericano. El lanzamiento oficial podemos datarlo en 2002, año en que aparecieron las primeras publicaciones dedicadas a la cuestión de la territorialidad (Abramavay 2002, Echeverri y Ribero 2002, FAO 2002).

Viene surgiendo la discusión sobre el rurbano llegando progresivamente al tema de la territorialidad

La FAO participa en este debate a través de una propuesta, proveniente de los trabajos anteriores en materia de sistemas agrarios y de agricultura familiar, basada en los principios del diálogo y de la negociación (FAO 2005).

Las constataciones de la multifuncionalidad del paisaje agrario; de la competencia creciente por parte de numerosos actores procedentes de distintos horizontes y también de la emergencia de algunos nuevos; del aumento de los conflictos a causa de los recursos son las que han llevado a estimular una reflexión amplia, a partir de las acciones pasadas, con aportes internos y externos a la organización.

La visión que implica el Desarrollo Territorial Participativo y Negociado es que las estructuras agrarias de hoy no son las mismas que las de las décadas anteriores; es necesario "aprender haciendo" y frente a una inestabilidad general en el campo, generada por un conjunto de factores internos y externos, se necesita pensar en mecanismos de diálogo político donde las organizaciones campesinas, los pueblos autóctonos, las mujeres rurales, los pescadores artesanales, etc. sean reconocidos como agentes importantes en la búsqueda de nuevas articulaciones sociales que apunten a modificar las asimetrías de poder existentes.

Se necesita pensar en mecanismos de diálogo político donde el conjunto de actores locales sean reconocidos como agentes importantes en la búsqueda de nuevas articulaciones sociales

El punto de partida de esta visión está representado por lo que Mazoyer llamaría la evolución y diferenciación de los sistemas agrarios de los países hoy en día 'desarrollados' (Mazoyer y Roudart 2001), apuntando al papel central que la agricultura familiar tuvo en el proceso de acumulación capitalista de los países del Norte. En este sentido, es necesario estimular procesos de reforma agraria para mejorar la distribución de la tierra, aspirando a la creación de sectores de agricultura familiar que puedan competir en el mercado, valorando no solo la dimensión económica sino también la promoción de una visión agroecológica tal como la recomienda Altieri (2008).

Frente a estos planteamientos, se observa el mantenimiento de las consignas de los movimientos sociales sobre la necesidad de una reforma agraria, con un planteamiento que trata de incluir el conjunto de actores del campo y del mar (productores con pocas tierras o carentes de ellas,, pescadores, pueblos indígenas) con una vinculación muy estrecha al tema de la soberanía alimentaria. Es la posición expresada durante la CIRADR. Sin embargo, es bastante evidente que estos planteamientos no logran traducirse de forma masiva en agendas de gobierno, ni siquiera en aquellos que más simpatías muestran hacia los movimientos campesinos.

Es precisamente esto lo que me motiva a hablar de un repliegue de los movimientos y a una progresiva pérdida de vigencia del tema de la reforma agraria en la región latinoamericana en particular, para terminar con unas consideraciones personales a partir de los principios de la CIRADR.

CONCLUSIONES

La hipótesis que sostengo sobre la pérdida de protagonismo de los movimientos campesinos en estos años recientes está relacionada con la 'decepción' relativa a los pocos resultados obtenidos en aquellos países y con aquellos gobiernos que eran considerados más afines a sus problemáticas. Entre ser oposición y ser gobierno hay grandes diferencias y muchos de los sueños se transformaron en pesadillas, provocando una resaca de la cual no se han recuperado todavía. Estos han sido años en los que, por la presencia de un gran número de gobiernos progresistas en la región, era legítimo pensar que el tema agrario podría ser retomado a partir de perspectivas nuevas. Las lecciones de la modernización del agro chileno, bajo los Gobiernos de la Concertación, con su capacidad de unirse a los sectores empresariales con un fuerte empuje de la agricultura campesina, podían ser un punto de partida muy interesante, así como las experiencias cooperativas que varios movimientos estaban proporcionando en la parte de transformación y comercialización de la producción. La aparición del comercio justo, el nuevo interés por prácticas conservacionistas y la necesaria mayor disponibilidad política de los sectores conservadores podían ser todos elementos interesantes no solamente para el debate sino también para unas políticas más activas en la cuestión de la estructura agraria latinoamericana.

En cambio, las experiencias políticas de varios de esos gobiernos progresistas han resultado en un aumento de la disidencia de los movimientos campesinos e indígenas hacia sus representantes gubernamentales. Y es que en las décadas anteriores era más fácil para los grupos políticos de oposición recetar cambios estructurales puesto que de allí surgía la alianza natural con los movimientos sociales que articulaban esa lucha en el campo.

Pasar a tener responsabilidades de gobierno ha enfriado mucho los entusiasmos y casi ninguno de los gobiernos se ha atrevido a enfrentar estructuralmente el tema agrario. Los movimientos parecen ser más débiles y con poca capacidad para formar alianzas políticas que les permitan volver a ocupar un espacio central en el quehacer político gubernamental. Las luchas indígenas van por su lado y, a pesar de que hay elementos que muestran una cierta cercanía y alianzas tácticas con los movimientos campesinos, los caminos parecen ser divergentes todavía, al menos a medio plazo.

El escenario se presenta más complicado aún cuando consideramos el nuevo auge de la competición por la tierra a partir de la crisis alimentaria de un par de años atrás (Merlet 2010). El acaparamiento de tierras por parte de grandes poderes ya sean éstos de índole nacional o internacional, pública o privada, empieza a darse también en la región latinoamericana, con un modelo productivo de tipo extractivista, precisamente lo contrario a lo que consideramos necesario para estos países (GRAIN 2010). Si bien es cierto que las luchas y los conflictos locales continúan, la opinión pública está menos sensibilizada e incluso podría decirse que está cansada de esto.

No obstante, aunque el tema de la reforma agraria, particularmente en los moldes antiguos, no parece ya ser practicable ni prioritario para los gobiernos de la región, es cierto que sigue existiendo un problema, una cuestión agraria. En efecto, la búsqueda de competitividad en los mercados y la necesaria estabilidad política que los gobiernos quieren mostrar para atraer inversiones internacionales no pueden ocultar una situación de pobreza y miseria que padecen una gran cantidad de excluidos que, hoy en día, y esto sí que es diferente, pretenden entrar a participar en los mecanismos de toma de decisiones, ya se refieran a sus territorios locales o a niveles superiores, regionales y nacionales.

A partir de esta observación y de la constatación del riesgo de un posible aumento de los conflictos ligados a los recursos naturales, a las tierras y al agua, surge un mensaje de esperanza. Considero necesario que una sociedad organizada siga aspirando a "otro mundo"; hoy en día no es posible pensar en una gestión de los recursos naturales realizada fuera de interlocuciones con los actores locales. El lugar que las organizaciones campesinas se han

ganado como interlocutores de las demás fuerzas político-económicas debe ser mantenido y reforzado. Sin embargo, para reducir la fragilidad actual y transformar en algo estructural estos espacios de diálogo y negociación, parece necesario que los movimientos sociales miren hacia adentro con modestia, algo que no siempre los caracteriza. Ya no se puede aceptar que las fuerzas sociales, además de limitadas, se dividan en centenares de pequeñas fuerzas a veces más interesadas en lograr su propia visibilidad que en articular una plataforma común. Ha llegado el momento de decirse que no es posible continuar así. Unir fuerzas significa aprender a negociar unos intereses comunes, hacia una plataforma de verdadera colaboración.

También será necesario pensar en alianzas fuera de los sectores tradicionales con segmentos del sector privado y/o organismos internacionales. La agenda futura del tema de la tierra deberá articular muchas más variables que antes: no sólo luchar contra un reconcentramiento de la misma o contra el creciente acaparamiento (en otras palabras, el peso creciente que tienen las grandes cadenas de supermercados) sino preocuparse por la dimensión de género, ambiental, la calidad de los productos y finalmente por lo que significa para el ser humano relacionarse con su herencia, que se halla representada por sus paisajes y territorios, productores de cultura e historia.

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