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REVISTA SOBRE TENENCIA DE LA TIERRA

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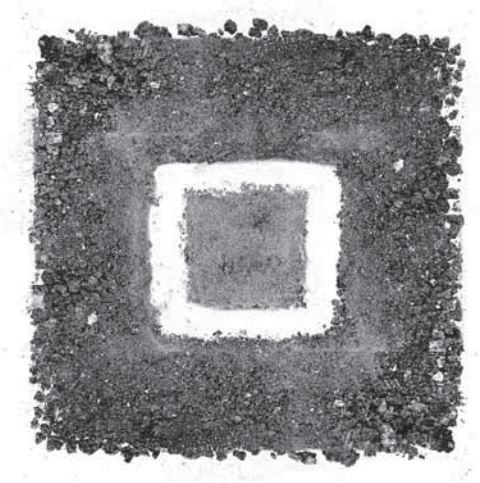

Preface

This edition of the *Land Tenure Journal* contains a diversity of articles ranging geographically from Moldova to French Polynesia, in scale from China to Sardinia, and in technical focus from land consolidation to how tenure of land and sea are linked. All of the articles reflect issues of governance of tenure, and all fall within the remit of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* that were negotiated and endorsed in 2012 under the Committee on World Food Security.

The articles deal, within this remarkable diversity, with many core issues of governance of tenure. Yongjun Zhao's paper on China's land tenure reform assesses recent developments in how land is dealt with in the rural areas of China and at experiments in dealing with land shareholding cooperatives. Ensuring that farmers' tenure rights are not eroded through weak participatory village governance, and recommending moving towards more inclusive models, are core governance of tenure issues. Huong Lan Nguyen's paper considers the case of land tenure security under the land laws of Viet Nam, in respect of the breadth,

Préface

Ce numéro de la *Revue des questions foncières* propose une série d'articles qui nous conduira de la Moldavie à la Polynésie française en passant par la Chine et la Sardaigne et abordera des thèmes allant du remembrement agricole aux liens entre les régimes fonciers applicables aux terres et aux mers. Tous ces articles portent sur la question des régimes fonciers et entrent dans le champ des *Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale*, négociées et approuvées en 2012 par le Comité de la sécurité alimentaire mondiale.

Dans le cadre de cette remarquable diversité, les articles abordent les questions essentielles de la gouvernance foncière. L'article de Yongjun Zhao, qui porte sur la réforme des régimes fonciers en Chine, évalue comment la prise en compte du facteur terre a évolué dans les zones rurales de Chine, notamment à travers la création de coopératives d'actionnaires fonciers. Ces initiatives montrent la volonté des agriculteurs de sécuriser leurs droits fonciers menacés par une gouvernance villageoise insuffisamment participative et la nécessité de s'orienter vers des modèles de gouvernance foncière plus inclusifs.

L'article de Huong Lan Nguyen se penche sur le cas de la sécurité foncière au Viet Nam, à travers

Prefacio

El presente número de la *Revista sobre tenencia de la tierra* contiene un variado conjunto de artículos que abarcan, desde el punto de vista geográfico, zonas que van de Moldova a la Polinesia Francesa; en cuanto a dimensiones, de China a Cerdeña, y, en lo relativo a la técnica agraria, de la concentración parcelaria a los vínculos entre la tenencia territorial y la tenencia marítima. Todos los artículos reflejan problemas asociados con la gobernanza y entran dentro del ámbito de las *Directrices voluntarias sobre la gobernanza responsable de la tenencia de la tierra, la pesca y los bosques en el contexto de la seguridad alimentaria nacional*, que fueron negociadas y aprobadas en 2012 bajo la égida del Comité de Seguridad Alimentaria Mundial.

No obstante su notable diversidad, los artículos tratan de muchos asuntos que están en el núcleo de la gobernanza de la tenencia. En su estudio sobre la reforma agraria china, Yongjun Zhao evalúa las formas actuales del manejo de las tierras rurales en China y los experimentos que han sido llevados a cabo en el campo del cooperativismo agrario participativo. La preocupación por velar por que los derechos de tenencia de los agricultores no sufran una erosión debida al menoscabo de la gobernanza participativa a nivel de la aldea y la recomendación de ir adoptando pautas de tenencia de tipo incluyente constituyen cuestiones que son centrales a la gobernanza agraria. El trabajo de Huong Lan Nguyen

duration and degree of assurance of farmers' rights. In particular, the paper assesses what improvements in security might be appropriate to encourage increased investment in agriculture in Viet Nam.

Looking more broadly at natural resources, and at participatory, negotiated, territorial based approaches to supporting resolution of conflict resulting from, inter alia, climate change, Ogola, Groppo and Abdul-Jalil describe the FAO approach to this in the context of the ongoing project in Darfur. Here, increased competition over, and restricted access to common natural resources, at the heart of the region's problems, are being addressed by bringing together different ethnic groups through dialogue and other peaceful conflict resolution mechanisms. Reflecting on the diversity of informal tenure relationships and the ways in which they are brought into formal land use regulations in Sardinia, Italy, Angela Cacciarru assesses how all of these different types of property relationships affect how land can be used.

Turning to the transitional economies and the inheritance of the land reform processes that started in the 1990's, a very common challenge is that of excessive land

un examen de la législation foncière de ce pays, en termes de portée, de durée et de sécurité des droits fonciers des agriculteurs. L'article propose un inventaire des améliorations de sécurité foncière susceptibles d'encourager de nouveaux investissements dans le secteur agricole du Viet Nam.

Avec un regard plus général sur les ressources naturelles, l'article d'Ogola, Groppo et Abdul-Jalil décrit l'approche de développement territorial participatif et négocié préconisé par la FAO, dans le cadre des projets en cours dans la région du Darfour, pour trouver des solutions aux conflits fonciers liés notamment au changement climatique. Dans cette zone, le cœur du problème réside dans une concurrence de plus en plus âpre sur les ressources naturelles communes et des restrictions de plus en plus sévères en termes d'accès à ces ressources. Les solutions sont recherchées par l'établissement d'un dialogue entre les divers groupes ethniques concernés et la mobilisation d'autres mécanismes pacifiques de règlement des différends.

L'article proposé par Angela Cacciarru s'intéresse à la question de l'utilisation des terres en Sardaigne, Italie, à travers un examen croisé des règlementations foncières formelles et des divers régimes fonciers informels et une évaluation des effets de ces divers types de propriété sur les modes d'utilisation des terres.

Les réformes foncières intervenues au cours des années 1990 dans

examina la problemática de la seguridad de la tenencia a la luz de la legislación vietnamita atendiendo a la amplitud, duración y grado de seguridad de los derechos de los agricultores. En particular, su artículo analiza las mejoras que habría que introducir en los mecanismos de seguridad de la tenencia para alentar una intensificación de las inversiones agrícolas en Viet Nam.

Con el objeto de proyectar una mirada más extensa sobre los recursos naturales y sobre los enfoques participativos, negociados y de carácter territorial de la resolución de unos conflictos que, entre otras causas, derivan de las alteraciones climáticas, Ogola, Groppo y Abdul-Jalil describen las iniciativas que la FAO ha desarrollado en este contexto en el proyecto actualmente en marcha en Darfur. Aquí, la competencia cada vez más aguda por los recursos naturales de aprovechamiento común y las limitaciones que plantea el acceso a esos recursos —factores que están en el meollo de los problemas que aquejan a la región— se están encarando por medio del diálogo entre los diferentes grupos étnicos y otros mecanismos de resolución pacífica de conflictos. Al reflexionar sobre las particularidades de la tenencia informal y sus relaciones, y las formas que acaba adoptando la reglamentación estructurada del uso de la tierra en Cerdeña (Italia), Angela Cacciarru da cuenta de cómo los diferentes tipos de propiedad determinan la modalidad de los usos que se puede dar a las tierras.

Pasando al tema de las economías

fragmentation. Hartvigsen, Gorgan and Palmer's paper takes up this story in Moldova, where they document the initiatives of the last decade, supported by finance from the World Bank, and by FAO, in a set of processes which has enabled consolidation to be offered through projects in almost 50 villages. Significant proportions of villagers have taken up the opportunity and benefited from this; and, at the national level, with FAO support, work is well progressed towards the finalisation of a national land consolidation strategy.

This edition's collection of papers is rounded off by Tamatoa Bambridge's case study on land and sea tenure in French Polynesia. While the paper maintains that the scientific literature on the Pacific treats land and sea tenures separately, for the Islanders themselves they have historically observed continuity between the two.

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les pays en transition ont souvent débouché sur un morcellement excessif des terres. L'article de Hartvigsen, Gorgan et Palmer examine le cas de la Moldavie, où des initiatives financées par la Banque mondiale et soutenues par la FAO ont permis, au cours de la dernière décennie, la mise en œuvre d'un programme de remembrement qui s'inscrivaient dans le cadre d'une cinquantaine de projets villageois. De nombreux villageois ont su saisir et bénéficier de l'opportunité ainsi offerte, et ce processus a permis, avec le soutien de la FAO, de progresser vers la finalisation d'une stratégie nationale de remembrement agricole.

Cette édition se conclut par une étude de cas portant sur les régimes fonciers terrestres et maritimes en Polynésie française, préparée par Tamatoa Bambridge. Cet article souligne que la littérature scientifique sur le Pacifique aborde de façon séparée les régimes fonciers applicables aux terres et aux mers, alors que les insulaires eux-mêmes considèrent qu'il existe une continuité historique entre ces deux formes de régimes fonciers.

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en transición y a la herencia de los procesos de reforma agraria, iniciados en el decenio de 1990, la excesiva fragmentación de las tierras constituye un reto muy común. Hartvigsen, Gorgan y Palmer examinan esta cuestión en Moldova, y documentan las iniciativas realizadas, con el apoyo financiero del Banco Mundial y de la FAO, durante la última década en un conjunto de procesos de consolidación parcelaria llevados a cabo en casi 50 aldeas. Una parte importante de la población ha aprovechado esta oportunidad y se ha beneficiado con las medidas de concentración; y a nivel nacional, y con el apoyo brindado por la FAO, los trabajos de consolidación parcelaria apuntan a una estrategia nacional que ya está en vías de finalización.

Remata la colección de monografías de este número el estudio de caso de Tamatoa Bambridge sobre la tenencia territorial y la tenencia marítima en la Polinesia Francesa. Aunque en el artículo se sostiene que la literatura científica sobre el Pacífico trata ambas formas de tenencia separadamente, para los propios isleños la tenencia territorial y la marítima han sido observadas, a lo largo de la historia, como una entidad dotada de continuidad.

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EXPERIENCES WITH LAND REFORM AND LAND CONSOLIDATION IN MOLDOVA

EXPÉRIENCES DE RÉFORME FONCIÈRE ET DE REMEMBREMENT AGRICOLE EN MOLDAVIE

EXPERIENCIAS SACADAS DE LA REFORMA AGRARIA Y LA CONSOLIDACIÓN DE TIERRAS EN MOLDAVA

ABSTRACT

LAND REFORM

RURAL LAND MARKET DEVELOPMENT

LAND FRAGMENTATION

LAND CONSOLIDATION

Land privatization in the Republic of Moldova was made feasible through the adoption of the Land Code in 1991. The land reform and post-land reform development has resulted in a polarized agricultural structure with an average land holding of 1.56 hectares, typically distributed in 3–4 parcels. In many cases the fragmentation of land parcels has prevented the land market from developing.

As a result of increasing political awareness of the problems, in 2004 the Government of Moldova requested assistance from the World Bank to address the situation. This led to a feasibility study and ultimately to the implementation of land consolidation in six pilot

RÉSUMÉ

RÉFORME FONCIÈRE

DÉVELOPPEMENT DES MARCHÉS FONCIERS RURAUX

MORCELLEMENT DES TERRES

REMEMBREMENT AGRICOLE

La privatisation des terres en république de Moldavie a été rendue possible grâce à l'adoption d'un Code foncier en 1991. L'application de la réforme foncière a généré une structure agricole polarisée, caractérisée par des propriétés agricoles d'une superficie moyenne de 1,56 ha, communément composées de 3 ou 4 parcelles. Le morcellement des exploitations a, en règle générale, freiné le développement du marché foncier.

Après une période de prise de conscience politique à l'égard de ces problèmes, le Gouvernement de Moldavie a sollicité l'assistance de la Banque mondiale. Cette démarche a conduit à une étude de faisabilité et plus récemment à une expérience

SUMARIO

REFORMA AGRARIA

DESARROLLO DEL MERCADO RURAL DE TIERRAS

FRAGMENTACIÓN DE TIERRAS

CONSOLIDACIÓN DE TIERRAS

La privatización de las tierras en la República de Moldava resultó de la adopción del Código agrario de 1991. La reforma agraria y los acontecimientos posteriores a ella dieron lugar a una estructura agrícola polarizada, en la que la tenencia promedio de tierras equivalía a una superficie de 1,56 hectáreas, generalmente distribuidas en tres o cuarto parcelas. En muchos casos, la fragmentación parcelaria ha impedido el desarrollo del mercado de tierras.

La siempre mayor sensibilización política acerca de los mencionados problemas hizo que, en 2004, el Gobierno de Moldava solicitase la asistencia del Banco Mundial para hacer frente a esta situación. Ello condujo a la realización de un estudio de factibilidad y, en último término, a

villages; this was then scaled up to an additional 40 villages.

The six pilots were implemented during 2007–2009. In total, more than 7 000 landowners and almost 27 000 agricultural parcels were identified in the six pilot villages. Of these more than 2 900 (40 percent) participated in the project through land transactions. The scheme was completely voluntary.

During 2009–2010, the activity was scaled up with 40 new projects. A total of 7 520 hectares changed ownership, and around 2 600 hectares were transferred through long-term leases. About 25 percent (12 795) of all owners participated in the project.

In 2010, the Government of Moldova requested FAO to support the preparation of a national land consolidation strategy. The plan is for this strategy to be implemented through a national land consolidation programme. In January 2013 it was expected that the land consolidation strategy would be adopted by the Government in mid-2013 as part of a general strategy for agriculture and rural development.

pilote de remembrement agricole dans six villages, étendue par la suite à 40 autres villages.

Le remembrement agricole dans les six villages pilotes a été réalisé entre 2007 et 2009. Plus de 7 000 propriétaires fonciers et 27 000 agriculteurs y ont été identifiés. Parmi ceux-ci, plus de 2 900 propriétaires (soit 40 pour cent) ont participé au projet, à travers des transactions foncières. Tous étaient totalement volontaires.

Au cours de la période 2009-2010, les activités ont été étendues à 40 nouveaux projets. Un total de 7 520 ha a changé de propriétaire et près de 2 600 ha ont été transférés à travers un système de baux à long terme. Près de 25 pour cent des propriétaires (12 795) ont participé au projet.

En 2010, le Gouvernement de Moldavie a demandé l'assistance de la FAO pour la formulation d'une stratégie nationale de remembrement agricole susceptible de se traduire ensuite par un programme national de remembrement agricole applicable à l'ensemble du pays. En Janvier 2013, il était prévu que la stratégie de remembrement agricole serait adoptée par le gouvernement à la mi-2013 dans le cadre d'une stratégie générale de l'agriculture et du développement rural.

acciones de consolidación de tierras en seis aldeas piloto. Posteriormente, el plan de consolidación abarcó 40 aldeas adicionales.

La consolidación de tierras en las aldeas piloto fue llevada a cabo entre 2007 y 2009. Se determinó que en ellas había más de 7 000 propietarios y casi 27 000 parcelas agrícolas, y que más de 2 900 propietarios (40 por ciento) participaban en el proyecto por medio de transacciones de tierras. El plan era completamente voluntario.

Durante los años 2009 y 2010, la actividad de consolidación fue incrementada con otros 40 nuevos proyectos. Una superficie total de 7 520 hectáreas cambió de dueños, y alrededor de 2 600 hectáreas fueron transferidas por arrendamiento a largo plazo. Aproximadamente el 25 por ciento (12 795) de todos los propietarios participaron en el proyecto.

En 2010, el Gobierno de Moldava pidió a la FAO apoyar la preparación de una estrategia nacional de consolidación. El plan consiste en aplicar la estrategia consolidación de tierras mediante un programa nacional. En enero de 2013 se esperaba que el Gobierno hubiese adoptado la estrategia consolidación de tierras a mediados de 2013 como parte de una estrategia general para la agricultura y el desarrollo rural.

INTRODUCTION

Most countries in Eastern Europe have been through a remarkable process of land reform that resulted in a complete shift from collective or state ownership of agricultural land to private ownership. The majority of these reforms were carried out in the 1990s and started with the transition from a command economy to a market economy. Land was privatized in different ways. In some countries, e.g. the Baltic states, privatization took the form of restitution to owners or their heirs of land that had been registered before the Second World War. In other countries, e.g. Albania, Armenia and Moldova, privatization was implemented through an equitable distribution of land parcels. In yet other countries, e.g. Ukraine and Russia, agricultural land was privatized by distributing to farm workers 'ideal' or 'equivalent' shares (i.e. undivided shares) with the land often continuing to be used by large-scale agricultural enterprises. All of these reforms were essentially driven by considerations of political justice. In some countries they were also driven by the need to rapidly allocate agricultural land to rural households in order to address problems of food security after the collapse of collective and state farms.

Most countries in Eastern Europe have been through a remarkable process of land reform

This paper describes the land reform process undertaken by Moldova, the land fragmentation that resulted, and recent efforts to address fragmentation through the introduction and development of a land consolidation instrument.

LAND REFORM IN MOLDOVA AND ITS OUTCOMES

The Republic of Moldova is situated in Eastern Europe between Romania and Ukraine. It was part of the Soviet Union and declared its independence in August 1991. During the Soviet era all agricultural land was state-owned (World Bank, 2005). Land was used for large-scale farming in collective or state farms and typically organized with one large farm per village.

Land privatization

Land privatization was made feasible through the adoption of the Land Code in 1991 and the Law on Peasant Farms (Csaki and Lerman, 2001). The Land Code set out the principles and processes for privatization and distribution of agricultural land. Meanwhile the Law on Peasant Farms provided the legal tools for establishing individual private farms by allowing people to exit from collective farm enterprises. In accordance with articles 6 and 12 of the 1991 Land Code, village land commissions were established to determine 'equivalent' land shares for eligible recipients, such as members and workers of collective and state farms. Eligibility extended to administrative and professional staff, teachers, social workers and pensioners. One of the first activities was to determine the land fund subject to privatization, and the village land commissions played a central role. The exact size of the land fund for all of Moldova's villages was established by Government Decree number 469 in 1994.

Land privatization was made feasible through the adoption of the Land Code in 1991

The 1991 Land Code (article 13) provided for the preparation of 'land arrangement projects' to distribute the state-owned agricultural land to the rural population. These privatization projects were approved by local councils of the *primarias* (i.e. municipalities) upon the recommendation of the village land commissions, after taking into consideration the opinions of the owners of land shares. The local councils authenticated the distribution of property rights for the equivalent shares of land and issued land titles for land shares. Initially, the provisional land titles did not indicate the exact location of parcels and eligible persons were not allocated physically distinct parcels. According to the Land Code, the owners of the land shares had the right to withdraw from the collective farms and establish individual farms. In this situation, distinct physical land parcels were allocated.

Administrative support for land privatization was relatively weak and in many cases the management of collective and state farms worked against the process. Between 1992 and 1996, less than 10 percent of members of collective farms had left and those that had were trying to farm individually, often without any equipment (East-West Management Institute, 2001). As such, despite the early start, land reform in Moldova advanced very slowly until 1996 when the Constitutional Court removed legislative constraints (Csaki and Lerman, 2001).

Moldova's land reform was heavily influenced by donors. The National Land Programme, funded by USAID, was launched in 1997 following two privatization pilot projects. Land arrangement projects for privatization were finally prepared and implemented using the procedure set out in the 1991 Land Code, but only after resolving the issue of outstanding farm debts. The new owners each received parcels of 'equivalent soil quality' rather than of equal surface area, i.e. allocations of land with good soil quality were smaller than those for less fertile soils.

The National Land Programme ended in 2001 and resulted in the privatization of 1 004 collective and state farms (East-West Management Institute, 2001). More than 98 percent of agricultural land subject to privatization (around 1.7 million hectares) was distributed to almost 1.1 million new owners, each with an average land holding of 1.56 hectares (Consulting and Credit in Agriculture (CCA), 2003). Moldova was relatively unusual among transition countries in that a husband and wife (for example) would each receive land parcels, rather than the household.

More than 98 percent of agricultural land subject to privatization (around 1.7 million hectares) was distributed to almost 1.1 million new owners

A land registry, the Agency for Land Relations and Cadastre, was established during the implementation of the National Land Programme with headquarters in the capital, Chisinau, and branch offices in each *raion* (i.e. administrative region). The parcels distributed during the privatization process have in most cases been registered.

The land reform in the 1990s and post land reform development has resulted in a polarized agricultural structure. A duality now exists: with a relatively small number of large corporate farms at one extreme and a large number of very small and fragmented family farms at the other. While smallholders operate some 99.5 percent of farms, they farm less than 39 percent of the total utilized agricultural area. Their farms average around one hectare compared with an average of almost 250 hectares for the larger operators, who are often farming on leased land (National Bureau of Statistics, 2011). Medium-sized family farms that are the backbone of the agricultural structures in most Western European countries are almost completely absent in Moldova.

Land fragmentation as a side effect of land reform

As elsewhere throughout Eastern Europe, land fragmentation occurred in Moldova as a side effect of the land privatization process. During the implementation of the National Land Programme the issue of land fragmentation was raised politically, and in 1998 the Land Code was adjusted to minimize fragmentation (Consulting and Credit in Agriculture (CCA), 2003). From that stage on, the equivalent land share was to be allocated in not more than three physical parcels – i.e. of arable land, vineyard and orchard – depending on the situation in the village. The level of land fragmentation after the privatization process varies considerably from village to village: new owners were almost always allocated three parcels officially, but they often received more. In some villages the persons eligible for land requested up to 12 parcels, e.g. to have orchards with different types of fruit trees.

Land fragmentation occurred in Moldova as a side effect of the land privatization process

The level of fragmentation today remains almost the same as when the privatization process ended around 2000. Figure 1 shows the level of land fragmentation for the different *raions*. For each *raion*, a land fragmentation index, i.e. number of parcels per hectare, is calculated by dividing the total number of agricultural parcels – including arable land, orchards and vineyards – by the total area of agricultural land. The level of fragmentation is highest in the central part of Moldova.

The extent to which land fragmentation obstructs agricultural and rural development differs from one country to another and a general analysis of the underlying circumstances is beyond the scope of this paper. In the case of Moldova, the small and fragmented farms – e.g. farms of one hectare divided into 3–4 parcels – are widely recognized as a significant barrier for the vast numbers of small-scale family farmers. These farmers live with the daily problem of additional costs and inconvenience caused by fragmentation.

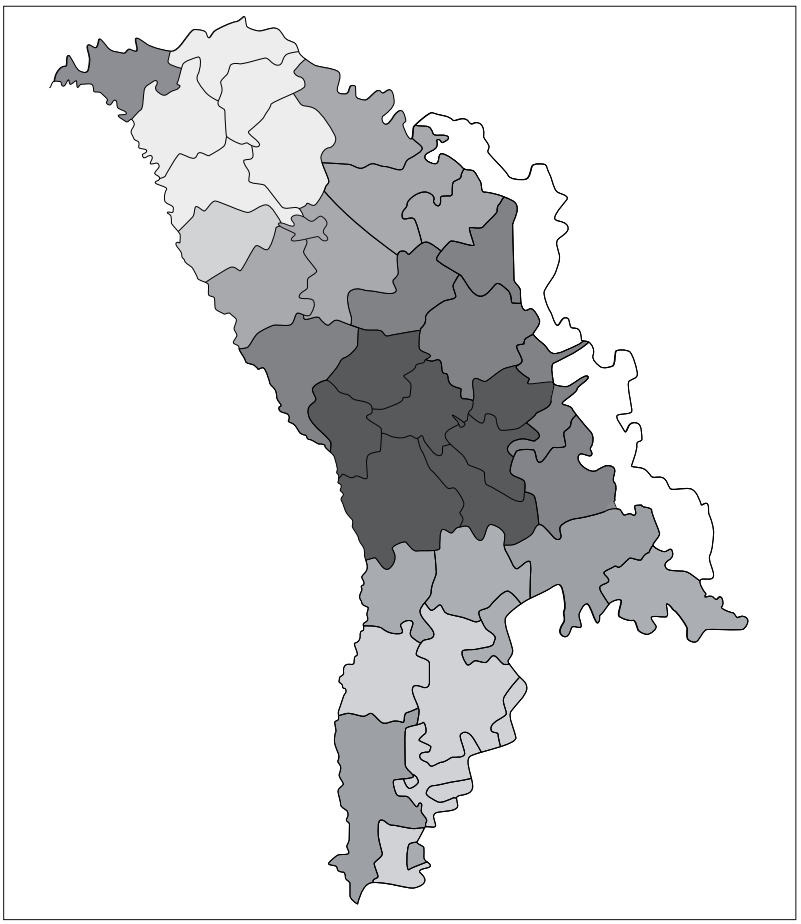


Figure 1
Land fragmentation in the Republic of Moldova
Land fragmentation level in *raions*

Source: Adapted from "Calculations by the authors based on data from the 2011 General Agricultural Census, National Bureau of Statistics of the Republic of Moldova"

Development of the agricultural land market

Starting in 1997, legislation permitted the selling and buying of parcels and the agricultural land market has gradually developed from a very low base. Table 1 presents data on sales transactions for agricultural land during the period 1999–2008. In 1999, 1 933 sales transactions were registered, transferring a total of 232 hectares. A decade later in 2008, 72 000 sales transactions took place and resulted in the transfer of ownership of 12 911 hectares (Botnarenco, 2009). A total of nearly 40 000 hectares of agricultural land was sold in almost 400 000 land transactions during the period 1999–2008.

Table 1

Sales transactions for agricultural land 1999–2008

(1 US$ equals 12 MDL as of March 2012)

	NUMBER OF TRANSACTIONS	TOTAL AREA OF TRANSACTIONS (HA)	AVERAGE TRANSACTION (HA)	AVERAGE PRICE PER HECTARE (MDL)
1999	1 993	232	0.12	3 364
2000	9 753	1 268	0.13	3 100
2001	24 625	2 336	0.09	2 928
2002	27 759	2 682	0.10	3 781
2003	49 165	3 595	0.07	3 733
2004	44 134	3 201	0.07	8 001
2005	47 382	3 250	0.07	9 040
2006	51 483	3 773	0.07	11 000
2007	65 000	4 697	0.07	12 104
2008	72 000	12 911	0.17	10 301
MEAN PRICE 1999–2008	393 294	37 945	0.10	6 735

Source: Botnarenco, 2009

The average size of land in one transaction has been stable at about 0.1 hectares throughout that period. Despite this development in the land market, the land sold in this ten-year period is only 2 percent of the total agricultural land in Moldova (Cimpoies et al. 2009).

In many cases the fragmentation of land parcels has prevented the land market from developing, on account of the high transaction costs and the practical constraints of the interested buyers. For example, these buyers sometimes need to deal with hundreds of owners, especially in the case of areas involving orchards and vineyards where parcels are sometimes as small as 0.1 hectares.

In many cases the fragmentation of land parcels has prevented the land market from developing

INTRODUCTION OF LAND CONSOLIDATION IN MOLDOVA

As a result of increasing political awareness of the problems experienced by small and fragmented farms, in 2004 the Government of Moldova requested the World Bank to assist in addressing the situation. This request led to a feasibility study, and ultimately to the implementation of land consolidation schemes in six pilot villages, later scaled up to an additional 40 villages.

The Government of Moldova requested the World Bank to assist in addressing the situation

Feasibility study

At the request of the Government of Moldova, the World Bank funded a feasibility study with the objective of providing recommendations on pilot land consolidation activities, based on voluntary participation by the beneficiaries, in order to create more efficient smallholdings. The feasibility study was carried out during 2005–2006 by a team of Danish land consolidation experts and included a background report (Hartvigsen and Haldrup, 2005) and an appraisal report (Hartvigsen *et al.*, 2006), leading to the design of a land consolidation pilot project. Based on the experience of the team with pilot projects in several Eastern European countries (for example, Lithuania, Armenia and Serbia), and also on FAO guidelines (FAO, 2003), a pilot project with three main components was proposed:

1. simultaneous implementation of land consolidation pilots in six locations
2. capacity building
3. monitoring and evaluation.

The main stages proposed for the pilot project are illustrated in Figure 2.

The feasibility study led in 2006 to a request by the Government of Moldova to the World Bank and the Swedish Development Agency (SIDA) to fund the implementation of the Moldova Land Re-parcelling Pilot Project as part of the Rural Investment and Services Project II (RISP-II). FAO participated with the World Bank in the supervision of the pilot project.

Following a tender process, the project was implemented during the period July 2007 to February 2009 by an international consortium consisting of Niras AB (Sweden), Orbicon A/S (Denmark), ACSA (Moldova) and Terra Institute (United States of America). All project costs were covered by World Bank / SIDA funds.

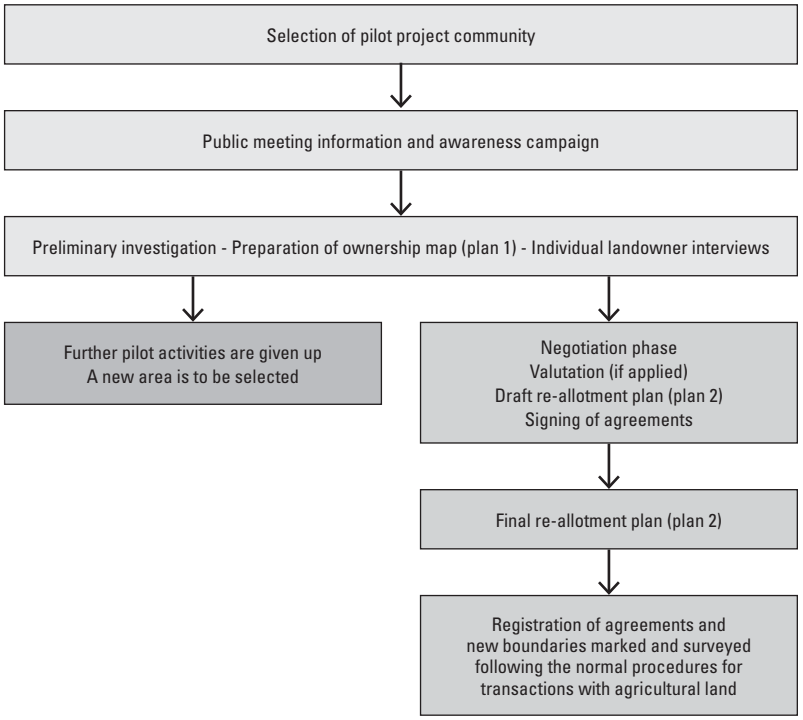


Figure 2
Main stages of land consolidation pilots proposed in feasibility study in 2006
(Land Consolidation Pilot Project for six villages)

Source: Adapted from Hartvigsen *et al.*, 2006

The specific objectives of the pilot project were to (Hartvigsen, 2007):

1. test the demand and feasibility of land consolidation with small landowners as the primary target group;
2. use the pilot experience as the basis for designing a potential national-level approach, including techniques, resource requirements and a legislative framework;
3. assess the impact of land consolidation at the local level, including on land markets, agricultural production and equity.

The project had three main phases:

Phase 1 – Preparation for land consolidation planning
Phase 2 – Land consolidation planning
Phase 3 – Registration and implementation of signed agreements.

The first activity was to select the six pilot villages using a list of 17 selection criteria proposed in the feasibility study (Hartvigsen and Haldrup, 2005). Among the most important criteria were:

- the existence of family farms with the potential for commercial farming and willingness to enlarge their farm size and amalgamate parcels;
- high fragmentation of land parcels;
- a small number of absentee owners and of parcels with problems of inheritance (i.e. where the registered owner was deceased);
- a small number of registration problems arising from the land reform process;
- initiative and commitment from the mayor and local council;
- availability and capacity of the secretary of the local council to provide some notarial services.

A list of 100 candidate villages was prepared by the Ministry of Agriculture and Food Industry (MAFI). Using the selection criteria the contractor and MAFI developed a shortlist of the 20 most suitable villages. They did this via an assessment whereby each village was allocated points depending on how it matched the selection criteria (Hartvigsen, 2007). The 11 villages with the highest scores were visited; finally the six most appropriate villages were selected (see Figure 3).

Figure 3
Location of selected pilot villages
Moldova Land Re-parceling project

The contractor established a project organization with a project team of three national consultants and a land consolidation planner in each of the six pilot villages. These team members were employed through ACSA, the local partner in the consortium. The agricultural advisory service in Moldova is to a large degree operated by ACSA, and its network of consultants became available for the project implementation. The local team was supported by an international team of five experts from Orbicon and Terra Institute.

A training programme was developed at the start of the pilot project (Hartvigsen, 2007). It included a series of five training seminars, each seminar covering the activities that should occur in the following months, and ongoing supervision by the national and international consultants. The training was based on land consolidation training materials divided into 12 units outlined via a text and slide presentation, prepared by FAO based on experience gained from projects in Lithuania and Armenia (FAO, 2006). Around 60 people from relevant stakeholder institutions participated in the training programme.

A public awareness campaign was prepared and included the following elements:

- A project brochure was prepared and disseminated in the pilot villages (see Figure 4).
- Three community workshops were organized in each pilot village.
- A project web site was created and maintained during the life of the project.
- Information tailored to the needs of specific landowners and/or farmers was given during interviews and negotiations with them.

At the first community workshop in each of the six villages in October 2007, a local stakeholder committee was elected among and by the workshop participants. These committees were essential to ensure a participatory and bottom-up approach, representing the general interests of the different groups of stakeholders. During the project the local project teams and the local committees met regularly. The committees participated in the land valuation process and in some cases also helped to facilitate the negotiations between landowners and/or farmers.

Another early step was the preparation of ownership maps (referred to as 'Plan 1'), which showed all agricultural parcels in each of the six villages. These maps were based on official data from the land register, such as cadastre maps and registry information on ownership, parcel size and land use. The local teams initially prepared analogue maps; later in the process digital maps were created using GIS software. In total, more than 7 000 landowners and almost 27 000 agricultural parcels were identified in the six pilot villages.

In total, more than 7 000 landowners and almost 27 000 agricultural parcels were identified in the six pilot villages

The next step was to investigate interest in and desire for the land consolidation project on the part of landowners and/or farmers. An interview

form was prepared and the process of interviewing all owners of agricultural parcels in the six villages began. For four months between December 2007 and March 2008, interviews were held with more than 6 000 landowners, representing 83 percent of all landowners (Hartvigsen, 2008).

Figure 4
Brochure given to landowners and local stakeholders

MINISTRY OF AGRICULTURE AND FOOD INDUSTRY

What can the land re-parceling offer to you?

Small and fragmented parcel

The Moldova Land Re-Parceling Pilot Project was started on 1. August 2007 and will run until 1. February 2009. The main aim of the project is the development of family farms in the villages. The project is implemented by an international consortium led by Niras AB in Sweden in cooperation with the Moldovan Ministry of Agriculture and Food Industry.

The main activity of the project is to carry out land re-parceling projects in six selected pilot communities:

- Busauca, Rezina
- Sadova, Calarasi
- Bolduresti, Nisporeni
- Calmatui, Hincesti
- Opaci, Causeni
- Baimaclia, Cantemir

The six villages were selected after a thorough process and based on a list of 100 candidate villages.

Participation in the project is open for all landowners, farmers and other local stakeholders in the six pilot communities and for all other relevant stakeholders.

Voluntary participation

During the land privatization in the 1990ties, most people living in the villages in Moldova were allocated 3-4 land parcels (arable land, orchard and vineyard), in total typical 1-3 hectares of land. The main purpose of the project is to contribute to local agricultural development through a more rational use of the land and enlargement of the land parcels. Participation in the project is completely voluntary.

Therefore, ask yourself:

What can the re-parceling project offer to me?

The answers will be individual based on the situation, possibilities and wishes of the individual landowners and farmers in the six project villages.

The data collected during the interviews were analysed and a report was prepared for each of the villages to describe the agricultural structure and production. A land mobility map – i.e. a map showing the parcels for which landowners had indicated their willingness to sell or exchange – was also prepared for each village (see Figure 5).

A total of 49 percent of the interviewed landowners indicated that they were willing to participate through the selling, buying, exchanging and/or leasing of land parcels (see Table 2). The interest demonstrated by landowners in participating varied from 33 percent in Opaci to 67 percent in Bolduresti. The interview forms – which gathered information such as land use and agricultural production and the interest of each landowner – were combined with the ownership map (referred to as 'Plan 1', see Figure 6) and the land mobility map. The combined results would give the local project teams a good platform for facilitating the detailed negotiations between the landowners and/or farmers in the second phase of the project.

The methodological approach of the pilot project placed land consolidation in an integrated rural development context. A community area development plan was prepared for each village by the project team in close cooperation with the residents and their elected leaders. Three workshops were organized in each village to prepare and discuss the draft development plans. The exercise

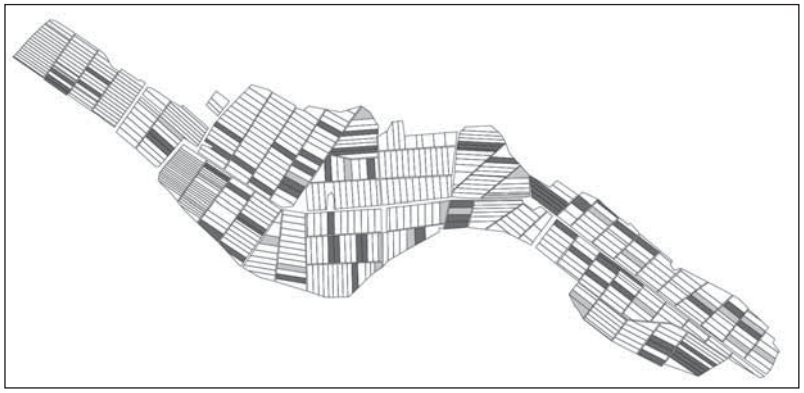


Figure 5
Land mobility map for part of Sadova village

Table 2
Final results of the Pilot Project

FINAL STATUS OF PROJECT	BUSAUCA PILOT SITE	SADOVA PILOT SITE	BOLDURESTI PILOT SITE	CALMATUI PILOT SITE	OPACI PILOT SITE	BAIMACLIA PILOT SITE	TOTAL IN ALL PILOTS
Total number of registered agricultural land parcels	3 011	5 922	6 006	2 022	5 626	4 204	26 791
Identified number of landowners	708	1 319	1 786	635	1 762	1 048	7 258
Number of landowners willing to participate based on interviews carried out November 2007 – March 2008	426 (60%)	535 (41%)	1 202 (67%)	286 (45%)	589 (33%)	540 (52%)	3 578 (49%)
Number of signed re-parcelling agreements	438	510	1 130	575	250	549	6 502
Number of transactions (buying–selling, exchange and heritage) fully registered as of 28 February 2009	907	350	1 197	440	473	245	3 612
Number of reimbursed transactions	773	350	1 180	410	450	160	3 323
Total area with changed ownership (hectares)	496	93	371	224	283	309	1 776
Number of parcels leased through the project	80	0	150	80	70	30	410
Total area leased through project (hectares)	40	0	100	21	91	50	302
Total number of parcels participating in the project (change of ownership + lease)	987	350	1 347	520	543	275	4 022
Total number of participating landowners	578	240	1 270	430	240	150	2 908
Total number of participating landowners (%) of all identified landowners	82%	18%	71%	68%	14%	14%	40%

Source: Hartvigsen, 2009

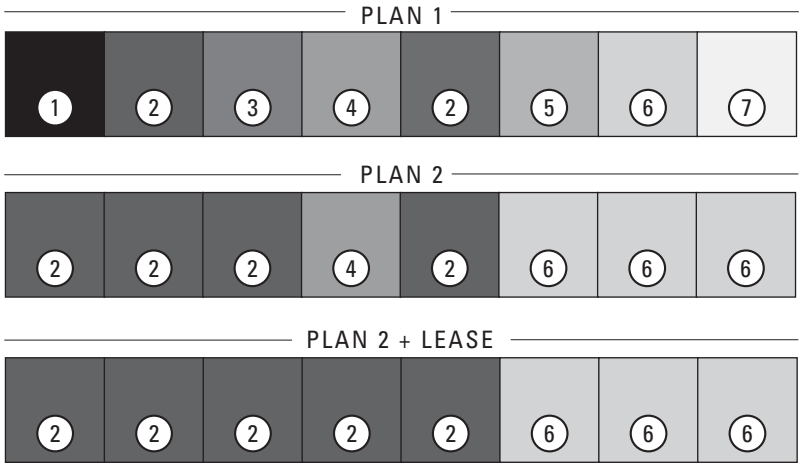


Figure 6
Land consolidation process
First change of ownership, then lease as supplement

Source: Adapted from Hartvigsen, 2009

gave consideration to agricultural issues, local infrastructure, social issues and other issues of local importance. One of the results was a catalogue of local development initiatives to be implemented. The pilot project had funding only for the re-parcelling itself, but in some cases the national and local project teams were successful in assisting the villages to find funding for the implementation of their development plans.

In the second phase of the pilot project the local teams, supported by national and international consultants, facilitated a process of negotiation and land consolidation planning between the landowners and/or farmers in the six villages. The objective was to assist participants in identifying the best possible options for re-allotment, and to represent the results on a re-allotment plan (referred to as 'Plan 2', see Figure 6). Each village was divided into sub-areas that were bounded by roads or channels. This was necessary in order for the local project teams to have an overview of the situation and to manage the re-allotment process, as in some cases there were over one thousand interested landowners. For each sub-area the design goals for the re-allotment planning were defined by the local project team in cooperation with the elected committee of stakeholders.

For example, a sub-area where a number of landowners wanted to sell their parcels might be considered a location of interest for landowners who wished to consolidate and enlarge their holdings.

A land valuation exercise was conducted as part of the land consolidation planning to find the market price for each parcel offered for sale or exchange. For each of the defined sub-areas, a market value per hectare was estimated. This value was subsequently used as the basis for the negotiations between landowners and/or farmers, which were facilitated by the project teams.

The project aimed first to do as much as possible to improve the ownership structure and then to facilitate long-term lease agreements as a supplement. The process is illustrated in Figure 6.

When an agreement on selling, buying or exchanging agricultural parcels was finalized with each stakeholder, an agreement form was completed outlining the relevant information and conditions, and this was signed by the landowner (see Figure 7).

Figure 7
The first land consolidation agreement being signed in Calmatui village in April 2008

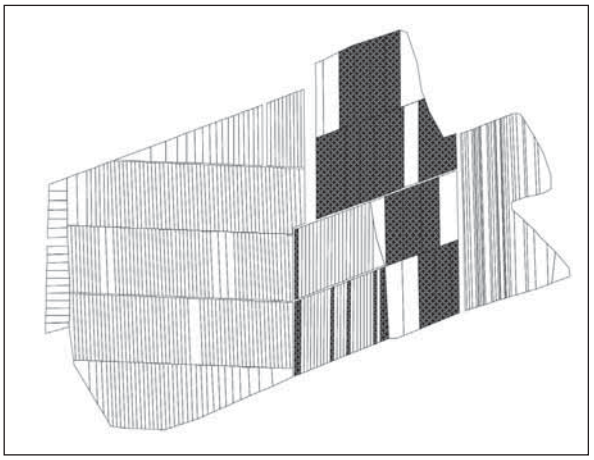
Source: M. Hartvigsen

Box 1

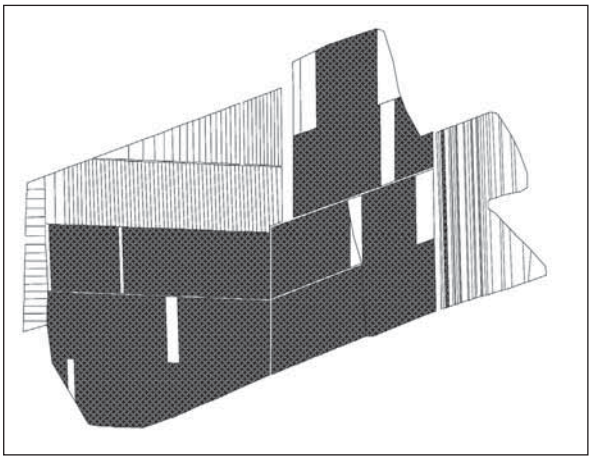
Land consolidation and the promotion of agricultural development

Bolduresti is a typical Moldovan village, with old, unproductive orchards. Before the pilot project started, a local farmer wanted to acquire about 30 hectares in order to establish a new orchard. As the parcel sizes created for orchard areas during the land reform were small, the area identified had 124 individual owners. The farmer managed to acquire an area of about 10 hectares by purchasing a number of parcels with an average size of about 0.7 ha. However, the remaining area comprised parcels as small as 0.14 ha, and the high transaction costs and time constraints of dealing with a large number of owners caused the farmer to give up.

SITUATION **BEFORE THE PROJECT** (**PLAN 1**)



SITUATION **AFTER THE PROJECT** (**PLAN 2**)



Through the pilot project, the farmer was able to acquire and consolidate another 15 hectares of unproductive orchard in a relatively short period of time. This involved purchasing approximately 110 parcels from about 80 landowners. After the finalization of the pilot project the farmer continued to purchase parcels in his area of interest and in 2009 he planted a new plum orchard on the consolidated land.

In total, 2 908 landowners or 40 percent of all landowners in the six villages participated in the voluntary land consolidation pilot project. Three villages were very successful, with the other three being less so. The participation rate varied considerably from 14 percent in Opaci and Baimaclia to 71 percent in Bolduresti and 82 percent in Busauca. In total, 1 776 hectares changed owners through the project, which has been one of the largest land consolidation pilot projects in Eastern Europe so far.

An example of the land ownership structure in a small part of one village before the pilot project (i.e. Plan 1) and after it (i.e. Plan 2) is shown in Figure 8. In this example most of the parcels in this part of the village were purchased and consolidated by a few local farmers. As outlined in the box above, land consolidation can be an efficient tool to stimulate rural land markets in situations where the high level of fragmentation, particularly in areas with very small parcels, hinders market transactions. The 'frozen' land market was warmed up.

In total, 2 908 landowners or 40 percent of all landowners in the six villages participated in the voluntary land consolidation pilot project

AREA A - **PLAN 1**

AREA A - **PLAN 2**

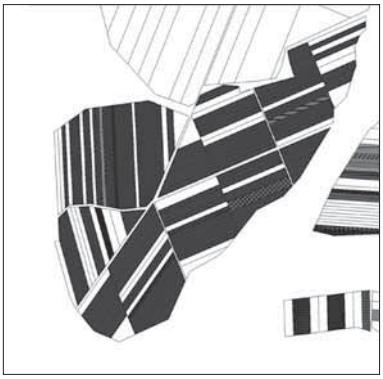


Figure 8
Land ownership in part of Bolduresti village before (left) and after (right) the project

The third and final phase of the project was to register and implement the land transactions agreed between the landowners and/or farmers. Simplified procedures for simultaneous registration were developed following the provisions in the 1991 Land Code. These further built on the simplified procedures already developed under the Land Privatization Support Project 2003–2006 funded by USAID (Hartvigsen and Haldrup, 2005). The simplified procedures allowed the secretary of the local council to perform some of the duties normally conducted by notaries. This speeded up the procedure and reduced transaction costs.

The land transactions started in June 2008 in those sub-areas of the villages where work on the re-parcelling plan had been undertaken. Only transactions that improved the parcel structure were funded under the project. In total, 3 612 land transactions were conducted (Hartvigsen, 2009). Despite the use of the simplified transaction procedures, some of the transactions were complicated and time consuming. Among these were so-called 'inheritance cases' in which the person registered as the owner in the land register had passed away, but transfer to their successor had not yet been registered. The process for registering the heir is relatively long and involves notaries, but it is a strict requirement before any transaction can take place. The pilot project dealt with almost 600 such cases. Many of these were in Opaci and this was one of the reasons for relatively weak results in that village. In addition, all six pilot villages had a number of problems with the registration of parcels in the land register. In Sadova, one of the less successful villages, large areas had not been registered during the land reform and the problem could not be addressed in the limited project period. Thus, the owners of these unregistered land parcels were excluded from participating. As a result, a recommendation of the pilot project was that future land consolidation projects should roll out over a longer period, such as 2½–3 years, in order to resolve registration and other problems.

Impact assessment of the pilot project

The evaluation of the pilot project was part of the concept of the earlier feasibility study. After a tender procedure, Agrex, a Moldovan consultancy, together with an international team leader, carried out an impact assessment

of the pilot project in 2011 (Agrex, 2011). The evaluation included a multidisciplinary analysis of the land tenure situation and its economic, environmental and social impact, using a combination of qualitative and quantitative methods. The six villages were compared with three comparable neighbouring control villages.

The conclusion of the impact assessment was (Agrex, 2011):

"An overall conclusion of the assessment is that the first land re-parcelling pilot project in Moldova was a timely, excellent and modern tool to improve the land tenure situation in rural areas. It also contributed to a great extent to building up national administrative capacities and raising public awareness on the benefits of land re-parcelling, as well as highlighting weak parts of the existing national legislation that could be improved in the nearest future in order to create suitable conditions for efficient, EU-oriented rural development practice in Moldova."

The first land re-parcelling pilot project in Moldova was a timely, excellent and modern tool to improve the land tenure situation in rural areas

The assessment included interviews with 60 owners who participated in the pilot project and 15 owners from the control group. The analysis showed that farms which were included in the pilot project obtained higher gross incomes and had higher returns per hectare than farms that did not participate (Agrex, 2011).

Figure 9
Newly planted orchard in Bolduresti village on consolidated land

Source: M. Gorgan

The environmental impact assessment concluded that the project had established framework principles to ensure that there were no adverse environmental impacts from project activities (Agrex, 2011). It further concluded that the pilot project had, to a great extent, contributed to developing capacities and raising public awareness on the benefits of land consolidation (Agrex, 2011). The impact assessment is one of the very few impact assessments of land consolidation projects in Eastern Europe.

Scaling up land consolidation in an additional 40 villages

Based on the experiences with implementation in the pilot villages, in 2009 the Government of Moldova requested the World Bank and SIDA to fund the scaling up of activities through the RISP-II project. This resulted in land consolidation being implemented in 40 additional villages from May 2009 to January 2011. The work was carried out by ACSA, the local partner in the consortium for the pilot project. Given ACSA's network of consultants and the capacity developed in the pilot project, it was possible to scale up and simultaneously implement land consolidation rapidly in 40 villages that were spread geographically across the country.

It was possible to scale up and simultaneously implement land consolidation rapidly in 40 villages

International assistance was provided to MAFI between November and December 2008 to select the 40 project villages, but no further international technical assistance was provided for the scaling up (Hartvigsen, 2008). FAO continued to participate with the World Bank in the supervision of the implementation.

The work followed the concept and principles of the pilot project and took into consideration the experiences and lessons learned. While the main target group continued to be small- and medium-sized family farms, participation was not restricted to them. The participation of other groups, such as larger corporate farms and/or investors, helped to achieve mutually beneficial solutions.

The training programme developed for the pilot project was used for training the new team members and the staff of regional and local governments. It was supplemented with training for secretaries of the local councils on the procedures and authentication of land transactions, and for the local project teams on GIS software.

Scaling up necessitated a new organizational structure. For the pilot project, a two-level organizational structure was used, with a small central office providing support to the project office in each of the six villages. Working in 40 villages required a three-level structure, and regional supervisors supplemented the support provided by the small central office. Each regional supervisor supported the work in eight villages, on average.

About 50 000 landowners were identified in the 40 villages, which had a combined area of approximately 80 000 hectares and were divided into 168 000 parcels (ACSA, 2010). Table 3 shows the results of the work, aggregated to the *raion* level. Of a total of 37 500 owners who were interviewed, 27 765 expressed a willingness to participate in the project, i.e. 55.3 percent of all interviewed landowners in the 40 villages. The project supported the conclusion of 15 685 transactions, which account for 9.35 percent of the total number of parcels in the villages. Of the total number of transactions, 65 percent (10 197) were for sales; 5 percent (767) involved exchanges; 8 percent (4 355) were for leases and 2 percent (366) related to inheritance. The total monies spent on the implementation of land transactions (land extracts, notarial services, registration costs, etc) amounted to 1 814 185 lei – about US$ 154 000 as at March 2012 – or 11.4 percent of the total project budget, which was 15 942 943 lei, about US$ 1 350 000. All costs related to the land consolidation projects were covered by the World Bank / SIDA funds.

About 50 000 landowners were identified in the 40 villages

A total of 7 520 hectares changed ownership, and around 2 600 hectares were transferred through long-term leases. About 25 percent (12 795) of all owners participated in the project. The total number of parcels decreased by over 34 percent (from 33 890 to 22 194). The average number of parcels per landowner was reduced from 3.8 to 3.3. The average parcel size increased from 0.65 ha to 0.99 ha and the average farm size increased from 2.43 ha to 2.95 ha.

A total of 7 520 hectares changed ownership, and around 2 600 hectares were transferred through long-term leases

Table 3

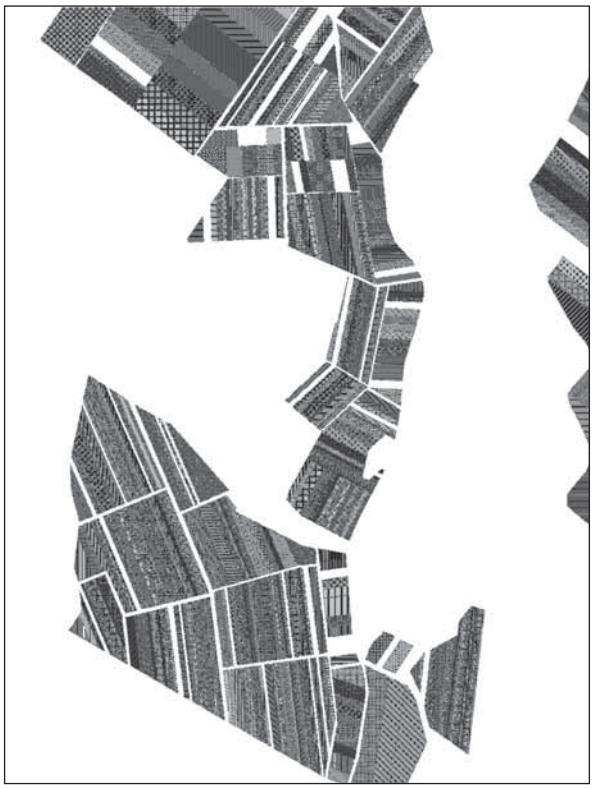
Final results of Moldova Land Re-parcelling Project in 40 villages distributed on regional project offices

PROJECT FINAL STATUTE	BĂLȚI	CANTEMIR	CHIȘINĂU	NISPORENI	ORHEI	TOTAL
Total registered agricultural land plots	25 913	26 961	48 510	28 714	37 715	167 813
Total landowners	9 707	7 476	13 372	7 928	11 701	50 184
Owners willing to participate in project activities (according to interview outcomes)	7 332	4 232	4 109	4 143	7 949	27 765
Land transactions registered (as of 15 December 2010)	4 837	1 472	1 283	2 425	5 668	15 685
Inclusive through lease, >5 years	3 630	8	0	194	523	4 355
Total area with changed owners	3 093.38	975.35	588.39	619.38	2 247.89	7 524.39
Total leased area, hectares	2 134.28	5.13	0.00	115.09	350.65	2 605.15
Total owners to benefit fully	3 644	1 175	979	1 730	4 049	11 577
Participating owners that did not manage to benefit from land transaction financing	418	57	272	185	286	1218
Total participating landowners as a percentage of total identified owners	42%	16%	9%	23%	38%	25%

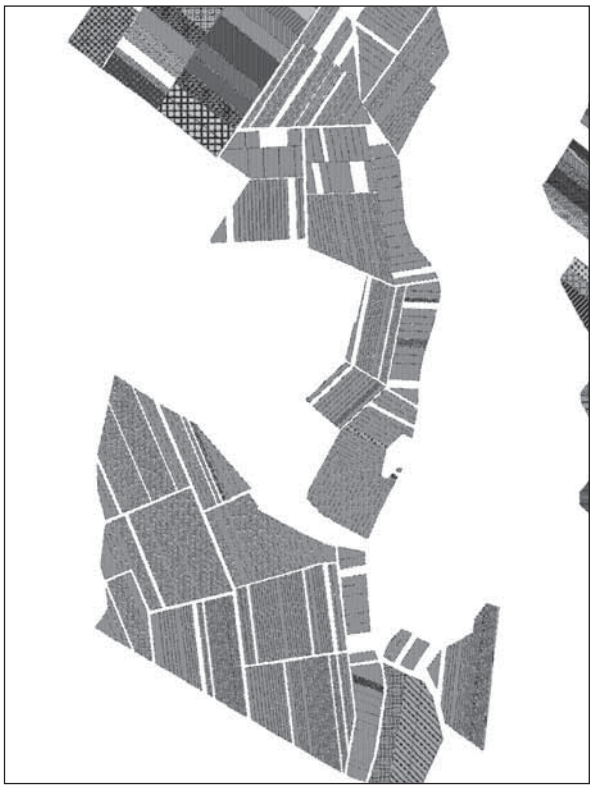
Source: ACSA, 2010

Figure 10
Consolidation of non-productive uncultivated vineyards in Ghiduleni village, Orhei *raion*

AREA A - **PLAN 1**



AREA A - **PLAN 2**



TOWARDS THE DEVELOPMENT OF A NATIONAL STRATEGY ON LAND CONSOLIDATION

In 2010 the Government of Moldova requested the World Bank and SIDA to fund the initial steps towards the development of a national strategy on land consolidation through the RISP-II project. An international consultant was contracted to assist MAFI by preparing two discussion papers, which were reviewed by relevant stakeholders (Hartvigsen, 2010):

- Main Concept for National Land Re-parcelling Strategy for Moldova;
- Main Concept for Land Re-parcelling Legislation.

Drawing on these initial concepts, the Government of Moldova requested FAO to support the preparation of a national strategy. This strategy is intended to guide the scaling up of land consolidation and its implementation in a national programme. Technical assistance was provided by national and international consultants who were closely involved with earlier initiatives, and by FAO staff. The development of the strategy was thus linked directly to Moldova's previous experiences.

The Government of Moldova requested FAO to support the preparation of a national strategy

A first step was the preparation of a 'framework paper' by national consultants to identify issues that should be addressed in a national strategy, and to evaluate options. These issues and options were reviewed with MAFI and an outline of the proposed draft strategy was prepared.

The drafting of the land consolidation strategy went through several iterations. A 'zero draft' was prepared by the national consultants and reviewed by MAFI, FAO and the international consultant. The feedback resulted in a revised 'first draft' which was presented and discussed at a national workshop. This review strengthened the draft strategy and a 'second draft' was presented to MAFI and approved by the Ministerial Council in January 2012. The draft strategy has undergone a formal review by relevant government ministries, prior to being finalized, and did not receive any objections. The State Chancellery has expressed the need to bring together the different strategies in the agricultural sector. It is expected (January 2013) that the land consolidation strategy will be adopted by the Government in mid-2013 as part of a general strategy for agriculture and rural development.

The draft land consolidation strategy is for a 15-year period and recognizes that conditions are likely to change within that time. Emphasis is placed initially on agricultural development and agricultural improvement based on the consolidation of parcels, enlargement of farm sizes, and increases in production and efficiency. However, it is anticipated that the focus will gradually shift towards the implementation of more comprehensive projects involving public infrastructure works, and the use of land consolidation techniques for non-agriculture purposes such as nature protection, environmental restoration, and projects containing resettlement components.

The draft land consolidation strategy identifies MAFI as the lead agency for land consolidation; as such, it would be responsible for the overall implementation of the programme. The focus for the first few years is on developing capacity for the implementation of the strategy, including: preparing training and public awareness campaigns; building lines of cooperation with key agencies; developing methodological, legal and institutional frameworks; identifying funding sources. The experiences gained during work in the 46 villages disclosed a number of impediments and bottlenecks in the legal frameworks that will have to be eliminated by adopting legal amendments.

CONCLUSION

Moldova has gone through a remarkable land reform process during the last 20 years. This process had two phases. In the first phase in the 1990s, agricultural land was privatized after four decades of state ownership. As elsewhere in the region, land fragmentation occurred as a side effect of land privatization. The second phase of land reform began around 2004 with the first steps of land consolidation and should continue for decades to come with the implementation of land consolidation projects under a new national land consolidation programme.

Moldova has gone through a remarkable land reform process during the last 20 years

Valuable capacity has been developed in both the public and private sectors. Project team members who received training and gained practical experience are available to contribute to a future round of projects.

The preparation of the national strategy for land consolidation has been an important exercise to embed the practical land consolidation experiences into government policy. The strategy will be implemented through the launch of a National Land Consolidation Programme. Even though much has been achieved since 2004–2005, land consolidation is still at a vulnerable stage in Moldova as activities for the short-term are dependent on continued political support and the securing of necessary funding.

The strategy will be implemented through the launch of a National Land Consolidation Programme

The experience of Moldova has redefined expectations regarding the number of owners who might participate voluntarily in projects. Earlier expectations were that voluntary participants might number a few tens of people or a few hundred at the most. The experience of implementing land consolidation in 46 villages during 2007–2010 has shown that it is possible to have projects with over one thousand landowners participating on a completely voluntary basis.

The practical experience of these projects also showed that the existence of large numbers of very small parcels (e.g. 0.1 ha for orchard and vineyard parcels) impede the development of a land market. Land consolidation should not be seen as a substitute for land markets, and instead it can play an important role in removing obstacles so that land markets can function better.

Another important lesson is that the land consolidation process is more time consuming than expected. The work in each of the 46 villages was carried out in only 18 months. This time was often not sufficient to include parcels with difficult registration problems, e.g. where inheritance issues came into play or where parcels were not registered in the land register. The draft strategy therefore proposes that the project period should be 2½ to 3 years. Solving registration problems should be an integrated part of land consolidation.

The work also provided insights on the requirements for a legal framework. As most European countries with ongoing land consolidation programmes have land consolidation laws, an early assumption was that one of the main proposals of the strategy would be the development and adoption of such a law. However, based on the experiences in the 46 villages, the legal analysis showed that a new land consolidation law would not be a necessary requirement for a full-scale national programme. Future land consolidation work will continue to use the provisions in the existing Land Code, which

provides for simplified and cost-effective transaction procedures (e.g. by allowing the secretaries of the local councils to perform some notary duties). At the same time, the provisions in the Land Code on the preparation of 'land arrangement projects' that were applied during the privatization in the 1990s can be used in the future to enable local councils to approve and adopt land consolidation projects. Thus, when it comes to a legal framework for land consolidation, the experiences from Moldova are different from those of most other Eastern European countries, where the recommendations have been to adopt a specific land consolidation law before beginning a national programme.

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ADDRESSING NATURAL RESOURCES ISSUES IN DARFUR THROUGH A PARTICIPATORY AND NEGOTIATED TERRITORIAL DEVELOPMENT APPROACH
Preliminary results

ABORDER LES QUESTIONS RELATIVES AUX RESSOURCES NATURELLES À TRAVERS UNE DÉMARCHE TERRITORIALE PARTICIPATIVE ET NÉGOCIÉE
Premiers résultats

CÓMO ABORDAR LA PROBLEMÁTICA VINCULADA A LOS RECURSOS NATURALES EN DARFOUR CON ARREGLO A UN ENFOQUE TERRITORIAL PARTICIPATIVO Y NEGOCIADO
Resultados preliminares

ABSTRACT

TERRITORIAL DEVELOPMENT

CONFLICT MANAGEMENT

PARTICIPATORY APPROACHES

EMERGENCIES AND LAND

The roots of the conflict in Darfur have been characterized as an erosion of natural resources caused by climate change that have contributed to social strife and ethnic conflicts. One of the critical issues still requiring resolution is the long-standing conflict over land and grazing rights between non-Arab farmers and Arab pastoralists. The need to address Darfur resource and development issues were recognized, initially by the Darfur Peace Agreement signed in 2006, and more recently in the Government of Sudan's *New Strategy for Darfur, 2010* and the *Doha Darfur Peace Document (DDPD)* signed in July 2011. The complexities involved in terms of interventions relating to natural resources – land in particular, must respond to the realities of the

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DÉVELOPPEMENT TERRITORIAL

GESTION DES CONFLITS

APPROCHES PARTICIPATIVES

SITUATIONS D'URGENCE ET QUESTIONS FONCIÈRES

Il est généralement admis que le conflit du Darfour prend racine dans la réduction des ressources naturelles liées au changement climatique, cette situation ayant exacerbé les conflits sociaux et ethniques. L'un des problèmes majeurs, encore non résolu, réside dans le conflit entre agriculteurs non arabes et pasteurs arabes sur les droits fonciers et les droits de pâturage – conflit ancien mais aggravé par la détérioration du climat. L'urgence de traiter ce problème a été largement reconnue, en premier lieu par l'Accord de paix sur le Darfour, signé en 2006 et plus récemment par la *Nouvelle stratégie pour le Darfour, 2010*. En raison de la complexité de la situation, les interventions liées aux ressources naturelles –et en particulier à la terre – doivent prendre en compte

SUMARIO

DESARROLLO TERRITORIAL

GESTIÓN DE CONFLICTOS

ENFOQUES PARTICIPATIVOS

EMERGENCIAS Y TIERRA

La raíz del conflicto en Darfour se ha buscar en la erosión de los recursos naturales causada por el cambio climático. La erosión de los recursos naturales ha contribuido al brote de desórdenes sociales y a enfrentamientos étnicos. Una de las cuestiones críticas que aún espera solución es la antigua disputa — agravada por el empeoramiento de las condiciones climáticas— sobre la tierra y los derechos de pastoreo entre agricultores no árabes y pastores árabes. La urgencia de abordar este problema fue reconocida inicialmente en el Acuerdo de Paz de Darfur, firmado en 2006, y, más recientemente, en la *Nueva Estrategia para Darfur, 2010*. Dada la complejidad del asunto, es necesario que las intervenciones relativas a los recursos naturales, y

different livelihoods groups at the grassroots levels; failure to do so will perpetuate historic grievances linked to resource rights and sharing.

This article describes the situation as regards land and natural resources in the Darfur region, the approach that FAO is taking, and preliminary results of the fieldwork undertaken by the project *Strengthening Community-Based Institutions for Participatory Peace Building, Conflict Resolution and Recovery Planning in Darfur*, funded by the Darfur Community Peace and Stability Fund. The aim of the project is to bring together different ethnic groups that were in conflict, to address the region's problems. In particular, the aim has been to find solutions to problems related to competition over and restricted access to common natural resources, using non-violence means such as dialogue and other peaceful conflict resolution mechanisms.

les spécificités des différentes populations. Tout échec à cet égard ne ferait que perpétuer les griefs historiques liés aux droits aux ressources.

Cet article décrit la situation des terres et des ressources naturelles dans la région du Darfour, l'approche adoptée par la FAO ainsi que les premiers résultats du travail de terrain entrepris par le projet: «*Renforcer les institutions communautaires pour une consolidation participative de la paix, la résolution des conflits et la planification de la reconstruction du Darfour*», initiative financée par le Fonds pour la paix et la stabilité des collectivités du Darfour. Ce projet vise à réunir les différents groupes ethniques en conflit pour traiter les problèmes de la région. Plus spécifiquement il s'est agi de trouver des solutions aux problèmes de concurrence pour un accès partagé à des ressources naturelles limitées, ceci en suscitant le dialogue et en ayant recours à divers mécanismes de résolution pacifique des conflits.

a la tierra en particular, respondan a las realidades de las diferentes poblaciones a nivel de las bases. La falta de una respuesta solo podrá perpetuar los agravios históricos vinculados a los derechos sobre los recursos.

En este artículo se describe la situación de la tierra y los recursos naturales en la región de Darfur; el enfoque que está siendo adoptado por la FAO sobre esta materia, y los resultados preliminares de los trabajos de campo llevados a cabo en el ámbito del proyecto «*Refuerzo de las instituciones de base comunitaria para la construcción de la paz participativa, la resolución de conflictos y la planificación de la recuperación en Darfur*», financiado por el Fondo de paz y estabilidad de la comunidad de Darfur. El objetivo del proyecto es reunir a diferentes grupos étnicos que han estado en conflicto con la finalidad de hacer frente a los problemas de la región. En particular, se ha buscado encontrar soluciones, a través del diálogo y otros mecanismos de resolución pacífica de conflictos, a los problemas que derivan de la competencia por los recursos naturales comunes y de las limitaciones con las que tropieza el acceso a dichos recursos.

INTRODUCTION

The conflict in Darfur is the product of a complex set of factors. It has been described both as an ethnic cleansing campaign carried out by the Sudanese government and its allied militia groups, and as a local struggle over natural resources between non-Arab farmers and Arab herders (Olsson and Siba, 2010). The roots of the conflict are complex with several elements attributed as contributing to it: inequitable distribution of economic and political powers; absence of strong and just governance structures; ethnic divisions; economic influences; climatic and environmental factors; deficiencies in land tenure rights; historical feuds; and more recently, militarization and proliferation of small arms.

The conflict has been characterized by UNEP as being caused by an erosion of natural resources leading to climate change, which in turn has lead to social strife and ethnic conflict. The long-standing and primarily local conflict over land and grazing rights between non-Arab farmers and Arab pastoralists has been made worse by climate change. Sudan in general has suffered several long and devastating droughts in the past few decades causing widespread displacement and localized famine. The scale of historical climate change, as recorded in Northern and Central Darfur for instance, indicated prolonged drought that speeded up desertification processes and a reduction in rainfall that has turned millions of hectares of already marginal semi-desert grazing land into desert.[1]

The need to address the issues of access to and control over natural resources in Sudan in general, and Darfur in particular, was first recognized by the Darfur Peace Agreement signed in 2006 and, more recently, in the *New Strategy for Darfur, 2010* and very recently in the *Doha Darfur Peace Document* signed on 14 July 2011. The Darfur Peace Agreement (DPA) was lauded as a model that could offer both a framework for power- and wealth-sharing, as well as a significant model for peace in Darfur, because it heavily borrowed from the now independent South Sudan and North Sudan Comprehensive Peace Agreement (CPA) signed in 2005.

In reality, the Darfur Peace Agreement made the situation worse: because the parties to the conflict were divided by deep mutual distrust, even hatred, and

1 http://postconflict.unep.ch/publications/UNEP_Sudan.pdf

little confidence was built between them. At the same time, the New Strategy for Darfur, often referred to as 'peace within', highlights addressing issues of security, reconciliation, development and resettlement of internally-displaced persons (IDPs) and refugees, as well as how to ensure delivery of humanitarian assistance to the needy. However, interventions linked to natural resources – land in particular have not been factored in, which in essence must respond to the realities of the different livelihoods at the grassroots. Failure to do so will automatically perpetuate historic grievances linked to resource rights.

This article outlines the situation as regards land and other natural resources in Darfur, the PNTD approach that FAO has adopted, and highlights preliminary results of the fieldwork carried out during the implementation of the project *Strengthening Community-Based Institutions for Participatory Peace Building, Conflict Resolution and Recovery Planning in Darfur*. The project was funded by the Darfur Community Peace and Stability Fund and implemented through the FAO Emergency and Coordination Unit in Sudan.

Interventions linked to natural resources - land in particular have not been factored in the New Strategy for Darfur

THE GEOGRAPHY, HISTORY AND DEMOGRAPHY OF LAND CHALLENGES

Drought is a common feature of environmental change that has been associated with conflicts in many African countries. The western part of the Republic of Sudan was one of those deeply drought-affected areas which in 1984 suffered famine, as elsewhere in East Africa. Darfur region was the worst affected area in the country. Ecologically Darfur has diverse features, ranging from a typical desert environment in the north to rich savannah marshland in the south; the upland areas reach an altitude of over 3,000 metres in the central Marrah Mountains (*Jebel Marra*). In general, Darfur has low and variable annual rainfall, ranging from less than 100 mm in the northern desert to approximately 300 mm around El Fasher, 300–500 mm in Geneina and Nyala, and up to 800 mm or more in the south and in the Marra Mountains. Rain falls in three months of the year (July–September) in El Fasher, and a bit earlier in the south[2], resulting in large variations in the availability of water between the wet and dry seasons.

2 Personal communication of Mr Beshir, Agricultural Officer, FAO Emergency Unit, El Fasher

The history of Darfur before the ascendancy of the Keira dynasty to the leadership of the Sultanate in the mid-16th century is largely unknown. However, like other communities in Africa living in a given territory, the people of this region effectively owned surrounding land communally in the pre-state period. A new tenure system of granting land titles, called *hakura* (Arabic, plural *hawakir*), was introduced by Sultan Musa Ibn Suleiman of the Keira dynasty around 1680–1700. The *hakura* (estate) granted by Keira sultans was of two types: an administrative *hakura*, which gave the title holder limited rights of taxation over people occupying a certain territory, and a more exclusive *hakura* of privilege that gave the title holder full rights over taxes and religious dues in the territory. The first type was usually granted to tribal leaders and later came to be known as *dars* (literally meaning 'homeland').

It is commonly considered that Keira sultans succeeded to a great extent to make land tenure a part of the administrative setup of the sultanate. Given that not all lands were granted as estates, it meant that the older system of communal tenure continued to exist side by side with the *hakura* system in various areas around Darfur, even after the Sultanate regime. What used to be communal land has now come to be considered as an administrative *hakura* or *dar*. Tribal homelands were named after the tribe, e.g. *Dar Zaghawa* and *Dar Rizeigat* (land of the *Zaghawa* and *Rezeigat* peoples respectively). This development introduced new function to the land other than its economic potential: it became a symbol of group identity. Since the region is open to hosting immigrants from neighbouring areas, it follows that newcomers may access land only through transactions with indigenous land-holding tribal groups. This is exactly what nomadic camel pastoralist groups have been doing for the last two hundred years.

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When Darfur was finally annexed to Sudan in 1916 the colonial authorities introduced few changes to the existing system of administration. Under their policy of indirect rule, they confirmed tribal leaders as part of a native administration system and custodians of land belonging to their tribes. It was expedient for tribal homelands (*dars*) to be recognized by the government: this helped in controlling the rural population more efficiently. One can therefore classify Darfurian tribes into land-holding and non-land-holding groups.

Map 1
Location of Darfur

Sedentary and pastoralist livelihood systems in Darfur have been severely affected by the significant growth in population over recent decades, from just over one million people in the mid-1950s to around 7.4 million people today[3]. The increase in population density has intensified cropping and grazing, which means shorter fallow periods for fields and overgrazed rangeland. Larger areas are needed to support the same yields and herds, but demands for farmland and herds is increasing, leading to conflicts between herders and farmers as they compete for access to resources.

INTERNALLY-DISPLACED PERSONS RETURN TO THEIR LAND

The Sudanese government's New Strategy for peace and stability in Darfur issued in August 2010[4] is emphatic as regards return, resettlement and integration of returnees (refugees and IDPs) in their "tribal lands". The second key theme of the strategy places a tremendous amount of emphasis on safe, voluntary and sustainable return of the displaced to their places of origin, and calls for the international community to assist in the process.

The New Strategy for peace and stability in Darfur (August 2010) is emphatic as regards return, resettlement and integration of returnees in their "tribal lands", and a strong emphasis is put on safe, voluntary and sustainable return of the displaced to their places of origin

The strategy has been widely criticized for its lack of transparency and realistic vision for the people of Darfur. First and foremost, it does not build on the reality on the ground, in terms of involving conflicting parties (non Arabs and Arabs) in participating fully in a common platform of negotiation and dialogue. For instance, doubts are cast as to its intentions; the issue of land occupied by new settlers while original owners are living in camps as IDPs has not been addressed, in West Darfur particularly.[5] According to the Government of Sudan resolving the settlement crisis in Darfur entails closing down the camps for the displaced and forcing their return to the villages.

3 http://simple.wikipedia.org/wiki/Darfur consulted on April 1st, 2011 and also http://www.oxfam.ca/what-we-do/emergencies/darfur-sudan

4 http://www.humansecuritygateway.com/showRecord.php?RecordId=34156

5 West Darfur experienced the highest number of displacements, both internally and across internationally recognized borders, during the conflict period.

This amounts to forced relocation, land forfeiture and indentured servitude for the displaced persons, given that there is no clear and dignified means of addressing land rights through dialogue between non Arab farmers and Arab pastoralists that were in conflict.

Land and natural resource issues continue to remain sensitive and the notion of the return of IDPs to their original territories is heavily politicized. In some areas the IDPs' land is already occupied by others, particularly the nomadic and pastoralist groups who took part in the counterinsurgency.

The FAO office in West Darfur has been involved as part of the efforts by government, civil society organizations and agency assessment missions to facilitate IDP returns, and seek ways of supporting IDPs and hosting communities. FAO investigations have revealed that spontaneous and voluntary returns have been recorded in the *Hashab* and *Zalinge* areas from Kalma Camp in Nyala, although the issue of land rights remains politicized and very sensitive. There are unconfirmed allegations that the government allowed pro-government supporters and militia groups from elsewhere, including Chad, to occupy the IDPs' land. However, on account of unresolved land disputes continuing between different groups, returning IDPs will still be exposed to renewed resource-related conflicts. In some areas those who occupied the IDPs' land have also taken control of available water sources, controlling and restricting access to others, creating another recipe for further conflict between IDPs and the new occupants.

The return of IDPs to their homelands in North Darfur is crucial in promoting durable and sustainable development. However, the biggest challenge is land and tenure security in the areas to which IDPs return. Most IDPs and refugees have been in camps for 7–8 years, during which time their land has been occupied by nomadic pastoralists. These nomads are currently practising 'opportunistic cultivation' in the land formerly owned by IDPs.

The return of IDPs to their homelands in North Darfur is crucial in promoting durable and sustainable development. However, the biggest challenge is land and tenure security in the areas to which IDPs return

As a result of the current politics of Darfur, it is likely that some land will be retained by current users and occupiers rather than reverting to the IDPs, in spite of their customary ownership rights (the *hakura* system), which are recognized by statutory laws. There are some recorded cases of IDPs tenure security being retained through continuous usage, which means the IDPs engaged on 'seasonal movement' to and from the camps. In these cases the

relative proximity of their lands has allowed them to more regularly cultivate their plots than if they were displaced much further away. Of course, this has only been possible for farmers displaced in nearby camps such as *Tawila, Korma* and *Shangil Tubai* in North Darfur. Most of these farmers were sharecroppers and were partly able to supplement the relief food offered in camps with their own production.

The integration of IDPs into urban centres has been suggested both by the government and by humanitarian workers as an alternative approach that may bring peace. This approach would also boost urban and rural economies and would naturally provide the basic services (food, water) and infrastructures (health care, education) that IDPs would need for survival. According to some analysts, urban integration of IDPs would also reduce land disputes. However, counterarguments suggest that it would worsen environmental challenges and increase resource scarcity and conflicting land use, given the current changing climatic conditions. Moreover, it may increase urban poverty and legitimize forced land occupancy. Solving land disputes between the different groups requires multi-faceted approaches. In addition to the government which is already seen partly in a negative light, as party to the conflict multiple stakeholders and actors would need to negotiate new agreements on land tenure rights and land use, including grazing corridors and migratory routes.

Solving land disputes between the different groups requires multi-faceted approaches

In western parts of North Darfur (*Kutum* and *Kebkabiya*), where massive internal displacement occurred, previous social networks and dependencies between farmers and pastoralists have been badly damaged. Surmountable efforts are required to support and initiate dialogue and negotiations forums to boost access and use of natural resources, beyond emergency response and early recovery. Policy-makers should also embrace dialogue and involvement of different stakeholders and actors, to develop a consultative approach aimed at finding 'localized' solutions on land tenure security issues in Darfur.

"Bottom-up" or participatory approaches are the best way to address the issue of land rights in Darfur at the community level; otherwise resolving land disputes among the returning IDPs and those already occupying their land could relapse into a new conflict.

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PREVIOUS EXPERIENCE OF FAO

FAO's engagement in specific land issues in the Sudan dates back to 2001, when the organization was invited as a partner of the Intergovernmental Authority on Development (IGAD) Partners' Forum (IPF), with the sole objective of carrying out a quick assessment on access to land, water and grazing land. FAO also found itself increasingly involved with the New Partnership for Africa's Development (NEPAD); this provided the framework for African nations collectively to take forward programmes for the development of capacity building, improved governance and poverty reduction, in partnership with G8 nations and other donors. Within NEPAD, the Comprehensive Africa Agriculture Development Programme (CAADP) offered a framework for agricultural development by tackling poverty and food insecurity. The core objective of the framework was within FAO's mandate and a sustained 6 percent annual growth rate was expected. Since agriculture depends on land resources, addressing the impact on existing land use and land rights was inevitable.

Through its presence in the Sudan – albeit limited in terms of human resources and somewhat restricted in the context of emergency relief – FAO began to build a stronger platform for dialogue on land issues with different partners, including the Government of Sudan, the Sudan People's Liberation Movement (SPLM), different UN organizations, NGOs, the academic institutions (e.g. the Universities of Ahfad, Bahr El Gazal, El Fasher, Khartoum) and donors[6]. This platform initially resulted in the inclusion of a number of sporadic land-related activities in emergency projects implemented by FAO and its partners.

6 This started with the initial scoping paper prepared by Paul de Wit (*Legality and Legitimacy: A Study on Access to Land, Pasture and Water*) in 2001 for the IGAD Partner Forum Working Group. This was followed by two reports on (i) scoping the issues and questions to be addressed and (ii) Land and Property Study in Sudan (OSRO/SUD/409/HCR). Following these, activities were financed through OSRO/SUD/415/NET (Technical assistance to secure and restitute land rights, address land and property dispute resolution and negotiate consensual land management), then OSRO/SUD/507/CAN and OSRO/SUD/514/ITA (Capacity building for land management and community driven recovery in post-conflict Southern Sudan) and the more recent GCP/SUD/057/DEN (Technical support to the establishment and functioning of the National Land Commission – formulated but not implemented).

FAO was also requested by a number of partners to extend its mandate and start addressing issues of access to land and natural resources in the Darfur area. This interest resulted initially in a number of activities being undertaken: mainly research, information dissemination and awareness creation on the land question in Darfur[7]. However, land tenure reforms in Sudan were still confronting considerable challenges – including the weak implementation capacity of land sector institutions and the reluctance of vested interests to implement change – requiring gradual institution building within broader public sector reforms.

Emphasis was placed on the need to recognize and legalize – in an inclusive fashion – land rights acquired by local populations through historic occupation, as well as rights-of-way, acquired through customary norms and practices since time immemorial. In practice, however, the existing legal framework is not conducive to the legal registration of community land rights. Some elements of the need to recognize existing customary land rights in Darfur as part of the conflict mitigation strategy were then included in the Abuja Declaration of Principles (DOP) signed by the main contesting parties on 5 July 2005 and subsequently agreed upon in DPA also signed in Abuja later in 5 May 2006. Most recently the DDPD signed in Doha on 14 July 2011 also recognized the same principles.

Emphasis was placed on the need to recognize and legalize – in an inclusive fashion – land rights acquired by local populations through historic occupation, as well as rights-of-way, acquired through customary norms and practices

Initiatives to reflect on land policy development in Darfur were organized in April–May 2006, when a series of local workshops were held[8]. Three state level seminars on land tenure and management were organized by the Centers for Peace and Development of the Universities of El Fashir, Nyala and Zalinge-Geneina. The major objective of the seminars was to establish a platform to share information on the issue of land in the Darfur region and to discuss ideas, basic principles, and approaches to the peace-building process. How land and natural resources are used and managed was the starting point for the seminars. These events were followed by a 3-day workshop 'Towards a

7 Through project OSRO/SUD/507/CAN

8 These workshops were partially organized through the OSRO/SUD/507/CAN project (Aweil and Bahr el Gazal) and partially as a joint effort with the UNDP Rule of Law programme (El Fasher, Nyala, El Genina).

Sustainable Land Policy for Darfur', 11–12 September 2006, organized by the Darfur Joint Assessment Mission (DJAM)[9]. FAO's Sudan Land Programme was invited to provide the technical support for the development of the main land policy materials for the workshop.

At the beginning of 2010 a new FAO project, specifically addressing these issues in the context of Darfur, was approved and was implemented in 2010–2011.

THE PROJECT 'STRENGTHENING COMMUNITY-BASED INSTITUTIONS FOR PARTICIPATORY PEACE BUILDING, CONFLICT RESOLUTION AND RECOVERY PLANNING' IN DARFUR

Context of the project

Before the wider Darfur conflict unfolded, different ethnic groupings (Arab pastoralists and non-Arab farmers) had a long history of guarded cooperation and lived peacefully with each other, albeit occasional frictions arising from animal intrusions into farms. The Arabs and non Arabs were never strongly ethnic in their criteria of mutual identification while dealing with each other. The low ethnic barriers that existed between them fostered a certain amount of friendliness; ethnicity actually functioned as a matrix of cooperation and not of confrontation. From a historical analysis carried out, there were reported isolated cases of disputes over access to natural resources in times of scarcity; but never were the Darfurians so divided as witnessed after the onset of the war from 2003 onwards.[10]

9 It was first envisaged that the workshop would be held in Nyala, but on account of UN restrictions placed on convening workshops in Darfur because of the conflict, the location was moved to Khartoum. A diverse group of participants was invited to participate, including representatives from customary leaders, UN agencies, civil society organizations, and universities. The workshop was conducted in Arabic to ensure that all participants could participate fully.

10 Focus group discussions carried out in Mellit Locality, North Darfur. August 7th, 2010

At the beginning of the project, in March 2010, it was clear that the different ethnic groupings were fissured, had become conspicuously polarized, and developed antagonistic and ethnically-based attitudes towards each other. These antagonistic attitudes were manifested mistrust, bitterness, rivalry and suspicion, besides practical sufferings involved in the large-scale physical displacement of many people, loss of property and life. Minor disputes that were previously settled at community levels escalated into ethnic differences in which hatred and deep mistrust reigned supreme, as ethnic groups were branded either pro- or anti-government loyalists. The different communities in conflict had all lost trust and confidence in the government as an 'honest broker' and its abilities as a mediator for peaceful co-existence and community reconciliation. From the community levels the government had become party to the emerging ethnic conflicts and was not at all a neutral arbitrator.

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Many people were forced into displacement from their own farms as a result of fear of attack from their neighbours, irrespective of whether they supported the government or rebel groups. The proliferation of arms and the rampant insecurity caused by tribal militia groups, government fighters and armed gangs of criminals, significantly contributed to internal displacements. Insecurity in most areas of the three Darfur States in the North, South and West also heightened crime-related violence and threats to people's basic physical security, e.g. sexual gender-based violence (SGBV) such as rape. These seemingly ever-present and widespread dangers resulted in restricted movements both for humans and animals. The situation not only lead to environmental degradation, but also to intense conflicts over water resources in areas perceived relatively safe.

There were disputes between farmers and pastoralists over the destruction of crops by animals, particularly in the months of October to December. There were also incidences of recurring conflicts caused by agro-pastoralists encroaching or expanding farming activities into traditional animals' migratory routes and grazing corridors. The pastoralists were also creating new animal routes on former farming lands / plots.

In Darfur the soils of crop farms were previously sandy (*qoz*). On account of population increases, household land holding has been reduced and farmers have started moving to clay (*wadi*) soils. In some areas both agro-pastoralists and pastoralists have adopted strategies aimed at increasing their productivity

by converting their own former pastureland to farmland. The conversion of farming land has also been carried out on former animal migration routes without allowing corridors for the animals to graze.

Customary leaders (*Malik*, *Nazir*, *Shartai*, *Furshas*, *Amirs*, *Omdas* and *Sheiks*) were in the forefront of handling ethnic disputes related to natural resources and community reconciliation. The native administration (*Idara Haliya*) continued to remain a very important source of legitimate jurisdiction, recognized and trusted by communities. They still commanded a lot of respect at the village / community levels, more than the government.

It's in this context that the project 'Strengthening community-based institutions for participatory peace building, conflict resolution and recovery planning' in Darfur was formulated, with the aim of bringing together different ethnic groups that were in conflict to address the above mentioned problems, in particular, problems related to competition or restricted access to common natural resources. The project was funded by the Darfur Community Peace and Stability Fund (DCPSF) and implemented under the Emergency and Rehabilitation Coordination Unit of FAO using a Participatory and Negotiated Territorial Development approach (PNTD).

Participatory and Negotiated Territorial Development approach[11]

The purpose of this approach is to define a process in which the analysis of local territorial issues, based on the viewpoints of the different actors / ethnic groups and historical analysis, could contribute to a coherent understanding of the territorial system. The framework for the approach centres on 'locality' and 'community'.

The PNTD approach stresses that all territorial issues that are identified and relate to community reconciliation and natural resources should be placed on the negotiation table. The negotiation table or a joint platform / arena will then gather together all stakeholders in order to discuss localized problems at the village level, with the aim of possibly collaborating in the formulation of a Social Territorial Agreement.

11 http://www.fao.org/sd/dim_pe2/pe2_050402a1_en.htm

The first two phases of the PNTD approach were implemented, namely:

1. The 'views' phase – with the objective of carrying out participatory, conflict-sensitive territorial diagnosis processes regarding community reconciliation and access to natural resources, taking into account different stakeholders / actors and their territory as a whole.
2. The 'horizon' phase – with the objective of carrying out open discussion among stakeholders / actors on the promotion of communal reconciliation and access to natural resources.

The participatory processes supported all stakeholders / actors in drawing up coherent and feasible perspectives on their territory, promoted awareness and set up a negotiation table. The views of different stakeholders / actors concerning community reconciliation and access to natural resources were taken on board; concrete proposals / community action plans (CAPs) were elaborated through consensus building at the local and community levels, offering alternative outcome scenarios that may resolve the fundamental disputes.

The approach requires the definition of a new role for the experts who act as mediators and facilitators in peace building and community reconciliation processes. Crucial to an effective process is how the experts legitimize their position through an equitable and impartial attitude (that of the 'honest broker') in search of a wide consensus. Also crucial was how experts measured their interventions according to the stakeholders' margins of flexibility, in order to stimulate moves towards agreement among the different viewpoints. PNTD fully appreciated that stakeholders had bargaining powers: allowing them to participate in the negotiation processes or else precluding them from such participation, is the most delicate aspect of the approach. This is why it is important from the very beginning to involve and promote widespread partnerships in order to encourage especially the capacity of weak and marginalized actors to negotiate.

The approach requires the definition of a new role for the experts who act as mediators and facilitators in peace building and community reconciliation processes

It is also important to mention that PNTD is based on the concept of an open process of diagnosis as a means to support the definition of a collective territorial project. Social Territorial Agreement (SAT) provided a

new perspective on the management and prevention of problems arising from local competition over the use of and access to natural resources. The problems were quite distinct depending on the context and the issues at stake in a particular geographic area.

Baseline information

An initial baseline assessment carried out highlighted several interesting features of the problem:

1. Non-existence of communal dialogue forums to deal with community reconciliation and access to natural resources at the local and community levels. The community-based institutions / structures had been weakened, compromised politically and unable to address emerging resource conflicts.
2. Most of the communal disputes identified resulted from access to natural resources; different communities in conflict expressed deep frustrations about accessing the resources they needed to sustain their livelihoods.
3. There were no existing community level action plans and no ongoing joint / communal initiatives to address the natural scarcity of resources in the 'flashpoint areas'.
4. There were no existing joint / communal initiatives in place for peace building, rehabilitation and restoration of natural resources. The communities looked at each other more as enemies and could not work together. Communities' differences were manifested in severed relationships, each community focusing on its own interests, and each not believing that it was getting fair treatment from the other parties involved.

The baseline also highlighted the very complex dynamics of the conflict that started as a resource conflict (its root cause) but quickly transformed into an ethnic identity war. The age-old intricate and heterogeneous nature of ethnic relationships and customary conflict resolution mechanisms had been slowly compromised and ruptured by ethnic tensions, political interests and the 'gun culture'. Further assessments and focus group discussions highlighted

the fact that community-based institutions and structures – such as the native administration (*Idara Ahaliya*) and customary mediation institutions (*Ajawiid, El Faki, Dimlig*) – lacked the capacity to address contemporary ethnic tensions in Darfur, given the dynamics of the conflict itself and increasingly disparate socio-political interests.

At the technical level, qualitative methods of gathering information, interviews with key informants (KI), and participatory rural appraisal (PRA) tools were adopted right from the beginning of the project. Several focus groups were brought together at the local and community levels to identify the stakeholders, undertake a historical analysis of the situation, and develop community resource maps and seasonal calendars.

Ethnic grassroots peace-building and community reconciliation dialogue in the Mellit locality of North Darfur

The Berti, Medoub and the Zayadia[12] are the three major ethnic groups that have co-existed in the northeastern part of north Darfur since time immemorial. *Zaghawa*, *Fellata*, *Fur*, and other smaller groups also reside and intermingle with them over the whole of the north Darfur state.

The *Berti*, *Zayadia* and *Medoub* ethnic groups each have their own native administration structures (*Nazir*, *Omdas* and *Sheikhs*) that govern affairs of their respective groups, as well as interplay with other ethnic groups in the area in terms of resource sharing and conflict management.

Conflicts over access to and uses of key natural resources were part and parcel of daily life for the ethnic groups in the area, even before the wider Darfur conflict. Nevertheless the native administration structures, customary and moral codes helped in managing such conflicts in the past. However, the widespread and protracted conflict of Darfur has significantly changed the dynamics and management of pre-existing conflicts in the area. The groups are currently grappling with a myriad of conflicts, as ascertained from conflict assessment in the area and nomadic workshop findings.

The native administration structures, customary and moral codes helped in managing conflicts in the past. However, the widespread and protracted conflict of Darfur has significantly changed the dynamics and management of pre-existing conflicts in the area

12 Predominantly pastoralist and agro pastoralists

Box 1
Some of the key resources-based conflicts in the project area

The movement of different ethnic groups to access natural resources is very limited and most of the ethnic groups are now confined within their homelands (*Dar*).

Reciprocal resource-sharing arrangements at local level were hampered on account of the absence of overall political settlement of conflict and compensation of victims.

The expansion of agricultural areas because of low productivity and recurrent droughts contributed to the annexation of grazing land for agricultural activities. The dependency on environmental resources to generate income to compensate low agricultural productivity is also putting additional burdens on limited resources.

Lack of water resources in some rich pasture areas contributed to concentrated use of and pressure on areas with limited water resources, yet left some of the pasture resources in other areas unexploited. Animal looting in the triangle of *Malha, Mellit* and *Kuma* is another problem communities are trying to deal with.

The traditional authorities (though weakened by the antagonisms) were still operating within their domains to address some of these resource-based conflicts, but were being presented with greater challenges in adapting to new obstacles in their way, caused by the changing dynamics of the conflict. They had limited resources and capability to deal with widespread and intractable problems compared with pre-conflict times. The rebel groups and the proliferation of arms in the areas are some of the threats that have undermined the effectiveness of the customary institutions.

The three main native administrations of the *Berti*, *Zayadia* and *Medoub* had already begun their own initiative to work towards unity and ethnic reconciliation. They formed their own tripartite committee, composed of 12 members (five from the *Berti*, four from the *Zayadia* and three from the *Medoub* Native Administrations, respectively), and they agreed that the representative of the Berti Native Administration would chair the committee. The aim was to build mutual trust and restore confidence and communication channels between different ethnic groups residing in the area. Dialogue was aimed at facilitating the peaceful co-existence of ethnic groups and free movement beyond their geographical areas. It was also intended to address banditry, animal looting and general criminal activities, and to foster cooperation with

other native administrations. *Ajawid* (a local NGO) also complemented the native administration initiative by facilitating social and cultural activities and a festival to break the cycle of hatred and suspicion between the groups.

FAO's project stressed the importance of dialogue and supported the High Level Committee (HLC – the umbrella body of the three native administrations) in expanding and building on their previous initiative in the area. The aim was to make it a platform for all-inclusive, broad-based dialogue and subsequently to address the conflict at grassroots level. At the community/village level, the various ethnic groups in their discussions emphasized the importance of promoting social peace, which would support resource sharing and conflict prevention.

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The HLC drafted a proposal for broad-based dialogue in Es Sayah and submitted this to FAO for support. The content of the proposal was discussed and agreed with the committee, with FAO acting as a 'neutral and honest broker', while facilitating the different ethnic groups in addressing their differences and reaching a peaceful consensus. The three native administrations set the date of the conference for 15 January 2011. Several preparatory meetings were held with the HLC, the native administration leaders, civil societies, women's groups and youth groups, religious leaders and other mixed groups in Mellit on 26 December 2010.

The Es Sayah conference was attended by more than 1000 people, including native administration leaders, women's groups, youth groups, government representatives (the State Governor of North Darfur and the locality commissioners of Malha, Kuma and Mellit), the African Union/United Nations Hybrid operation in Darfur (UNAMID), NGO representatives, local community-based organizations (CBOs), religious leaders, the private sector, individuals and some key figures from the community. The participants emphasized the importance of participation by people from the grass roots in the conference, and the dissemination of the conference's objectives around the villages. It was stressed that everybody in the community has to play a role towards realizing the goals and objectives of the conference. The Commissioner of Mellit locality expressed his willingness and commitment to support the Es Sayah Conference. He welcomed the newly appointed Commissioners of Kuma and Malha as part of the ongoing peace-building processes and a move towards non-violent means of conflict resolution, aimed at an ethnic reconciliation.

Objectives and outcomes of the Es Sayah peace dialogue

The main objective of the Es Sayah dialogue was to bring together the different customary leaders (native administrations) and their conflicting communities, so that they could openly reconcile with each other, negotiate a peaceful co-existence, and improve access to natural resources for all.

Specifically the conference was designed:

1. to increase social peace through interactions between rival groups, and promote socio-economic dependencies among the conflicting communities (the Berti, Medoub and Zayadia)
2. to stop interethnic hostilities and criminal activities such as animal looting, and to guarantee access to markets for all.
3. to reduce conflicts between farmers and pastoralists over crop destruction and farmers' encroachment into grazing land.
4. to improve access to and use of natural resources, mainly water and pastureland and rangeland.

The conference was entirely devoted to ethnic negotiations and dialogue on promoting community reconciliation. The first meeting was between the *Zayadia* and the *Medoub*, chaired by the King of Berti. In-depth discussions between the two groups were held and took into consideration previous recommendations from meetings between the *Sari* and *Um Dagor*. These served as a reference point and precondition for negotiation and dialogue that did eventually led to a consensus. The main outstanding issue concerned animal lootings instigated by *Zayadia* ethnic groups against the *Medoub*; this hampered access to pasture and rangeland in places such as *Madu* and *Saya* within the Mellit locality.

The second meeting was between the *Zayadia* and the *Berti*, chaired by the King of Medoub. The meeting was marred by disagreements and hot exchanges because the *Berti* had demanded compensation for the deaths of some of their people, allegedly killed by the *Zayadia*. In the end a consensus was finally reached. The third meeting was between the *Berti* and the *Medoub* and was chaired by *Zayadia Nazir*. The fourth meeting was between all three tribes.

The outcomes of the conference:

- Consensus and agreement among the *Berti*, *Medoub* and *Zayadia*. The leaders of the native administrations jointly signed a binding document for peaceful co-existence.
- Mechanisms were developed by the three native administrations to observe and monitor the conference resolutions, especially as regards to non-violent alternative conflict resolution.
- Enhanced social interaction, free movement and safe access to natural resources for all community members.
- Consensus was reached on collaborative work fully involving all communities, initiated for sustainable peace and development: for instance, construction of fire breaks and water points (rehabilitation of *hafirs*).
- Market centres have been opened and are accessible by all three ethnic groups; these have further contributed towards strengthening social relationships and mutual co-existence.
- Incidences of insecurity and banditry, especially animal looting, have been reduced.
- Increased access to natural resources, especially pastures and water points, have been recorded.

The conference, together with all preparatory meetings and ongoing project activities in the localities, has offered some initial lessons to the native administrations as well as the wider communities. It is better understood that peace-building is a gradual process that requires step-by-step approaches and patience. Hence, higher committees request that members should be fully aware of the processes and challenges ahead and 'stay the course', even when they encounter incidences that would be considered a 'backlash' to the process.

It is better understood that peace-building is a gradual process that requires step-by-step approaches and patience

The High Level Committee (HLC) and the Locality Commissioners of Mellit, Kuma and Malha have agreed to put in place systems that will implement and monitor some of the points agreed upon through consensus, to maintain the momentum gained from their broad-based dialogues. FAO agreed to closely monitor the situation and provided the necessary support and backstopping needed to keep the process on track.

Negotiating territorial issues between the Fur and Turjem ethnic groups in South Darfur

The two major conflicting ethnic groups (the *Fur* and the *Turjem*) in El Salaam locality in South Darfur State resolved to live peacefully and harmoniously at the initial stages of the project. As the project embarked on implementation of community action plans (CAPs) aimed at resolving land disputes, the two tribes were to face each other at a negotiation forum, with the aim of reaching a consensus on issues related to land tenure.

The two groups provided a historical analysis that highlighted how they had lived peacefully in the past, demonstrating strong social and economic interdependencies that included interethnic marriages. The groups were able to discuss peacefully land issues such as ownership, occupation, inheritance, and land use (farming/grazing), and conflict-resolution mechanisms related to land disputes.

The land of the *Fur* ethnic group was communally-owned under the *hakura* system, by which the Sultan/*Shartai* (the highest native administrator) was in charge of land allocation for all the people, all members of the *Dar*. The *hakura* continued and remained in place during the first conflict between the *Fur* and the *Turjem*, in which the *Fur* became internally-displaced persons (IDPs). There were some instances of seasonal movements from refugee camps back to farms after the conflict, but overall the majority of *Fur* lost their land to their *Turjem* neighbours; the *Turjem* in turn invited their relatives from elsewhere to occupy some of this land.

After the wider Darfur conflicts land disputes became even more prevalent: for example, boundary disputes escalated because of immigration from elsewhere (as mentioned earlier), and conflicts of interest between the communities, e.g. expanding farming activities. The *Fur* ethnic group believes that the government does not support them in getting back their land, given that they the *Fur* are mistrustful of the government. They have further suggested that government support for the *Turjem* has subjected them to banditry.

Immigration by other ethnic groups into the heartlands of the *Fur* was also highlighted as a major concern by *Fur* participants. They argued that their neighbours have invited their kinsmen from other parts of Darfur, putting a strain on the natural resources available in the area, which are scarce.

Specifically, decreasing availability of pastures and rangeland as a result of increasing population density – both human and animal – and increased desertification has exacerbated conflicts. Many of those impoverished by the conflicts lost their animals, land, farms and property, and had to turn to cutting trees for charcoal or selling firewood as a means of maintaining the most basic livelihood.

In their concluding remarks the *Fur* participants mentioned that as a result of all these events, they developed deep mistrust, hatred and suspicion of the *Turjem*, although now they have reconciled and are 'as one'. The DCPSF has made them realize that negotiation and dialogue between these two groups is the only means by which they can restore and maintain peaceful co-existence.

The *Turjem*, meanwhile, described their problems. They agreed with the *Fur* that land disputes have increased in El Salam Locality because of increased population density. They also accepted that more *Turjem* people (relatives and kinsmen to those living in El Salaam) have been migrating from West Darfur. They said that decreasing availability of land for farming activities and grazing areas has certainly contributed to conflicts related to fundamental resources such as water. The *Turjem* argued that land disputes are very closely linked to the availability of water. Areas with good pastures but which lack water are usually avoided. This causes pastoralists to concentrate and settle in certain areas, leading to overcrowding, competition and conflict.

Decreasing availability of pastures and rangeland as a result of increasing population density – both human and animal – and increased desertification has exacerbated conflicts

The *Turjem* argued that land disputes are very closely linked to the availability of water

Negotiation and results

After many disagreements and at times shouting and bitter exchanges, the participants finally reached a consensus agreement: the *Turjem* agreed to voluntary vacate the 'occupied' *Fur* lands and property and surrender the farms they had been cultivating[13]. The project supported provision of agricultural inputs, the establishment of pasture enclosures to improve range resources, and income-generating activities for the youths aimed at reducing unemployment and the culture of violence.

13 In Abujazo the Turjem were to leave Maraisy, Awain Rad east of Wadi Esledgi, Boron Brom and in Bulbul dalalal Angra Marhabieb, Al daga, Jabaroma, Missic, Tatries and Kabakata Locations

CHALLENGES AND PROSPECTS FOR THE FUTURE

PTND-based negotiation approach, although still in its early stages of execution, suggests that it may be possible to find common agreement and ways to move ahead on the complex issue of natural resources in Darfur. Contacts have been established with the Darfur Land Commission, an institutional body that has a core mandate in the areas of recognition and protection of tribal land ownership rights (*hawakeer*), historical rights to land, traditional or customary livestock routes, and access to water. This institution is relatively weak, but this may change as it establishes its presence in the area. Crucially it will need to promote sustainable usage of natural resources, regulation of land tenure, and the exercise of rights to land, as concurrent functions. Reinforcing institutional powers is of fundamental importance in order to make these organizations more visible and capable of dealing with access to and management of natural resources.

Another important lesson learnt is about the need to reinforce the link between the 'distributive' actions normally undertaken by FAO Emergency programmes and the PTND approach – a relatively new approach to such a sensitive issue. Building credibility between the different stakeholders requires a mix of skills: to facilitate dialogue and negotiation, and at the same time to provide concrete initial elements that will improve people's livelihoods. This has proved to be the right balance when turning towards the field level access to and sustainable management of resources.

PTND-based negotiation approach, although still in its early stages of execution, suggests that it may be possible to find common agreement and ways to move ahead on the complex issue of natural resources in Darfur

Reinforcing institutional powers is of fundamental importance in order to make these organizations more visible and capable of dealing with access to and management of natural resources

CONCLUSION

Access to land and other natural resources in Darfur is intricately linked to conflicts between different ethnic or tribal groups, leading to disastrous consequences. It is informative therefore to note that finding durable solutions that build on participatory dialogue as a foundation to post-conflict peace process will not only improve access to and sharing of natural resources, but will also help to repair damaged social fabrics through trust and confidence building.

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Preliminary results from Darfur show that FAO's Participatory Negotiated Territorial Development (PNTD) approach can be useful in addressing conflicts over natural resources in a post-conflict situation. Given FAO's key aim of improving food security, we suggest that the PNTD approach allows for a historical analysis that takes into account the prior experiences and customary expectations of conflicting groups, which in turn leads to negotiation and dialogue in non-violent terms. The process can result in a comprehensive understanding of the psychological complexities surrounding land use and land ownership, including attitudes to resources such as water, animals, and freedom/restrictions on movement and settlement. We believe there is clear value in developing the PNTD approach further in FAO projects to build on strengths and successes learned in Darfur.

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AGRICULTURAL LAND TENURE SECURITY UNDER VIETNAMESE LAND LAW

Legislative changes and improvements since the economic reform

SÉCURITÉ FONCIÈRE AGRICOLE DANS LE CADRE DE LA LÉGISLATION FONCIÈRE DU VIET NAM

Changements et améliorations législatifs intervenus depuis la réforme économique

LA SEGURIDAD DE LA TENENCIA AGRÍCOLA CON ARREGLO A LA LEY VIETNAMITA

Cambios y mejoras legislativas desde la implantación de la reforma económica

ABSTRACT

FARMERS' LAND-USE RIGHTS

TENURE SECURITY

LAND LAW

Land tenure security is believed to be important for agricultural investment. Tenure security can be measured using the three criteria of breadth, duration, and assurance. This paper assesses agricultural land tenure security under Vietnamese land law – specifically with respect to individual farmers – by employing these three criteria. The main finding is that the current law, which is a result of the economic reform initiated in 1986, provides significant security of tenure even though the ownership of all land in Viet Nam is conferred on the State. However, in order to ensure

RÉSUMÉ

DROITS DES AGRICULTEURS À L'UTILISATION DES TERRES

SÉCURITÉ FONCIÈRE

LÉGISLATION FONCIÈRE

La sécurité foncière est considérée comme un facteur essentiel de l'investissement agricole. Elle peut être mesurée à partir de trois critères: l'ampleur, la durée et l'assurance. Ce document évalue la sécurité foncière agricole dans le cadre de la législation foncière qui prévaut au Viet Nam – s'agissant notamment des exploitants agricoles individuels – en appliquant ces trois critères. L'étude montre que la législation actuelle; directement issue de la réforme de l'économie initiée en 1986, apporte une sécurité foncière appréciable, bien que la propriété

SUMARIO

DERECHOS DE UTILIZACIÓN DEL SUELO

SEGURIDAD DE LA TENENCIA

LEY DE TIERRAS

Se cree que la seguridad de la tenencia de la tierra es importante para las inversiones en el sector agrícola. La seguridad de la tenencia se puede medir utilizando tres criterios: su amplitud, su duración y la garantía de su seguridad. Este trabajo evalúa la seguridad de la tenencia agrícola con arreglo a la ley de tierras vietnamita — en especial con respecto a los agricultores considerados individualmente — recurriendo a los tres criterios mencionados. La principal conclusión es que la ley vigente, que es el resultado de la reforma económica iniciada en 1986, ofrece

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investment in agriculture to support the continued advancement of the economy of Viet Nam, further improvements in the law, among other improvements, are desirable to strengthen the security of tenure of individual farmers.

de toutes les terres du Viet Nam soit conférée à l'Etat. Toutefois, pour favoriser l'investissement dans le secteur agricole et contribuer aux progrès de l'économie du pays, il convient d'envisager de nouvelles améliorations de la législation afin de renforcer encore davantage la sécurité foncière des agriculteurs.

una considerable seguridad en la tenencia, pese a que sea el Estadio quien confiere la propiedad de todas las tierras en Viet Nam. Sin embargo, para asegurar las inversiones en el sector agrícola y respaldar el progreso continuo de la economía del país, el perfeccionamiento de la ley representa, entre otras mejoras, una medida deseable para dar solidez a la tenencia de los agricultores.

INTRODUCTION

With the majority of the Vietnamese population having always resided in rural areas, agriculture, and particularly farming by individual growers[1], has been a central theme of socio-economic development policies in the Socialist Republic of Viet Nam (hereinafter referred to as Viet Nam) ever since its declaration of independence from France in 1945. After about 26 years of economic reform that began in 1986, Viet Nam has developed into a fast growing economy that is becoming strongly integrated into the global economic system. As of 2010 it has a middle-income status, with an expectation of achieving industrialized status by 2020 (Communist Party of Viet Nam, 2011).

Although in this state of economic development agriculture is only expected to contribute directly to 15 percent of GDP, with industry accounting for the remaining 85 percent, the agricultural sector will continue to play an important role in the economy and society, contributing raw material for the various industries and to the food supply (Hoang, 2008). In these changing circumstances, Vietnamese agriculture must become more efficient and sustainable, in order to meet the demand for agricultural products and to maintain land productivity. However, the agricultural sector is facing difficulties such as: the increasing scarcity of arable land; the degradation and fragmentation of farmland; the impact of climate change; low labour productivity; price distortions; lack of investment (Dang, 2008; Dang *et al.*, 2006).

Vietnamese agriculture must become more efficient and sustainable, in order to meet the demand for agricultural products and to maintain land productivity

Generally, land tenure security along with other factors such as labour and capital inputs, technology and market forces[2], is believed to be important for agricultural growth (Feder, 1987). In the face of difficulties such as those being experienced by the agricultural sector in Viet Nam (some of which are likely to be experienced on a continuous basis), security of tenure can be considered even more fundamental to encouraging land-related investment

1 'Individual growers' refers here to agricultural activity undertaken by individuals or individual households. All reference to 'farmers' in this paper is to this type of grower.

2 The discussion of these factors is beyond the scope of this paper.

(Coxhead *et al.*, 2010). However, in an attempt to establish equality in terms of land distribution and land-use efficiency appropriate to its socialist ideology, private ownership of land was gradually abolished by the government, and all land in Viet Nam was nationalized under the 1980 Constitution. The current Constitution, which similarly reflects the provisions of the 1980 Constitution, essentially states that all the land in Viet Nam is publicly owned and managed by the State. Nevertheless, private individuals, corporations, and other organizations are allowed to enjoy certain rights to land under the law; these are referred to collectively as land-use rights and granted in respect of all categories of land, including agricultural land. As part of the same economic reform of the country that has resulted in the current level of socio-economic development, the Vietnamese system of land-use rights has continued to evolve.

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The purpose of this paper is two-fold. First, it will provide an overview of the evolution of Vietnamese land law from the time of the country's independence to the present day. Then it will assess the security of tenure under the law at the three stages of development signified by the three Land Acts of 1987, 1993, and 2003 respectively. Place *et al.* in their research concerning a methodology for measuring land tenure security in Africa, have suggested three measurements for assessing the security of land tenure (Place *et al.*, 1994). These measurements relate to breadth, duration, and assurance of tenure, and this paper will adopt these as guiding criteria for its assessment of the Vietnamese situation. The main finding is that, at the two earlier stages of development of the law, security of tenure was questionable to varying degrees, while the current law now provides significant tenure security for Vietnamese farmers in a form of land-use rights that fits within the Vietnamese system of public ownership of land. However, as briefly concluded, further improvements in the law are desirable in order to strengthen security of tenure. This in turn should ensure investment in agriculture by individual farmers who will underpin the further development of the Vietnamese economy in general.

Because the make-up of agricultural land-use rights depends on the category of farming involved, and given that future agricultural growth in Viet Nam will continue to involve individual farming – especially so as to

balance this traditional livelihood with industrialization and urbanization – the focus of this paper will be on the tenure security of individual farmers whose land-use rights are granted in the form of land allocation by the State.[3] Under Vietnamese land law, agricultural land consists of land used for annual crops, perennial crops, aquaculture, salt production, and forestry. This paper will consider the tenure of annual and perennial croplands only. It is also worth noting that despite the essential role of legal arrangements in protecting farmers' land rights, tenure security depends on contextual factors that are extra-legal, such as historical, social, economic and political circumstances (see, for example, Ho and Spoor, 2006; Hare, 2008). It is beyond the scope of this paper to analyse these factors to significant depth, but they will be discussed briefly so as to offer a broader view of the shortcomings of land tenure security in Viet Nam.

AN OVERVIEW OF THE HISTORICAL DEVELOPMENT OF VIETNAMESE LAND LAW

Although the 1980 Constitution of Viet Nam marked the turning point for Vietnamese land law, two important land reforms leading up to that point took place after Viet Nam's declaration of independence. The first land reform was aimed at giving Vietnamese peasants private ownership over land. Accordingly, legislation was passed in 1953 to take away land owned by landlords and re-distribute it to peasants and the landless on an egalitarian basis. The second land reform during the period 1957–1980 (WB, 2010), following the Soviet example, encouraged farmers to pool their privately-owned land and main production means to engage in collective farming and, with that, to participate in collective land ownership (Do and Iyer, 2008; Nguyen, 2009).

3 In Viet Nam agricultural land-use rights may be acquired in several ways and all these modes of acquisition are based on primary land grants initiated by the State. There are mainly two forms of land grants, namely, land allocation by the State and land lease by the State. The two forms are subject to different rights and duties concerning the land, and both forms establish a tenure relationship between the State and the land grantees.

This collectivization was the first step in the nationalization of land in 1980. In that year, the National Assembly enacted a new constitution stating that all the land in Viet Nam belonged to the people as a whole.

Faced with a dramatic decline in agricultural production and a food crisis, the Government of Viet Nam began the de-collectivization of farmland in 1981 (Pingali and Xuan, 1992). Shortly after that in 1986, the *Doi moi* policy or economic renovation was launched to shift from a planned economy to a socialist-oriented market one. The *Doi moi* policy was aimed primarily at dealing with high inflation, severe shortages in food and resources, and the deficiency of state institutions. The means to achieving this was by fostering an increase in agricultural output, the development of a private sector, trade liberalization, and allowing private participation in state-owned enterprises.

As a result of the nationalization of land and in the context of the beginnings of economic reform, the first Land Act was passed in 1987 to provide a regulatory framework for land administration and to establish a direct land tenure relationship with the State. More particularly, the 1987 Act established a system of land-use rights. However, the Act provided for land-use rights in terms of collective farming even as the system of collective farming was being dismantled and shifting back to family farming. Shortly after the adoption of the Act, the Government continued to promote the de-collectivization of farmland; eventually, most land that was still being collectively farmed was re-allocated to individual farmers. Further to these developments, a new 1992 Constitution elaborated on the notion of the public ownership of land enshrined in the 1980 Constitution. All land remained publicly owned, but the allocation of land-use rights to private individuals, corporations, and other organizations was to be recognized. Most significantly, the Constitution recognized the transferability of land-use rights. The 1987 Act, therefore, had to be revised to be consistent with the changing circumstances.

The first Land Act was passed in 1987 to provide a regulatory framework for land administration and to establish a direct land tenure relationship with the State

Accordingly, the second Land Act of 1993 was passed to remedy the limitations of the 1987 Act. It granted land-use rights to individual farmers who had once been members of the collective farms that had been abolished, and allowed land-use rights to be transferred under specific circumstances. In spite of its utility, the 1993 Act could not remain intact while the socio-economic circumstances of Viet Nam continued to change so dramatically.

The second Land Act of 1993 allowed land-use rights to be transferred

To support the country's growing industrialization beyond 1993, the Act was revised in 1998 and 2001 in order to, respectively, establish the procedures for the transfer of land-use rights and to ease the restrictions on the transferability of the land-use rights granted to companies, including foreign investors.

In 2003, the National Assembly passed a new Land Act that became effective on July 1, 2004. One reason for this Act was to consolidate the law following the amendments to the 1993 Act and the numerous subsidiary pieces of legislation issued thereunder. Most importantly, there were deficiencies remaining after the amendments to the 1993 Act that needed to be addressed in order to support the process of industrialization. The 2003 Act established a comprehensive legal framework for a functioning land market, improved the provisions on land valuation and land compensation, and clarified the role of the State as the owner and administrator of the land (World Bank, 2011).

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The 2003 Act is the most comprehensive land legislation to date in Viet Nam, significantly supporting the on-going transition of the economy. However, after about eight years of implementation a number of shortcomings have become manifest that could hamper further economic development, despite the legislative achievements thus far. One area of shortcomings relates to the land tenure security of individual farmers; this will be explored in the remainder of this paper.

THE IMPROVEMENTS IN AGRICULTURAL LAND TENURE SECURITY UNDER THE THREE LAND ACTS OF VIET NAM

Tenure security can be defined as landholders' perception as to the certainty or otherwise of reaping the fruit of their investment in land, *vis-à-vis* outsider interference with this process (Place *et al.*, 1994). It is difficult to describe land tenure security in terms of the attitudes of people. But three measurements of tenure security have been proposed by Place and colleagues in their research on land tenure security in Africa. Their methodology involves the measurement of breadth, duration, and assurance of land tenure. In the wider literature, a general consensus seems to have been reached as to the application of Place and colleague's methodology in determining land tenure security (see, for

example, Prosterman *et al.*, 2009; Ubink *et al.*, 2009). Breadth refers to the quantity and quality of land rights; in theory, tenure security is perceived to be greater when a landholder enjoys more rights to the land or at least key rights relevant to specific situations. Duration means how long land rights last legally or remain valid. The length of time should be long enough for farmers to recoup the fruits of their investment in the land, and land tenure security is perceived to be greatest when the duration is an unlimited term. Assurance refers to the enforcement of the breadth and the duration of land rights. Tenure security depends on the occurrence of all three elements, and the most secure form of tenure based on these criteria in conventional Western thought is that of private ownership of land.

Using the criteria of breadth, duration, and assurance, Vietnamese land law, specifically the three Land Acts of 1987, 1993, and 2003, will be assessed below to determine the security of tenure afforded by the law *vis-à-vis* the land-use rights of individual farmers established under the law.

The breadth of Vietnamese land-use rights

The breadth of farmers' land-use rights has been defined gradually over the course of the three Land Acts. The 1987 Act considered farmers simply as authorized users of the land and established a very simple form of land tenure. Farmers were permitted to enjoy only the physical use of the land. The State strictly limited land transactions among land users, and farmers were not allowed to assign their land-use rights. In contrast, the 1993 Act, in response to the practical demands of individual farmers within the context of transition to a market-oriented economy, recognized especially the capital value of agricultural land and allowed assignment of land-use rights within a specified duration. This enabled farmers to maximize their own interest through the options of either keeping the land for their own use and earning a return on their investment, or converting the value of their land to a monetary benefit by transferring it to others. As transferability is considered one of the more important rights within the breadth of land rights (Place *et al.*, 1994), tenure security would be incomplete without it. It can therefore be concluded that the recognition of the 1993 Act of transferability of land-use rights fundamentally improved farmers' tenure security.

Transferability of land-use rights as established under the 1993 Act and its amendments involved a number of possibilities. In the beginning, the 1993 Act established farmers' five transfer rights. These included the exchange of plots of land located in the same commune-level area between farmers, and the ability of a farmer to lease, bequeath, mortgage, or sell the plot of land over which he or she enjoyed land-use rights. The law then recognized a particular ability of farmers to assign their land-use rights to a company as a capital contribution in exchange for shares in its Amendment of 1998, and finally the right of guarantee in the 2001 Amendment.[4] The 2003 Act has kept these seven transfer rights and added an eighth, the ability to make an *inter vivos* gift.

Transferability of land-use rights as established under the 1993 Act and its amendments involved a number of possibilities

Besides the conferral of an extensive number of transfer rights, the quality of these rights is equally important for ensuring tenure security. In relation to the quality aspect of the transfer rights of farmers, over the course of the three Land Acts there has been gradual and dramatic improvement. While the 1993 Act allowed the transfer of land-use rights, it continued to impose restrictions on the transfer rights of farmers; the 2003 Act has since eased these restrictions. These restrictions could be considered an inadequacy in the quality of the transfer rights and as such would negatively affect the security of the land-use rights of farmers.

As regards the right to sell, the 1993 Act only allowed sales to those who resided in the same place as the land to be transferred was situated, but this requirement has been abolished by the 2003 Act. Accordingly and in general, farmers are now permitted to transfer their plot of land to anyone throughout the country, regardless of the place of residence of the transferee. There remain, however, a few situations where restrictions continue to apply, as is the case of agricultural land in protected areas and paddy fields. The freedom to transfer is a fundamental improvement because mobility is inherent to industrialization. As farmers migrate to cities or take up non-agricultural jobs, they may want to transfer their land-use rights. Meanwhile, productive farmers tend to seek more farmland where this is available for expansion

The freedom to transfer is a fundamental improvement because mobility is inherent to industrialization

4 The right of guarantee refers here to the right of a landholder to use his/her own land-use rights as a security to promise to pay for a loan borrowed by someone else when the borrower defaults.

of their operations. The easing of restrictions on transfers means that there are potentially more transferees, from whom a farmer seeking to transfer his land-use rights can choose the best deal.

One transfer right that was initially restricted was the right of mortgage. Farmers were allowed to use their land-use rights as collateral as of the adoption of the 1993 Act, but only an assignment in favour of a domestic credit institution under Vietnamese law was allowed. The 2003 Act extended the categories of mortgagees to include branches of foreign banks legally operating in Viet Nam, along with any company and private citizens, including Vietnamese residing overseas investing in Viet Nam. This expansion opens up more sources of capital to farmers: they now find that they have more choice in terms of creditors that are potentially well matched to their best interests and convenience. Having access to external sources of capital is very important for farmers in Viet Nam who lack their own personal capital and especially for those who are attempting to commercialize their farming. It has been reported that farmers generally believe that the ability to use their land-use rights as collateral is the most significant land-related right they have gained in recent times (Tran, 2006). The expansion of the categories of mortgagees also formalizes a long-established practice of informal credit supply in Viet Nam, legally protecting the rights and interests of both the creditor and the farmer.

The 2003 Act extended the categories of mortgagees to include branches of foreign banks legally operating in Viet Nam

The right of farmers to lease their land-use rights was also once restricted, but now they have more freedom in this regard. The 1993 Act established for farmers the right to rent their land-use rights *vis-à-vis* annual croplands, although only in some limited circumstances and subject to approval by the local authority. Farmers were allowed to rent their plots of land if they were unable to cultivate those plots on account of their unsettled off-farm jobs or because of a lack of available labour. Additionally, the Act limited the rent term to three years in normal cases, and 10 years in some special cases determined by the local authority. Such a limitation was an impediment to the consolidation and the transfer of farmland to productive farmers in the context of increasing rural–urban migration. The 2003 Act now allows farmers to lease any plots of farmland, including perennial croplands, at will and without any prior approval required, except for the requirement of registration

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of the lease. Because land is usually regarded as a social safety net in a society where off-farm income is unstable and social welfare is underdeveloped, land rental markets could be a positive alternative for agricultural growth and the reduction of rural poverty in this society, in addition to land sales markets (Deininger, 2003). The abolition of restrictions on leasing ensures that farmers – particularly those using land ineffectively or having off-farm job opportunities – are allowed to freely assign their land-use rights in a way that suits their best interests, either through sale or lease.

Another type of right that has existed since the 1987 Act and whose quality has improved is the right to manage the use of agricultural land. The two previous Acts prohibited farmers from letting the land lie fallow for a fixed consecutive period of time, and from changing land use to other types of agricultural use unless they had obtained the permission of the State. For example, if the plot was determined by the State as meant for perennial crops, this being reflected in the land-use rights certificate, the holder of the plot was not allowed to switch its use to annual crops without the permission of the local government. Although not using land remains prohibited,[5] the 2003 Act gives farmers more freedom to choose what to cultivate on their land, provided that their land use still conforms to the existing land-use plan, a plan that is on the record and publicly accessible to all interested parties. Only the conversion of paddy fields into perennial cropland, or land used for forestry or aquaculture, is subject to the permission of a competent body. That means farmers can freely convert the use of the other types of agricultural land: the Act simply requires that such conversion be registered. This discretion as to land-use conversion allows farmers to conveniently and actively adjust their agricultural production *vis-à-vis* market demands. Consequently, they can make the best investment in the land that will, in turn, give them the maximum profit.

The 2003 Act gives farmers more freedom to choose what to cultivate on their land, provided that their land use still conforms to the existing land-use plan

5 Annual and perennial croplands are allowed to lay fallow for no longer than a consecutive period of 12 and 18 months, respectively.

The duration of Vietnamese land-use rights

The 1992 Constitution states that land is allocated to individuals, organizations, and corporations for a stable and long-term period of use. In fact, the principle concerning stable and long-term land-use rights was initiated in the 1987 Act. Accordingly, long-term land-use rights were applicable to farmers who already cultivated independently and who were not engaged in collective farming; the Act merely limited the duration of use of unused or poor land allocated or leased to farmers for agricultural production. However, long-term land-use rights were only beneficial for a small proportion of farmers, because a large number of farmers were members of collective farms. In practice, the duration of the land-use rights of farmers who were contracted in collective farmland was stipulated by land policy. According to the land policy, annual cropland was allocated to farmers for approximately 15 years of use (Communist Party of Viet Nam, 2006). Not until the adoption of the 1993 Act were the regulations on duration of farmers' land-use rights consolidated by a statute and applied equally to all farmers being granted land-use rights. The 1993 Act provided a fixed term of 20 years of use for annual cropland and 50 years for perennial cropland, subject to renewal. These provisions for the determined length of farmers' agricultural land-use rights remain intact in the 2003 Act. The analysis of the land law and land policy leads to the conclusion that the duration of land-use rights of farmers increased only relatively; the greatest significance in terms of tenure security is that the length of land-use rights is now explicitly available for public consultation in one piece of legislation. In so far as tenure security refers to one's perception of the certainty of one's land tenure, the fact that land tenure is comprehensive and well-defined is not enough to enhance tenure security. Such comprehensive and well-defined land tenure must be firmly stipulated and available to landholders. As such, the consolidation of the law and policy concerning land in Viet Nam can be seen as a useful measure to ease farmers' access to the regulations that govern their rights to land. This provides further legal certainty to land rights after the prior instability of land law and policy caused by the collectivization of farmland.

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In addition, the 2003 Act sheds light on the renewal of farmers' land-use rights. The 1993 Act allowed farmers to renew their land-use rights if they so wished, assuming that they had strictly observed the land law during their prior land-use period, and that the land use still conformed to the prevailing land-use plan. However, the 1993 Act left a vacuum in terms of the determination of the extended term and the procedures for renewal. The 2003 Act upholds the renewal of land-use rights as stated by the 1993 Act, but fixes its shortcomings in relation to determination of an extended term. Accordingly, land-use rights that are allowed to be renewed will be extended for the same duration as was applicable in the original term. That means annual cropland can be extended for another 20-year period, and perennial cropland for another 50-year one. With this clarification, the 2003 Act prevents competent bodies in charge of land administration from applying the law at their discretion, thus freeing farmers from any uncertainty concerning the renewal of their land-use rights.

The 2003 Act sheds light on the renewal of farmers' land-use rights

The assurance of land tenure for Vietnamese farmers

All three of the Acts have provided protective measures for farmers' land-use rights. These measures mainly consist of land registration, land dispute resolution and land compensation. Although these three main measures are stipulated in each Act, their scope is different, especially as compared with the 1987 Act. Farmers' land rights have been increasingly protected in succeeding Acts, making land tenure more secure under the law.

Farmers' land rights have been increasingly protected in succeeding Acts, making land tenure more secure under the law

Land registration has been promulgated since the 1987 Act. However, not until the adoption of the 2003 Act has registration of farmers' land-use rights been defined clearly and comprehensively in a statute. The first Act required farmers to register their land-use rights but made no provisions for procedures. It only assigned the fundamentals relating to land registration such as the competent body, the conditions, and the form the land-use rights certificate should take; it left implementation of land registration to the discretion of the competent body. Although the second Act attempted to accommodate issuance of land-use rights certificates and stipulated land registration procedures, these procedures were regarded as complicated and time-consuming. For instance, farmers had to approach several authorized bodies at different

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municipal levels to complete the process of land registration. Moreover, the procedures undertaken by each authorized body involved in the process were seldom transparent. The procedures, therefore, depended on the discretion of the authorized body, which could lead to difficulties in acquiring certificates of land-use rights.

The 2003 Act simplifies the procedures and establishes offices of land registration to make land registration approachable, transparent, and convenient.[6] Land registration is implemented through 'one-stop-shop' procedures in which farmers deal with a single local authority for land registration. It is up to the local authority to transfer the application to the relevant office of land registration, and that office then deals with all related agencies in order to complete the registration.

Thanks to one-stop shops, farmers can now save time and expense in land registration because they only have to contact a single agency to initiate their land registration (FAO, 2007). More conveniently, under the one-stop-shop mechanism, all relevant procedures must be announced publicly, and applicants can consult these procedures at the local municipality (UNDP, 2009). Farmers can access cadastral information by submitting a request to the office of land registration. Additionally, the land-use rights of female farmers are largely ensured, in that the 2003 Act mandates the registration of joint ownership of land-use rights between spouses, unless the couple expresses their disagreement with this in writing.

In 2007, a regulation passed under the 2003 Act further clarifies the provisions for the registration of land-use rights, recognizing the land-use rights of those who enjoy *de facto* long-established and unchallenged use of land. The aim of the regulation was to accelerate the formalization of all landholdings, thus supporting a functioning land market. Simplified and convenient land registration as prescribed by the 2003 Act contributes to tenure security in several ways. Land formalization ensures that the land-use

6 Under the current Vietnamese system of land registration, the authority for issuance of land-use rights is vested in local administrative bodies. The offices of land registration do not function as an administrative authority, but as an intermediary between these local administrative bodies and the applicant for the certificate of land-use rights.

rights of farmers are recognized and protected by the State against the claims of outsiders, and they can now make a claim for land compensation in the case of land expropriation.

In addition to enforcement of land rights through land formalization, the law protects farmers' land-use rights by providing mechanisms for the resolution of land disputes. Starting with the first Act, rules for settlement of land disputes existed, but these were far too simple and ineffective in protecting the rights of farmers. The 1987 Act had assigned jurisdiction to local governments over all land disputes, with the exception of disputes related to the ownership of property attached to land, such as houses and trees. The exception was subject to judicial determination. The 1993 Act, which recognized horizontal relationships between land users, adjusted the resolution mechanism for land disputes, though it continued to regard the administrative authority as one of the competent bodies to settle disputes. In fact, the 1993 Act made a distinction between land disputes in which the disputed land was registered with a relevant authority, and disputes where the disputed land was not registered. Disputes over non-registered land remained subject to resolution by the local administrative authority, while land disputes over registered land, as well as disputes related to the ownership of the fixtures, were now made subject to judicial determination.

The court jurisdiction over land disputes was regulated by the civil procedure law, which is relatively comprehensive. However, there were no regulations in place relating to land disputes settled by the administrative authority until the 2003 Act shed some light on the fundamentals required for the administrative authority to settle the disputes. Furthermore, the 2003 Act explicitly formalizes land-related complaints, giving farmers a means to request the State to review its administrative decision on land management. Review can be undertaken either by the administrative authority or the court, as chosen by those making the complaint (World Bank, 2011). The 2003 Act clarifies those matters for which land users are allowed to make a complaint subject to judicial review, including administrative decisions on compulsory land acquisition and land compensation. The fact that the land law provides protection for farmers' land-use rights in the form of mechanisms for dispute settlement – especially the possibility of resolution by the courts,

The fact that the land law provides protection for farmers' land-use rights in the form of mechanisms for dispute settlement is likely to influence farmers' perceived confidence in their land rights in a positive fashion

independent from the administrative land authority – is likely to influence farmers' perceived confidence in their land rights in a positive fashion.

Finally, protection associated with compulsory land acquisition has been improved gradually over the course of the three Land Acts. Although the 1987 Act recognized the right to compensation when land-use rights were expropriated by the State, compensation was limited to exchange of plots (Phan, 2009). It provided that a farmer whose land-use rights were the subject of compulsory acquisition was entitled to be allotted another plot of land. As such, the 1987 Act treated farmers as if they had borrowed the land from the State, and the State did not need to compensate for the acquired land except for the properties attached to the land.

Protection associated with compulsory land acquisition has been improved gradually over the course of the three Land Acts

The 1993 Act became the first Act to recognize land value, stipulating that the State would pay compensation for the improved value of land due to the investment made by a farmer, in addition to the costs of the fixtures attached to the land. The compensation, however, was based on a fixed price system determined by the State. This has been assessed as usually having yielded values between 10–30 percent of what would have prevailed under a non-fixed system (World Bank, 2011). The regulated land price for the purpose of land compensation has since increased under the 2003 Act, with prices more closely resembling normal market values. Further improvements in land compensation made under the 2003 Act include financial support from the State for resettlement, such as the cost of moving and re-training. Similarly, there have been improvements in the sanctioning of negotiations between farmers and land developers engaged in small investment projects, as regards the compensation to be paid by the latter (World Bank, 2011). Finally, the Act clarifies the procedures for land expropriation for public interests separately from those for commercial purposes, and requires land expropriation and compensation to be publicly announced. These improvements resulting from the 2003 Act have dramatically protected farmers' interests in their land through a transparent process of compulsory land acquisition and a fair compensation approach.

CURRENT SHORTCOMINGS IN THE LAW

Despite the improvements made to Vietnamese land law over the course of the three Land Acts, there remain some shortcomings in the law which can have a negative impact on farmers' perception of their tenure security. Four important shortcomings will now be briefly examined.

First, the 2003 Act imposes a limit ceiling on land transfer. A farmer is entitled to receive up to six hectares for annual cropland located in the south-eastern and the Mekong Delta regions, and four hectares for the other regions. As regards perennial cropland, the ceiling is 20 hectares for the plains and 50 hectares for the midlands and mountainous regions. These regulations limit the number of potential purchasers of land-use rights, adversely affecting the possibility for farmers to obtain the maximum capital benefit from their land-use rights. The limitation also jeopardizes the opportunities of those farmers who have reached the limit but wish to expand their farms in order to take advantage of economies of scale in their agricultural production. The abolition of the land transfer ceiling, therefore, could be meaningful not only in terms of the robustness of commercial family farming but also in terms of opening up opportunities for farmers to obtain the maximum profit in the transfer of their land-use rights.

The 2003 Act imposes a limit ceiling on land transfer

Additionally, in practice local governments make little attempt to prosecute violations of the land transfer ceiling, nor do they impose sanctions for these violations (Dang, 2011). This state of affairs could endanger the trust of people as regards law enforcement. Since tenure security is related to people's perceptions, the law as it is put into practice is as significant for tenure security as is the law on paper (Ping *et al.*, 2009). However, the abolition of the land transfer ceiling might lead to land concentration, threatening land access for poor and vulnerable farmers in rural Viet Nam (see, for example, Akram-Lodhi, 2005).

The present reality is that 41.2 percent of the labour force and 74.5 percent of the poorest still earn a living from agriculture (Viet Nam's General Statistics Office, 2010). Meanwhile, land per farm household is very low at 0.46 hectares on average (Dang *et al.*, 2006). What is more, land and labour markets are underdeveloped in two senses: the conditions necessary for land transfers that

would allow effective farmers to expand their farm size are underdeveloped; so too are alternative sources of stable income that would allow ineffective farmers to leave their farms permanently (see, for example, MacAulay *et al.*, 2006).

Within the context of these constraints, the abolition of restrictions in land transfer ceilings needs to be given proper consideration so as to stimulate economic growth. But this needs to be achieved while also maintaining social stability in general and, especially, not at the expense of the poor. The land transfer limit should therefore be eased to the point at which it promotes commercial family farming under the prevailing socio-economic context of Viet Nam.

The second impediment to the tenure security of farmers is associated with the provisions governing the duration of the land-use rights for annual and perennial croplands. These provisions remain largely unchanged in the current Act in comparison to the 1993 Act. As stated previously, the duration of the land-use rights of farmers is 20 years for annual crops and 50 years for perennial crops. Meanwhile, more long-term investment is required for robust agricultural growth in the context of the new socio-economic ambitions of Viet Nam. This means that farmers need greater tenure security capable of ensuring that they are confident of garnering the appropriate return on such an investment. The State therefore needs to review its rationale for limiting the length of farmers' land rights, especially when it comes to annual crops, if it wants to encourage farmers to invest more in their land and for the longer term.

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Compared with the other two elements of breadth and assurance, measures relating to duration are the most quantitative measures that can be taken to afford farmers a degree of tenure security. An increase in the perception of tenure security can be seen when land rights are allowed to be valid for longer, provided the elements of breadth and assurance remain constant. Addressing duration is also the simplest way to improve tenure security: alternatively, much time and effort would have to be spent in order to propose a new definition of land rights or an improvement in assurance mechanisms. Additionally, efforts to improve duration should be paramount, given that the current law establishes key land rights and the protective measures available to farmers. An extension of any of these elements is unlikely to contribute

to tenure security *vis-à-vis* agricultural development any more significantly than would the extension of the duration of land-use rights.

Furthermore, although the 2003 Act makes the determination of extended terms upon renewal explicit, it still leaves a vacuum as to the procedures involved in renewal. The Act simply states that those directly engaged in agricultural production (hereinafter referred to as 'directly cultivating farmers') shall be continually allowed to use their land-use rights, except in those cases where the State retrieves their land-use rights.

The 2003 Act still leaves a vacuum as to the procedures involved in renewal

Several concerns regarding this provision arise. The first concern is related to the definition of 'directly cultivating farmers' and the competent authority determining such a definition. The Act provides no clarification on these issues, leaving it to the discretion of the authority in charge. Moreover, the Act still provides no procedures for renewal in such a case, while it does clearly state the detailed procedures for renewal in other cases. It seems that the State allows the land-use rights of directly cultivating farmers to be renewed automatically if their land use meets all the conditions required for renewal, including the conformity of land use with the existing land-use plan. However, even in such a case, the Act appears contradictory to its mandate for registration of any changes to land-use rights, including renewals, when it provides no procedures for the renewal.

More importantly, the regulations concerning renewal could threaten the possibility of automatic renewal if the renewal may be annulled by the State's land-use planning and land acquisitions. In practice, a land-use plan is adjusted every five years so as to facilitate a five-year socio-economic development plan. The State has increasingly converted more agricultural land to industrial or commercial land use in order to meet its industrialization targets. As it stands, the Act further reduces farmers' tenure security, because it authorizes the State to compulsorily acquire the land upon its expiry without compensation for land and real estate. Therefore, a perpetual use right to farmland is a likely solution both to the ill-defined renewal procedures and, more importantly, to the limited length of farmers' land rights in Viet Nam, as analysed above.

The last outstanding shortcoming refers to land disputes subject to the court's settlement; here the 2003 Act takes a backward step compared with

the 1993 Act. The 2003 Act allows disputes over registered land to be heard by the court but imposes an extra procedure in the process. It requires land disputes to be reconciled at a local administrative authority before being referred to the jurisdiction of the courts. Such a requirement is designed so as not to burden the court (Tran, 2009). However, this kind of expectation is unjustified if Viet Nam promotes the rule of law. The right to be heard by a court should be protected by law. The State should provide its citizens with alternatives instead of imposing extra impediments in seeking legal protection. Land dispute resolution by an administrative authority should instead be considered a voluntary mechanism, particularly when the land disputes are apparently of a civil nature.

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Although this paper focuses on an analysis of legislative reform and its implications for farmers' tenure security, it acknowledges that legislative improvements to tenure security *per se* will make little sense to landholders if the merits of these laws are not realized on the ground, and supplementary institutions are underdeveloped. In an attempt to enhance farmers' tenure security regulatory changes are necessary, but to make these changes meaningful there must be good governance. Despite achievements in judicial and public administrative reform, law enforcement and land governance remain problematic in contemporary Viet Nam (see, for example, UNDP, 2009; WB, 2009). The most apparent obstacles are land corruption and weak judicial independence. Additionally, as emphasized by Ho (2005), the legislative improvements created with the expectation of increasing tenure security would be an 'empty institution' if the markets of labour, capital and land are still underdeveloped. Currently, these institutions have been in a process of restructuring in Viet Nam. In fact, in addition to the relatively high proportion of the labour force engaged in farming as stated above, insecurity in off-farm jobs and of social security could negatively affect the availability of land for market. Those who have off-farm jobs do not necessarily transfer their agricultural land but rather keep the land as a safety net (Kirk & Nguyen, 2009).

Legislative improvements to tenure security *per se* will make little sense to landholders if the merits of these laws are not realized on the ground, and supplementary institutions are underdeveloped

Farmers still reportedly face significant difficulties accessing formal credit lines in rural Viet Nam, despite supposedly improved access to formal credit on account of their increased tenure security (Smith *et al.*, 2007; Ha, 2011).

Moreover, the agricultural land market has not yet functioned as well as expected in facilitating land sales and rentals (Dang, 2008). As such, land governance and supporting institutions must be managed hand in hand with the legislative changes that aim to establish, once and for all, farmers' tenure security.

CONCLUSION

In Viet Nam agricultural land tenure has undergone fundamental changes, attributable to economic reform, the abolition of private ownership of land, and the corollary establishment of public land ownership. As part of the economic renovation process, land law reforms have undoubtedly established an increasingly strong legal basis for farmers' land rights and security of tenure. The reforms also reflect a response to the demands of the transition to an industrial economy.

Given that tenure security depends on the three components of breadth, duration, and assurance, the legislative changes concerning these components collectively affect the degree of land tenure security. The 1987 Act provided for granting stable and long-term land-use rights to farmers, but restricted the transfer of this form of tenure and provided vague grounds for land expropriation, and no land compensation. Therefore, while in principle Vietnamese farmers were allowed to enjoy tenure in perpetuity, such tenure was actually less economically valuable than it could have been, and poorly protected, resulting in tenure insecurity.

The 1993 Act, however, enabled farmers to enjoy key transfer rights and thereby provided them with greater tenure security. Conversely, it imposed various restrictions on these transfer rights, stipulating complicated and time-consuming procedures on the registration of land-use rights, and provided limited effective mechanisms for land dispute resolution. The 2003 Act has attempted to fix the shortcomings of the 1993 Act and to provide significant tenure security via:

- its easing of the restrictions on land transfers;
- clearer explanations about the renewal of land tenure;
- the simplification of land-registration procedures;

- the promotion of market-based land compensation;
- the choice of the adjudication of land-related complaints either by the courts or by administrative authorities.

The tenure of farmers has not only fundamentally changed in nature, but has also been improved in terms of legal security – remarkably so – under the aegis of the country's economic reform.

However, there remain crucial shortcomings in the law as well as in institutions. The legislative impediments include a ceiling limit on land purchases, insufficient duration, unclear procedures for renewal, land compensation upon expiry, and land disputes. In addition, as security of land tenure is a context-based perception that is affected considerably by the actual experience of seeing the law being implemented or not, the legislative improvements to farmers' land rights must go hand in hand with improvements in law enforcement.

More importantly, other institutional arrangements such as labour, land and credit markets should be developed further, to help realize the benefits of land tenure security to agricultural growth and poverty reduction in Viet Nam. Since land has both economic and social functions – notably in transition economies where a large percentage of the population still cultivate land for their living – land tenure should be arranged in such a way as to balance economic growth and social equality. So, while legal security *vis-à-vis* the form of tenure allotted to individual farmers in Viet Nam has indeed developed over the years, further improvements to the law and other related institutions addressing these shortcomings remain necessary. Future sustainable agricultural growth in Viet Nam in the context of industrialization is dependent upon this.

The tenure of farmers has not only fundamentally changed in nature, but has also been improved in terms of legal security under the aegis of the country's economic reform

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RETHINKING CHINA'S LAND TENURE REFORM
The emergence of farmers' land shareholding cooperatives

REPENSER LA RÉFORME FONCIÈRE EN CHINE
L'émergence de coopératives foncières agricoles

REPLANTEAMIENTO DE LA REFORMA AGRARIA EN CHINA
Las nuevas cooperativas accionistas agrarias de gestión campesina

ABSTRACT

LAND TENURE

VILLAGE GOVERNANCE

DEVELOPMENT

INSTITUTIONAL CHANGE

Land tenure reform is crucial to China's rural development and economic transformation. Recent land policy has emphasized experimentation with land shareholding cooperatives. The aim has been to address the constraints on enforcement of farmers' land rights in the context of scaled agricultural production and the marketing of rural land. Enforcement of these rights is seen as essential to tackling land fragmentation for the realization of coherent and sustainable urban–rural economic balance. However, many of the institutions involved have not strengthened tenure security, instead serving the interests of village leaders, businesses and local states, rather than the farmers. This paper

RÉSUMÉ

RÉGIMES FONCIERS

GOUVERNANCE VILLAGEOISE

DÉVELOPPEMENT

CHANGEMENT INSTITUTIONNEL

La réforme des régimes fonciers constitue l'un des aspects essentiels du développement rural et de la transformation économique de la Chine. Les réformes foncières mises en place dans la période récente ont mis l'accent sur l'expérimentation du concept de coopérative foncière agricole. L'objectif était d'aborder les difficultés rencontrées pour mettre en application les droits fonciers des agriculteurs dans un contexte de croissance de la production agricole et du marché foncier des terres agricoles. L'application de ces droits est considérée comme cruciale pour freiner le morcellement des terres et parvenir à un équilibre économique cohérent et durable entre le monde urbain et le monde rural. Toutefois, plusieurs des institutions concernées,

SUMARIO

TENENCIA DE TIERRAS

GOBERNANZA ALDEANA

DESARROLLO

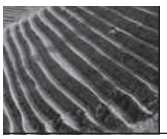
CAMBIO INSTITUCIONAL

La reforma agraria reviste una importancia crucial para el desarrollo rural y la transformación económica de China. La política agraria reciente ha hecho hincapié en la experimentación con las posibilidades que encierran las cooperativas accionistas agrarias. El objetivo ha consistido en abordar las limitaciones que plantea la aplicación de los derechos agrarios en el contexto de una producción agrícola normalizada y la comercialización de las tierras rurales. El ejercicio de estos derechos se considera esencial para superar la fragmentación de las tierras y lograr un equilibrio económico coherente y sostenible entre los sectores urbano y rural. Sin embargo, muchas instituciones no han reforzado la

examines the political economy of these developments and local practices, and discusses the links between land tenure systems and village governance. It also links the key debates regarding both individual and collective land tenure reform. The paper recommends the design of more inclusive institutions that will address issues such as incentives for village shareholders, participation in land management and village governance processes.

loin de renforcer la sécurité foncière, ont au contraire servi les intérêts des chefs de village, des hommes d'affaire et des administrations locales, au détriment de ceux des agriculteurs. Ce document examine les aspects politiques et économiques de ces pratiques locales et analyse les liens existants entre les systèmes fonciers et la gouvernance villageoise. Il souligne également l'importance que revêt le débat sur la réforme foncière tant du point de vue des collectivités que de celui des individus. Le document recommande enfin la mise en place d'institutions plus ouvertes, capables de prendre en charge des questions telles que les incitations nécessaires pour favoriser l'actionnariat villageois, la participation à la gestion des terres et les processus de gouvernance villageoise.

seguridad de la tenencia, y han actuado a favor de los intereses de jefes de aldea, empresas comerciales y administraciones locales, y no de los campesinos. En este trabajo se estudia la economía política de estos fenómenos y las prácticas locales, y se analizan los nexos entre la tenencia y la gobernanza aldeana. También se establece una relación entre los principales temas del debate en torno a la reforma de los sistemas individuales y colectivos de tenencia de la tierra. El artículo recomienda la creación de instituciones más incluyentes que se ocupen de cuestiones tales como la incentivación de los accionistas aldeanos, la participación en la ordenación de tierras y los procesos de gobernanza aldeana.



INTRODUCTION

In the 1970s, a watershed in China's land tenure reform occurred: the introduction of the Household Responsibility System (HRS), which aimed at ensuring individual rural households' long-term, secure land-use rights, under village collective landownership. Despite its important role in facilitating agricultural growth, the HRS is increasingly seen as an impediment to scaled agricultural production and rural development. This dualistic land tenure structure has come under mounting criticism for its ambiguity, which leads to forced land acquisition and land speculation through an alliance of business enterprises and local government, spurred by China's tremendous urbanization. The creation and development of a land market is often deemed incrementally important in allowing individual farmer households to transfer their land directly to third parties without undue arbitration or intervention from the local government. As long as they receive adequate compensation and reasonable social security benefits – such as access to health, education and pensions – it is assumed that farmers may eventually vacate their land, passing it to organizations that are more capable of farming it to its maximum (and sustainable) potential. This would contribute to more efficient land use and the flow of rural population to the cities, these trends being fundamental to continued economic growth and balanced regional development.

The household responsibility system, despite its important role in facilitating agricultural growth, is increasingly seen as an impediment to scaled agricultural production and rural development.

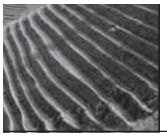
Underpinning the above discourse at the national level is the integrated urban–rural development agenda. This places an emphasis on closing the urban–rural development gap, aiming to improve farmers' incomes and scale production by specialized farm households and cooperatives. This policy calls for more coordinated regional and national development based on industrialization, urbanization and agricultural modernization. In fact, local governments had already advanced this policy in promoting and experimenting with land shareholding cooperatives, dating back to the early 1990s, in the relatively developed southern regions in particular. The promotion of land shareholding cooperatives entails that institutional arrangements should

The household responsibility system, despite its important role in facilitating agricultural growth, is increasingly seen as an impediment to scaled agricultural production and rural development

be in place, so that individual farmer households may tender their land as part of a collective sharing arrangement under the direct management of cooperative organizations or agribusinesses. This apparent institutional land tenure innovation – in the form of land shareholding cooperatives – strikes a balance between individual and collective landownership in applying market mechanisms to maximize farmers' rights and benefits; these rights and benefits are derived from the land and aim to address structural disparities in urban-rural economic balance. A typical disparity is characterized by the fact that in Chinese cities, homeowners can freely transact their residential properties in the market, whereas in rural areas farmers are forbidden from selling their housing land and farmland.

There is a lack of understanding as to why the Chinese state at the local level is in favour of the market-oriented land tenure reform approach, and it is often blamed for causing land tenure insecurity. If the local state is perceived as playing a dualistic role of institutional innovator but also 'trouble-maker', to what extent can land shareholding experiments – assumed to be aligned with market principles and approaches – be successful in the end? Also, to what extent are these land shareholding cooperatives actually initiated and organized by the farmers themselves? This paper provides a critical lens into the study of changes in land institutions by investigating the key challenges of ongoing land tenure reform. In illustrating the practices of land shareholding cooperatives, the author argues that the issues surrounding land tenure insecurity and urban–rural development do not solely revolve around landownership and the land market *per se*, but more with the decision-making powers of the farmers as regards land use and management. Land policy reform ought to provide an environment in which farmer participation is given full reign, despite the presence of other factors: such as the role of the market in influencing the state, and the presence of other actors. Farmer participation in sustainable land use and management can only be meaningful if it is coupled with improvements in village governance. Without empowering the poor in land shareholding arrangements, the loss of farmland and rural poverty can even be *exacerbated* by the cooperatives, when these do not always represent the interests of their shareholders.

Without empowering the poor in land shareholding arrangements, the loss of farmland and rural poverty can even be *exacerbated* by the cooperatives



THE POLITICAL ECONOMY OF LAND SHAREHOLDING COOPERATIVES

Deng Xiaoping's visit to Guangdong Province in 1992 significantly boosted economic reforms in the region. These set an example for the rest of the country to experiment with specialized collective farmer organizations, aimed at increasing agricultural production and farmers' incomes (Zhang & Donaldson, 2008). Since then, the move towards up-scaling the use of farmland for both agricultural and non-agricultural purposes has shaped the changing political economy of the Chinese countryside (Zweig, 2000).

China's land law and policy developments have facilitated land commercialization as the market value of land drastically increases. The current urbanization rate of 47 percent is a manifestation of a new wave of land enclosure and town creation, aimed at unleashing the huge potential of the rural economy. This potential is deemed crucial to the achievement of the 12th Five-Year Plan for National Development (2011–2015) and the urban–rural integrated development agenda (Chi, 2010). Many local pilots have opted for transferring land in return for social security compensation, enabling farmer households to relocate to the cities after land acquisition. This has become a symbol of better livelihoods and modernization, espoused by the slogan "turning farmers into urbanites".

Rural land remains the property of the village collective, and the sale of landownership is forbidden in law. Only under government acquisition can farmland be converted to non-agricultural purposes. Although there is no formal rural land market, village collectives can transfer or lease farmland to outsiders for agricultural purposes. To a certain extent, given the current policy hindrances to the full development of a land market, a land shareholding cooperative is used as a kind of last resort to promote economies of scale through an alliance of business enterprises, local governments and village collectives. In other words, this institutional innovation demonstrates the features of a market economy with socialist characteristics.

Despite some positive outcomes brought about by the land shareholding cooperatives, it is often argued that there is no formal and regularized land market, or relevant service providers in place to ensure more efficient and

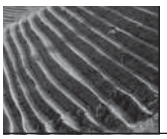
transparent management processes. As a result, there are latent conflicts among different stakeholders and more strikingly, misuse of farmland in the case of its conversion to non-agricultural purposes (Duan, 2010). It is through shareholding cooperatives that village collectives can relatively easily lease land to business enterprises without the full consent of village shareholders. In the name of granting the shareholders more equitable economic benefits accrued from such arrangements, village collectives and local governments can use this system as an excuse for farmland acquisition. In this way, land share prices and economic compensation paid to the affected households are dictated by the local governments and business enterprises, without adequate farmer participation and discretion. Consequently, mishandled land transfers are the direct causes of the loss of farmers' land rights (Li, 2010).

Through shareholding cooperatives village collectives can relatively easily lease land to business enterprises without the full consent of village shareholders

LAND SHAREHOLDING COOPERATIVES IN EXPERIMENTATION

Since the 1980s, grassroots experimentation in land use and management has been exemplary of the increasing role of land shareholding cooperatives. For instance, in 2004 the Dongguan Municipality of Guangdong Province drew up a strategic plan to complete rural shareholding reform in three years, and transform all farmers into urbanites within five years. In Kunshan, Jiangsu Province, by 2004 there were 142 cooperatives accounting for one-tenth of the province's rural population. These were established with each household receiving at least 10 percent of the value of their land shares (Po, 2008: 1615).

Of all the cases of local experimentation with land shareholding cooperatives, the municipalities of Nanhai in Guangdong Province, Wenling in Zhejiang Province, Suzhou in Jiangsu Province, and the capital Beijing, are representative of the major models, given their scales of influences (Wu, 2009). Zhejiang Province was chosen by the Ministry of Agriculture to pilot farmer specialized cooperative organizations in the 1990s. By 2004, the number of these organizations reached 554 000 and the number of farmer households involved reached 2 029 500. By 2008, 42 percent of the households contracted land, or 25.5 percent of the total arable land had been transferred to the more capable and larger households and business enterprises known as the 'dragon head' (Hu *et al.*, 2007: 444).



The Wenling Municipality of Zhejiang pioneered these initiatives in expanding the production of cash crops. These are perceived to be crucial to scaled agricultural development, as more and more specialized large households can acquire land with the support of the government for cash crop farming. Land transfers, which have been greatly encouraged by the local government, have taken variegated forms such as land shareholding cooperatives, sub-contracting, leasing, exchanges and so forth. Service centres were established to facilitate land transfer processes. Nevertheless, the provincial government sees these changes as not being rapid enough, on account of four major institutional constraints:

- the inadequate role of government support
- lack of service support for more regularized land transfer procedures
- lack of social insurance schemes for farmer households
- the latter's ideological backwardness in accepting the notion of modernization (Zhu & Chen, 2008).

Many farmers are concerned about losing their rights completely after joining the cooperatives. A lack of secure rights further limits their incentives to become shareholders, given the fact that 63.1 percent of rural households in China have contract certificates for farmland use (Prosterman *et al.*, 2011: 329). Moreover, there is high level uncertainty over the adequacy of the compensation and social security offered to the households involved (Zhu & Chen, 2008).

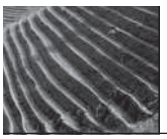
The evolution of the Nanhai Model

A more prominent case of land shareholding cooperatives is the Nanhai model, exemplary of the vast number of such initiatives across China. Nanhai District under the jurisdiction of Fuoshan Municipality of Guangdong Province started its rural economic reform in 1987. The State Council designated it as one of the major sites for pilot demonstration schemes of large-scale agricultural production, in which land transfer would be permitted. At that time, the HRS gradually became a major constraint to organized larger scale farming. Coupled with structural changes in agriculture whereby farming was no longer appealing to the farmers, the

extent of rural–urban migration was phenomenal. More than two-thirds of farmers sought urban employment and left their land either fallow or unattended. Agricultural production slowed down dramatically and could not be boosted because of farmers' low incentives and a shortage of labour. Rapid urbanization induced a high demand for farmland. Land acquisition and expropriation to facilitate urbanization caused mounting farmer discontent over inadequate compensation, and the negative impact of this on their livelihoods (Wang and Xu, 1996).

To the Nanhai government, land tenure reform meant nothing except facilitating agricultural modernization through land concentration. At an early stage, farmers' entitlements to their contracted land were adjusted. Those farmers, who to a large extent were migrants who did not rely on land for their livelihoods, were not allowed to keep the land. Even those who possessed land use rights certificates were asked to give up their land to large-sized households and small businesses with more capital and skills in agricultural production. Village administrative committees acted as land managers in converting the collective land and assets into other usages (Wang and Xu, 1996; Jiang and Liu, 2004).

Although these institutional measures created favourable conditions for scaled agricultural production, the local government felt that the measures did not met expectations, on account of the slow progress made in land acquisition. This was demonstrated by the fact that a fairly large number of farmers wanted to remain in the villages and continue farming as before. Given rapid rural population growth, the average land plots available for each household declined substantially. At the same time, farmers awareness of the increased land value was raised. Although they did not fully rely on their land to meet their subsistence needs – in contrast to those living in poorer regions – they were still inclined to hold on to land for future use (Wang and Xu, 1996). To deal with this challenge, the local government began opting for a farmer-centred institution to cope with farmers' unwillingness to vacate the land. Given a lack of belief in both land privatization and nationalization among local officials, the reformist government decided to establish land shareholding cooperatives in order to encourage more comprehensive rural economic development outcomes.



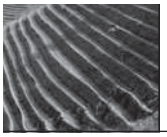
In 1992, a demonstration pilot project was started that would allow farmers to become land shareholders by granting them economic and management rights. The local government managed to consolidate and accumulate the fragmented land and put it to different uses. It established zones for farmland protection, and other zones for industrial development and public utilities. By 1995, a total of 1 869 rural shareholding organizations had been established, 80 percent of which were formed at the village level (Zhao, 2007: 40). In most cases, these cooperatives were transformed into higher-level shareholding corporations under the auspices of the local government. Because rural development required collective action, to a certain extent the alliance of local government, farmers and businesses was instrumental in overcoming many difficulties in the farming and marketing of agricultural produce (Wang and Xu, 1996). In addition, being the holders of 50 percent of the cooperative's shares, village collectives play an essential role in providing the public services and social security aspects needed by the local populations (Jiang and Liu, 2004).

To enable farmers to join the cooperatives and thus to become shareholders, the principle of equal rights as regards the number of shares allocated to each household was applied. In some cases, other types of shares based on labour contribution and the period of time land had been used were also introduced to stimulate farmers' incentives. Sub-models were developed to cater for local circumstances in three townships. In the Lihai model, farmers' shareholding rights were hinged on the land and other assets contributed. In addition they could be transferred, mortgaged, inherited and even bestowed as gifts within the organization. In contrast, the Guicheng and Pingzhou models did not allow for trading of land shares except for inheritance purposes. But all the models allowed the distribution of dividends, to be decided by the shareholders' assembly, which was held regularly and involved the participation of the majority of shareholders. All management information – especially concerning financial management – was supposed to be released to the shareholders, these in turn having the exclusive right to judge whether there were issues related to lack of transparency, fairness and operational efficiency. Almost 40 percent of annual revenues were distributed to shareholders as dividends, while the remainder was kept in the cooperatives for public use and enterprise redevelopment (Huang, 2005; Zhao, 2007).

Despite these positive steps, till now the developmental effects of the Nanhai model are not as far-reaching as expected. Between 1994–2004, the number of land shareholding cooperatives reached 1879; however, 25 percent of the established land shareholding cooperatives were either dysfunctional or simply collapsed (Jiang *et al.*, 2010: 253). On account of continuous shortage of natural resources such as water and farmland, the question of how to maximize the utilization of these resources to suit developmental needs has posed a challenge for the local government. For instance, more profitable sectors such as vegetable and flower farming businesses are targeted, with a view to developing a modern urban agricultural sector. However, as these agribusinesses involve huge demand for farmland, food security is put at risk. The local government seems aware of this dilemma and even calls for maintaining the current level of food supply. At the same time it needs to allow the full development of the 'dragon head' businesses in leading agricultural modernization, given the growth-driven approach China is taking to accelerating local economic development.

Between 1994-2004 25 percent of the established land shareholding cooperatives were either dysfunctional or simply collapsed

The weakness of the farmers in organizing more effective land shareholding cooperatives than originally assumed was evident in terms of organizational management (Nanhai Agricultural Bureau, 2007). In 2003, the average yearly dividend per capita was only RMB 1 180 or US$186 at the current exchange rate. Revenue distribution was also skewed, contrary to the organizational charters of the cooperatives. In southeastern areas of the municipality where industrial enterprises were paramount, the dividend received by shareholders was almost ten times higher than in other locations. By contrast, in western areas where agricultural enterprises constituted the majority (approximately 33 percent of the total land shareholding cooperatives), the village shareholders had not received any dividends (Huang, 2005). In general, land shares are confined within the villages, thus making the transfer, inheritance and mortgage of these land shares difficult or impossible. When farmers are allowed to opt out of the cooperatives they do not receive adequate compensation. In many parts of the country there is a lack of evidence as to whether farmers joined the cooperatives of their own volition (Jiang *et al.*, 2010).



Local farmers developed perplexing attitudes towards the model. They did not see the marked difference between the land shareholding cooperative system and the HRS, because their discretionary power over the land in both systems does not differ much. Many farmers complained about frequent government policy changes. When the HRS was implemented, the local government asserted its usefulness in safeguarding the long-term rights and interests of the poor. However, some farmers were confused by the introduction of the land shareholding system, even though this was presumed to be more beneficial to them. Some showed their discontent over the loss of their land to the cooperatives, whereas under the HRS system, they did at least have some land to meet their subsistence needs. Once the land had gone, they would end up losing the safety net; their benefits from the cooperatives were uncertain because of the internal and external risks involved in organizational management and development. They simply doubted that the cooperatives were managed in their best interests by the local elites (Wang and Xu, 1996).

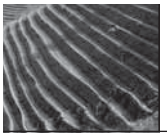
COMPLEX POWER RELATIONS AND VILLAGE GOVERNANCE

In retrospect, the differences between current land shareholding cooperatives and arrangements under the People's Commune in the 1960s are remarkable. The latter can even be thought of as a higher-level cooperative organization, in terms of their scaled operations across villages and townships. The state managed to transform the majority of traditional marketing and supply organizations into the so-called 'modern' cooperatives. However, these hastily-established institutions failed, on account of gross inadequacies in the facilities, resources, skills and experience of the government, among many other factors (Skinner, 1965). The state and the commune played a dominant role; meanwhile individual households joined the commune as members, not shareholders. The failure of the People's Commune is a warning: that a simplistic approach to land commercialization in the form of today's land shareholding cooperatives may not necessarily lead to the empowerment of the poor, or improvements in their livelihoods.

While land transfer is largely encouraged in current land law and policy, Yu (2010: 274) cautions that it can also lead to land loss for farmers, especially smallholders. Given ongoing population increases and corresponding decreases in available land, the tensions and contradictions between the Chinese people's land needs and what their land can sustainably offer them will only increase in the coming decades, assuming land transfer is accelerated for the sake of scale economies. Given the uncertainties surrounding the current economic downturn, those who lose their land and move to cities may nevertheless eventually have to return to their villages, especially when social services in the cities cannot cope with the rising population influx: their temporary city employment can come to an end at any time. If the returning migrants have no land to till in their villages, village conflicts caused by the loss of their basic means of livelihood become inevitable. The current legal framework has yet to be effective in safeguarding farmers' interests; therefore smallholders can lose their land quite readily in land transfers to larger households, business enterprises and government, even though they are land shareholders on paper.

Given the varying degrees of success and failure of experiments with land shareholding cooperatives in China, institutional constraints to the successful creation of more farmer-centric economic organizations need to be further understood. In many cases, membership is vetted by the organizations' leaders to ensure that the members meet physical and technical requirements. Quite often the members are not allowed to withdraw when the cooperative is losing profits or property (Tang, 2009). Purchasing of land shares is a right extended to each member with the cooperative leaders acting as their patrons. The numbers of shares one can purchase depends on various factors, which in turn determines the shareholders' power in decision-making (Hu *et al.*, 2007: 449). The majority of village shareholders may not exert much influence over land management. Instead, they may have to give up their discretional power to cooperative leaders, most of whom are village leaders and representatives of business enterprises. Thus, local collectives dominated by elites actually obstruct farmers' power and choice over the management of the cooperatives. Moreover, the embedded 'values' of institutions – that is, informal rules of the game, customs, traditions, norms and even religion – further complicate the formal institutions in terms of efficiencies in their bureaucracy, policy and judicial decision-making (Williamson, 2000).

Local collectives dominated by elites obstruct farmers' power and choice over the management of the cooperatives



Furthermore, land transfers among households and between households and other shareholders such as business enterprises often involve the infringement of farmers' rights, a lack of legal stipulation on the protection of their rights, a waste of resources, and a weak oversight of cooperative management. The local state and village leaders may abuse their power for private gains (Hoff and Stiglitz, 2004). As such, the institutional environment of the land shareholding cooperatives has been more about transferring farmers' land to large and powerful land shareholders than about addressing the real needs of village shareholders. For the latter, landlessness becomes the reality. Or simply put: the cooperative can be an effective institution that exploits their land rights (Zhang, 2009). Given the evidence of land loss and conflicts arising from the operation of these institutions, the government is trapped in its effort to transform the rural economy. This is inextricably linked to the process in which village democratization is hampered by elite capture. It is in this process that the rights of farmers are being renegotiated and the struggles for power between the farmers and their leaders occur, both in silent and non-silent forms.

INDIVIDUAL OR COLLECTIVE LAND TENURE: WHICH IS BETTER?

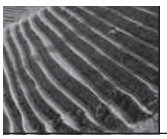
The emergence of land shareholding cooperatives as discussed so far explains the need to rethink China's land tenure reform. For many scholars and policy-makers, the HRS carrying more features of individual tenure seems a stumbling block to the realization of scale economies, owing to its induced farmland fragmentation. As smallholders lack adequate access to inputs, technology, information and markets, their produce can hardly meet the demands of final consumers (Hu *et al.*, 2007). Given that only tiny land plots are available, many rural households – especially those living in more economically-developed areas – look to the advantages of rural–urban migration while also leaving their land fallow, while those living in poorer areas keep their land cultivated as a means of subsistence and social security. However, the comparative advantages of small-scale farming as seen in other countries have been ignored in China, both in terms of policy research and practice. Thus, there is a lack of more grounded agricultural policies aimed at benefiting both smallholder and scale economies.

The comparative advantages of small-scale farming as seen in other countries have been ignored in China, both in terms of policy research and practice

Qin (2006) strongly argues that real landownership should be assigned to the farmers, which is crucial to democratic village governance. Qin's rural survey conducted in Hunan Province in 1997 indicated that almost 50 percent of the respondents expressed their preference for more strengthened private land rights, to ensure land equity. He concludes that farmers' landownership should be recognized by law – be this individual or collective ownership – as long as it is based on their choice. In the case of individual landownership, farmers can still form land groups. And in the case of group ownership, individual members should be allowed to withdraw their membership. Disagreeing with others who are concerned about the possible effects of land concentration in the hands of a mighty few (as is evident in many developing countries), Qin argues that dealing with the unconstrained power of the state, and business alliances that severely undermine the rights of farmers, is of vital importance. In this respect, land privatization characterized by free land trading does not necessarily cause landlessness for the poor. Whereas private landownership is unrealistic for China in the foreseeable future, land shareholding cooperatives as a collective form of tenure provide an alternative that should enshrine rights to farmer households as shareholders, under the assumption that these groups can exert their de facto landownership.

Yet, the absence of an effective control system over state behavior, and of channels for farmers' collective action in matters concerning their rights and participation in legal and policy-making processes, exercises a major constraint on their capacity to hold the cooperative leaders to account. This constraint cannot be tackled simply by the institutionalization of private landownership. In a similar vein, the formation of land shareholding cooperatives may not necessarily lead to more effectively organized collective action by farmers regarding land use and land management. As such, the study of land tenure reform must shift the focus away from ownership, rights and economic issues to exploration of the political, social and legal conditions. China's land reform should not opt for absolute privatization, since the latter does not exist even in Western countries. Land always embodies the state's interests in realizing its potential to cater for the public interest. The ultimate question is how farmers' vested interests can be represented effectively and negotiated both with the state and with business interests in the land use and management process.

The formation of land shareholding cooperatives may not necessarily lead to more effectively organized collective action by farmers regarding land use and land management



From a historical perspective, farmers' abilities to make institutional choices cannot be overestimated. It is argued that the collectivization period of the 1950–1960s was marked by strengthened organization of the peasantry. By comparison, agricultural decollectivization since the late 1970s under the HRS has led to the disintegration of rural communities (Zhou, 1996). The HRS has brought about increased rural societal differentiation in terms of inequality in incomes and access to social services. It has actually dissolved the basis of the socialist superstructure and removed the socialist economic base (Knight and Song, 1993; Rozelle, 1994; Bramall and Jones, 2000). The question of how to bring back community ownership and management has been under-researched.

Rural social differentiation has strong bearings on the role of the government. With the introduction of the HRS, the central government's influence in rural governance has weakened in the process of decentralization. Local governments have played a large role in economic development, facing mounting challenges of revenue generation to support their programmes (Bramall and Jones, 2000). As the drive towards farmland conversion and consolidation for scaled economies is likely to continue, it is increasingly difficult for small landholders to exert control over their land, given the diverse physical and social fragmentation in the Chinese countryside. More land-related conflicts are likely to occur because of multiple land claims. Any attempts at land privatization may not undermine the capacity of the local elite in infringing the rights of the majority of the farmers (Cheng, 2006; Cao, 2005; Wen, 2004). Strengthening farmers' land rights proves to be a daunting challenge, complicating the formation of land shareholding cooperatives that should properly accommodate the heterogeneous interests of their shareholders.

Any attempts at land privatization may not undermine the capacity of the local elite in infringing the rights of the majority of the farmers

The institution of collective landownership has its roots in long-standing social, contractual and cultural norms that cannot be simplistically understood from an economic or legal angle. Because of the rules implicit in land relations, collective land rights reflect the changing nature of bundles of rights and social relations. As these relations evolve, any attempt to clarify the present land rights structure will not lead to the stabilization and securing of farmers' rights. Even though the law gives farmers all the rights they may deserve, it does not necessarily mean that these rights can necessarily be safeguarded and enforced effectively (Zhe and Chen, 2005; Zhou, 2005).

State institutions need to understand local conditions, and the law must be able to play an essential role in ensuring its own effective enforcement, to safeguard the rights of the affected according to local conditions (Qiang, 1997). To make the law work for the poor, farmer-centred village governance in respect of village elections, for instance, must be improved to ensure effective legal changes. This also means that legal reform to strengthen property rights should be enhanced by mechanisms that will hold village leaders accountable (Sun, 2008; Deininger and Jin, 2009). It is no wonder that current land shareholding cooperative systems seem a last resort to safeguard farmers' rights and maximize the efficiency of land use. It is far too early to assess their impact on village governance; this requires further study (Po, 2008).

Land shareholding cooperatives as a mixed form of individual and collective tenure have largely been political in nature, and ideologically earmarked as the last means of striking a balance between socialism and capitalism, or land nationalization and privatization. They facilitate the establishment of quasi land markets characterized by local state domination in land transfers. Without the full participation of village shareholders in defining their rights, they can be ambiguous in terms of the roles and responsibilities of the local state, the village collectives and corporations. It is this ambiguity that facilitates the development of the land market, which serves the state's interests in exerting sufficient control over the cooperatives. Although relevant laws and policies seem to promote greater autonomy for these institutions, village shareholders' rights are not automatically improved, given the unbalanced power of different stakeholders.

In a nutshell, both the individual land tenure represented by the HRS and the collective land tenure represented by village collective landownership and land shareholding cooperatives have not worked adequately to the benefit of the poor. It is necessary to go beyond the narrow domains of land tenure to understand the social, political and biophysical conditions and dynamics that will make land tenure systems more locally appropriate (Zhao, 2011).

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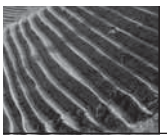


CONCLUSION

China's land tenure reform has reached a critical stage, in which drastic institutional changes are needed to incorporate local communities into land use and management regimes. Existing institutions have provided ineffective mechanisms for authentic farmer-centred decision-making processes. It is essential that more appropriate land tenure arrangements for sustainable land use and management are explored (Zhao, 2011). The design of China's urbanization policy should be compatible with demographic, resource, environmental and social realities. The economy simply cannot generate adequate employment opportunities for 69.5 million landless rural migrants who will arrive in China's cities by 2015. Neither can the Chinese cities supply adequate water and other energy resources and waste treatment facilities, given the fact that these resources are already under severe strain (Lu, 2010: 61–62). The teleological relationship between rural population size, economies of scales and modernization does not hold true for China, and China should avoid the trend of urbanization that has led to rural social and economic decay as experienced by many other countries (Bandyopadhyaya, 1971; Lu, 2010).

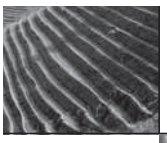
Land shareholding cooperatives reflect the fact that any attempt to advocate a uniform system of land tenure in rural China is doomed to fail (Kung, 2000). Land laws and policies to strengthen individual farmers' rights – such as the right to transfer land within the remits of collective landownership – have proven not to be largely beneficial to the poor, especially the most disadvantaged groups among these. The fact of becoming land shareholders does not necessarily translate farmers' rights as shareholders into more strengthened decision-making powers as regards land use and management. Similar to the issue of the village collective, questions remain about who exactly represents the cooperatives, and how individual shareholders can exercise their rights. In the absence of adequate shareholder participation, it is hard to tell how the cooperatives have served the best interests of the village shareholders. The abuse of power by village administrative committees and higher-level government in controlling land operation and governance undermines the effectiveness of ongoing institutional reforms (Cai, 2003; Guo, 2001; Kung, 2003; Po, 2008).

The enforcement of farmers' land rights can be undermined by complex political, economic and social factors. Local authorities may perceive their power undermined by farmers' strengthened rights. In this case they would have fewer incentives to implement the relevant laws and policies properly. And they may seek measures of last resort to intervene in such a way that farmers' land rights are delimited, determined, used and managed in the name of land consolidation for the purpose of scale economies, rather than in the interests of the farmers themselves. This can be complicated by a lack of transparency and accountability in the management of land-related institutions.

Land shareholding cooperatives are not aimed at replacing the HRS. Rather, it is the modification of the system that is assumed to suit the trajectory of economic reform. In practice, however, the role of land shareholding cooperatives in agricultural development should not be overestimated, as agricultural development relies on comprehensive support from the government, which has to deal with the structural limitations of agricultural and market systems. Farmers' reluctance to vacate their land to facilitate the development of land lease markets in shareholding arrangements indicates an institutional failure that ignores farmers' needs, interests and consent. Furthering market-oriented land tenure reform without addressing key governance issues will not improve the current situation. Nevertheless, the land shareholding cooperative system does present an alternative to land privatization (which is not feasible within the current political, economic and social parameters). It is an institutional innovation to demonstrate how the complex relations between different stakeholders can be potentially re-formulated for the sake of intensive and efficient land use to the benefit of poor smallholders.

One needs to understand the ongoing village democratization processes in which farmers' social, economic and political rights need to be significantly improved, so that they can wield more power to participate in decision-making processes concerning land-related institutional development. Policy-makers and theorists ought to avoid using the institution of the land shareholding cooperative as a prototype of land tenure reform without allowing for community-centred approaches to institutional innovation that better suit the needs of the local context.

One needs to understand the ongoing village democratization processes in which farmers' social, economic and political rights need to be significantly improved



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Further studies of the impact of land shareholding cooperatives on their members' rights and responses, livelihoods and agricultural development, are required. Policy-makers need to ensure that the promotion of this institution does not come at the cost of marginalizing poor shareholders, whose active participation should be tied to their own benefits via wider reform measures vis-à-vis village governance. Otherwise, these institutions are likely to do more harm than good to the livelihoods and rights of the poor, as well as China's agrarian future in general. More locally-based and diversified land tenure arrangements for sustainable land use and management should be explored and experimented with (Banks, 2003; Zhao, 2011).

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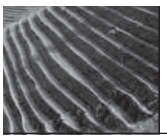

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LAND AND MARINE TENURE IN FRENCH POLYNESIA
Case study of Teahupoo

LE FONCIER TERRESTRE ET MARIN EN POLYNÉSIE FRANÇAISE
L'étude de cas de Teahupoo

LA TENENCIA TERRESTRE Y LA TENENCIA MARÍTIMA EN LA POLINESIA FRANCESA
El estudio de caso de Teahupoo

ABSTRACT

MARINE TENURE

LAND TENURE

USER RIGHTS

FRENCH POLYNESIA

The diversity of Pacific cultures (0.3 percent of the population to 25 percent of the world's languages) is important. Most of the island societies manage their resources and territory in communities meaning that the interaction with state tenure governance is extremely varied. The lack of centralization of power until to the colonial era, with the notable exception of Tonga or Hawaii, no doubt encouraged the continuation of legal pluralism in the Pacific. In the scientific and technical literature on the Pacific Islands, land

RÉSUMÉ

FONCIER MARIN

FONCIER TERRESTRE

DROITS D'USAGE

POLYNÉSIE FRANÇAISE

La diversité des cultures océaniennes (0,3 pour cent de la population pour 25 pour cent des langues mondiales) est grande. La plupart des sociétés insulaires gèrent leurs ressources et leur territoire de manière communautaire entrant ainsi en interaction avec la gouvernance foncière étatique selon des modalités extrêmement variées. L'absence de centralisation du pouvoir jusqu'à l'époque coloniale, à l'exception notable de Tonga, voire de Hawaii, a sans doute favorisé le maintien du pluralisme juridique océanien.

SUMARIO

TENENCIA MARÍTIMA

TENENCIA TERRESTRE

DERECHOS DE USO

POLINESIA FRANCESA

La diversidad de las culturas oceánicas (el 0,3 por ciento de la población del globo respecto al 25 por ciento de las lenguas que existen en él) es muy acentuada. La mayor parte de las sociedades insulares gestionan sus recursos y territorios de acuerdo con pautas comunitarias, lo que hace que la interacción que se establece con la gobernanza de la tenencia ejercida por el Estado adopte muy variadas formas. La ausencia de un poder centralizado hasta la época colonial, con la excepción notable de Tonga

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and marine tenure are systematically treated separately. Yet, the Pacific Islanders have historically established relations of continuity between land and marine tenure resulting in priority and/or specialized control of territories and resources.

Dans la littérature scientifique et technique concernant le Pacifique le foncier terrestre et le foncier marin sont systématiquement traitées séparément. Pourtant les Océaniens ont historiquement établi des relations de continuité entre foncier terrestre et marin se traduisant par des maîtrises prioritaires et/ou spécialisées des territoires et des ressources.

o incluso de Hawaii, favoreció sin lugar a dudas el mantenimiento del pluralismo jurídico en Oceanía. En la literatura científica y técnica relativa a las Islas del Pacífico, las tenencias terrestre y marítima se tratan sistemáticamente como entidades separadas. Sin embargo, los habitantes de Oceanía han establecido a lo largo de la historia unas relaciones de continuidad entre ambas formas de tenencia, que se han traducido en un control prioritario y/o especializado de los territorios y los recursos.

INTRODUCTION

La littérature scientifique et technique concernant le Pacifique traite systématiquement le foncier terrestre et marin séparément. Pourtant les Océaniens ont historiquement établi des relations d'équivalence et/ou de continuité entre le foncier terrestre et marin. Ainsi le travail exemplaire de Hviding (1996) ne s'intéresse qu'à la tenure marine aux Salomons, tandis que celui de P. Ottino (1972) à Rangiroa (archipel des Tuamotu), comme le remarquable travail coordonné par Ward et Kingdom (1995) à l'échelle du Pacifique, ne portent que sur la partie foncière terrestre. Les dispositifs environnementalistes (avec les organisations non gouvernementales internationales) tendent à reproduire cette dualité. L'entrée par les ressources de la propriété commune tente d'englober dans un même canevas des exemples terrestres et marins mais sans réflexion spécifique sur cette continuité entre la terre et le mer (Wagner et Talakai 2007). Si les objets et les champs disciplinaires paraissent limités, ce n'est pourtant pas le cas des pratiques océaniennes qui posent un principe de continuité entre la terre et le mer (Rigo 2004; Le Meur et al. 2009).

À partir d'une enquête menée de 2008 à 2011 à Teahupoo, commune associée située à Taiarapu à l'extrémité sud de l'île de Tahiti (archipel polynésien des îles du vent) (Cartes 1 et 2), nous proposons de montrer comment les questions foncières terrestres et marines sont inextricablement liées en dépit de deux siècles de politiques publiques d'inspiration coloniale qui ont abouti à séparer ces deux questions. Une méthodologie d'étude interdisciplinaire permet d'éclairer les deux revers d'une même pièce (foncier terrestre et marin). C'est ainsi que nous avons systématiquement recueilli des données pour les intégrer dans un système d'information géographique qui permet de projeter des informations au travers de cartes thématiques. Le recueil des données est organisé selon le schéma présenté dans la Figure 1.

Parallèlement des entretiens non-directifs et semi-directifs ont permis de comprendre le territoire vécu des populations de Teahupoo et d'aborder la gestion de leur foncier dans un contexte dominé par le pluralisme juridique océanien au sens de Griffith (1986): «la présence dans un champ social de plus d'un ordre normatif».

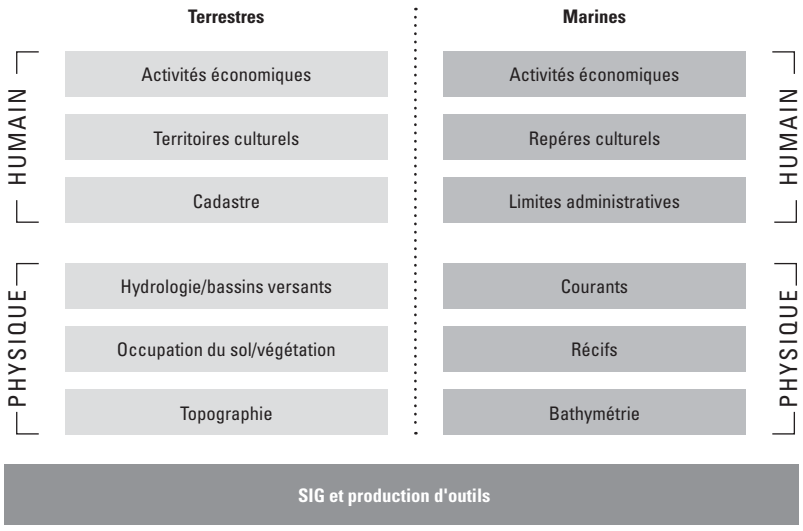
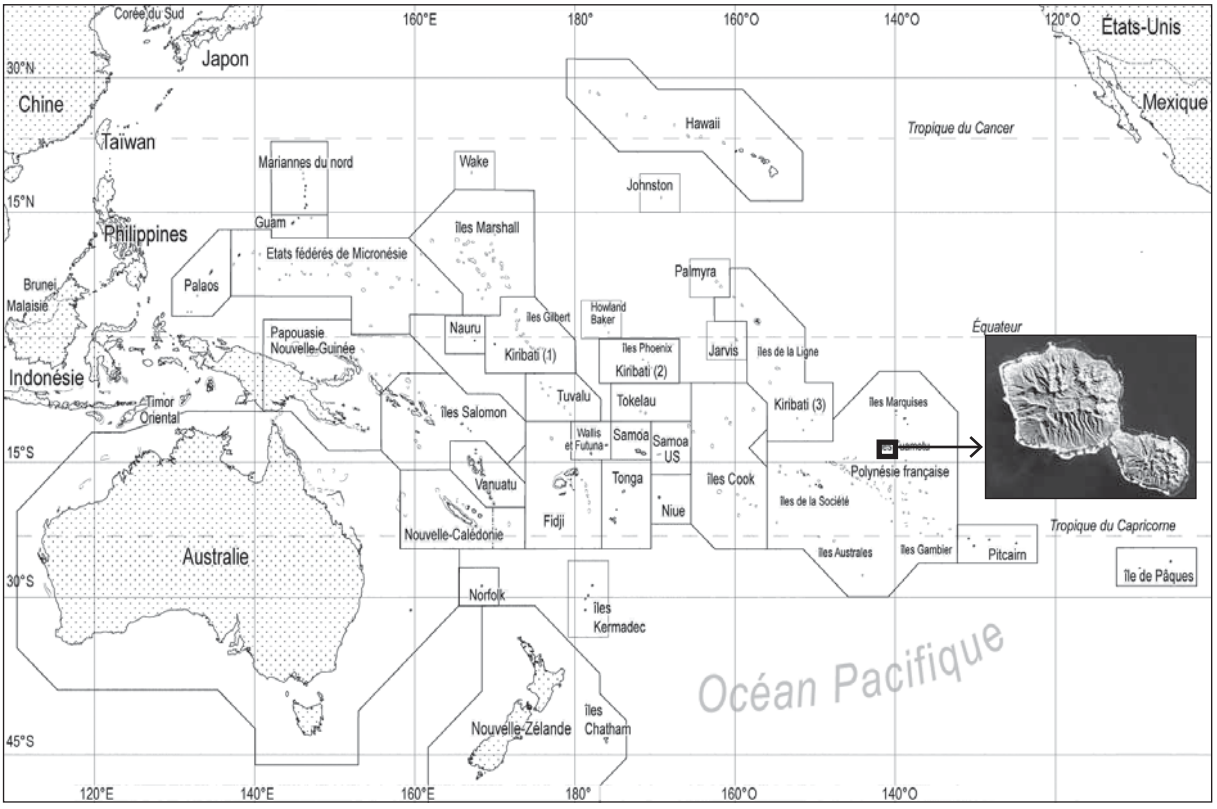


Figure 1
La projection des informations au travers des cartes thématiques

Nous abordons dans une première partie l'appropriation du foncier avant le contact avec les Européens, puis dans une seconde partie l'évolution du rapport de la société au foncier à Taiarapu durant la colonisation. Dans une troisième partie nous détaillerons différentes facettes de l'appropriation du foncier (terrestre et marin) aujourd'hui. Un cadre d'analyse relatif à la théorie des maîtrises foncières sera mobilisé. La théorie des maîtrises foncières, développé dans le contexte du foncier africain, distingue différents types de droits d'usages exercés par des acteurs. La maîtrise prioritaire se réfère ainsi à des droits d'accès, de prélèvement et de gestion d'une ressource ou d'un territoire exercés par un ou des acteurs (Le Roy 2011).

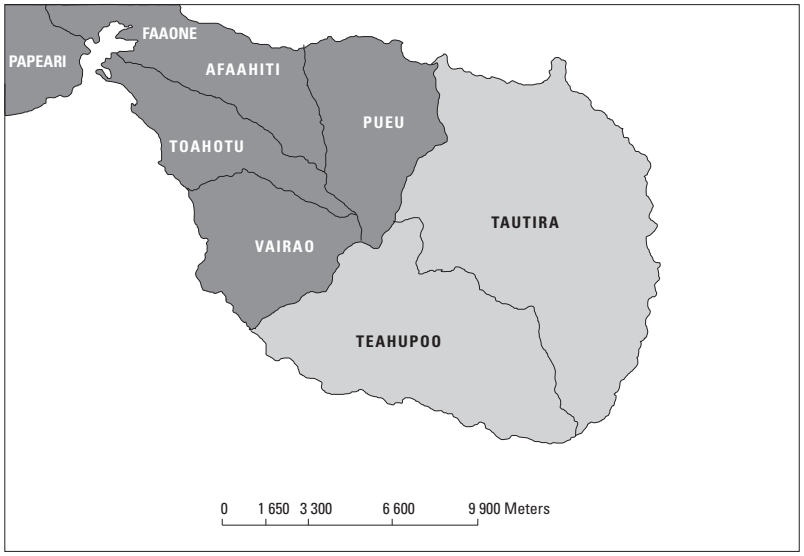
Nous faisons l'hypothèse dans ce travail que ce cadre d'analyse permet de comprendre les différents types de droits d'usages qui s'exercent sur la terre et la mer dans un contexte insulaire polynésien. Cela nous amènera ensuite à discuter de la recomposition du pluralisme juridique foncier dans cette partie de la Polynésie française.

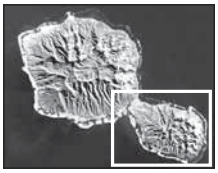
Carte 1
L'Océanie avec la loupe de Tahiti



Source: Adaptation de Fond de carte Oceania2011 http://ctig.univ-lr.fr/Map_Oceania2011

Carte 2
La zone d'étude





LÉGENDE

Zone d'étude

Superficie
Teahupoo: 5 755,2 ha
Tautira: 8 595,9 ha

Source: Adaptation de L. Villierme

LA SOCIÉTÉ ANCIENNE DE TAIARAPU ET LE FONCIER

L'économie politique de Taiarapu, comme dans de nombreuses sociétés polynésiennes, était basée sur une organisation ramifiée au sens de R. Firth (1965). Le pilier du ramage était le *marae* (espace en pierre à ciel ouvert) dont dérivaient les droits fonciers terrestres et les droits d'usages marins. Chaque chefferie avait son *marae*, tout comme chaque ramage, quel que soit son statut, avait son *marae* de famille (*marae fetii*). Au début du 18ème siècle il existait six confédérations politiques et territoriales à Taiarapu dont les limites des chefferies incluses dans chaque confédération variaient au gré des

alliances. Selon J Morisson (1966) Tahiti iti (lieu de notre étude) était divisé en six chefferies: Afaahiti, Tautira, Tepari, Vaiaotea, Mataoae et Vaiuru. Une chefferie regroupait un ou plusieurs ramages (*opu* ou famille élargie). L'aîné du ramage est normalement le chef non seulement de son ramage mais de la chefferie tout entière. Le ramage étant une organisation divisée, chaque aîné de chaque ramage est reconnu comme le chef (*arii*) de sa propre famille élargie sur son propre territoire.

Parmi les attributs du chef le *rahui* est sans doute le plus important (Morisson 1971; Oliver 1974). Au sens strict le *rahui* est une restriction temporaire dans le temps ou sur un espace portant sur des ressources ou un territoire. A Taiarapu la reconnaissance du chef impliquait une reconnaissance de droits spécifiques sur le contrôle de la terre et du lagon attaché à son territoire (Ariitaimai 1964; Marau Taaroa 1971). Parmi ces droits était celui qui permettait de mettre en œuvre un *rahui* sur la terre et le territoire marin de son ramage. Dans notre compréhension les droits d'utilisation associés à ces *rahui*, détenus par les ramages, sont plus relatifs que absolus. Dans certaines occasions et selon les contextes, un chef majeur peut avoir des droits solennels de *rahui* sur un territoire qu'il ne contrôle pas directement (en terme de premiers fruits ou de premier poisson). En d'autres occasions, le droit de mettre en œuvre un *rahui* par un chef de ramage moins important était indépendant du privilège du chef principal. Un statut particulièrement envié au sein des ramages était celui de *tahua* (signifiant littéralement expert). Le *tahua* est souvent recruté parmi les cadets qui disposait sur le territoire des ramages de maîtrises spécifiques et de droits fonciers particuliers liés à son activité: spécialiste de la pêche, chargé du contrôle (droit d'accès et d'exclusion, droit spécifique de *rahui*) des lieux de pêche et spécialiste de l'agriculture, de la construction de pirogue, de la pharmacopée traditionnelle etc.

Les droits fonciers des *arii* (chef) comme des *tahua* (expert) ne concernent pas seulement le droit à la terre mais portent aussi sur les territoires lagunaires et ses ressources dans le cadre de l'ensemble du territoire contrôlé par les ramages et dans le contexte de chevauchement des fonctions et des responsabilités.

Les droits fonciers des *arii* (chef) comme des *tahua* (expert) ne concernent pas seulement le droit à la terre mais portent aussi sur les territoires lagunaires et ses ressources

LE FONCIER ET LA SITUATION COLONIALE

La reconnaissance de droits d'usages coutumiers sur le lagon comme sur la terre n'a pas été niée pendant la période missionnaire ni durant la colonisation française. Ironiquement les droits locaux sur le foncier terrestre et les lagons ont été pris en compte pour faire l'objet de tentatives de démolition et d'anéantissement (Bambridge 2007 et 2009). Dans une première période de construction d'un Etat centralisé le code révisé de 1824 de Pomare II prévoyait que désormais le *rahui* serait le monopole du *arii nui* (grand chef), les autres chefs de ramage devenant eux des *tavana* (gouverneur). Au cours des années 1820-1830, Pomare II ne se privait pas d'utiliser le *rahui* à son seul bénéfice pour commercer les perles noires des Tuamotu, le cochon et l'amidon des îles de la société et des îles sous le vent. Toutes les ressources spécifiées se trouvant sur un territoire lagonaire ou terrestre ne devaient pas être consommées et devaient être apportées à Pomare. L'époque indépendante était à géométrie variable selon les îles et les archipels. Pour des raisons religieuses plus qu'économiques les missionnaires avaient tenté et avaient réussi à abolir le *rahui*, comme le statut de *tahua*, associés à une forme de maintien des liens avec les ancêtres. La conservation de telles institutions paraissait inconcevable à un moment où l'objectif politique était d'imposer un nouveau dieu judéo-chrétien excluant les dieux tahitiens et les ancêtres déifiés.

S'agissant des droits d'usages relatifs au lagon, Cochin (1949) a remarqué que sous le protectorat le Code Tahitien du loi XXIV, dans ses versions révisées de 1842 et de 1848, prévoyait que des portions du lagon (des «trous à poissons», des «lacs», des passes et des rivages) puissent faire l'objet d'une maîtrise prioritaire, absolue ou relative: «La mer était une source de richesse pour les Polynésiens qui concevaient l'appropriation de celle-ci. Etaient considérés comme propriétés privées les bancs de coraux et les lagons situés entre les récifs et le rivage, et étaient propriétaires de ces biens les familles qui possédaient les terres baignées par les lagons».

L'emploi du terme «propriétaire» est délicate, même aux années 1842-1848, puisque la propriété familiale polynésienne n'envisage pas la question

de l'*abusus* et il s'agit d'une propriété détenue par un ramage (*opu*) plus que par un individu. Ce sont d'ailleurs moins des droits de propriété que différents types de droits d'accès, d'exclusion et de maîtrise prioritaire relative ou absolue selon les statuts des personnes et le groupe familial considérés. Les questions foncières terrestres et marines, si elles sont bien reconnues, ne seront cependant jamais abordées par l'autorité étatique dans des termes idéologiques autres que celle de la propriété au sens du droit romain occidental. Cela est d'autant plus vrai que le nouvel État Polynésien, sous protectorat français puis sous l'annexion, organisera successivement plusieurs procédures de revendication des titres de propriété.

L'enregistrement des titres de propriété à Teahupoo (commune associée localisée à Taiarapu) a été réalisé sous l'empire du décret du 24 août 1887. Désormais, par une fiction juridique du pouvoir colonial, toutes les terres étaient considérées comme appartenant au domaine colonial (théorie du domaine éminent). Il était à charge pour les autochtones de faire une déclaration de propriété. Chaque revendiquant, officiellement reconnu comme propriétaire, pouvait se faire délivrer un titre de propriété («*tōmite*» de l'anglais «*committee*»), tandis que les parcelles non enregistrées devenaient temporairement des «terres de district». Si après un délai d'un an les terres n'étaient pas revendiquées, elles devenaient des terres domaniales (terres vacantes et sans maître). A Teahupoo les revendications ont été organisées à cheval sur les années 1890 et 1891. A l'origine 331 parcelles furent concernées. Le premier cadastre sera mis en place en 1935 tandis que le nouveau cadastre sera officialisé en 2008. La mise en œuvre du décret de 1887 a engendré une situation d'indivision foncière sur la majeure partie du territoire communal à Teahupoo, y compris dans l'espace villageois, tandis que le lagon fût déclaré domaine public.

L'APPROPRIATION LOCALE ET LA RECOMPOSITION DU PLURALISME JURIDIQUE FONCIER

En droit étatique l'application du décret de 1887 sur l'enregistrement de la propriété, en séparant des familles proches les unes des autres, aurait pu mettre fin à l'insertion traditionnelle du territoire au sein d'un réseau plus

large. Sur ce point, nos enquêtes à Teahupoo montrent que le droit formel ne coïncide pas avec les pratiques. En effet, l'indivision familiale développée par l'application du décret de 1887 apparaît aujourd'hui à Teahupoo comme une norme. Le foncier est le support des réseaux de parentés plus larges et d'une maîtrise spécialisée selon les ressources.

Le territoire s'insère effectivement dans un réseau de parenté et spatial plus large. Le réseau familial s'étend souvent à une échelle qui dépasse le cadre communal. Par exemple Sabou, ancien de Teahupoo, interrogé sur le réseau de parents qui s'étend sur plusieurs territoires limitrophes explique:

Nous avons de la famille à Tautira, Hitore Pifao et Rore. Cependant ce vieux nous a dit qu'il ne voulait pas nous voir à Tautira et de laisser Tautira pour ceux de Tautira	*Te vai ra te mau fetii to matou i Tautira, o Hitore Pifao, o Rore, te ra ra ua parau mai tera ruau, eiaha vau e ite outou haere i Tautira, vaiho to Tautira, no Tautira*

En une phrase Sabou résume la philosophie du maintien du régime de l'indivision à Taiarapu. La résidence sur le lieu donne un droit d'accès privilégié (habitation et usages) aux terres en indivision. Cette norme vécue permet d'exclure les non résidents à l'appropriation d'une terre. Il y a évidemment des variantes autour de cette norme générale. Cela signifie en tout cas que pas plus la branche de Teahupoo ne revendique Tautira (commune limitrophe) que celle de Tautira à Teahupoo. Dans de très nombreux cas, l'analyse des trajectoires biographiques fait également apparaître le caractère mobile des lieux de résidence. Telle personne a vécu au *fenua aihere* dans sa jeunesse puis s'est installée au village depuis plusieurs décennies, à la suite d'un événement important dans sa vie. Telle autre est partie du village pour travailler à Papeete. Elle y est revenue, dotée d'un statut particulièrement envié au sein de la communauté villageoise, et jouit à présent d'une aura incontestée. Telle autre a toujours vécu au village mais n'a cessé de parcourir le *fenua aihere*, ses vallées, ses rivières, ses lagons et ses récifs. Telle autre encore a pris sa femme à Tautira puis ils vivent à Teahupoo depuis leur mariage.

L'indivision familiale apparaît comme une norme. Le foncier est le support des réseaux de parentés plus larges et d'une maîtrise spécialisée selon les ressources

Cela étant, Sabou distingue clairement le régime d'indivision actuel d'un régime de gestion de l'indivision qui n'existe pas aujourd'hui. Il indique:

Il n'y a pas de gestion commune de la terre. Cette terre est une terre indivise. Pour y accéder, tu dois avoir les documents justifiant ta filiation et tes droits sur cette terre.	*Aita fenua hau amui, te ra fenua tera aita e vavahi hia. Haere nae mai oe haere oe e ta o'e papier. E hi'o mai o'e to o'e haereraa mea nahia to o'e ti'araa*

Sous le régime de l'indivision les familles sont éparpillées dans plusieurs districts mais elles conservent des liens importants. Par exemple Adrien et Véronique, frère et sœur, indiquent:

Adrien: Notre père est de Toahotu **Véronique***:* Les vieux ont décidé qu'en ce qui concerne Teahupo'o, ils ne rentreront pas. Laissez Tautira pour eux.	**Adrien**: *To to matou papa no Toahotu* **Véronique**: *Ua faanaho te ra ruau: Teahupoo nei aita ratou e o mai i onei. Vaiho to Tautira no ratou.*

A propos d'une question sur leur lien de parenté avec certaines familles, ils répondent:

Adrien: C'est la même famille, nous faisons partie de la même famille, toutefois je ne connais pas le lien qui nous unit aux Farauru, aux Rore, à Vito, aux Tearo… **Véronique***:* Moi, je ne connais pas cet homme. Il habite à Tautira. C'est dit. Maintenant je suis contente car il nous a laissé cette terre. Nous ne craignions rien par ailleurs.	**Adrien**: *Ho'e a, e fetii ihoa matou, me aita ra vau e ite te paparaa e te ia Farauru, Rore ma, o Vito, O Tearo…* **Véronique**: *Tera ra aita vau e ite te ra taata. Faaea ona i Tautira. Ua oti ia parau. Teie nei ua oaoa vau, ua vaiho mai i'o nei no matou. Aita ihoa matou e haapeapea ra..*

Les uns comme les autres s'inscrivent dans la même logique précédemment exposée par Sabou.

Dans un tel contexte, le territoire n'apparaît pas comme une succession de propriétés privées, indépendantes les unes des autres, dans lequel le seul enjeu se résumerait à «l'organisation du vivre ensemble», d'un ensemble d'individus ayant des intérêts divergents. Le territoire ressemble au contraire à un réseau de parentés et foncier dont les frontières sont mobiles et perméables dans le cadre de ce même réseau.

LE FONCIER TERRESTRE ET MARIN. SUPPORTS D'UNE MAÎTRISE SPÉCIALISÉE

En même temps le territoire est le support d'espaces différenciés relatifs à la pêche, à la pharmacopée et aux lieux sacrés. Ces territoires, détenus en indivision, sont en même temps l'objet d'une maîtrise spécialisée par des individus ou des familles particulières. Ces *tahua* (spécialistes) détiennent des savoirs spécifiques et maîtrisent des techniques élaborées (pêche, calendrier lunaire, savoir-faire en ce qui concerne la pharmacopée etc). Cette maîtrise ne relève pas que des qualifications ancestrales mais elle se traduit également au travers de la connaissance intime des plantes, des territoires terrestres et marins. A ce propos elle est directement observable au travers des toponymies qui décrivent, selon les cas, des activités, des limites, des lieux interdits ou encore des hauts lieux historiques.

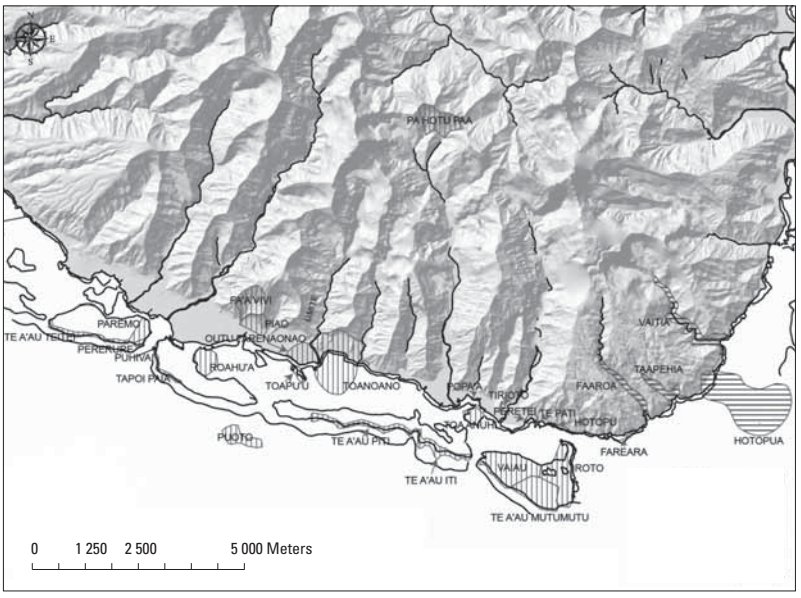
Ainsi un pêcheur de chevrettes comme Tamu situe son activité dans l'espace en énonçant les noms des rivières. Il indique:

Les grandes rivières qui existent ici commencent depuis le Pari: Vaiau, Vaiarava, Roe, Toanoano-Vaitutaepua, Hotutonu, Piao, Tiirahi, Urihee, Maire.	*Te mau pape rahi i'o nei, na te Pari mai tatou i te haamata: Vaiau, Vaiarava, Roe, Toanoano-Vaitutaepua, Hotutonu, Piao, Tiirahi, Urihee, Maire*

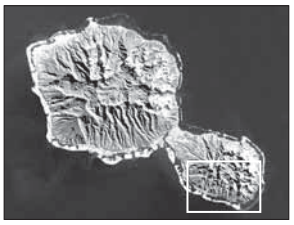
Mais le territoire de pêche peut également être décrit vallée par vallée, en particulier celles qui mènent à Tautira. Par exemple Poria, un autre pêcheur de chevrette, indique:

Tiirahi, Vaiau, Vaipoiri, Vaiarava, sont les vallées éloignées et tu arrives à Tautira.	*O Tiirahi, Vaiau, Vaipoiri, Vaiarava, te mau faa atea pai e tae o'e i Tautira.*

Les cartes du territoire de la pêche lagonaire, réalisées avec des pêcheurs montrent la connaissance traditionnelle des lieux de pêche (rivière, vallées, zones littorales, passes et récifs) au travers de toponymes terrestres et marines (Carte 3).



Carte 3
Toponymes terrestres et marines



LÉGENDE

Orsmond Parker
(Expert pêche, pharmacopée)

Patrick Rochette
(Expert culture et pêche)

Source: Adaptation de L. Villierme, 2012

Comme indiqué sur la carte 3 certains toponymes se réfèrent en même temps à des espaces terrestres, littoraux et lagonaires. Autrement dit, ce qui fait sens, ce n'est pas le découpage entre le terrestre et le marin mais l'accès et le type de contrôle qu'un acteur exerce sur un territoire ou une ressource, quel que soit l'espace impliqué.

Les toponymes témoignent, dans certains cas, de correspondances directes entre territoires marins et terrestres et indiquent la continuité de l'appropriation de la terre à la mer.

Alors que le lagon apparaît relativement grand, les lieux des pêches n'occupent que des espaces spécifiques. D'autres lieux, dans le territoire marin, sont également appréciés pour leur fonction de divertissement: les passes de Te avaino et Haavae, Pererure et le lieu dit de «l'aquarium». D'autres lieux encore sont réputés aujourd'hui pour servir de réserve à certaines plantes utiles à la pharmacopée traditionnelle. Ces lieux sont localisés en partie au *fenua aihere*, mais aussi au Pari, reconnu par la communauté comme une réserve importante de plantes utiles.

Certains lieux à Teahupoo sont connus comme étant des lieux habités par les esprits ou des lieux où ceux-ci se manifestent plus qu'ailleurs.

Ainsi Sabou explique au Te Pari:

En ces temps-là, lorsque j'allais pêcher les chevrettes, j'allais seul jusqu'au Te Pari. Ces lieux sont hantés. Faaroa et Vaiote aussi (…) A Faaroa on te lance des pierres (..) Il y a Vaihaururu, Tootopauma, Verevereafaa (…)	*Te ra mau tau ia haere vau e patia te aura, o vau nae e haere, haere roa i te Pari. Tera mau vahi mea tiaporo i Faaroa, i Vaiote to'a… (…)* *Te ra mau vahi i Faaroa, e taora hia oe te ofai' (…)* *Te vai ra o Vaihaururu, o Tootopauma, o Verevereafaa (…)*

A propos de certains lieux il en donne une explication:

Aiavaro, c'est le lieu où les gens faisaient des réserves en ce temps là (…)	*Te ra vahi o Aiavaro, te vahi tera e haapuna hia te taata te ra tau (…)*

D'autres lieux sont également connus pour abriter le protecteur (taura) de telle ou telle famille. Ainsi Manea indique:

C'est Tapaeroa qui est dans Tiirahi chez Tetuamoe, c'est une grande rivière, lieu où réside le chien Taumaha.

O tapaeroa i roto o Tiirahi i io o Tetuamoe, e pape rahi ona, te faaea raa o te uri o -------.

Si la transmission de ces savoirs est traditionnelle, leurs contenus et leurs origines sont composites. Ils sont véhiculés par les migrations, les voyages, les conflits, la colonisation et la mémoire collective. Ces savoirs prennent d'abord en considération l'identification d'un espace opérationnel. Ainsi l'exprime Papa Mote, le fils de Tamarii Moetu:

Il y a deux requins: Tamaui et Tutuao. Ce ne sont pas de vrais requins, ce sont des animaux gardiens (ou totem). C'est comme ici à Teahupoo. Là il y a Te ava piti (la passe) où j'ai vu ces deux requins, il y en avait un qui venait et qui n'avait pas de queue, juste derrière arrive le second requin. Ce vieux qui est du côté mer au fenua aihere a expliqué: lorsque tu rencontres ce requin c'est que la mer va être agitée. Il faut alors dire aux gens de rentrer car la mer va être agitée.

Te vai ra tera ma'o e piti: O Tamaui e o Tutuao. Eere te ma'o mau e ma'o taura. Mai io nei i Teahupoo nei. Io i Te ava piti, ua ite vau tera ma'o, haere mai i te hoe ia aita e aero, muriho ua ite vau tera ma'o e tia pai. Ua parau mai tera ru'au i tai i fenua aihere: ia ite oe tera ma'o e miti iti rahi. E parau ia te mau taata haere mai e hoi roto e miti iti rahi.

A propos d'un autre lieu, Papa Mote indique:

Ce trou, c'est Pereure Havae. Il y a un trou ici. Il a été rempli par une pierre. Maintenant, tu n'entends plus le bruit de la houle. Ce n'est plus qu'au fenua aihere ou tu entends encore le bruit de la houle.

Tera apoo i Pereure Havae, te vai ra tera apoo, ua faai hia i te ofai. Aita o'e e faaroo faahou te pa'u o te mau are. Tei fenua aihere anae o'e e faaroo roa hia mai te pa'u.

Les itinéraires, les vallées, les bassins versants et les sites benthiques ou pélagiques sont identifiés par des noms, des points de repères, des ressources, des saisons et des rythmes d'exploitation. La précision de l'identification de l'espace communautaire constitue un des éléments de personnalisation du groupe: celui-ci, dans son ensemble, connaît le mieux en cercles concentriques «son espace» circonvoisin. Le territoire personnalise la communauté et inversement.

Ainsi ni l'indivision sur la terre, ni la domanialité du lagon, n'empêchent la continuité des «maîtrises foncières spécialisées» (Le Roy 1999, 2011).

LA MAÎTRISE PRIORITAIRE N'EST PLUS ASSUMÉE SOUS LE RÉGIME DE LA DOMANIALITÉ PUBLIQUE DU LAGON

Officiellement les lagons font partie du domaine public de la collectivité de Polynésie française. Les lois successives d'autonomie ont même renforcé le transfert des compétences au profit des autorités polynésiennes en matière de protection et de gestion des espaces lagonaires (Cazalet 2008). Cela étant dit, cette «loi officielle» (Chiba 1998) ne correspond pas aux normes tahitiennes pré-européennes, ni même aux normes locales contemporaines fondées sur des *habitus* au sens ou Bourdieu (1986), explicité en mettant en parallèle les expériences du droit (le code) et la régulation selon le sens pratique. On a souvent le sentiment que la règle (entendue étatique) est étrangère et au bénéfice des étrangers. A ce sujet, les interviews d'Adrien et de Véronique sont intéressantes car représentatives d'un certain nombre de points de vues dans lesquels la législation sur le domaine public maritime est clairement associée à une législation anti-tahitienne. Répondant à une question directe, Adrien indique:

Un seul moyen madame: qui est propriétaire de la mer? Du bord de mer et en remontant de cinq mètres, le français est propriétaire pas toi. Le français en bénéficie. Nous n'en tirons aucun profit. Non.	*Hoe noa ravea e mama: o vai te fatu o te tai? Tatahi, pae metera haere mai uta nei te farani te fatu, eere o o'e. Farani tera rave ra te ra mea. Ua roaa hia mai te mau vavai. Aitea ta tatou i roto tuhaa. Aita*

Insistant, Adrien indique:

Je n'ai jamais rencontré de tels voleurs. Comment peux-tu voir. Peine perdu, ça c'est à nous. Nos dirigeants n'ont aucun pouvoir.	*Aita ia vau e farerei te mau feia i'a mai tera. Mea nahea o'e e ite ai? Aita e faufaa toa ho ate ran a matou. To tatou mau fea faatere, aita ratou e mana.*

Plus loin, sa sœur souligne clairement son désarroi:

Tu sais, c'est fatigant quand on y pense. Quand tu n'es pas à l'aise dans ta vie, c'est pas ça.	*Tu sais mea rohirohi atoa ia feruri ana, quand pai tu n'est pas à l'aise i roto i to oe oraraa, c'est pas hoa ça.*

Si le discours exprime bien un sentiment de dépossession de la maîtrise du lagon, dans la pratique la privatisation de la ligne de rivage dans le district de Teahupoo constitue une situation préoccupante. L'artificialisation collective (quai, remblais publics et pontons) et individuelle (ici généralement réalisée sans autorisation) du littoral à Teahupoo permet d'illustrer le propos précédent. En effet, ce sont plus de 4.7 km de côtes pour la seule commune associée de Teahupoo qui sont désormais artificialisés (voir Figure 2). L'artificialisation du trait de côte représente désormais environ un quart du territoire de la commune de Teahupoo.

L'artificialisation du trait de côte représente désormais environ un quart du territoire de la commune de Teahupoo

Le décalage entre la loi officielle et les pratiques locales entretient une ambiguïté. D'un côté, le principe de la domanialité du littoral est ignoré par les populations vivant cette réglementation comme une dépossession. Des remblais sont réalisés sans autorisation mettant les autorités devant la pratique du fait accompli. Ces derniers font peser des risques importants sur certaines ressources naturelles du lagon car les zones côtières sont reconnues pour être des zones de nurseries pour de nombreuses espèces. D'un autre côté, ces remblais, vécus comme une forme de continuité avec les pratiques anciennes, constituent un déni des traditions transformant des droits d'usages en un quasi droit de propriété.

TEAHUPOO	COLLECTIVE	INDIVIDUELLE	TOTAL
Artificialisation du littoral	2 265 mètres	2 503 mètres	4 768 mètres
En % de la ligne de côte	11,7%	12,9%	24,6%
Ligne de côte			19 367 mètres

Figure 2
L'artificialisation du trait de côte à Teahupoo

Autrement dit: l'appropriation du littoral est aujourd'hui individuelle, privative et exclusive alors qu'historiquement il s'agissait d'un maîtrise prioritaire au bénéfice du groupe. L'appropriation impliquait des responsabilités politiques et de conservation avec des degrés d'exclusion divers selon les fonctions réservées à tel ou tel lieu.

UNE VOLONTÉ DE CONCILIER LE DROIT ÉTATIQUE ET LES NORMES TRADITIONNELLES

Pour autant et tenant compte de l'histoire ancienne, des transformations historiques et des appropriations actuelles, la volonté de concilier le pluralisme juridique local au travers de processus hybrides est présente dans les discours locaux. Elle s'exprime dans le registre du maintien d'un pluralisme et non dans celui de l'obéissance aux lois étatiques perçues comme favorisant les étrangers. Cette norme d'adaptation (Bailey 1969) apparaît sous des formes diverses.

Ainsi par exemple, le discours local s'accommode au nouveau contexte de pluralisme juridique à Teahupoo. Comme l'explique Véronique:

Véronique*:* Pour moi, je ne suis pas d'accord, je préfère que le Te Pari reste naturel.
Tu sais, nous mêmes propriétaires fonciers, nous ne voulons pas de changement. Le problème qui se pose, il y a des personnes de Papeete qui ont acheté des terres ici, c'est eux qui veulent changer.

Véronique: *No'u nei, aita vau e fa'ati'a, mea au a'e na'u ia vai noa o Te Pari mai to'na naturaraa.Tu sais même matou te mau fatu fenua aita atoa matou e hinaaro. (…)*
Te vahi fifi ua hoo mai pai te taata no Papeete te fenua io nei. Ratou tera opua ra.

Ces propos, qui résument bien l'opinion souvent rencontrée lors de nos enquêtes, sont adaptés à des acteurs porteurs d'une politique de protection de l'environnement qui, en même temps, permettrait de maintenir la superposition des droits fonciers et des activités (*tahua*) sur un territoire. L'indivision est un facteur de maintien des activités communautaires dépassant strictement la famille élargie (*opu*) tahitienne. Ils renvoient en outre aux modalités d'intégration d'un «étranger» à une communauté en ce qui concerne sa position politique et ses droits fonciers.

Dans un autre contexte, lors des réunions de groupe organisées par notre équipe pour réfléchir avec les populations à la gestion du territoire de la commune, Papa Mote saisit clairement la dimension politique d'un dispositif de gestion du territoire et des ressources. Il l'exprime sans ambiguïtés:

Si je suis l'arii (le chef) ici, c'est moi qui décide de la période de récolte. C'est le arii qui partage la ressource et c'est aussi le arii qui récolte même si c'est toi qui l'a planté. Telle est la parole du arii. Ici à Teahupoo, cela a certainement existé. Si on *rahui* ta part de territoire, il ne faut pas y toucher. Tu peux avoir accès à un autre lieu. Toutes les ressources dans la mer comme sur la terre étaient *rahui*.

Mai te mea, o vau te arii i onei, na'u e tatara te maa e reira e horoa hia ai ta oe. Na te arii e opere te maa ; na te arii atoa e tatara te maa noatu na oe e tanu i te maa. (…) Parau tera no te rahui.
E io nei Teahupoo nei, te vai ra hoa paha. Mai te mea ua rahui hia hoe tuhaa eaha ia e hauti. Haere atu ia i te tahi tuhaa. Pauroa te maa i roto i te miti e te fenua mea rahui.

Le *rahui* (restriction ou restreint) apparaît ici encore avec une dimension politique et de gestion des ressources. Il intègre la dimension terrestre et marine, implique une autorité, un corps de règles et des comportements adaptés au respect d'une institution. Le *rahui* renvoie ainsi plus à une logique de souveraineté qu'à une logique de propriété (Colin 2008; Jacob et al. 2010).

Discutant de la situation préoccupante des pêcheurs aujourd'hui, Manarii Teuira met en avant le *rahui* comme une gestion appropriée d'un espace. A ce sujet, s'inscrivant dans une démarche dynamique et politique, analogue à la période pré-européenne, il explique:

Aujourd'hui, la situation est difficile pour les pêcheurs. Le poisson se fait rare de nos jours. Nous avions pour projet de mobiliser les pêcheurs autour des ressources en poissons et bénitiers. Quels moyens avons nous ? Nous avons cherché les moyens de mobilisation. Comme à Tautira, ils ont mis en place le *rahui* à leur bénéfice et en même temps ils viennent ici pêcher. (…)
Nous, nous n'allons pas pêcher à l'extérieur. La plupart des pêcheurs ici viennent de l'extérieur.

Teie mahana e fifi rahi tau e ite ra i roto i te parau no te mau taata taia. Mea varavara roa te ia mea e tera mau tau. Ua opua aena vau no te faaetaeta pai te mau taata taia. Te vai e taia ra te ia neinei, te pae anei no te pahua.(…)
Eaha te hoe ravea no te faaetaeta ?
Te imi ra matou te mau ravea no te faaetaeta raa. Mai ia Tautira mai, e rahui ratou ia ratou, e haere mai ratou io nei e taia ai. (…)
Matou, aita ra matou e haere e taia i rapae, te rahi raa no rapae teie e haere mai nei e taia.

C'est peut-être Teuira Manarii qui exprime le mieux ici la nécessité de rétablir à Teahupoo, à l'instar d'autres tentatives dans des communes limitrophes, une maîtrise foncière prioritaire autant qu'un contrôle communautaire du lagon. Si les ressources lagonaires doivent être gérées, c'est sur l'espace de la communauté pour le bénéfice de ses acteurs.

Aujourd'hui en Polynésie française, il ne fait aucun doute que les outils administratifs (codes de l'environnement et des pêches) puissent être adaptés pour permettre la prise en compte d'une gestion locale et décentralisée de type *rahui*. Encore faut-il tenir compte des perceptions des acteurs, du principe

de continuité entre la terre et la mer de leur territoire et de leur volonté de conserver un pluralisme normatif où normes locales et étatiques entrent en interaction de façon plus coopérative. Une réforme qui tiendrait compte des dynamiques hybrides, mises à jour au cours d'un enquête localisée, permettrait non pas de revenir à un passé romantique et révolu mais de maintenir un mode d'organisation locale où maîtrises foncières spécialisées (donnant lieu à des droits d'accès, de prélèvement et de gestion d'un territoire ou d'une ressource) et prioritaires (donnant lieu à des droits d'accès et de prélèvement mais pas de gestion) obéissent à des fonctions majeures au sein de la communauté.

CONCLUSION

Dans le cadre de ce travail sur le foncier dans cette partie de la Polynésie orientale, il est apparu nécessaire de traiter ensemble les questions du foncier terrestre et marine qui avaient été séparées par une longue tradition anthropologique et juridique coloniale puis occidentale. Les enquêtes et une méthodologie adaptée ont permis de poser de nouveaux questionnements. Nos travaux mettent en lumière les recompositions du pluralisme juridique foncier montrant ainsi les nouvelles dynamiques et problèmes posés par deux siècles d'interactions entre «loi officielle» et «loi non-officielle» (Chiba 1998).

Si les populations de Teahupoo rejettent les politiques publiques foncières, c'est moins en raison de l'inadaptation de ces politiques publiques à des situations particulières qu'en raison des faibles bénéfices que tirent ces populations habituées à un mode de vie où la tradition occupe encore une place importante. A l'appropriation traditionnelle du foncier -maîtrise prioritaire et spécialisée - (Le Roy, 2011) se superpose une réappropriation des réformes foncières du début du siècle dernier par le maintien du régime de l'indivision. Cette situation demeure cependant ambiguë car elle ne permet pas une réelle gestion de l'indivision (*hau fenua feti*i) révélant ainsi d'un pluralisme «faible» dominé par l'assimilation de la norme locale par le droit étatique. Ces même enjeux sont présents ailleurs dans le Pacifique où la non prise en compte du principe foncier de continuité terre-mer dans l'élaboration des réformes foncières pèse sur l'avenir des populations insulaires les plus exposés à la pauvreté et aux changements globaux.

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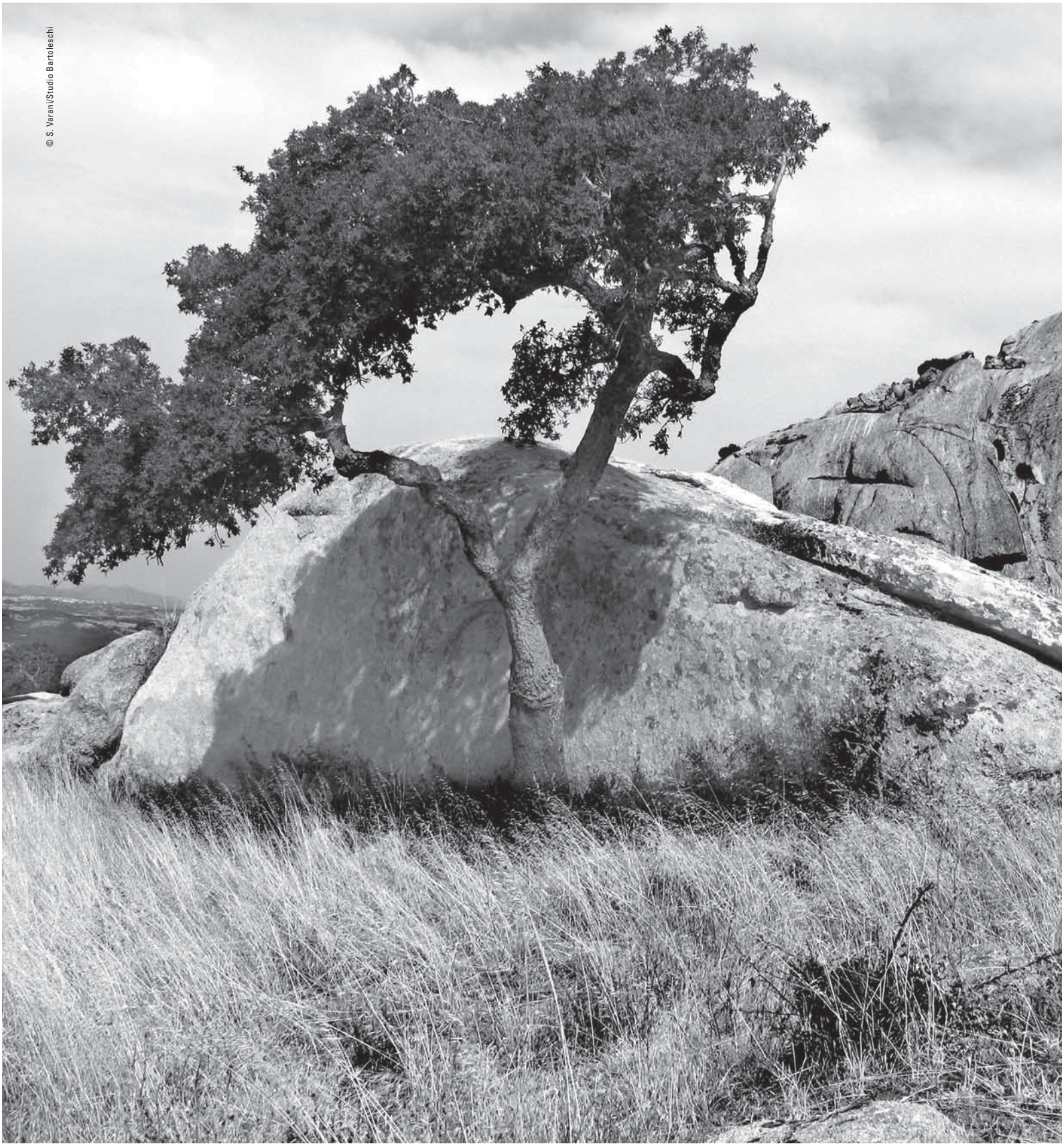

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LAND OWNERSHIP AND LAND USE IN SARDINIA, ITALY
Towards sustainable development patterns

PROPRIÉTÉ FONCIÈRE ET UTILISATION DES TERRES EN SARDAIGNE, ITALIE
Vers des modèles durables de développement

PROPIEDAD Y USO DE LA TIERRA EN CERDEÑA, ITALIA
Hacia la adopción de pautas de desarrollo sostenible

ABSTRACT

LAND TENURE

RURAL DEVELOPMENT

SUSTAINABLE DEVELOPMENT

SARDINIA

The observation and analysis of current land-use practices in Sardinia, Italy, reveals a myriad of informal arrangements that reflect property relationships through which land use is organized in the interest of local economic development.

These informal arrangements, and the different ways they have been incorporated into formal land-use regulations, are the focus of this study of two Sardinian provinces. Drawing on the author's participant observation, the paper looks at how common and private property types coexist with private and public property, in hybrid systems that are not transitional arrangements in an evolution toward private property. They result from engaged local involvement in setting the terms for

RÉSUMÉ

RÉGIMES FONCIERS

DÉVELOPPEMENT RURAL

DÉVELOPPEMENT DURABLE

SARDAIGNE

L'observation et l'analyse des pratiques d'utilisation des terres en Sardaigne, Italie, révèlent d'innombrables arrangements informels qui reflètent la façon dont les relations de propriété influencent l'utilisation des terres en faveur du développement économique local.

Ces arrangements informels – et les différentes pratiques qu'elles ont introduites dans les règlementations foncières existantes – constituent le thème central de cette étude entreprise dans deux provinces de Sardaigne. Le document examine, à partir des observations de l'auteur, comment des types de propriété collective et privée cohabitent au sein de systèmes hybrides. Loin de représenter une étape transitoire dans une évolution vers la propriété

SUMARIO

TENENCIA DE LA TIERRA

DESARROLLO RURAL

DESARROLLO SOSTENIBLE

CERDEÑA

La observación y análisis de las prácticas actuales de uso de la tierra en Cerdeña, Italia, revela la existencia de un sinnúmero de acuerdos informales que reflejan las relaciones de propiedad por conducto de las cuales se organiza el uso de la tierra en interés del desarrollo económico local.

Los acuerdos informales, y las distintas formas en que estos se han ido incorporando a las regulaciones formales de uso de la tierra, son el enfoque del presente estudio, que fue realizado en dos provincias de Cerdeña. Partiendo de las observaciones participativas de la autora, se analizan aquí las formas en que la propiedad común y privada coexiste con la propiedad privada y pública en unos sistemas

property use, and can be efficient and sustainable.

The author's research also aims to contribute to the debate on property, with specific reference to the presence of hybrid property regimes in Europe, as well as other world regions. The paper's conclusions reflect on the lessons that could be taken from the study, with particular reference to next European Union budget cycle of 2014–2020.

privée, ces systèmes constituent au contraire le fruit d'un engagement local destiné à établir des usages fonciers efficaces et durables.

A travers cette recherche, l'auteur entend également contribuer au débat sur la propriété foncière et notamment sur les régimes fonciers hybrides existant en Europe et dans d'autres régions du monde. Le document souligne en conclusion les leçons qui peuvent être tirées de cette étude, notamment dans la perspective du prochain cycle budgétaire de l'Union européenne (2014-2020).

híbridos que no representan acuerdos transitorios en la evolución hacia la propiedad privada. Dichos acuerdos resultan del compromiso de los agentes locales para establecer los términos que gobiernan el uso de la propiedad: tales términos pueden ser eficaces y sostenibles.

Las investigaciones de la autora también persiguen contribuir al debate sobre la propiedad, y se refieren específicamente a los regímenes híbridos de propiedad existentes en Europa, pero también en otras regiones del mundo. En las conclusiones se reflexiona acerca de las lecciones que podrían extraerse del estudio, y en particular acerca del próximo ciclo presupuestario de la Unión Europea, relativo al período 2014-2020.

INTRODUCTION

The relationship between economic development and private property rights is at the centre of today's complex globally-integrated market. Listed as a basic human right in the UN Declaration of Human Rights, property rights are considered fundamental to ending poverty and moving 'informal' citizens into the formal economy and democratic political engagement. In the European Union (EU) property rights and land privatization specifically have been a key economic development tool, as illustrated by the EU's strategic guidelines for rural development. These guidelines are aimed at establishing a market-oriented agricultural sector and consolidating Europe's agri-food production.

These policies are demonstrating diverse outcomes throughout the European regions, as each sub-region negotiates and implements them in the context of its own, varying land-use histories and rural development patterns (Dabla-Norris and Freeman, 1999; Harcourt and Escobar, 2005; Song and Chen, 2006; Vandemoortele, 2005). As several scholars have highlighted, land-use practices reveal a myriad of informal arrangements that reflect property relationships through which land use is organized in the interests of local economic development (Blaser *et al.*, 2004; Geisler and Daneker, 2000; Geisler, 2006; Sikor, 2006; Singer, 2000).

Land-use practices reveal a myriad of informal arrangements that reflect property relationships through which land use is organized in the interests of local economic development

These informal arrangements, and the different ways they have been incorporated into formal land-use patterns, are the focus of this study of two Sardinian provinces: Gallura and Ogliastra. The author's research also aims to contribute to the debate on property and to a better understanding of its complexities, with specific reference to the presence of hybrid property regimes in today's globalizing Europe, as well as other world regions.

Common and private property types can and do co-exist in hybrid systems. These systems are neither temporary transitional arrangements in an evolution towards private property, nor formulae for economic stagnation or decline. The Sardinian case shows instead that such systems usually result from engaged local involvement in setting the terms for property use, and that they can be efficient and practical, ensuring the sustainability of local rural livelihoods.

In Sardinia, I used a number of different fieldwork methods. These included formal one-on-one interviews with individuals, informal interviewing of participants at public and private events, and group interviews. Participant observation was also relied on and this will be described in some detail.

One-on-one interviewees numbered 61 individuals in total. Nine interviews were also conducted with groups of five to seven people, mostly family groups, and sometimes work groups. These were not formal 'focus groups' in the strict sense; nevertheless the broad cross-conversations initiated among participants quickly brought out points of divergence and of agreement between local people.

The individual interviews were generally 60–90 minutes long, though some lasted for two or three hours. It was almost impossible to carry out the classic pen and paper interview. I knew my interview schedule by heart, posed the appropriate questions, let the respondents talk, and then asked follow-up questions to deepen understanding. I recorded many of the interviews, but in most cases I took hand notes with a pen during the interview, and retired afterwards to a café or other location to recorded further notes about the interview on my laptop.

The interviews conducted over six months during 2008–2009 generally grew out of my broader participant observation in the rural communities of Gallura and Ogliastra. In each of the provinces I lived for a period of several days with three families, sleeping at their houses, eating with them, and joining the daily work routines of both men and women. I was open with everyone about the kind of work that I was doing, and the communities where I worked quickly learned the purpose of my presence.

I attended over 50 public meetings – around 20 in Gallura and 30 in Ogliastra – most having to do with land policy and land-use issues. For a week I accompanied the municipal officials of a small town in Gallura, following them on their travels through the countryside and their work in the office, as they assisted people with issues that ranged from filling out a form to resolving a dispute over trespass.

Another pole of my participant observation involved attendance at village and town religious festivals, which offered an excellent opportunity to join tables of local people, ranging from the local doctor to shepherds, and talk with them about land, labour exchange, and economic change.

Participating on the community level in these ways allowed me to gain the trust of the local communities and to build strong networking ties, making the challenge of finding interview subjects relatively easy. Local people referred me to others, and it was not difficult to discover who I needed to speak to about a particular topic, or who was in charge of some particular undertaking.

PROPERTY REGULATIONS AND PROPERTY RELATIONS: FROM EUROPE TO THE GLOBAL SOUTH

Post-socialist societies, multiple property systems, and the limits of privatization

One area in which privatization and marketization of land have become newly prominent is among post-socialist societies in Eastern Europe, where some of the most revealing analyses of multiple property systems today take place. These analyses have been very important to this study of the hybrid property systems observed in Sardinia. The complexity of arrangements that mix private and common land property in post-socialist societies (Sikor, 2006; Staniszkis, 1991; Verderey and Humphrey, 2005; Verderey, 1999) is characterized by a "recombination of land property regimes" (Stark, 1996), and is accompanied by a detachment between legislation and property relations.

One area in which privatization and marketization of land have become newly prominent is among post-socialist societies in Eastern Europe, where some of the most revealing analyses of multiple property systems today take place

The lack of "government enforcement capacity" (Sikor, 2006:121) is matched by the assertiveness of popular, grassroots practices through which rural populations reorganize property relations and influence state regulations. Sikor points out that, "What is at stake is the very nature of land as an asset. People seek ways to enhance the material and symbolic values derived from control over land" (2006:118).

Regarding multiple forms of ownership, Sikor and Nguyen (2007) take a closer look at forestry practices in Asia and Europe and discover that community ownership and state authority are not mutually exclusive. Among the many cases that they highlight, it is interesting that in Romania it was mid-20th century communism that "wrested control of forests from local communities" while "...currently, governments are in the process of decentralizing powers and responsibilities to local authorities" (2007:91).

Decentralization policies often translate into the reintroduction and diversification of the forest commons. In Romania, the government is returning the forest commons to the original communities that managed them. In Albania the government is also transferring forest ownership rights to local authorities, who grant these rights to local communities.

Property relations in the global south: African cases

An excellent example of the dichotomy between property regulation and property relations at local level is evident in Bassett's 2007 study of land tenure practices in Voi, Kenya. She found that, in spite of official government support for privatization policies as the only possible way to reach steady economic development, the population of Voi choose a community land trust (CTL) model over individual ownership titles. The CTL model, as Bassett explains, was considered the best way to preserve individual self interest, since it allowed each individual to secure his or her own property by unifying it in a much stronger institution, the CTL. In this way they would be able to avoid selling plots of land in order to respond to financial constraints, or to changing life goals. Bassett concludes that this choice for a collective solution can be defined as a rational economic behaviour.

The community land trust model was considered the best way to preserve individual self interest, since it allowed each individual to secure his or her own property by unifying it in a much stronger institution

Bassett stresses that this choice was not the one followed by other subregions, with a stronger history and tradition of individual rights. This aspect highlights that there are many possible land tenure models, and that these are the product of a specific society and of its history, geographical conditions, and political and economic conjunctures. Bassett's work became an important reference when I looked at the different ways in which Gallura and Ogliastra organized their land tenure systems, and at how local decisions and solutions can sometimes resist laws and regulations that are imposed by the state or by market rules.

Berry (2009) acknowledges today's enormous pressure for privatization, which is coming from international institutions and major donors. As Berry stresses, "Since the 1980s, international financial institutions and major donor governments have pressed West African states to liberalize their economies, deregulating markets, dismantling controls on foreign trade and investment, downsizing the state, and privatizing ownership of assets and enterprises" (2009:1379).

Berry (2009) discusses the dispossession of land that took place during the implementation of these development policies, accompanied also by the

acquisition of state-owned land by government officials. In her analysis, Berry stresses that in many cases private owners did not invest in more productive and sustainable forms of land use, but instead opted for short-term profit maximization: sometimes they "leased it out to commercial companies that evicted local users, cleared forests, mined soil ... and left the land less productive than they found it" (2009:1370). Neo-liberal solutions, privatization being key among them, did not serve as an engine for sustainable economic growth.

Drawing on studies by Sikor and Muller (2009), Berry highlights that scholars are finally beginning to advocate "community-led land reform as a preferable alternative to the kind of state-led privatization carried out in many post-socialist and/or developing economies during the 1980s and 1990s" (2009:1370). Such reforms, decided and implemented at the local level are, as Berry says, "likely to be more flexible than reform carried out by the state" (2009:1370).

The West African case that Berry presents in her study is insightful as to the complex and contested history of land ownership, and of its meaning in terms of current practices. She highlights that in order to understand ownership, we need to look at it more as a social process than a legal fact. Particularly useful in my analysis of the Sardinian cases was Berry's reminder that the merits of any particular model cannot be generalized. Success stories, she stresses, are always born in specific and unique contexts.

THE MEANING AND PRACTICE OF PROPERTY IN GALLURA AND OGLIASTRA, ITALY

Returning to Italy (Figure 1), the provinces of Gallura and Ogliastra (Figure 2) present two different, distinctive land management and tenure systems: the *stazzi* in Gallura and the *usi civici* in Ogliastra. The meaning and practice of property are, in each province, the outcome of historical notions of land use, of current and past moral economies, and of negotiations between different levels of power. The need of local populations to ensure access to their land within an intergenerational perspective represents the common thread of these two different systems, both the privately owned *stazzi* in Gallura, and *usi civici* in Ogliastra, a type of common land property.

The need of local populations to ensure access to their land within an intergenerational perspective represents the common thread of the privately owned *stazzi* in Gallura, and *usi civici* in Ogliastra, a type of common land property

Figure 1 (left)
Location of Sardinia

Figure 2 (right)
Sardinian provinces, including Gallura (currently named Olbia/Tempio) and Ogliastra

NOTES FROM THE FIELD

Gallura and the self-sufficient system of the *stazzi*

During one of the periods I spent in Gallura, I found myself standing at the edge of a broad valley, from where I could see many little white houses, surrounded by land cultivated with vegetables, wheat or vineyards. In some properties the cultivated areas were separated by stonewalls from plots where people kept domestic animals, often chickens or pigs, and in separate plots, sheep or cows. From my vantage point, we could also see that most of the houses were also surrounded by forests, sometimes of less than a hectare, with others being larger, a few hectares in extent.

These small houses and the surrounding land represent the self-sufficient system of the *stazzo*, which are one of the most defining characteristics of Gallurese land use and culture (Figure 1). They consist of the rural homestead and of the surrounding areas, including fields, gardens, and forest; but much more than

Figure 3
Visiting a *stazzo* in Gallura

Source: A. Cacciarru

that, they constitute an entire system of differentiated rural land management. Family homes scattered throughout the countryside and the lands surrounding them represent a self sufficient, locally controlled system for management of rural areas. The owners are farmers and shepherds at the same time, as the division of the plots (Figure 4) surrounding the houses can easily suggest.

During weekends it is common to see whole families feeding the animals and working in the vegetable gardens, sometimes harvesting the produce to be used for family consumption and for sale in town. During weekdays there is much movement back and forth between *stazzo* and town; men and women can be seen arriving by car, coming from town in their town work clothes. They then change into more comfortable working clothes, mainly of cotton or wool depending on the season. Both men and women have jobs in town, working in teaching, clerical jobs, or running small shops. They travel to their *stazzi* during the week, approximately every other day. It is generally at the weekends that they take their whole families with them to spend the weekend there, taking care of their country houses, preparing large family meals, and being joined by other relatives in the many kinds of work that take place on the property.

Sometimes *stazzi*'s owners hire a caretaker, often an immigrant from Eastern Europe or Russia, who lives in the *stazzo* and takes care of the house during

The self-sufficient system of the *stazzo* consists of the rural homestead and of the surrounding areas, including fields, gardens, and forest; but much more than that, it constitutes an entire system of differentiated rural land management

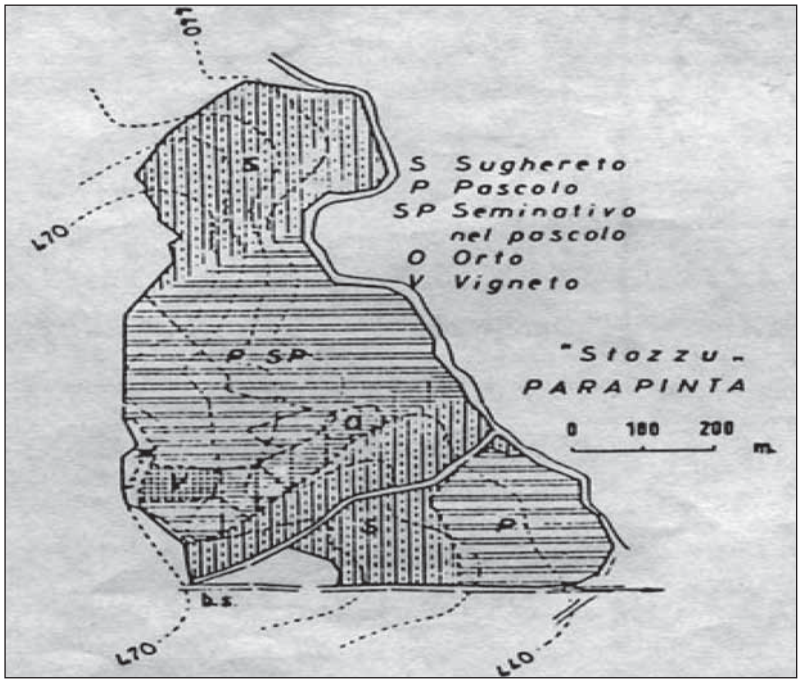

Figure 4
Map of a *stazzo* in Gallura

LEGEND

S = Sughereto
(Cork oak groves forest)

P = Pascolo
(Pasture)

SP = Seminativo nel pascolo
(Land cultivated in the pasture)

O = Orto
(Vegetable garden)

V = Vigneto
(Vineyard)

Source: Lissia, S. 1903. La Gallura. Tempio Pausania: Tipografia G. Tortu

weekdays. Otherwise, a relative or a close friend may visit the *stazzo* a few times per week. Though *stazzi* and the surrounding land are privately owned, exchanges of labour like this have always been crucial in providing each family unit with the extra help necessary during harvesting, or in times when other labour-intensive activities take place (Lissia, 1903; Brandanu, 2007).

The land that surrounds the *stazzi*, which falls into the category of public land, is often managed by foresters employed by the Forestry Institute (*Ente Foreste*). A branch of Sardinian Government, the Forestry Institute implements forestry policies approved by the Sardinian Government and works directly with municipal administrators and other institutions at municipal level.

Usually, public land is owned by the municipality but will have been leased to the Forestry Institute for long-term management. It is also understood that the foresters hired by the Institute are usually local people who know this particular land very well, and who have strong local ties with farmers and townspeople. These foresters are therefore regional-level public officials; at the same time, they also bring the knowledge and voices of the local population into their work (Boscolo *et al.*, 1995; Fara, 1978).

Ogliastra *usi civici*: informal arrangements and formal regulations

During my participant observation in Ogliastra I accompanied different families of shepherds in their daily chores that started in the town; everybody in the family got up very early to handle the daily tasks. Days in the countryside during my visits were always very busy: both husband and wife fed the domestic animals, and immediately went to take care of the vineyard, the vegetable garden and the fruit trees. While the wife continued her chores in the garden the husband took their goats to the pastures, moving them from their own property to the land under *usi civici* (Figure 5).

Usi civici is a legal model common to many regions of Italy and other regions all across Europe, even if it may have slightly different names. Essentially this model regulates the use of the land and defines it as belonging to the collection of individuals who, in a specific historic period and geographic location, live together as a community and organize the use of their territory in order to ensure individual access to this natural resource (Nervi 2000, 2001, 2004).

In Ogliastra more than 60 percent of the territory is under *usi civici* and is managed by the municipalities. The land use regulations are fixed at the local level by a council of town's representatives, which normally includes the elected officials plus a number of citizens who are respected in the town for their experience in the management of *usi civici* land. This council represents the community that collectively owns the land under *usi civici* and makes sure that the written rules that regulate activities on the land under *usi civici* are respected. Ultimately, the mayor has the power of enforcing the law when local regulations are not respected. Under no circumstances can the land under *usi civici* be sold or its use be changed (Boscolo *et al.*, 1995; Brandanu, 2007; Le Lannou, 1979; Masia, 1992; Meloni, 2006; Nervi, 2004).

In Ogliastra more than 60 percent of the territory is under *usi civici* and is managed by the municipalities

Figure 5
Land under *usi civici* in Ogliastra

Source: A. Cacciarru

The rest of Ogliastra's territory is either private or public. If public, it belongs to the municipalities or to Sardinia's Forestry Department, which apply regional laws and regulations fixed for the management of the forested land. However, the foresters always consult with local administrators before making any final decision regarding the management of the town's forested areas under their care.

The land encompassed within the towns' borders can therefore belong to the municipality in two ways: as land under *usi civici* or as *demanio comunale* (municipal domain). In the case of the municipal domain, the land belongs to the municipality as an administrative and political entity. The mayor, with the approval of the town's elected officials, has the power to sign any regulation in order to preserve or sell the land or to change its use, respecting general rules and regulations fixed at regional level (Masia, 1992; Nervi, 2004; Nuvoli, 1998; Nuvoli and Furesi, 2004).

In Ogliastra, mayors typically are engaged in regular public dialogue in community fora over land-use issues and policies. In the last 10 years these meetings became routine, and are currently held in a town that was chosen by the mayors as a regular meeting place. I participated in many of these meetings, where the topics of discussion were wide-ranging and the debates discussed anything from the current borders of the land under *usi civici* in one of the towns, to municipal laws not being adequately enforced in another town. These local meetings were always very lively and always ended with a list of actions to be taken in response to the problems discussed. They demonstrated a remarkable sense of community and identity, something that natives of Ogliastra are especially proud of.

PROPERTY AS A SYSTEM OF SOCIAL RELATIONSHIPS: HISTORICAL FOUNDATIONS

Examining the historical origins of the current land tenure system is especially important in understanding the role played by central and local governmental mechanisms, and by local populations' informal agreements. In Sardinia, one of the main historical events that impacted the present land tenure system was the 1821 Enclosures Law, the *Regio Decreto* of King Vittorio Emanuele, who in that period governed the Kingdom of Piemonte and Sardegna and first mandated rural land privatization.

The Enclosures Law was implemented fully in 1836 and ensured the legal recognition of private property titles for local land users. They were allowed to enclose and claim land that had historically belonged collectively to each town's population, and had been managed through traditional common property rules and regulations. The rush of individuals eager to enclose as much land as possible at that time in Sardinia displayed the unfettered greed that usually accompanies the privatization of common goods. In turn the process led to the formation of large estates, enclosed by those people who were working for large landowners, and to the formation of a myriad of small land plots enclosed by peasant families (Lilliu, 1995).

The other historical event that profoundly impacted the current landscape, with particular reference to the sizes of land plots, was the abolition of feudalism as ratified by the *Carta Reale* of 12 May 1838. However, unlike in the rest of Italy, this did not result in the emergence of an aristocratic landlord class. In Sardinia, feudal lands were bought by local municipalities at a price many times superior to their original value. In this way King Vittorio Emanuele sought to pacify feudal nobility for the loss of their lands, and to maintain their precious political support. The substantial amounts of money paid to the feudal lords from municipal institutions drained the financial resources of Sardinia's already poor municipalities. Among the general population – harassed by decades of exploitation by feudal landowners and under economic pressure from colonial occupiers – there were not many families or individuals with the resources to buy large plots of land and implement rentable economic activities there (Boscolo *et al.,* 1995; Del Piano, 1959; Iacini, 1884).

The result of these historical events was a rural landscape characterized by:

- a few medium to large land estates in the hands of private owners;
- a myriad of small plots of land owned by peasants, with very few of these parcels being more than two hectares;
- extended tracts of public land;
- in most of Sardinia's provinces, medium to large extensions of land managed and used under common property rules.

These historical patterns of land occupation had a strong impact on Sardinia's land management, with different outcomes in the different provinces (Le Lannou, 1979; Masia, 1992; Nervi, 2004, 2009; Pinna, 1974).

WHAT ARE THE LEGAL RIGHTS AND INCENTIVES ASSOCIATED TODAY WITH LAND USE AND OWNERSHIP?

The contemporary discipline of ownership in Italy, whether private or public, emerged from the work of the *Assemblea Costituente*, the legislative body founded in 1946 and responsible for drafting a Constitution for the new post-World War II Italian Republic. The *Assemblea Costituente* was made up of the

Partigiani, citizens' groups that had organized the resistance against fascism in Italy. Their explicit goal was to create legal tools that would enhance the social function of property. Constitutional rights to ownership thus do not consider property "... without any exception ... inviolable" (quoting a passage from Article 29 of the previous Italian Constitution). Article 42 protects legal rights to use the property and to make it accessible to all. Therefore the current Italian Constitution limits private ownership and opens up a wide range of interpretations of constitutional law that underscore the possibility of other kinds of ownership (Gazzoni, 2004; Rescigno, 2006; Rolla, 2001).

The current *codice civile*, approved in 1942, contains all the norms for the regulation and protection of civil rights, transactions, and the ruling of litigations. Article 832 of the *codice civile* says that: "The owner has the right to enjoy and dispose the things he owns, in a full and exclusive way, within the limits and with the observation of the obligations established by the law." Therefore within Italian legislation the legal right to ownership is considered a 'substantial right' (*diritto reale*). This means that it includes the capacity of using the thing owned in an exclusive way, within the limitations and obligations fixed by the law. When the law refers to ownership, it focuses on the subject that can exert the legal right, which can be an individual, or a group of individuals, or a private or public entity, or the state (Gazzoni, 2004; Rescigno, 2006; Zatti and Colussi, 2005).

Talking about the relationship between property and regulation, Singer (2000) argues that regulations can limit property rights. However, property rights are at the same time forms of regulation directed at both owners and non-owners. Singer stresses that legal rights are not just the expression of the relationship between a person and a thing: the relationship is also between owners and non-owners, and this relationship impacts society at large. Therefore the reach of legal rights goes much deeper than simply affecting people and the things whose uses they supposedly regulate (Fioravanti, 2009).

When the legal right to ownership refers to the 'modes of use', the ownership right encounters several limitations. Article 841 of the *codice civile* gives the owner the right to use, transfer and give the land in inheritance, while Article 832 clarifies the limits of the legal right to use the land. Finally, according to several scholars, the definition of property as a right accessible

The definition of property as a right accessible to all is inspired by one of the fundamental values expressed in the Italian constitution: the principle of equality

to all is inspired by one of the fundamental values expressed in the Italian constitution: the principle of equality, which can be found in Article 3 (Bianca, 1991; Pescatore and Ruperto, 1995).

As rhetorical as the term 'equality' might sound, it inspired not only the second paragraph of Article 42 of the Constitution, but also laws such as the Sardinian Law of 14 March 1994, N.12, which not only acknowledges *usi civici*, but also protects "the destination of the land under *usi civici* ... for the benefit of the whole collectivity." This passage incorporates the element of equality contained in Article 42 of the Italian constitution and the emphasis on the collectivity's general interest expressed in Article 832 of the *codice civile* (Gazzoni, 2004; Masia and Ferrari, 2003; Rescigno, 2006).

THE REGULATION OF *USI CIVICI* IN SARDINIA: HISTORICAL PERSPECTIVE AND THE APPROVAL OF THE CURRENT LAW 12/1994

The different regional laws aimed at defining, regulating and at times suppressing *usi civici*, exemplify the Sardinian legislature's ongoing search for a balance between practices and regulations, as well as between access to resources at the community level and development policies at the regional, national and European levels. The Sardinian case is also interesting because of the island's status as an autonomous region, one of five within Italy. This status implies that Sardinia has its own government, budget authority, and a certain amount of freedom in the management of local resources. Regional Law 14 March 1994, N.12, is the Sardinian law that currently regulates *usi civici*. This law addresses the issues of legal rights applied to *usi civici* that had become the object of attack under the earlier Law 1766 of 1927.

Law 1766 was designed by the Sardinian legislature in order to suppress *usi civici* through legal means. The main goal was to replace the *usi civici* through privatization of the common land, via a process that was supposed to take at most two decades. The other goal was to centralize the privatization process by region without completely excluding the municipalities. The difficulty of controlling municipal governments' regulation of the land under *usi civici* was considered by

the law's promoters (all regional government officials) as an obstacle to Sardinia's efficient management of the agricultural sector and the implementation of any future industrial sector (Masia, 1992). The implementation of the law required a survey aimed at determining the exact extension of the land under *usi civici*. The passive resistance of the rural communities and of their administrators to this survey obstructed the collection of this fundamental information, undermining the intent of this law, which in the end could never be applied.

However, the Sardinian regional legislature did not give up attempting to regulate the diverse panorama of *usi civici* under a regional law, to which all municipal-level regulations would have to conform. In the mid 1980s, several decades after the demise of the 1927 Law 1766, regional administrators presented a new proposal for another regional law also aimed at regulating the *usi civici*, again to be preceded by a regional survey of the land. However, this time the reasons for such insistence on the primacy of regional authority were different from the motivations behind the approval of the previous Law 1766 of 1927.

While Law 1766 aimed at suppressing *usi civici* – responding to the political pressure towards privatization of rural land and the encouragement of future investments in industrial development – the proposed new law addressed concerns over the role of such development plans in the aborted launch of Sardinia's industrial economy.

In order to understand where these concerns came from, it is important to recall the post World War II events that resulted in what in Sardinia are known as 'cathedrals in the desert'. In the early 1960s the Sardinian government supported a large-scale industrialization project promoted by the Italian government, aimed at industrializing the southern regions. In this way the government intended to address the disparities between the growing economy of Northern Italy and the economic stagnation and unemployment that characterized the South, including Sardinia. Through a massive transfer of public money and the involvement of national and multinational petrochemical industries, such as GULF and ENI, the construction of automobile, steel, and petrochemical industries began.

The transfer of personnel from North to South to monitor production phases and attune them to the needs of Northern industries reduced the impact of the new industries on the job market. Moreover, the developments

damaged local natural resources by reducing scarce water supplies. They also compromised pristine locations that had great potential for tourist development; as such they actually harmed prospects for Southern economic development. Several of these industries closed between the late 1970s and early 1980s, and today remain surrounded by desolate land, impoverished and polluted from the impact of their former industrial activities. The promise of economic development did not become a reality, instead leaving behind widespread disillusion (Brigaglia and Tola, 2009; Ventroni, 2008).

In this context, the proposal by the Sardinian Government in collaboration with the island's elected provincial administrators to promote a comprehensive survey of the *usi civici* was welcomed by municipal administrators and supported by rural communities. The idea was to *preserve* the *usi civici* and maintain their management in the hands of the municipal governments, who actively collaborated in data collection. Communities saw this study as an opportunity to protect local resources and their access to these (Nuvoli, 1998; Masia, 1992), something deemed especially necessary after the recent fiasco of attempted industrialization.

This survey was followed in 1994 by the approval of Law 12, aimed at formalizing legal rights to the use of the land under *usi civici*. Article 1, Part B, specifies that the law aims at, "guaranteeing the existence of the *usi civici,* preserving and recuperating its specific characteristics, and protecting the destination of the land under *usi civici* for the benefit of the whole collectivity." In Article 2, Law 12 defines *usi civici* as "…the rights of the whole Sardinian collectivity to use the goods … respecting their environmental value and the natural resources …" and it specifies that these rights, "… belong to the citizens resident in the municipality in which borders are located …".

In Ogliastra, most municipalities were engaged in the preparation of the plans, and all the municipalities are still involved in updating data on the extent of each town's *usi civici.* Defining the current extent can be a controversial matter, on account of conflicts between neighbouring municipalities over the borders of the land under *usi civici.* In some cases the documents that would prove where borders are located are contradictory, and a solution to many of these disputes is yet to be found.

CONCLUSION

Von Benda-Beckmann *et al.* (2006), who inspired my approach in looking at property regimes in Sardinia, argue that these regimes cannot be expressed by any one-dimensional political, economic or legal model: they are multi-dimensional and multi-functional. This is why scholars have used the concept of 'jurisdictional pluralism' and rejected monistic and state-centred legal models to analyse the complexities of property systems. Geisler goes further and reminds that while "property is embedded in social, political and economic organizations "these organizations "...may or may not be working states" (2006:51). He problematizes an idea rooted in the Western world's classical economics (Locke, 1988) – that states exist in order to protect property – and critically analyses recent studies of traditional property systems (Scott, 1998) that regard their apparent complexity as anachronistic, because of their illegibility to state administrators.

Geisler (2006) argues that traditional systems, as well as all the property systems other than private or public systems, are in fact often accepted and protected by the state, which is the case of Ogliastra's *usi civici* in Sardinia. Complexity is inherent to property regimes, and "not only do prior forms of political organization not end ... but 'old' and 'other' property systems, as legal pluralists have long insisted, have a way of confounding, enriching and complicating later property relationships." (2006:46).

My conversations with rural communities in Gallura and Ogliastra opened up, little by little, the details of a multilayered moral economy through which community members organize their work in town and on the rural land. These details at times offered new 'interpretative windows' that gave me a deep sense of the daily life arrangements, reproduction activities, and contentious relationships among the individual members of the community, and between them and the old and new levels of governance that they were dealing with.

European Union policies, and the EU Rural Development Plan in particular, have acquired a growing role in shaping the way that property relationships, production and reproduction are all articulated and negotiated at the municipal and provincial levels. However, while the European Union rural development policies' declared goal is to help "rural stakeholders harness rural

diversity as a driving force for a wide range of sustainable rural development activity" (Fisher Boel, 2009:13), there are inconsistencies in the way in which the programmes are designed, especially the LEADER (*Liaison Entre Actions de Développement de l'Économie Rurale*) and the European Network for Rural Development (ENRD) programmes.

With reference to the impact of the LEADER in Sardinia, this programme has been critical in fostering new uses of rural land, such as agritourism and organic farms, not only in Sardinia but also in other parts of Italy. However, the requirement to have private ownership title of the land in order to access European Union funding represents a serious limitation, particularly in the context of rural Europe, which is historically characterized by a diverse land tenure system that seems completely ignored by European Union policies.

The European Network for Rural Development is still maintaining that the privatization of land should be a precondition to access EU rural development funding

The ENRD too is still maintaining that the privatization of land should be a precondition to access EU rural development funding. At the same time it is trying to promote the diversification of rural activities that are considered to be one of the main strengths of the EU rural economy. However, such diversification should also be understood to include diversified land-use practices that encompass all forms of land ownership found locally, including public, private, and common.

These issues seem to highlight the fact that laws at the national or supra-national level cannot take into account local specificities, as the focus on private property by the EU rural development measures shows us. In the meantime, as the failure of the law aimed at dismantling *usi civici* seems to suggest, laws without a proper system of incentives or disincentives often do not work. Such issues are crucial in the formulation of national and regional measures for rural development, such as during the next EU budget cycle of 2014–2020.

These contentious elements reflect the internal contradictions in some EU programs, that arise from the problematic attempts to promote the market economy through enhancing rural development practices while still trying to respect local social relationships based on non-economic as well as economic values.

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Towards sustainable development patterns


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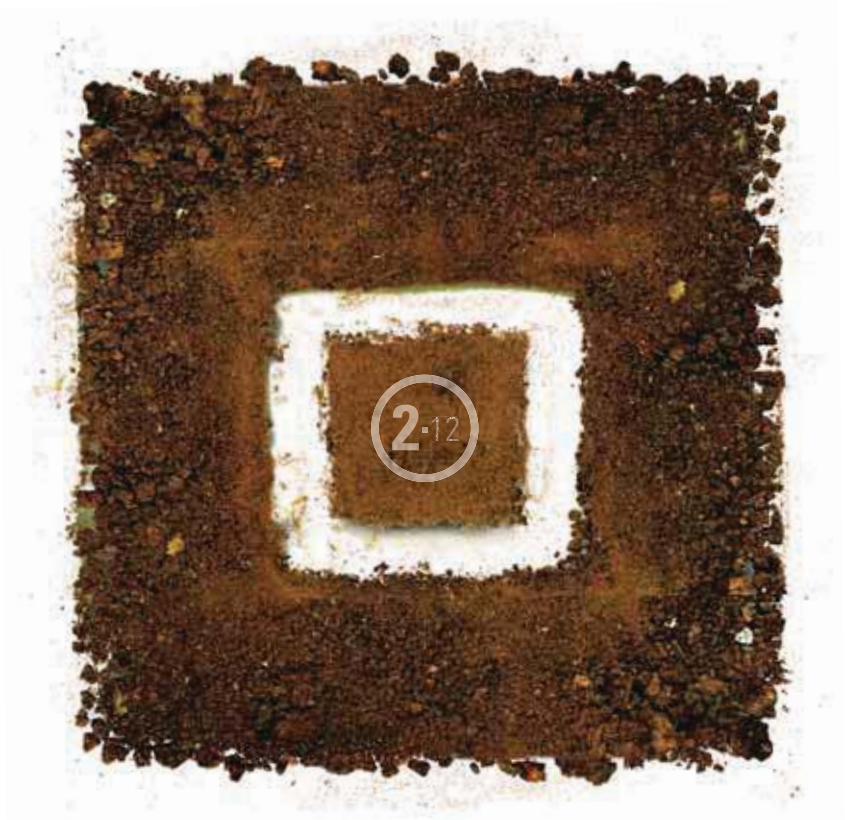

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