



FAO LEGAL SYMPOSIUM: LAND

# **Report on the Symposium on Legal Aspects of Large Scale Investments in Land:**

**Implications for Food Security  
and Rural Development**

FAO Headquarters Rome, March 4th 2011

**FAO LEGAL SYMPOSIUMS** are a collection of articles, reports and presentations held at symposiums on legal issues of contemporary interest in the areas of food policy, agriculture, rural development, biodiversity, environment and natural resource management.

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## I. Introduction

1. The *Symposium on Legal Aspects of Large Scale Investments in Land: Implications for Food Security and Rural Development* was held at FAO Headquarters in Rome on March 4<sup>th</sup> 2011.
2. The Symposium was co-hosted by FAO and the World Food Law Institute at Howard University School of Law. It brought together experts from FAO, the Institute for the Unification of Private International Law (UNIDROIT), the International Development Law Institute (IDLO), the International Fund for Agricultural Development (IFAD) and the World Food Law Institute (Institute) as well as external lawyers and an investor, who participated via teleconference. The Agenda for the Symposium is attached as Appendix A and the list of participants as Appendix B.

## II. Opening of the workshop

3. Ms Lorraine Williams, FAO Legal Counsel, welcomed the participants and opened the Symposium. Ms Williams stated that large scale investments in land are of direct importance to FAO's work because of their potential impact on food security and rural livelihoods. She identified three key legal issues in this respect: land rights of local communities; enforceable and meaningful benefits for the country as a whole, and local communities in particular, included in investment contracts; meaningful participation of local communities in investment decisions and projects and legal aid provided to them. Ms Williams also mentioned the importance of the right to food in relation to investments in land as well as two international voluntary instruments in which FAO is involved that relate to large scale investments in land: the Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources; and the Principles of Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources.

## III. Agricultural investment, land tenure, rural development and food security

4. Mr David Phiri, Chief, Policy Assistance Support Service (TCS), FAO made a presentation on "Agricultural investment, land tenure, rural development and food security". Mr Phiri informed the participants about the current status of global food security and the role of investment in agriculture for food security. He highlighted the need for increased investment in agriculture, especially domestic investment, as well as the importance of improving the quality of investments, by focusing on those investments that improve the level of domestic capital formation and domestic investments.
5. Mr Phiri addressed the role of the policy and legal environment for foreign investment in agriculture and food production. He stressed that investment can benefit the recipient country if the foreign investment responds to the capital and development needs of the recipient country. National policies on investment should therefore clearly have the country's development and capital needs as objectives.
6. Mr Phiri mentioned that investment agreements are often negotiated and concluded between a private investor and a recipient government that does not have the same negotiating and legal capacities. While the investor is usually assisted by a team of lawyers and other specialists, the recipient country often does not have at its disposal the same negotiating capacities and human resources. This may result in an investment contract that better reflects the interests of the investor than those of the country. Even where governments do have fair negotiating capacities, it was noted that weak land governance systems, including the absence of formal title deeds for informal use, may impair the land use rights of local people that are not properly reflected in the domestic legal system. Weak governance systems can thus negatively affect local populations and their food security.
7. A copy of the paper on which the presentation was based is attached as Appendix C.

## **IV. Policy, regulatory and contractual responses to large scale investments to promote food security**

8. Moderated by Ms Margret Vidar, Legal Officer, Development Law Service (LEGN), FAO, three case studies concerning policy, regulatory and contractual responses to large scale investments in land to promote food security were presented and discussed. Ms Vidar highlighted the importance of the policy and legal framework governing foreign investments in agriculture and food production to ensure sustainable development of the agricultural sector in developing countries. The policy environment should facilitate sustainable agricultural investment that responds to the capital and development needs of the recipient country

### **Case study 1: A model for partnerships between investors and local communities in Mozambique**

9. The first case study was presented by Mr Paolo Groppo, Land and Water Division (NRL), FAO. Mr Christopher Tanner, Senior Technical Adviser of project GCP/MOZ/096/NET, is co-author of the presentation. Mr Groppo reported on a model partnership developed in Mozambique aimed at ensuring that large scale investments in land and other natural resources are carried out to the benefit of society as a whole, with respect for local, regional and national interests, including the interests and (customary) rights of local people. He explained that country-wide consultations, engagement of civil society and public pressure led to the negotiation and adoption of a new Land Law (1997) that integrates customary tenure into statutory law and legally recognizes land rights acquired by customary systems as being equivalent to the State-allocated 'land use and benefit right' (DUAT). He presented the overall purpose of this new law and its provisions on acquiring a DUAT. Mr Groppo pointed out that a sound investment process includes negotiations with existing rights' holders on the best way to gain access to land. The process should furthermore be subject to a participatory land use plan that respects existing local rights. An investment process that follows these basic rules will benefit community, investor and government alike.

10. Mr Groppo introduced a cooperation programme at the National Directorate for Promoting Rural Development (DNPDR), which features a project to establish pilot community-investor partnerships in agriculture, including the development of guidelines for promoting such partnerships in the future. This programme, which formally began in mid-2010, will test several areas of legal and practical importance, including the possibility of communities renting their land (rights) under current legislation. It will also promote the development of detailed contracts, as opposed to the present short and imprecise 'acts' which set out the skeleton of agreements reached through the mandatory community-investor consultation process when any new investment project is planned. A copy of the presentation is attached as Appendix D.

### **Case study 2: Experience with community land titling in Liberia, Mozambique and Uganda: initial results from an empirical research project**

11. Mr Thomas McNerney, Director of Research, Policy and Strategic Initiatives, IDLO presented an empirical research project that IDLO is currently carrying out in Liberia, Mozambique and Uganda and which aims at investigating how to best ensure that customary land rights are successfully claimed, protected, and leveraged and also aims at defining how registration of community claims can assist communities in negotiating and defending their rights. Mr McNerney pointed out that the granting of investment concessions to foreign investors may result in dispossession and displacement of whole communities that were using the land before. These communities might have little bargaining power to contest the concessions, as they often lack formal documentation of their customary land rights and

access to justice, and they might often not be able to successfully demand and receive compensation for their losses. The importance of claim and protection of customary land rights in this context was highlighted.

12. Mr McInerney presented some initial results of the empirical research and explained different possible approaches for the communities to safeguard their land rights. A copy of the presentation is attached as Appendix E.

### **Case study 3: From an investor's perspective: structure of a large scale investment in land in Zambia**

13. Mr Neil Crowder, Co-Founding and Managing Partner, Chayton Capital, UK reported by video conference from Capetown on the investment by his company in Zambia. The company concluded an Investment Protection and Promotion Agreement (IPPA) with the Zambian government in 2009. Mr Crowder explained the factors on which the investment decision was based, which included Zambia's strong agricultural potential and investment-friendly policy framework which supports agricultural development, Zambia's encouragement of private equity investment and the attractive incentives such as tax breaks. He also explained the acquisition strategy on which the company executed the project and indicated that it was decided to purchase an already existing farm, rather than enter into discussions with local communities for the establishment of new farms, which had been considered too cumbersome and risky. Mr Crowder mentioned that the company is engaged in education and training of the local community and stressed that these activities were in the first place in the business interest of the investors, as skilled local communities will be able to carry out supporting tasks for the farmers who will eventually cultivate the land. The IPPA did not itself include provisions of engaging the local community or of building their capacities.

14. In the subsequent discussion participants stressed the importance of engaging investors through a public bidding process, which would make the company offers more competitive and would enhance the benefits offered to the country. Participants also discussed the inclusion of clauses that make it possible to export as much as 80% of the agricultural production (albeit within the African region), even in cases of local food shortages. The absence of provisions in the contract that oblige the investor to invest in tangible benefits for the communities involved and the country at large was also discussed. A copy of the presentation is attached as Appendix F.

## **V. International initiatives related to agricultural investment in land**

15. Ms Francesca Romano, Land Tenure Team (NRC), FAO presented two current international initiatives addressing agricultural investment in land, namely the *Principles for Responsible Agricultural Investment (RAI) that Respects Rights, Livelihoods and Resources* and the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources*. Ms Romano reviewed the background to the development of these two initiatives, their purpose, content objective as well as the relationship between the two instruments.

16. Ms Romano highlighted the importance of developing the Voluntary Guidelines on the Responsible Governance of Tenure and Other Natural Resources (Voluntary Guidelines) as a response to the growing need for an international instrument that sets out the minimum standards for governance of tenure. The Voluntary Guidelines should provide practical guidance to States, civil society and the private sector on improving governance of tenure, recognizing the legitimacy of both statutory and customary tenure. While the Voluntary Guidelines are in the final stage of being drafted and their scope therefore not yet set in stone, they will address large scale investments by possibly recommending the development of transparent policy and regulatory frameworks for granting concessions for the use and exploitation of land

and other natural resources. Such frameworks should ensure a fair, standard, transparent, neutral and non-discriminatory granting process that respects existing rights to land and other natural resources and that do not lead to forced displacement of people or loss of livelihoods.

17. Ms Romano also introduced the Principles for Responsible Agricultural Investment (RAI principles) and highlighted the need that the principles be translated into action by local investors, governments, donors and international agencies at institutional, regulatory and policy level as well as at private corporate level. A copy of the presentation is attached as Appendix G.

## **VI. Concession contract terms: legal issues and lessons from Liberia**

18. Mr Bruce Gilchrist and Mr. Joseph C. Bell, both senior partners at Hogan Lovells US LLP, gave a presentation titled “Concession contract terms: legal issues and lessons from Liberia”. Mr Bell presented non-fiscal objectives and legal issues concerning foreign investment in agricultural land experienced in Liberia. Mr Bell explained that the country’s objectives for entering into long term agreements on land investment was to improve the socio-economic situation of its population through economic development, creation of direct and indirect employment opportunities for Liberians, enhanced education and health standards, housing, infrastructure, support of small holders and local farmers as well as value-added downstream activities. He mentioned that fiscal returns from foreign investments to the national tax coffers are often over-estimated. Income tax returns usually only materialize after a long initial period in which contractors are able to deduct investment costs from the still limited revenues. Rental of land is generally at a symbolic price in return for which governments hope to benefit from growing employment and investments in infrastructure. Often the most important fiscal benefits of the foreign investment are in the form of import duties on goods imported by the investor.

19. It is important that governments are aware of these discomfoting realities. In the absence of considerable fiscal benefits, it is important that governments seek to enhance non-monetary benefits from the investment deal, such as education, transfer of knowledge, investments in infrastructure, social welfare as well as environmental benefits. Mr Gilchrist presented the results of a concession contract concluded on behalf of the Liberian government that led to substantial non-monetary benefits such as the establishment of primary and secondary schools, clinics and hospitals in the concession area at the expense of the investor. The concession contract also resulted in the development of infrastructure, such as roads, bridges and utilities for public use in and leading to the concession area, as well as the development of housing with electricity, drinking water and hygienic utilities. The concession holder was made responsible for all maintenance and the state will automatically become owner of all this when the concession contract ends.

20. Discussion about the Liberian investment contract negotiations led to identification of several issues such as the compensation for resettlement of the local population and the tendency of investment companies to introduce so-called “freezing” clauses in the investment contract, clauses which provide that the investor is forever subject to the national law in force on the date of contracting, making subsequent regulation impossible.

21. The discussion led to the conclusion that there is a need to introduce clauses that give governments the right to terminate the concession in case of non-performance by the concession holder, as well as clauses on prolongation of the concession and change of the concession holder. Participants stressed the importance of having qualified lawyers and negotiators when concluding an investment contract and of negotiating the details of obligations for investment in benefits. These contractual obligations should for instance provide details about the maintenance of utilities and infrastructure, as well as ownership. A copy of Mr Bell’s presentation is attached as Appendix H.



## VII. Linking large scale investment in land, commercial law and food security

22. Professor Marsha A. Echols, Director, The World Food Law Institute, introduced the afternoon section of the Symposium by emphasizing the importance of strengthening the legal expertise needed to support and advise on the many legal issues related to food security, including varied legal aspects of large scale investments in land. She made a presentation titled "Linking large scale investment in land, commercial law and food security". Only if there are knowledgeable attorneys and other professionals (e.g., nutritionists, agronomists, economists, financiers) can the policy and legal aspects of investments in huge tracts of land be well managed, in keeping with the important goals of food security and rural development.

23. Professor Echols presented options for creating the requisite legal expertise and for enhancing the cooperation and interactions among the relevant institutions. She emphasized the importance of raising awareness among lawyers about the need to be aware of relevant legal aspects of finance, contracts, intellectual property and constitutional law and their relationship to sustainable economic development and food security of the recipient country when advising governments and other clients. Professor Echols suggested that the creation of a functioning network of lawyers is an important option. She said that the World Food Law institute will create and support a global network of lawyers to share relevant knowledge and information about legal issues relevant to food security and rural development. Annual Executive Knowledge Institutes for lawyers who advise and are decision-makers about key elements or aspects of food security and rural development is another option that Professor Echols mentioned as a crucial element of creating the needed legal expertise and the network. She also stressed the need for research and publications as options to increase awareness among lawyers. Another option – one made concrete by the Symposium – is the establishment of on-going interactions among FAO, IFAD, UNIDROIT and IDLO related to food security, in addition to their bilateral arrangements. Professor Echols stated that the World Food Law Institute hopes to continue to be included.

24. Professor Echols also raised two legal issues, dispute settlement and the role of regional courts, which should be examined more closely in the discussion about agricultural investment, since both have played a significant role in legal developments regarding large scale investments in land. A copy of the paper on which the presentation was based is attached as Appendix I.

25. In the subsequent discussion, participants agreed that there is insufficient broad legal expertise in the area, as lawyers are usually experts in only one field, such as contract, commercial, property, finance, investment or trade law, but they do not have (but should have) adequate knowledge about the implications of many legal rules and concepts as they affect land investments, food security and rural development.

26. The participants agreed on the creation of a network, including the establishment of a platform for informal information sharing and networking opportunities. In addition to promoting exchange of information, participants should seek to publish information papers through the network on topics related to large scale investments in land in support of food security and rural development.

## VIII. Legal framework and design of investment contracts

27. Mr José Angelo Estrella Faria, Secretary General, UNIDROIT moderated the open discussion on the legal framework governing investments and the design of investment contracts.

28. The participants discussed various types of contracts that can be used for investment in land, such as concession contracts, leases, joint venture contracts and contract farming agreements.

29. Necessary elements for investment contracts were discussed including: creation of employment, environmental protection, and respect for rights of affected people and stakeholders. Local land rights, whether formalized or not, must be taken into consideration. The contract should further include provisions on engagement of local communities in decision-making and in the management of the project throughout the project cycle. Finally, it should provide for accessible and fair dispute settlement.

30. The participants agreed that the complexity of considerations and the fundamental specifications of these investments would require specialized legal guidance on contract negotiation and drafting for the parties.

## IX. Conclusions and the way forward

31. Participants agreed that investment in land may affect the right to food and other human rights. They agreed that the agricultural sector in developing countries is under-capitalized, and that, in the face of decreasing public investments, foreign large-scale investment could be an option to fill the investment gap. The sustainability of investments depends to a large extent on the legal and policy framework in place and on the actual contract that underlies the investment. Good investments can considerably contribute to food security and rural development of the country if the investor is held to create benefits for the community, such as education programs, social services, including health care and housing, infrastructure such as roads, bridges, electricity and drinking water networks. If done properly, investments can directly and indirectly generate jobs, contribute to the country's economy and to its infrastructure. However, the way in which the investment is being carried out determines whether it is beneficial to the country as a whole. The legal and policy framework governing investments as well as the investment contracts should ensure that the interests of both the investor and the country are balanced, strengthening rural development and food security for the country as well as investment opportunities.

32. Participants recognized that investment agreements can negatively affect land rights that are not clearly defined and registered. Investments may be detrimental to land rights when these rights are not enforced because they are either not known to their holders or appropriate remedy mechanisms are lacking. Transparency of the negotiation process can address these problems by including all potentially affected stakeholders. The recipient country's legislation should safeguard transparency and public participation in the conclusion of large-scale land investment contracts. One of the mechanisms that could be introduced is the principle of free, prior, informed consent<sup>1</sup> (or, at least, consultations), which could ensure that all local people with an interest in the affected land or other natural resources are heard. A transparent procedure would further include the publication of geographical areas offered for investment, possibly a call for bids and submission of offers by the interested investors. Transparent procedures do not only benefit local stakeholders, but could also make the investment a bigger success by creating support among the local communities and stakeholders.

<sup>1</sup> The principle of free, prior, informed consent is recognized in the context of indigenous peoples (arts 10, 11, 19, 28, 29 and 32 of the United Nations Declarations on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution 61/295 on 13 September 2007) and could be expanded to some extent to cover local communities generally.

33. The participants acknowledged the challenge to raise awareness among commercial lawyers for issues related to food security and sustainable development. Creating a network that facilitates the sharing of information and that promotes research can be helpful in this regard. Through this network, an information document specifically addressing legal issues to be considered in international investment contracts may be developed to provide guidance to lawyers. The acknowledgement of the importance of providing such legal guidance, especially for the recipient country's government, was one of the major outcomes of this Symposium.

34. Participants expressed their general intention to continue the analysis and discussion of the legal aspects of international investment agreements and to strengthen the cooperation among themselves, while involving other partners. The next steps should be built around the following:

- Create a network of lawyers to strengthen the discussion of the legal issues and developments regarding large scale investments in land, to encourage exchanges and collaborations among a group of lawyers and to serve as a vehicle for research and publication.
- Develop an information document for practitioners working in the field of international investment explaining the key elements that should be regulated in an international agriculture investment contract and the clauses that are recommended to be introduced.

35. The possibility of convening further symposiums in the future was mentioned and received general support.

36. Mr Blaise Kuemlangan, Chief, Development Law Service, FAO, closed the symposium on behalf of the FAO Legal Counsel, Ms Lorraine B Williams, thanking all participants for attending, Professor Echols for instigating the event and Ms Margret Vidar, Legal Officer, FAO, for its organization.



World Food Law Institute

# **SYMPOSIUM ON LEGAL ASPECTS OF LARGE SCALE INVESTMENTS IN LAND: IMPLICATIONS FOR FOOD SECURITY AND RURAL DEVELOPMENT**

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

**Rome  
March 4, 2011**

## **AGENDA**

### **Part I**

**9:00**

**Welcome and Opening**

*Ms Lorraine B. Williams  
Legal Counsel, FAO*

**9:10-9:30**

**Agricultural investment and agriculture, rural development and food  
security**

*Mr David Phiri  
Chief, Policy Assistance Support Service (TCS), FAO*

**9:30-11:00**                      **Case Studies: Policy, Regulatory and Contractual Responses to Large Scale Investments to Promote Food Security**

***Moderator***

*Ms Margret Vidar, Development Law Service (LEG), FAO*

**Mozambique – partnership on the basis of community land rights**

*Mr Paolo Groppo, Land and Water Division (NRL), FAO*

**Experience with community land titling in Liberia, Mozambique and Uganda: initial results from an empirical research project**

*Mr Thomas McInerney*

*Director of Research, Policy, and Strategic Initiatives*

*International Development Law Organization (IDLO)*

**Zambia – structure of a large scale investment in land**

*Mr Neil Crowder*

*Co-Founding and Managing Partner, Chayton Capital, UK*

*[via videoconference link]*

**11:00-11:30**                      **Coffee Break**

**11:30-12:00**                      **Discussion**

**12:00-12:30**                      **Current initiatives: Voluntary Guidelines on Responsible Tenure of Land and other Natural Resources; Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources**

*Ms Francesca Romano, Land Tenure Team (NRC), FAO*

**12:30 – 14:00**                      **Lunch**

**Part II**

**14:00 -14:15**                      **Linking large scale investments in land, commercial law and food security**

*Professor Marsha A. Echols*

*Director, The World Food Law Institute*

**14:15-15:15**                      **Panel Discussion: Large scale investments in land, food security and rural development: contract & commercial law challenges**

***Moderator***

*Mr José Angelo Estrella Faria*

*Secretary General*

*Institute for the Unification of Private Law (UNIDROIT)*

**IFAD's approach to large scale investments in land: a legal perspective**

*Mr Charles Forrest*

*Office of the General Counsel*

*International Fund for Agricultural Development (IFAD)*

**Concession contract terms: legal issues and lessons from Liberia**

*Mr Joseph C. Bell, Esquire and Mr Bruce Gilchrist*

*Hogan Lovells US LLP*

*[via videoconference link]*

**15:15-15:30**

**Discussion**

**15:30 – 16:00**

**Coffee Break**

**Part III**

**16:00-16:45**

**General discussion: Responding to the legal challenges: the way forward**

*Professor Marsha Echols*

*Director, World Food Law Institute*

*Mr Blaise Kuemlangan*

*Officer-in-Charge, Development Law Service, FAO*

**16.45-17.00**

**Closing**

*Ms Lorraine B. Williams*

*Legal Counsel, FAO*

## Symposium participants

1. Ms Frédérique MESTRE, UNIDROIT
2. Mr José Angelo ESTRELLA FARIA, UNIDROIT
3. Mr Charles FORREST, IFAD
4. Ms Katie MURRAY, IFAD
5. Ms Marieclaire COLAIACOMO, IFAD
6. Mr Itziar Garcia VILANUEVA, IFAD
7. Mr Thomas McINERNEY, IDLO
8. Mr Yohannes KASSUN, IDLO
9. Ms Lorenza PAOLINI, Crocevia and FIAN International
10. Mr Michael TAYLOR, ILC
11. Ms Kristina KAMSIUKAITE, European Commission
12. Ms Catherine DEL CONT, Université de Nantes
13. Ms. Marsha ECHOLS, World Food Law Institute
  
14. Ms Astrid AGOSTINI, TCI
15. Ms Luisa CRUZ, ESA
16. Mr Paolo GROPPPO, NRC
17. Ms Clara PARK, ESW
18. Mr David PHIRI, TCS
19. Ms Francesca ROMANO, NRC
20. Ms Hannah TRANBERG, TCI
  
21. Mr Peter DEUPMANN, LEG
22. Mr Blaise KUEMLANGAN, LEG
23. Mr Patrice TALLA, LEG
24. Ms Margret VIDAR, LEG
25. Ms Philine WEHLING, LEG
26. Ms Lorraine WILLIAMS, LEG

# **AGRICULTURAL INVESTMENT AND AGRICULTURE, RURAL DEVELOPMENT AND FOOD SECURITY**

**Chimimba David Phiri**  
*Chief, Policy Assistance Support Service*  
*Food and Agriculture Organization of the United Nations*

## **Symposium on Legal Aspects of Large-Scale Investments in Land: Implications for Food Security and Rural Development**

*FAO, Rome: 4 March 2011*

### **1. THE STATE OF GLOBAL FOOD INSECURITY**

The world faces a major challenge in the fight against hunger and food insecurity. FAO estimates that 925 million people (1 in 6) in the world were undernourished in 2010. This number is an unacceptably high even though it represents a slight decline from the 1.02 billion reached in 2009. FAO also estimates that global food production will have to grow by 70%, and double in developing countries, for all of the world's population, 9.1 billion, to be food secure in 2050.

### **2. AGRICULTURAL INVESTMENT FOR FOOD-SECURE WORLD**

During the last fifteen years the international community has taken a number of initiatives towards eradicating poverty and food insecurity in the world. Among these, the most significant for a were the FAO World Food Summit in 1996, which agreed on a goal to reduce the number of hungry people by half by 2015, and the United Nations Millennium Summit in September 2000, which agreed on eight Millennium Development Goals (MDGs), the first of which is to halve the proportion of global poverty and hunger by 2015.

Since these two seminal events, many developing countries had been making some progress towards meeting the MDGs, or their own regional goals in case of Africa and Latin America and the Caribbean. However, the soaring food prices in 2007 and 2008 exposed the fragility of the world food security situation. As some traditionally food exporting countries banned exports of their staples, the situation put into doubt the commonly-held belief that global food supply was sufficient to meet the global food demand, and that hunger was essentially a problem of access.

In response to the soaring food prices, the world leaders gathered in Rome from 3 to 5 June 2008 for the *High-Level Conference on World Food Security: The Challenges of Climate Change*



*and Bioenergy* in order to find a way to address the problem of food shortage. They recognised that agriculture in many developing countries has been chronically underfunded, and therefore could not produce enough food to feed their populations, let alone for resilience against such a crisis. They committed themselves to increasing investments in agriculture in order to stimulate food production. Subsequently this commitment was reaffirmed, at the G8 summit at L'Aquila, Italy in July 2009, where G8 countries pledged more than USD 22 billion to support food production in developing countries.

The USD 22 billion pledged at L'Aquila, even if fully delivered, which as we already know will not in fact be delivered at nearly that level, should be put into perspective. FAO estimates that in addition to domestic resources and other international transfers, USD 80 billion of investment is required annually to ensure a food secure world. That USD 80 billion should be put into perspective. It is small compared to the USD 365 billion support provided by rich countries to their farmers, tiny in relation to the USD 1340 billion the world spends on armaments, miniscule compared to the trillions of dollars found within weeks to support the financial sector in 2008 and 2009.

And yet Official Development Assistance (ODA) for agriculture had decreased steadily from 17% in 1980 to 3.8% in 2006, and only now with renewed interest in agriculture as it gone up again; but it remains at a paltry 5-6%. **Efforts should be made to increase ODA to at least the 1980 level.**

ODA is, of course, only one, if small, source of agricultural financing, with a majority of financing coming from domestic sources, foreign direct investment, and increasingly remittances. The level of remittances (USD 328 billion in 2008, USD 317 billion in 2009; forecast: USD 325 billion in 2010 and USD 334 billion in 2011) outnumber by far nearly all other forms of capital flow to the developing countries. They are over 3 times ODA, and over 2 times ODA and Foreign Direct Investment (FDI) combined. FAO is working on how we can support member countries that are major recipients of remittances to design policies that encourage investment of remittances in agriculture and food security; and we are working with several partners in this, including the World Bank, IFAD and the Commonwealth Foundation and the Ramphal Centre.

All efforts must be made to increase the **quantity** of investment for agriculture. But quantity of investment is clearly not enough. For any investment to contribute to growth and development, it must lead to sustainable domestic capital formation. The experience of developing countries,

including in Africa, with agricultural development strongly suggests that making a transition from economic stagnation to self-sustaining economic growth in agriculture - and consequently the overall economy - requires a sustained increase in the rate of domestic capital formation in agriculture.

The nexus between capital formation and agricultural growth, and agricultural growth and poverty alleviation are complex, but empirical analysis clearly suggests that the volume and composition of capital formation are the major determinants of agricultural productivity and output growth. Therefore, the **quality** of investment is as important as the quantity of investment.

The increase in domestic capital formation should be viewed in its broad sense, including thus investment in social overhead and economic infrastructure. Although such investment may yield only a small increase in income in the short term, it will create an environment necessary for more profitable and cumulative subsequent investments. The experiences in China, Thailand, Brazil and Vietnam clearly demonstrate how the sustained increase in capital formation in agriculture generates the subsequent growth opportunities in agriculture and the economy as a whole.

**The key message here is that farming should be considered as a business. While governments and their partners are seeking to support agriculture, they should adopt policies and extension methods that help farmers to develop a capacity to save, accumulate fixed capital, and continually reinvest in their own own farms; and use whatever support comes from public sources to leverage own resources.**

### **3. RATIONALE FOR FOREIGN SUPPORT FOR AGRICULTURE**

If we agree with the issue of the quality of investment, ODA and other forms of foreign support for agriculture can be justified on the basis that some developing countries are not in a position by themselves to generate the savings needed for investing in capital formation for sustainable growth and development. The purpose of any international aid and outside capital in a developing country should therefore provide the latter with a positive incentive for maximum national effort to increase the rate of domestic capital formation up to a level which could then be maintained and eventually increased without any further aid and international investment. Ideally then, international aid and investment should be directed to where it will have the maximum catalytic effect of mobilizing additional national effort or preventing a fall in the national effort.

#### **4. FOREIGN INVESTMENT IN AGRICULTURE AND FOOD PRODUCTION: THE POLICY AND LEGAL ENVIRONMENTS**

As noted above, the agricultural sector in developing countries is under-capitalized. Chronic low investments have resulted in stagnant or reduced productivity and production levels. The share of ODA going to agriculture is stagnant at a low level; and FDI has not increased to bridge the capital deficit.

In the face of the food crisis in 2007 and 2008, a number of financially-rich but land-poor net food-importing countries embarked on land purchases and leases in developing countries, particularly in Africa and Latin America, or facilitated private actors in their countries to do so. While foreign acquisitions of large tracts of farmland has been there from time immemorial, the speed at which this happened in the recent past became the focus of concern. And they have raised complex and controversial economic, political, institutional, legal and ethical issues. However, such investments should be welcome if the foreign investment is consonant with the capital and development needs of the recipient country. Governments have thus an important role in setting a policy environment that allows this to happen, and thus ensuring that adequate investment flows to agriculture.

The amount of land acquired and operated by foreign interests in Africa in the last three years is estimated around 20 million hectares, although figures as high as 50 million hectares are claimed by some commentators. Even at these levels, such land is only a small proportion of total land areas in host countries, but the local impacts of individual investments can be significant. As many developing countries are making strenuous efforts to attract international investments, the practical question is not whether such investments should be curtailed, but rather how the local impact can be optimised to maximize benefits and minimize inherent risks. Again then, the quality of investment matters.

The policy and legal framework governing such investments is thus crucial. Most of the land deals appear to be between private investors, even if backed by the foreign governments, and recipient governments. The negotiations and contractual arrangements are often made between unequal partners - with the legal teams in recipient country negotiating teams usually weaker than the foreign teams. In recipient countries with weak land governance - particularly in cases where

land tenure systems are unclear - it begs the question of whose land is being ceded. While much land in developing countries is not fully utilized, there may in fact not be a great deal of “surplus” land in fact, as such land may be used or occupied without formal title deeds. Ceding such land could disenfranchise the local populations and affect negatively their food security.

Public policy should ensure that such foreign investments as well as domestic commercial interests are of benefit to the country at large.

**In view of the above observations, the key issues underlying public domestic support, foreign assistance and international investment in agriculture are:**

- **What are the most efficient ways for making a sustained increase in domestic capital formation in agriculture?**
- **Which forms of investment, both domestic and international, are more effective in contributing to domestic capital formation?**
- **What are the appropriate domestic agricultural and rural development policies and programmes that would lead to greater international investment?**
- **In case of foreign investments, how can the governments ensure that while profitable to the shareholders, they are beneficial to the local populations?**

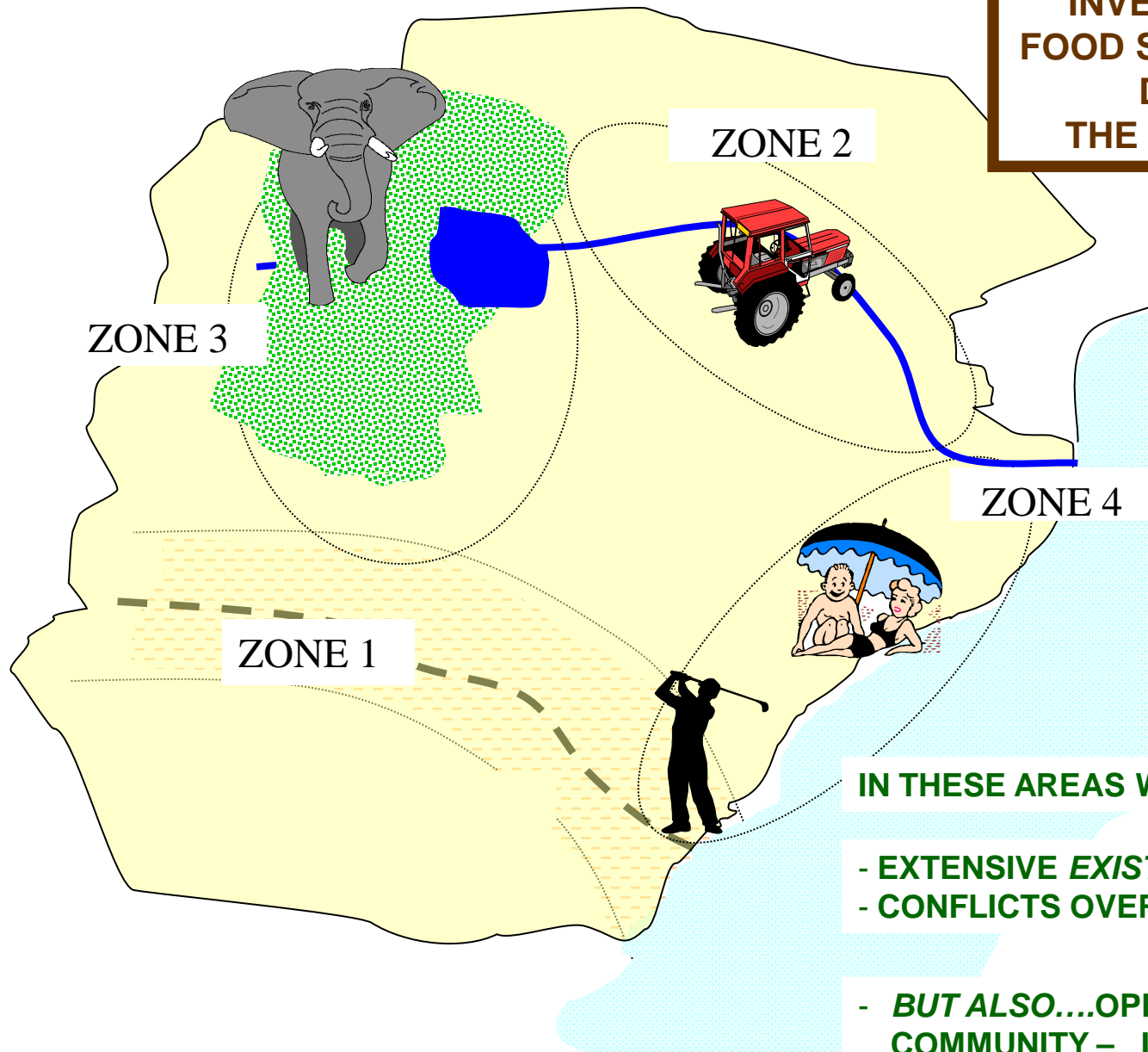
The answers to these questions are critical for enhancing appropriate investment to address food security, poverty reduction and agricultural development.

FAO has launched a study, with funding from the Japan, to study some of these issues, and come up with policy recommendations.

# **Mozambique – partnership on the basis of community land rights**

Paolo Groppo, Land and Water Division  
Christopher Tanner  
FAO Senior Technical Advisor  
Land and Natural Resources Policy and Legislation

**INVESTMENTS IN LAND,  
FOOD SECURITY AND RURAL  
DEVELOPMENT:  
THE LAND QUESTION ....**



**IN THESE AREAS WE CAN OBSERVE:**

- EXTENSIVE *EXISTING* LOCAL RIGHTS
- CONFLICTS OVER LAND AND RESOURCES
- *BUT ALSO....* OPPORTUNITIES FOR  
COMMUNITY – INVESTOR  
(AND STATE) PARTNERSHIPS

## **SETTING THE BASIS FOR DISCUSSION: NATIONAL LAND POLICY (1995) AND LAND LAW (1997)**

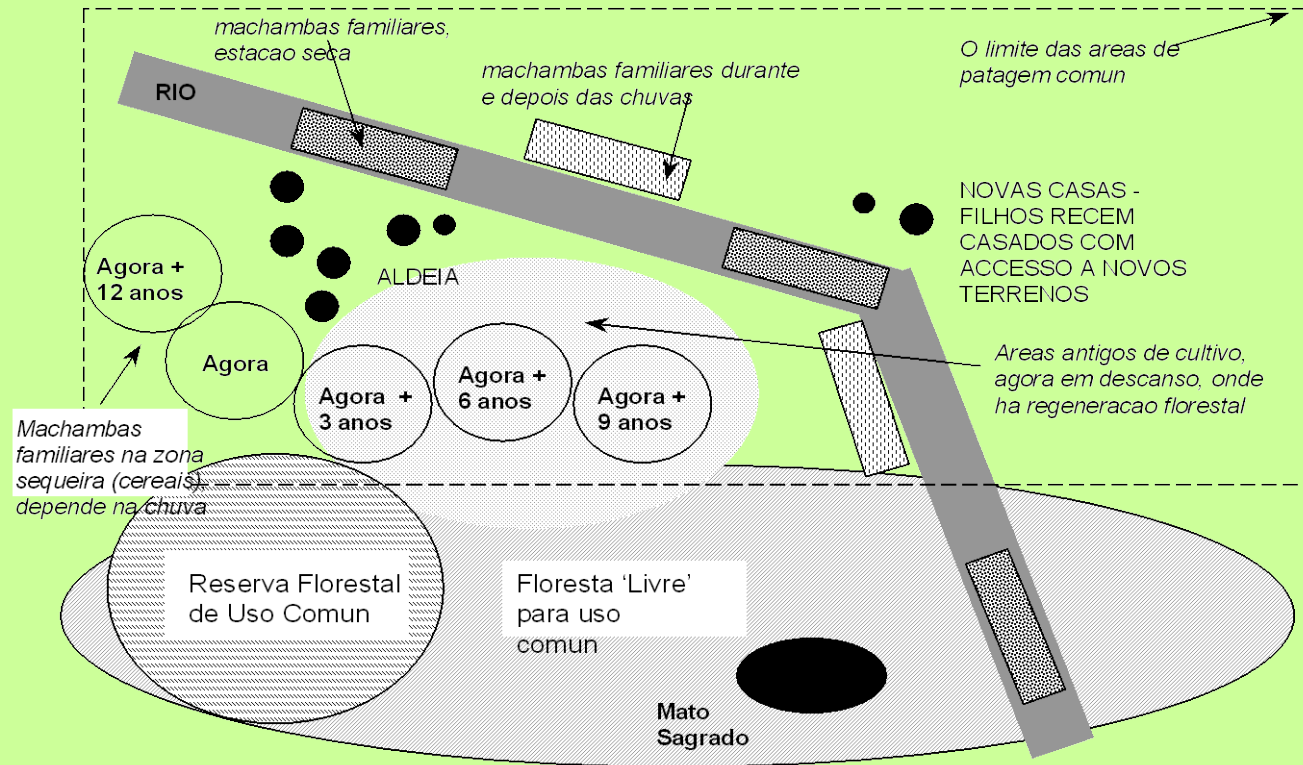
Secure the diverse rights of the mozambican people  
over land and other natural resources....

as well as promoting promote new investment ...  
and the sustainable and equitable use of these resources.

Pivotal role of “local communities”!

## WHAT IS A LOCAL COMMUNITY?

AREA RURAL TÍPICA - AGRO-PECUÁRIA EM CONSORCIO, ZONAS SEMI-HÚMIDAS, RIOS COM ÁGUA DURANTE AS CHUVAS, ÁREAS DE SEQUEIRO SEM IRIGAÇÃO E DEPENDENTE NA PRECIPITAÇÃO:  
ANÁLISE DE SISTEMAS DE PRODUÇÃO E DE UTILIZAÇÃO DE RECURSOS



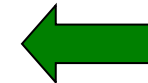
Fonte: Tanner 2001a, análise de pesquisa de campo em Mocambique, Angola, Guiné-Bissau, 1990 - 1997

**A legal concept based in local realities  
(production systems and social organization)**



There are **THREE** ways to acquire a Land Use Right (DUAT):

- Occupation by individuals and by local communities, following customary norms and practices, so long as these do not contradict the Constitution
- Occupation by national individuals who, in good faith, have been using the land for at least ten years
- Authorization of a request [for a new DUAT] presented by individuals or collective entities, in the manner established in this Law



**ONLY WAY OPEN TO  
FOREIGNERS**

**Land Law, Article 12**

## LAND USE RIGHTS (DUATs) FOR INVESTORS

- ❑ ACQUIRED BY FORMAL REQUEST TO THE STATE
- ❑ OBLIGATORY COMMUNITY CONSULTATION (LAND LAW, ARTICLE 13)
- ❑ HAVE TO BE REGISTERED (TITLING PROCESS WITH DEMARCATION)
- ❑ 5 YEAR PROVISIONAL DUAT (NATIONALS); 2 YEARS FOR FOREIGNERS
- ❑ DUAT DEFINITIVE ONCE PROJECT IMPLEMENTED;
- ❑ 50 YEAR TERM; RENEWABLE FOR ANOTHER 50 YEARS

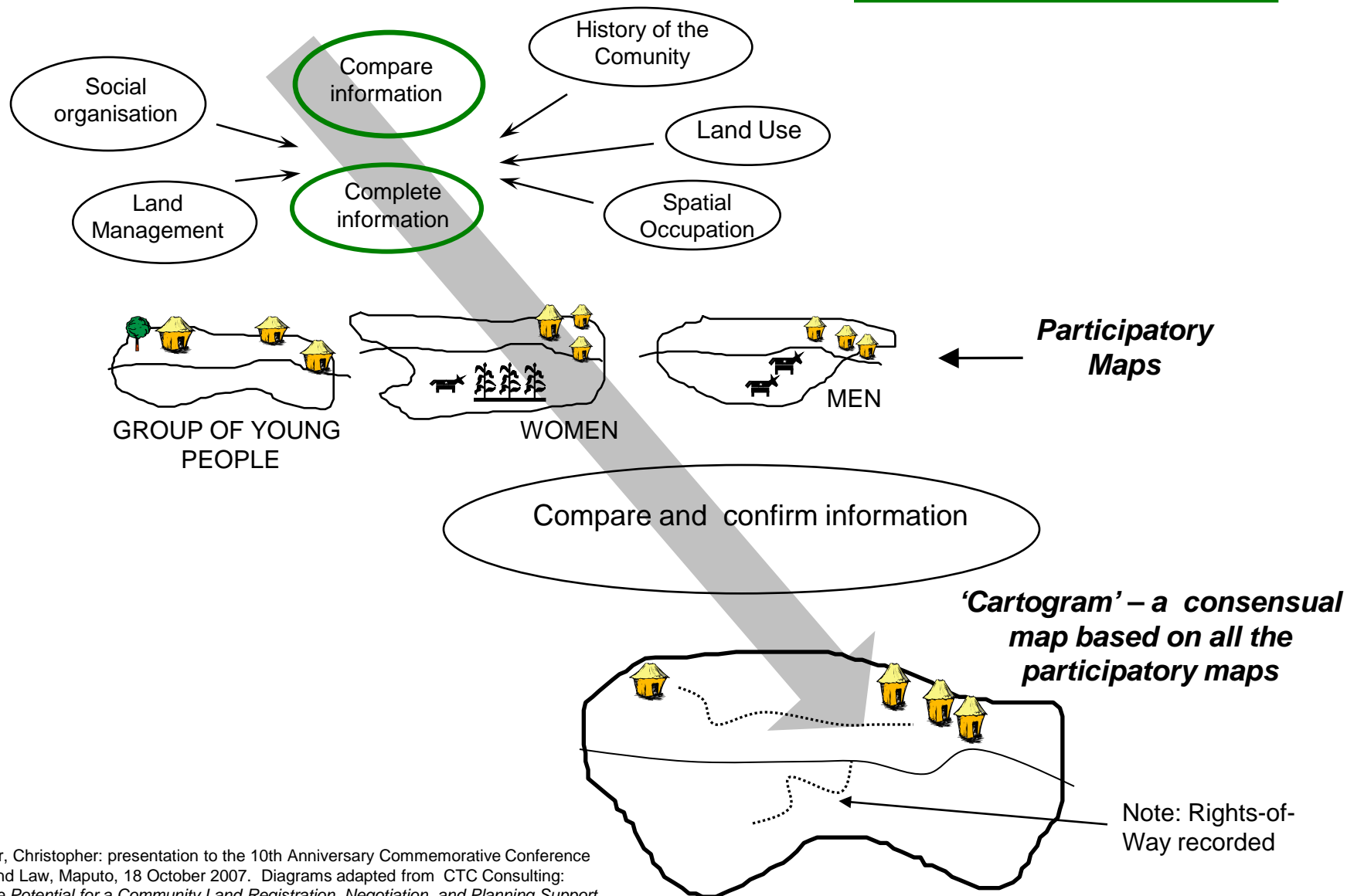
INVESTORS NEED TO KNOW WHERE THERE ARE ACQUIRED RIGHTS

WHEN THESE ARE NOT MAPPED OUT IN OFFICIAL DATABASE:

**COMMUNITIES PARTICIPATORY LAND DELIMITATION**

# 'SENSIBILIZATION'

## DELIMITATION – 1



Source: Tanner, Christopher: presentation to the 10th Anniversary Commemorative Conference of the 1997 Land Law, Maputo, 18 October 2007. Diagrams adapted from CTC Consulting: *Appraisal of the Potential for a Community Land Registration, Negotiation, and Planning Support Programme, Mozambique* (a report for DfID Mozambique), and the *Manual de Delimitacao de Terras das Comunidades* (Maputo, Comissao Inter-ministerial para a Revisao da Legislacao de Terras), developed with support from FAO Project GCP/MOZ/089/NET).

## DELIMITATION – 2



Validate information with neighbours

Transfer information to official  
1:50,000 topographic maps

Georeferenced lines and physical features that are not visible on existing maps (using handheld GPS)

Identify features visible on existing maps (rivers, peaks, highways, etc)

# Community Land Use Right DUAT)

## ***Formal map or plan of community space***

## Pemba

# 'DEVOLUTION

## LINES

## Points Physical Feature

- |       |                      |
|-------|----------------------|
| 1 - 2 | River X              |
| 2 - 3 | Straight line on map |
| 3 - 4 | Highway to Pemba     |
| 4 - 5 | Road between A & B   |
| 5 - 6 | River Y              |
| 6 - 7 | Straight line on map |
| 7 - 1 | Straight line on map |

## POINTS

### Point Coordinates

- 1 E X'yy" S a'bb"
- 2
- 3
- 4
- 5 etc

## MAP AND DESCRIPTIVE INFORMATION RECORDED ON CADASTRAL ATLAS

# WAYPOINTS FOR A SOUND INVESTMENT PROCESS: A NEGOTIATED TERRITORIAL DEVELOPMENT APPROACH

IDENTIFY APPROPRIATE AREAS



DETERMINE EXISTENCE OF RIGHTS ACQUIRED BY OCCUPATION  
(LAND LAW Article 13, Clause 3)



NEGOTIATE WITH EXISTING RIGHTS HOLDERS OVER HOW TO GAIN  
ACCESS TO LAND (LAND LAW REGULATIONS, Article 27, Clause 3)



PARTICIPATORY LAND USE PLAN PREDICATED ON EXISTENCE OF LOCAL  
RIGHTS AND NEED TO DEVELOP A 'WIN – WIN' SCENARIO

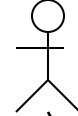
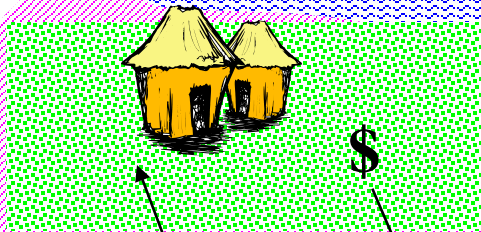
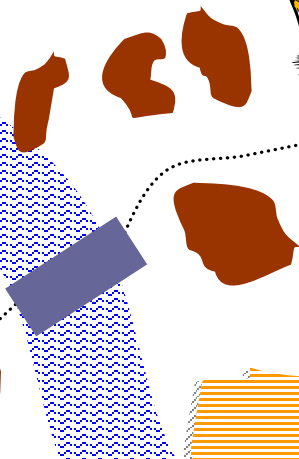
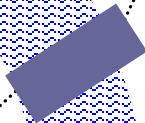
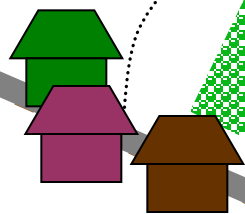
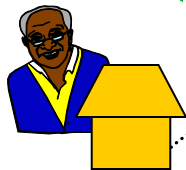
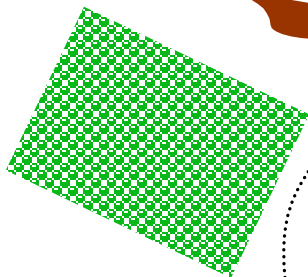


EQUITABLE AND SUSTAINABLE DEVELOPMENT PROCESS

Land rights  
management  
using the Land  
Law properly

MACHAMBAS

PASTAGEM

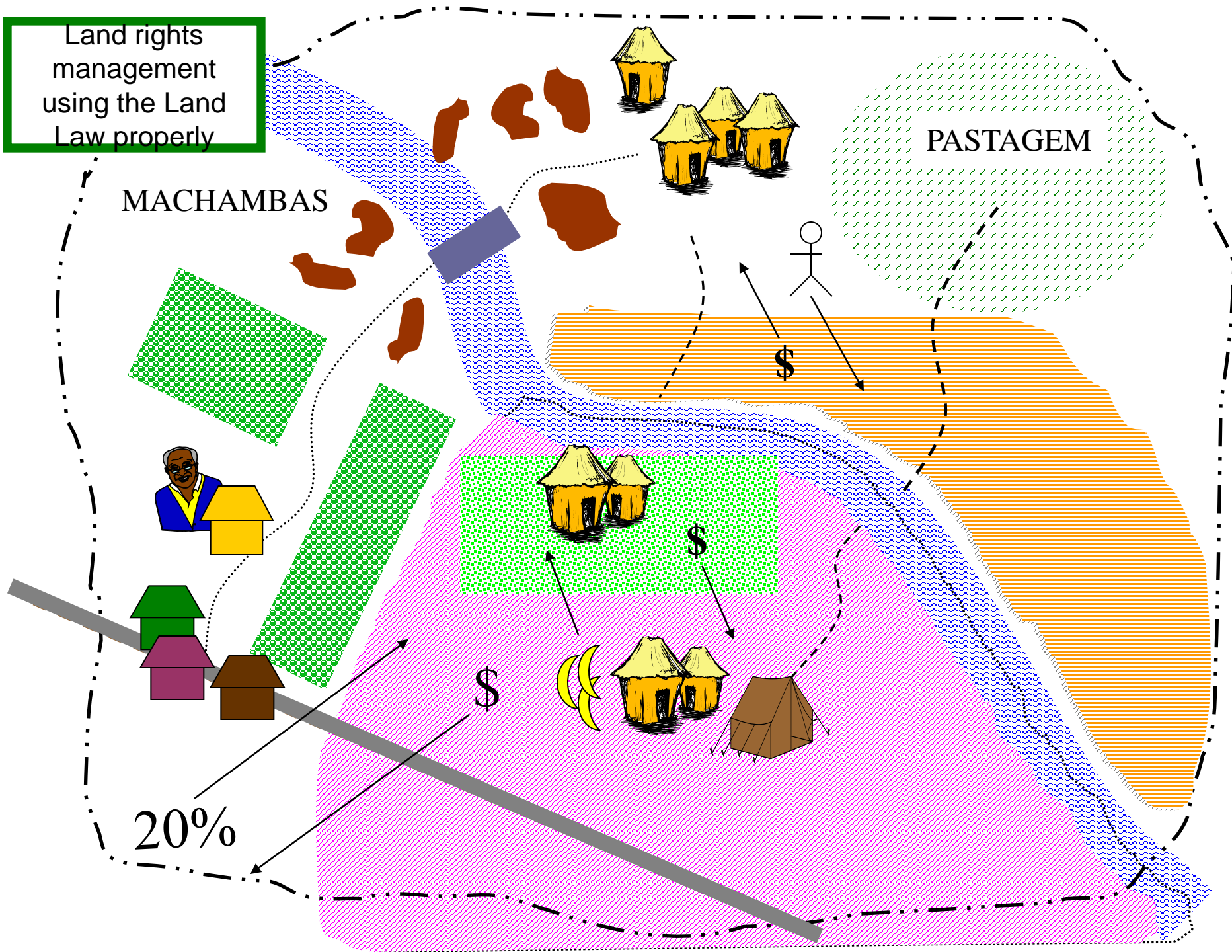


\$

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20%



# CONSEQUENCES OF FOLLOWING THIS PATH: EVERYONE WINS....

## THE COMMUNITY....

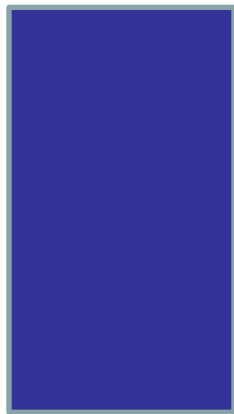
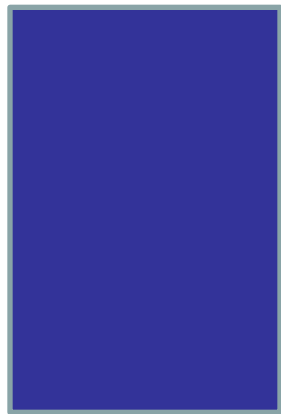
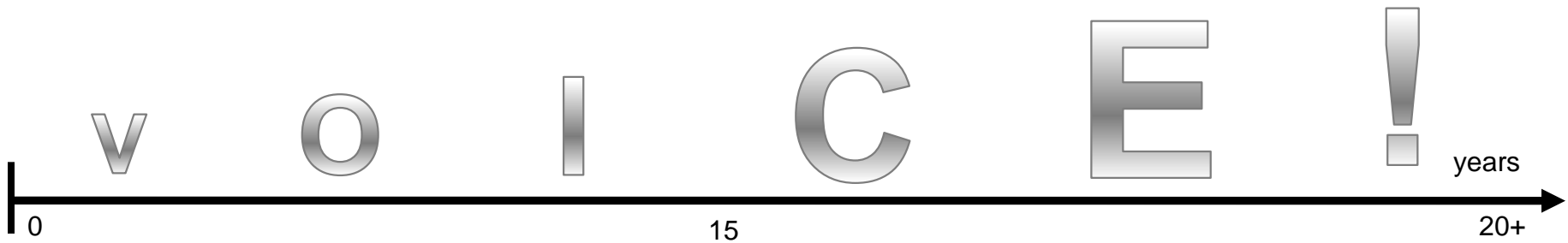
1. SECURES ITS ESSENTIAL RESOURCES...
2. SECURES ITS RIGHTS OF WAY...
3. GAINS EMPLOYMENT WITH THE INVESTMENT PROJECT...
4. LEARNS AND APPLIES NEW SKILLS, DIVERSIFIES AND INTENSIFIES AGRICULTURE
5. PARTICIPATES ECONOMICALLY, NOT ONLY AS LABOUR FORCE...
6. GAINS NEW *LOCAL* MARKETS (GROWING TOWNS, HOTELS ETC)...
7. GETS NEW SOCIAL SERVICES AND INFRASTRUCTURE...

## THE INVESTORS...

1. GET SECURE ACCESS TO THE RESOURCES THEY WANT...
2. GOOD PROSPECTS FOR INVESTING WITHOUT CONFLICTS...
3. GOOD RELATIONS WITH THEIR NEIGHBOURS...
4. CONTRIBUTE TO LOCAL DEVELOPMENT WITHOUT MAJOR WORRIES...

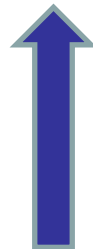
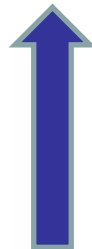
## THE GOVERNMENT...

1. SECURES LOCAL FOOD SECURITY (PARTICIPATORY PLANNING, INTENSIFICATION, ETC)...
2. CREATES CONDITIONS FOR NEW INVESTMENT AND NEW OPPORTUNITIES FOR ALL...
3. RECEIVES NEW FUNDS (TAXES) FOR SOCIAL SERVICES AND INFRASTRUCTURE...
4. ACHIEVES CONSERVATION AND BIODIVERSITY OBJECTIVES...



'THE PARTNERSHIP'

DEEP WATER



'Creating the base'

'Project Phase'

'Real business'

'Growth & change'

'Enabling environment':

- social movement
- war or post-conflict options
- political change
- land reform
- government and legitimacy
- new markets

'Trigger', or 'Catalyst':

- **Leaders of change**
- hard work by protagonists:
- market research
- business plan
- negotiation & contract
- raise capital
- government OK

Support phase:

- NGO
- **community committee**
- donors
- jobs
- more capital
- carbon credits
- re-invest
- **training**

Capacity Building:

- re-invest
- **training**
- **bursaries**
- transparency
- distribution of benefits
- community management

Going alone:

- competition
- re-invest
- **community managers**
- **new skills**
- access to finance
- business climate





# COMMUNITY LAND TITLING: STATUTORY RECOGNITION OF CUSTOMARY LAND RIGHTS

International Development Law Organization (IDLO)

# The Current Context

- Wealthy nations and private investors are increasingly seeking to acquire vast tracts of land for large-scale agricultural investment.
  - Governments are granting large land concessions to investors and other sovereign nations ( for: biofuels, food security).
  - As a result, whole communities are being dispossessed and displaced, and because they often lack formal documentation of their customary land rights and access to justice, they may have little bargaining power to contest the concessions or demand and receive compensation for their losses.
    - Even if they are allowed to remain on their lands, a community's natural resource claims may be degraded or destroyed, and the community may have little power to take action to stop the destruction.

# In the words of one Liberian woman:



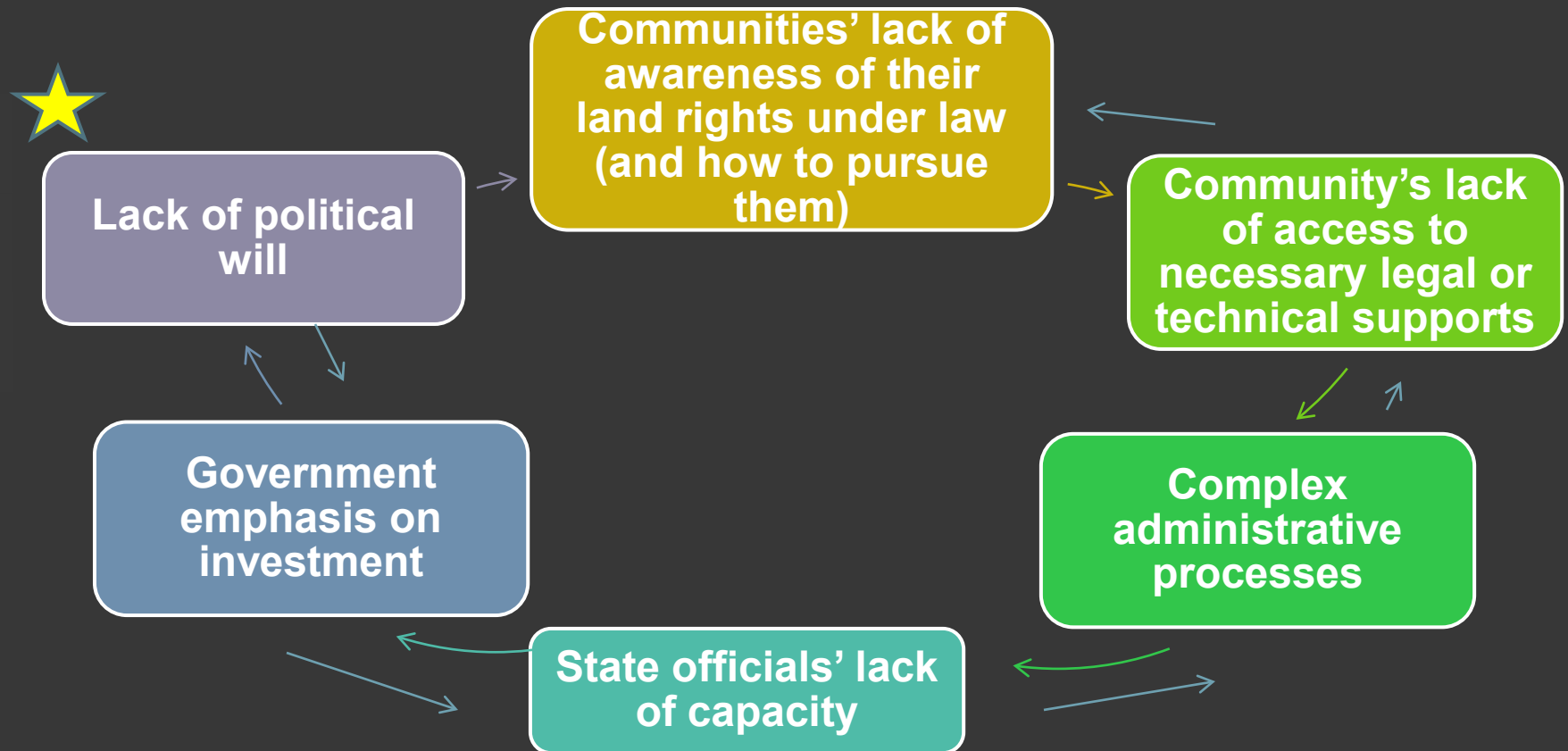
“If we have papers for our land, if an investor comes in our forest, I will not accept it because of things they do to us in the past. They have polluted our water – no fish, no meat, they have scared our animals away, and when it rains and when the wind blows, our houses, thatches, are destroyed. Some people have zinc but most of us only have thatch for roof, and [the availability] of thatch is getting very hard and the constant demand of sticks and rope to rebuild our homes is getting difficult... I am afraid our areas will turn into a desert one day.”

# National Legislation Protecting Customary Land Claims Already Exists

- In the context of large scale agricultural investment, claiming and protecting customary land rights becomes increasingly urgent.
- Titling communities as a whole (the meta-unit or “tenurial shell”) may be the fastest, most efficient and equitable manner of protecting customary land claims.
- Various nations have already passed excellent laws that set out relatively simple procedures for securing community land rights.
  - **Legislation explicitly provides for common property rights registration in:**
    - Niger, Tanzania, Ethiopia, Uganda, South Africa, Mozambique and others.
  - **Legislation explicitly recognizes customary land claims and allows for their registration in:**
    - Niger, Tanzania, Uganda, Mozambique, Angola, Ghana, Botswana, Kenya (policy), Malawi (policy) and others.

# Laws Not Being Well Implemented

However, these land laws have generally not been well or widely implemented. This has been due to various inter-related factors:



# “Best Practices” for Recognition and Protection of Customary Land Claims Must be Determined

The central questions thus become:

- **Recognition:** How to best recognize customary land claims (under formal law and legal procedures)?
- **Protection:** How to best ensure that customary land rights are successfully claimed and protected?
  - How to write new laws or amend existing laws to simplify and streamline administrative procedures to ensure that these laws are “useable and used” by communities?
  - How to ensure that laws are well-implemented by state officials?
  - What type and level of support do communities require to successfully complete community land titling processes?
  - How to best facilitate the protection and enforcement of women’s and vulnerable groups’ land rights during community land titling efforts?

# Overview: IDLO's Community Land Titling Initiative

## in Mozambique, Uganda and Liberia

- **Project Goal:** To investigate how to best ensure that customary land rights are successfully claimed, protected, and leveraged for local prosperity and human flourishing.
- **Project Objectives:**
  - ▣ Facilitate the titling of customarily-held community lands
  - ▣ Understand how to best support communities' efforts to document land claims
  - ▣ Identify procedural obstacles to documenting community land claims
  - ▣ Devise and pilot strategies to guard against intra-community injustice and discrimination
- **Methodology:**
  - ▣ 60 communities: 20 communities in each nation split into 4 treatment groups - control, monthly education, paralegal supports, full legal services
  - ▣ Parallel trainings for local land administrators
  - ▣ Baseline and Post-Service study of 2,225 villagers, 180 focus group discussions
  - ▣ Community observations during service provision, tracking of all obstacles, debates, and decisions.

# Basic Steps: Formalizing Communal Land Claims

While each of the laws in the study countries have different mechanisms and procedures, there are generally five basic components:

1. Creation and election of a coordinating committee.
2. Boundary harmonization with neighbors (defining the physical limits of the community's land).
3. Establishing rules for community land administration.
4. Establishing a land and natural resources management plan and/or land use and zoning plan.
5. Following the necessary administrative procedures.









# Key Findings to Date

- The community land documentation process, if done well, has the potential to: reduce conflict in the long run, increase civic engagement, social and political participation, build a culture of direct democracy and may help to restore the social fabric of the community.
- The level of legal service provided has so far not proved to be as salient a factor in community progress as:
  - ▣ Degree of external threat perceived
  - ▣ Leaders' management abilities
  - ▣ Pre-project community cohesion and cooperation
- It is extremely difficult to define a community, especially in the context of enforced historical or evolving administrative boundaries.
- This process turns “dormant” land conflicts into “live” conflicts – so must be handled exceptionally carefully and competently.
- Special care must be taken to protect and safeguard the rights of communities that are not the customary “owners” but have customary use and access rights.

# Key Findings to Date

- Choosing the right community leaders to work with is key, as:
  - ▣ The level of community commitment and the general success of the project will depend on the zeal of the local leaders to mobilize and lead their communities to work together.
  - ▣ Involving the *customary* leaders (as mediators between the past and the present) is critical to the success of these processes.
  - ▣ Local elites and influential community members may distort the reality of land claims and create obstacles to their community's success.
- It is necessary to convene periodic separate meetings for women only to ensure women's participation in the process and attendance at the full community meetings.

# Key Findings to Date

- Coalitions of elders and youths may help to bridge “the way things have always been done” with “the modern world” during boundary harmonization discussions.
- While theoretically a technical exercise of simply following the “steps” of a land claims documentation process, **the project activities are to date having a profound peace-building and conflict resolution effect on study communities**: It is therefore necessary to reflect on how to best leverage communities’ strong desires for land documentation to prompt them to undertake such difficult but important exercises on their own initiative.

# The Way Forward...

- **Land rights documentation is not enough, unfortunately.**
- **After recognition: it is necessary to institute systems that allow for and ensure:**
  - ▣ Respect for customary land claims by government officials
  - ▣ Enforcement of community rules that protect the rights of vulnerable groups
  - ▣ Enforcement of customary land rights when they are violated
  - ▣ Full use of customary lands for human flourishing
- **What might this look like?**
  - ▣ Access to technical, agricultural and financial supports to help communities leverage land and natural resource rights for community prosperity.
  - ▣ On-going legal support and legal education for communities – both on legal rights *and* legal procedures (re: contract negotiation, financial management, etc..)
  - ▣ Formal contract law to apply to agreements with investors.
  - ▣ Court challenges to state or investor actions that violate customary land rights.
  - ▣ Mechanisms to ensure downward and upward accountability for all land administrators, both customary and state.
  - ▣ Improved training and changes in incentives for local and regional land administrators to ensure political will, as well as changes in incentives for surveyors and other technicians, among other supports.



# The Project Field Teams



# Project Partners



## International Development Law Organization

[www.idlo.int](http://www.idlo.int)

IDLO is a public international organization whose mandate is to strengthen the rule of law and good governance in developing countries and countries in transition.

## Liberia: The Sustainable Development Institute

[www.sdiliberia.org](http://www.sdiliberia.org)

SDI works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia.



# Project Partners

## Uganda: The Land and Equity Movement in Uganda

[www.land-in-uganda.org](http://www.land-in-uganda.org)

LEMU works to improve the land tenure security of the poor and ensure that policies, laws and structures are put in place to allow all Ugandans to have fair and profitable access to land.

## Mozambique: Centro Terra Viva

[www.centroterraviva.org.mz](http://www.centroterraviva.org.mz)

CTV works to contribute to improved environment and land rights policies and legislation and to increase the capacity of civil society to participate in environmental management.

This project is funded by the Bill & Melinda Gates Foundation. The findings and conclusions contained within are those of the authors and do not necessarily reflect positions or policies of the Bill & Melinda Gates Foundation.



Chayton Africa

UN Food and Agriculture Organization  
March 2011

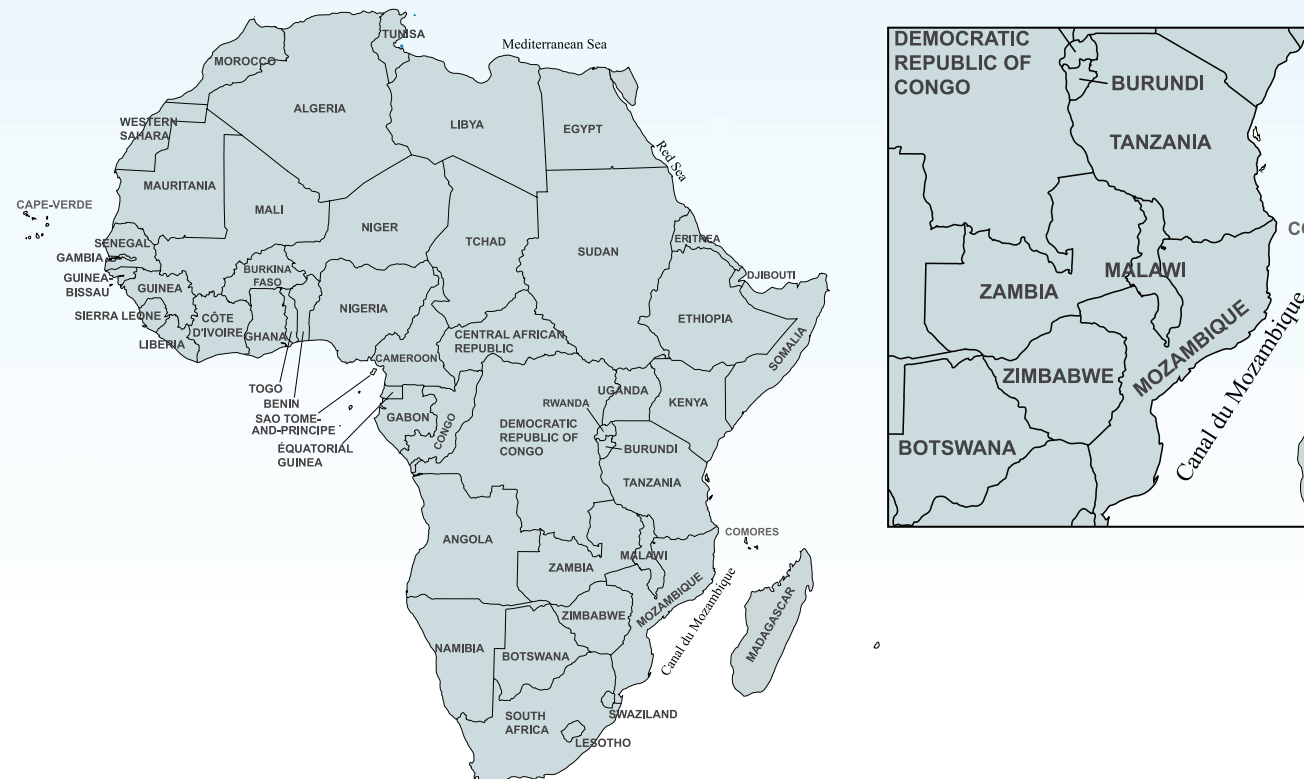
[www.chaytoncapital.com](http://www.chaytoncapital.com)



## Vision: World-Class Farming in Sub-Saharan Africa

Our vision is to create world-class farming operations and integrated businesses across the agricultural value chain, and to leave a legacy of responsible commercial agricultural practices in the region.

Target markets include Zambia, Botswana, Mozambique, and Tanzania.





## Our Farming Strategy: Increase Productivity and Mitigate Risks

- **Zero tillage:** Creates natural fertilising effects, increases organic matter in soil and improves soil structure, protects against erosion, conserves moisture, reduces farm labor requirements, expands growing window between planting and harvest
- **Double-cropping:** Boosts yields significantly, enriches soil, expands crop diversity
- **Precision farming:** Uses a combination of global positioning and geographical information systems and remote sensing data, programming trucks to spread tailored fertiliser and pesticide deposits, reducing waste and optimising input usage
- **Satellite tracking:** Enables shipment tracking and weight monitoring, providing a level of security and risk management to protect the business



## Chayton Investment Expertise

- **Visionary approach:** Identifying opportunities with potential for significant absolute returns in fragmented and difficult-to-access markets
- **Strong track record:** Experienced emerging markets investment advisor with approximately \$400 million of commitments for CEE property investment
- **Regional insight:** Leveraging an influential Advisory Board and local networks to uncover attractive off-market transactions





## Chayton Agricultural Expertise

- **Highly experienced and entrepreneurial** farm operation and management team with over three generations of agricultural experience operating in sub-Saharan Africa
- **Proven capabilities** in large-scale commercial farming in Africa with a record of successful execution across the full agricultural value chain
- **Led one of the largest vertically integrated agricultural companies** in Zimbabwe producing 20% of the country's grain output at their peak
- **Strong regional reputation** that attracts top quality farming talent and superior off-market transactions





# Africa in Perspective

Africa is gaining focus due to the **projected growth** and **fundamental change** occurring across the continent:

- **54 countries**
- **1+ billion population**
- **US\$1.6 trillion GDP**
- Significant proportion of the world's **natural resources**

## Surface Area by Country      km<sup>2</sup>

China	9,598,094
US	9,629,091
European Union (27)	4,328,039
India	3,287,263
Argentina	2,780,400
Japan	377,873

Total                      30,000,760

**Africa**                      **30,312,382**

Source: UN Demographic Year Book 2005

Source: Duet Asset Management, Citi Research, EIU, Reuters and M



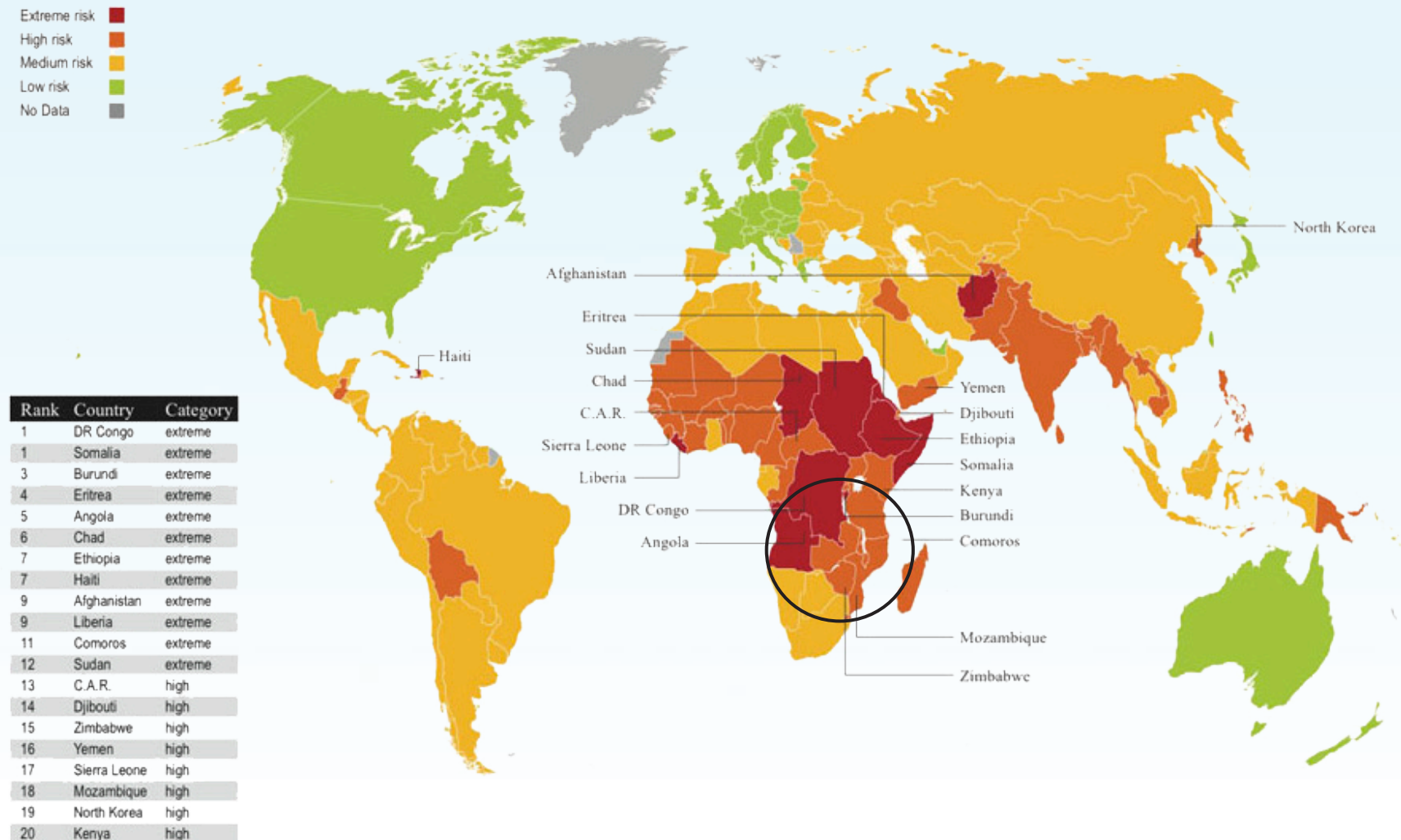
## Africa's Proportion of Global Resources

Population	14%
Land Mass	20%
Diamonds	65%
Gold	50%
Phosphate	90%
Platinum	40%
Petroleum	8%
Natural Gas	12%





## Addressing Regional Food Security



Sub-saharan Africa dominates a new food security risk map, while the Indian sub-continent and Iberian peninsula also stand out Map: Maplecroft

According to Maplecroft's 2011 food security analysis index, several of the countries that border our primary production sites are categorized as being at "extreme risk" and therefore represent natural markets for our "Feed Africa" model.



## Chayton Office Locations

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Romania

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GOVERNANCE OF TENURE

Finding common ground

GOVERNANCE FONCIÈRE

Trouver un terrain commun

GOVERNANZA EN LA TENENCIA

Encontrar un terreno común

Управление режимом владения

Найти общую платформу

土地权属治理

求得共同基础

حاکمة الحياة  
إيجاد أرضية مشتركة



Voluntary Guidelines secretariat

Climate, Energy and Tenure Division (NRC)

Natural Resources Management and Environment Department

Secrétariat des Directives volontaires

Division du climat, de l'énergie et des régimes fonciers

Département de la gestion des ressources naturelles et de l'environnement

Secretaría de las Directrices voluntarias

División de Clima, Energía y Tenencia de Tierras

Departamento de Gestión de Recursos Naturales y Medio Ambiente

Отдел по вопросам климата, энергетики и землепользования

自愿准则秘书处

环境、气候变化及生物能源司

自然资源管理及环境部

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للإدارة البيئية والبيئية



Food and Agriculture Organization of the  
United Nations

Organisation des Nations Unies pour  
l'alimentation et l'agriculture

Organización de las Naciones Unidas para  
la Agricultura y la Alimentación

Продовольственная и  
сельскохозяйственная

Организация Объединенных Наций

联合国粮食及农业组织

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00153 Rome Italy

Tel: +39 06 570 52 090

Email: VG-tenure@fao.org

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



# VOLUNTARY GUIDELINES ON GOVERNANCE OF TENURE; RELEVANT FOR BUSINESSES?

**Francesca Romano**, Land Tenure Officer  
Climate, Energy and Tenure Division (NRC)



# **VOLUNTARY GUIDELINES ON GOVERNANCE OF TENURE OF LAND AND OTHER NATURAL RESOURCES**



# 1. Why are land and other natural resources important?

## GROWING GLOBAL PRESSURE ON NATURAL RESOURCES

### **Increasing demand**

- Population growth
- Urban expansion
- Food exports
- Bio-energy production

### **Decreasing supply**

- Land degradation
- Climate change
- Displacement due to violent conflicts



# **VOLUNTARY GUIDELINES ON GOVERNANCE OF **TENURE** OF LAND AND OTHER NATURAL RESOURCES**

## 2. Why is tenure important?

### EQUITABLE AND SECURE ACCESS TO LAND AND OTHER NATURAL RESOURCES...

**...reduces poverty and hunger by:**

- allowing a family to produce food for household consumption
- increasing household income by producing commodities for sale in the market



## 2. Why is tenure important?

**EQUITABLE AND SECURE ACCESS TO LAND AND OTHER NATURAL RESOURCES PROMOTES ENVIRONMENTAL SUSTAINABILITY...**

**If farmers can expect to benefit from their investments, they are more likely to:**

- improve their land through soil protection measures
- plant trees
- improve pastures



## 2. Why is tenure important?

**EQUITABLE AND SECURE ACCESS TO LAND AND OTHER NATURAL RESOURCES INCREASES INVESTMENTS AND PROMOTES GROWTH**

**Reliable business environment attracts responsible investors that are sensitive to**

- environment
- local conditions
- rights and
- customs

# **VOLUNTARY GUIDELINES ON GOVERNANCE OF TENURE OF LAND AND OTHER NATURAL RESOURCES**



### 3. Why is the governance of tenure important?

#### **Governance of tenure can be the cause of problems:**

- Insecure tenure leaves people marginalized and vulnerable to eviction from their land
- Inappropriate tenure policies lead to over-exploitation and over-grazing
- Inappropriate tenure policies lead to quick and dirty investing in land and natural resources

Many tenure problems stem from weak governance.



# Responsible & effective land governance

## What needs to be done

- Well informed decisions and transparent decision processes, particularly when it is necessary to make choices between competing interests.
- All public decision-makers and public servants are responsible and accountable for their actions. Rights and obligations of all actors and land-users/ land owners are clearly defined.
- The rule of law is enforced and applicable to all.
- Administrations and public agencies are correctly funded and staffed. Public services are accessible to all

# **VOLUNTARY GUIDELINES ON GOVERNANCE OF TENURE OF LAND AND OTHER NATURAL RESOURCES**



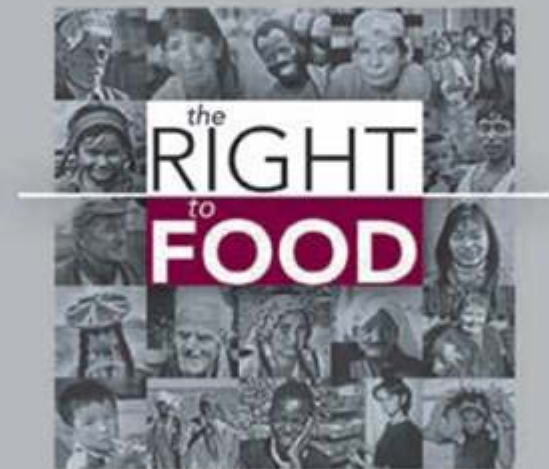
## 4. What are Voluntary Guidelines?

### Voluntary Guidelines ...

- ... set out principles
- ... provide a benchmark
- ... are voluntary
- ... do not replace laws or treaties

### VOLUNTARY GUIDELINES

to support the progressive realization of  
the right to adequate food  
in the context of national food security





# 5. Voluntary Guidelines on Governance of Tenure

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



Food and Agriculture  
Organization of the  
United Nations  
*for a world without hunger*

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Natural Resources  
Home

Land Tenure Home

Information Resources

Voluntary Guidelines

Events

Partners

Field Programme

english

français

español

## Land Tenure



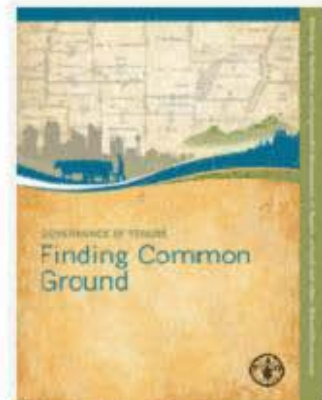
### VOLUNTARY GUIDELINES

FAO and its partners are preparing Voluntary Guidelines to improve the governance of tenure of land and other natural resources. Voluntary guidelines set out principles and internationally accepted standards for responsible practices. They provide a framework that States can use when developing their own strategies, policies, legislation and programmes. They allow government authorities, the private sector, civil society and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

#### GOVERNANCE AND TENURE

Tenure is the relationship among people with respect to land and other natural resources. The rules of tenure determine who can use what resources of the land for how long, and under what conditions. Tenure has significant implications for development. Where the poor and vulnerable have limited and insecure rights to land and other natural resources, it is difficult for them to overcome hunger and poverty. Conversely equitable and secure rights can support social and economic development and the sustainability of the environment.

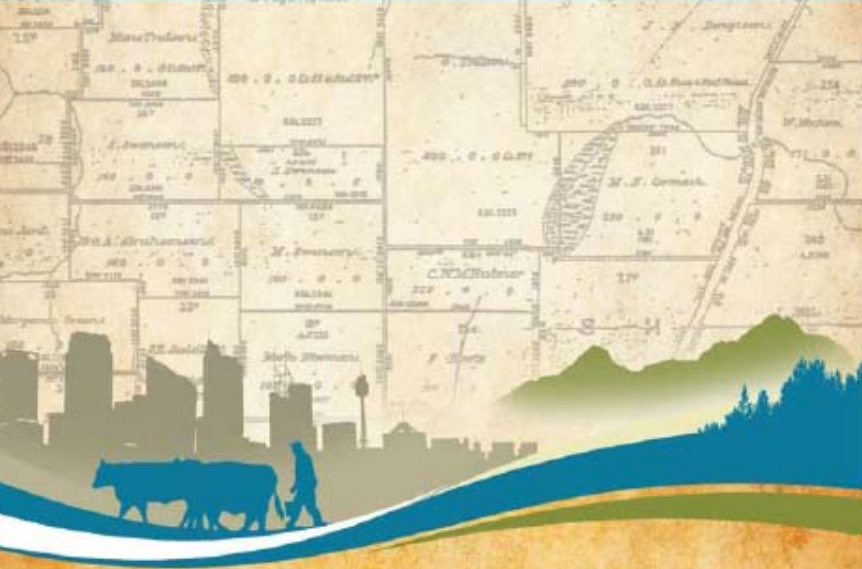
Weak governance is a cause of many tenure-related problems, and attempts to address tenure problems are affected by the quality of governance. Weak governance is found in formal statutory land administration as well as in informal and customary tenure arrangements. It flourishes where the law is complex, inconsistent or obsolete; where people who work in land agencies lack motivation and are poorly trained and paid; where decision-making processes are not transparent; and where civil society is weak. The poor are vulnerable to the effects of weak governance as they lack the ability to protect their rights to land and other natural resources.



Please click on image to  
download Voluntary Guidelines  
brochure



# Finding Common Ground



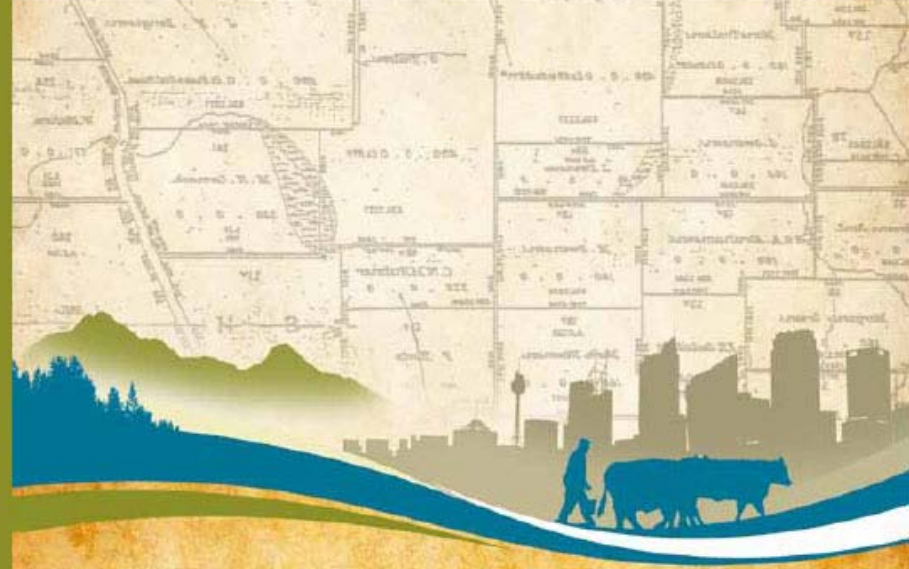
GOBERNANZA EN LA TENENCIA

## Encontrar un terreno común



Directrices Voluntarias sobre gobernanza responsable en la tenencia de la tierra y otros recursos naturales

إرشادات طوعية بشأن الحوكمة المسؤولة للأراضي والموارد الطبيعية الأخرى




## حوكمة الحياة إيجاد أرضية مشتركة





## 6. How are the Voluntary Guidelines prepared?

### **Through an open partnership and with wide participation**

- Research and consultations
  - Development of the First Draft through an inclusive process
  - Review of the First Draft by the open-ended working group of the CFS
  - Consideration of the 37<sup>th</sup> CFS
- 

# Comprehensive Consultation

**15 consultations between Sept 2009 - November 2010**



**1200 people from governments, academia, civil society and private sector attended**

# Outcome of Consultations

## Themes of Governance of Tenure Covered

- Tenure security
- Tenure reform
- Land markets
- Land valuation
- Compulsory acquisition
- Agricultural investments
- Land administration
- Urban, rural and territorial planning
- Access to justice
- Land consolidation and land banking
- State land management
- Natural resources management (Fo, Fi, Wa)

**Impact of growing investments on land and resources was the main topic of discussion!**

# Development of the First Draft – inclusive process

**15 April:** Public reading presenting the Zero Draft in FAO

**18 April – 16 May:** Publication and review of the Zero Draft

- Member countries
- VG Advisory group
- High Level Panel of Experts
- **e- consultation**

**19 – 30 May:** Production of First Draft  
in all official FAO languages

**1 June:** Submission of the First Draft  
to Open Ended Working Group

Your  
contribution  
is highly  
appreciated



April

May

June


July

# Review of the First Draft VG by the open-ended WG

**2 June – 19 July:** Regional and stakeholder reviews of the First Draft

**19 – 22 July:** CFS led plenary review and finalization of the VG

Member countries and stakeholder sectors  
Negotiate the VGs



**29 July:** Submission of the Final Draft for the consideration of CFS

**18 – 22 October:** Consideration by the 37<sup>th</sup> session of the CFS

July

August

September

October



**In parallel; preparing for the implementation**

A screenshot of the FAO Land Tenure Partners page. The page features the FAO logo and the text 'Food and Agriculture Organization of the United Nations for a world without hunger'. The main heading is 'Land Tenure'. Below this, there is a banner image showing a landscape with a city skyline and a river. The section 'PARTNERS' is highlighted with a red oval. The text under 'PARTNERS' reads: 'The Voluntary Guidelines initiative... partner organizations (IFIs and UN organizations) in order to reach as many...'. Below this, a list of partner organizations is shown: GTZ, United Nations, Global Land Tool Network (GLTN), United Nations Development Programme (UNDP), World Bank, and European Commission.

**Technical Guides**

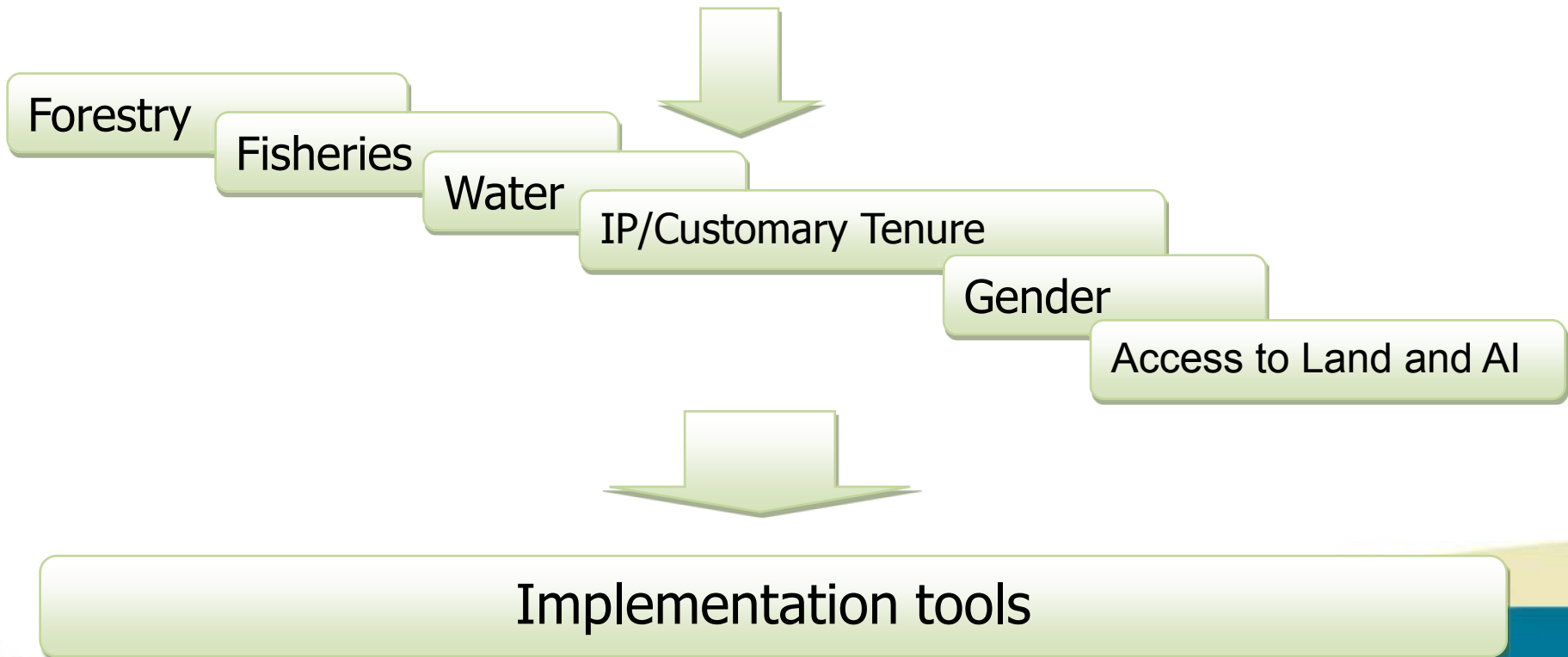
**MoUs - Partner Activities**

**FAO Trust Funds for Piloting**

- GTZ
- United Nations
- Global Land Tool Network (GLTN)
- United Nations Development Programme (UNDP)
- World Bank
- European Commission

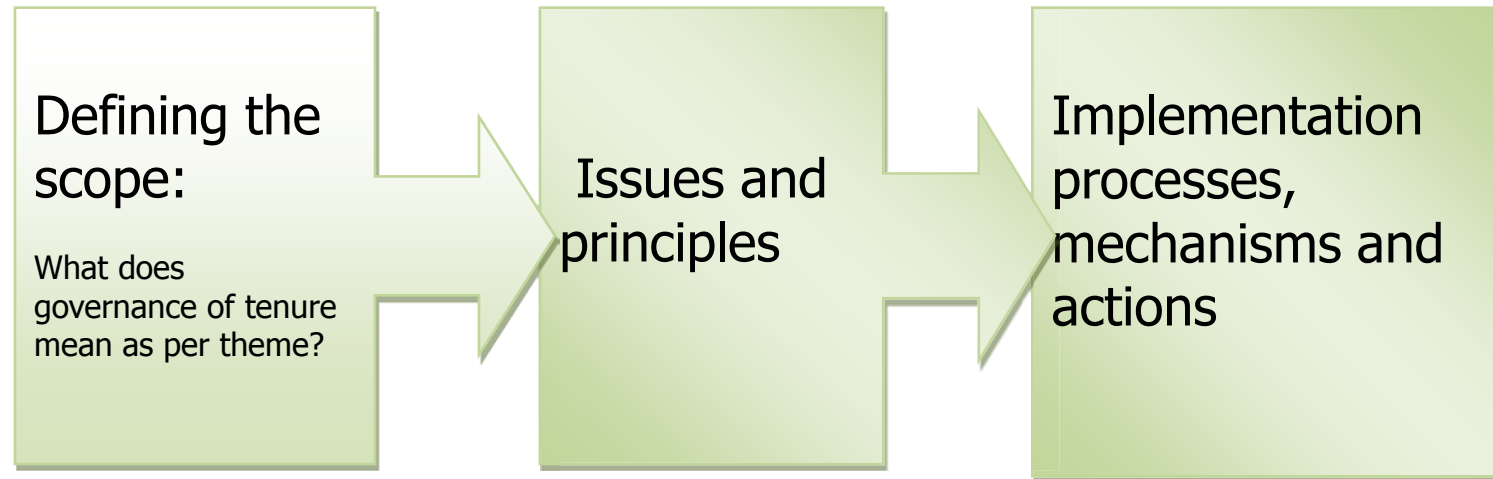
# The VGs and the IGs

## Voluntary Guidelines





# Process of development



- Tailored processes - Tailored Guides
- Research - scoping - production - consultation and validation
- Practical guidance
- Pragmatic mechanisms

# **Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources (RAI)**



## **Risks of large-scale land acquisition where local land rights are not clearly defined and governance is weak**

- displacement of local smallholders
- loss of grazing land for pastoralists
- negative impacts on livelihoods
- no compensation

=> risks of opposition, high costs, civil conflict



# RAI principles: what are they

proposed by FAO, World Bank, UNCTAD, IFAD  
(2010)

- Voluntary
  - A reference for international investment agreements, investment contracts & CSR initiatives
  - May be used as “checklist” when assessing projects
  - Can help governments develop laws & regulations
- 

# Principle 1

“Existing rights to land and associated natural resources are recognized and respected”

- Identification of rights holders
- Legal recognition of all rights and uses
- Negotiations with land holders/users for transfer
- Payment for all acquired rights
- Independent mechanisms for resolving disputes

=> See [FAO voluntary guidelines on land tenure](#)





# [www.responsibleagroinvestment.org](http://www.responsibleagroinvestment.org)

[HOME](#) [ABOUT](#) [LOGIN](#) [SITE MAP](#) [INDEX](#) [FAQ](#) [CONTACT](#)

## Knowledge Exchange Platform for Responsible Agro-Investment (RAI)

One stop information shop for policy-makers, practitioners and stakeholders

[About RAI](#) [Regions](#) [Countries](#) [Commodities](#) [Centers of Excellence](#) [International Institutions](#)

**Browse By Type**

Stakeholder


- [Interest Groups](#)
- [Investors](#)
- [Communities](#)

Source

- [Government](#)
- [Host Government](#)

Guidance

- [Principles](#)
- [Guidelines](#)
- [Codes](#)
- [Standards](#)



### Principle 5: Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

All investors (whether private or government-linked) should:

- (i) Comply with laws, international treaties, best practices
- (ii) Adhere to global best practices
- (iii) Aim to increase shareholder value & benefit host area

[Read More >>](#)

6 of 8

#### INSIDE RAI

UPDATES

#### RESOURCES

[Quick Start Guides](#)

#### USEFUL LINKS

- [Civil Society](#)
- [Partnerships](#)



# Thank You!





# Lessons from Liberia Fiscal Issues

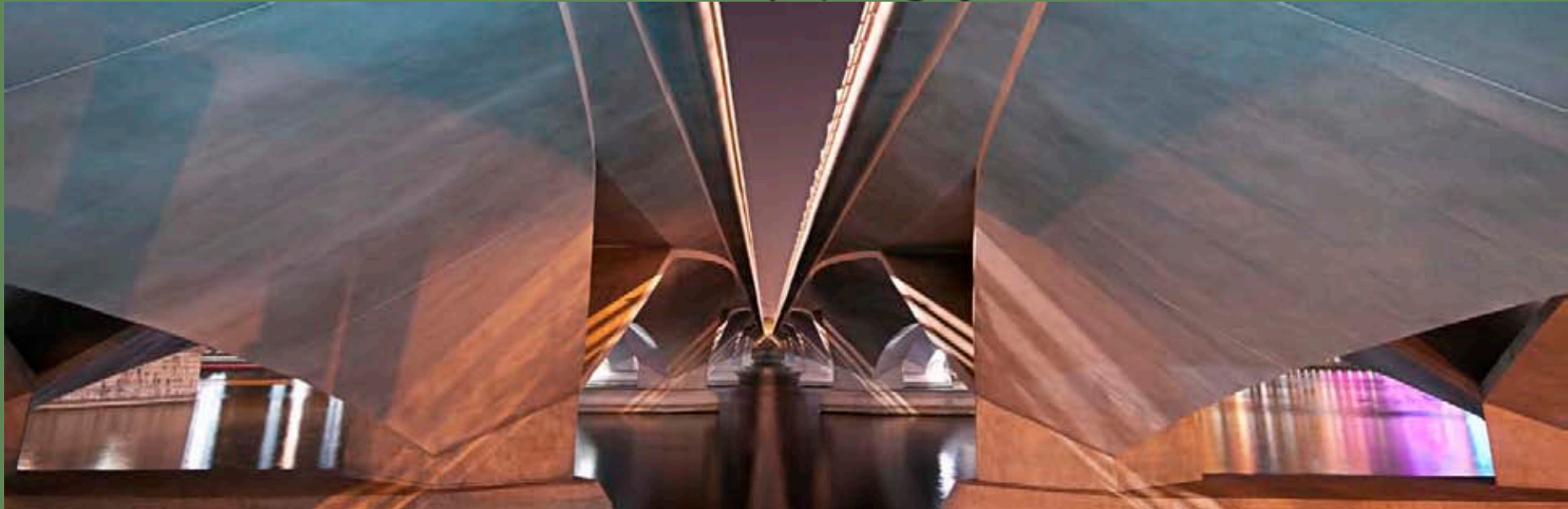
FAO Symposium

Rome

March 4, 2011

Joseph C. Bell

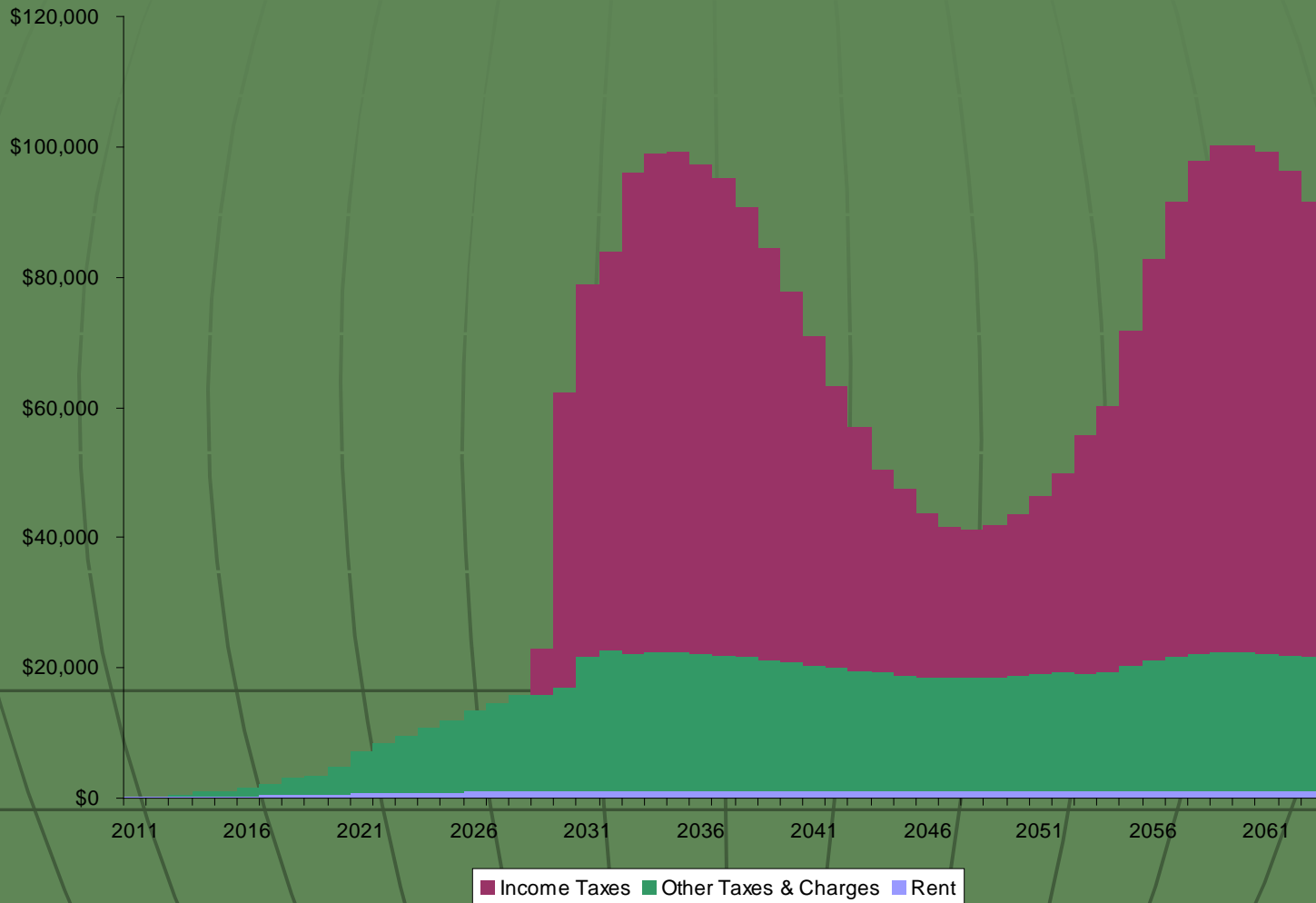
[joseph.bell@hoganlovells.com](mailto:joseph.bell@hoganlovells.com)



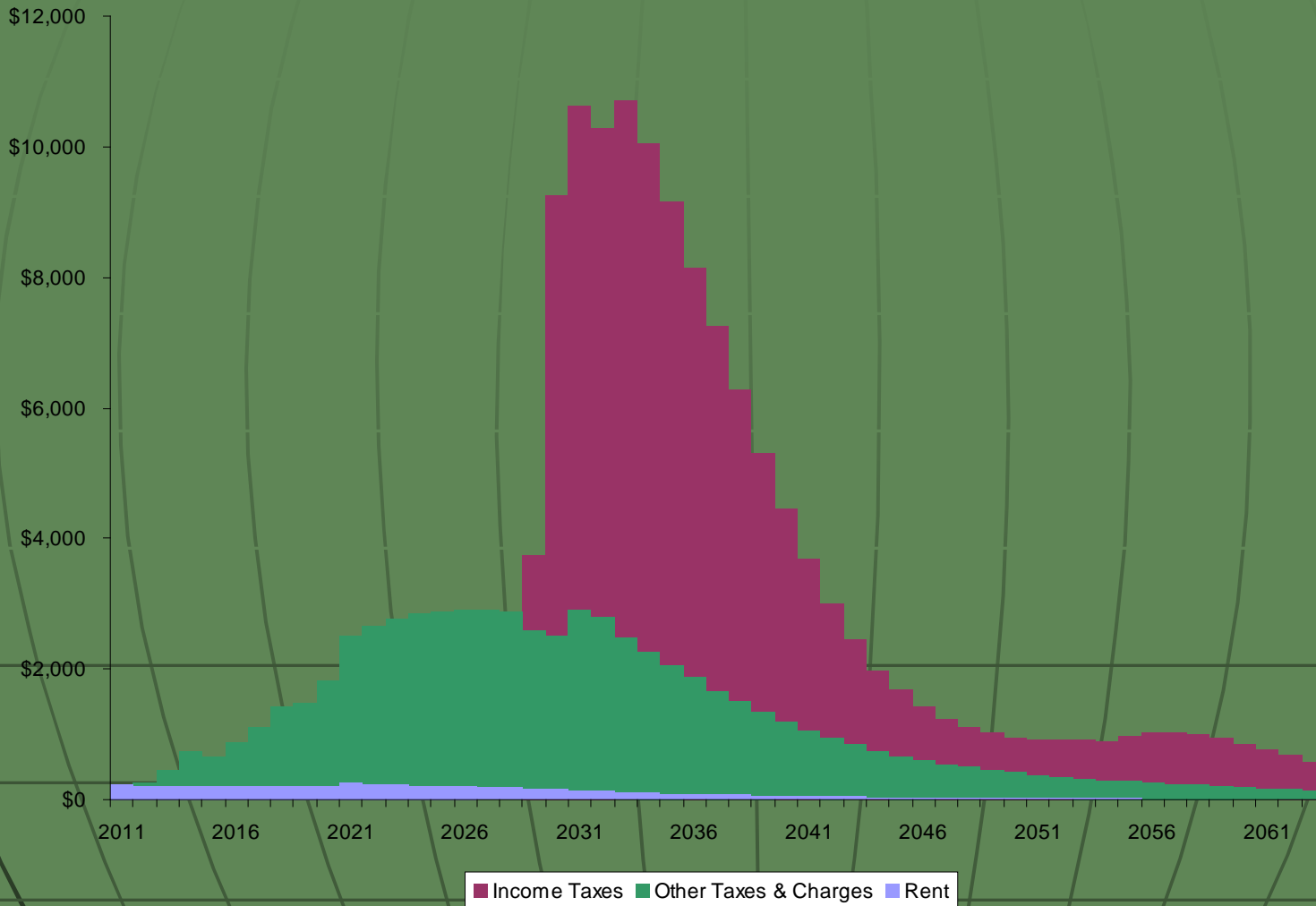
# Fiscal Issues

- Getting the revenue
- Import duties and other taxes and fees
- Relative Weakness of Income Tax
- Rents

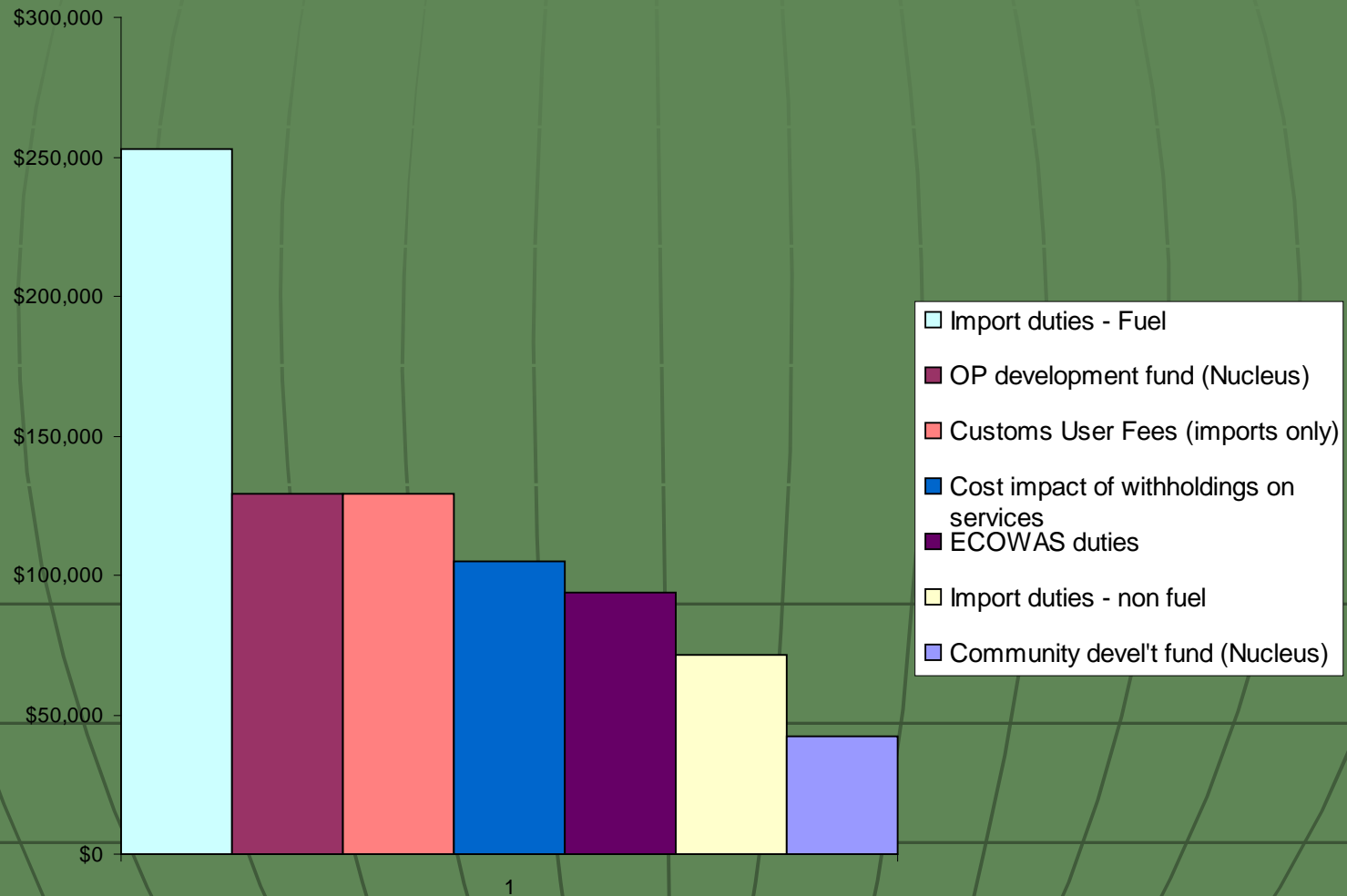
# Revenues (000's)



# Discounted Revenues (10 percent discount; 000's)



# Import Duties, Taxes and Fees other than Income Tax and Rent



# Income Tax limitations

- Taxable Income Deferred
  - Nature of the product
  - Tax holiday/None in Liberia
  - Offset of new investment against income of earlier investment (loss carry forward; lack of ring fencing)
- Problems in application
  - Transfer prices
  - Thin capitalization
- Capital Gain (off shore transfers)



# Transfer Prices

- Commodity price (can use index to market, See Firestone)
- Affiliate procurement
  - Firestone, requires cost
  - Withholding/treaty limitations
- Management Fees
- Income shifting
  - Hedging (require separation)
  - "Risks"
- Interest to affiliate

# Rent

- Nature of the problem
  - A revenue key
  - Related to value of output
  - Lack of good comparables
  - Affected by other deal elements
  - Administrative limitations

# Fixed Rate

- Fixed amounts
  - Developed/undeveloped land/bad incentives
- Need for periodic adjustment
  - Keeping real value
  - Reflecting changes in economic environment
  - Uncertainty/bargaining power

# Liberian Revenue Code

- **Surface Rent.** A contractor must pay an annual surface rent of US\$2 (Two United States Dollars) per acre for developed land and US\$1 (One United States Dollar) per acre for undeveloped land, irrespective of the value of the assets contained thereon. The valuation of and the payment for the value of the assets in a proposed concession area may be made a biddable item in the concession procurement process.
- (1) Annual payments are due on or before the effective date of the agreement and thereafter on the agreement anniversary date.
- (2) Surface rent amounts stated in this section are subject to inflationary adjustment in accordance with the GDP Implicit Price Deflator as published and revised from time to time by the U.S. Department of Commerce, Bureau of Economic Analysis ("the deflator"). The inflation-adjusted rent shall be effective January 1 of each calendar year based on the ratio of the value of the revised deflator for the second quarter of the immediately preceding calendar year to the value of the revised deflator for the second quarter of 2008.

# Alternative Indexation

- Index to something other than GNP deflator, e.g., general agricultural index, commodity price
- Possible price participation, e.g., an amount calculated as a percentage of price in excess of agreed threshold

# Land Rent Tax

- Imposes additional rate of tax when internal rate of return exceeds threshold amount
- Excess return is a measure of the value added by the land, hence captures a portion of value for state
- Calculation uses same information as the income tax
- Proposed but rejected in Liberia



Thank You

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

**SYMPOSIUM ON LEGAL ASPECTS OF LARGE SCALE INVESTMENTS  
IN LAND**

**CONCESSION CONTRACT TERMS: LEGAL ISSUES AND LESSONS FROM LIBERIA**

BRUCE GILCHRIST, PARTNER, HOGAN LOVELLS US LLP

<b>NON-FISCAL OBJECTIVES/SOCIAL OBLIGATIONS</b>	<ul style="list-style-type: none"><li>• Community and economic development in neighboring area</li><li>• Encourage return from cities to remote portions of Liberia</li><li>• Environmental impact considered in selecting sites</li></ul>
<b>Employment of Liberians</b>	<ul style="list-style-type: none"><li>• Skilled</li><li>• Management positions (75% in 10yr)</li><li>• Unskilled</li><li>• Employment standards</li><li>• Job training</li></ul>
<b>Education/health</b>	<ul style="list-style-type: none"><li>• General requirements<ul style="list-style-type: none"><li>○ Elementary and high schools</li><li>○ Clinics and hospital</li></ul></li><li>• Employees and family</li><li>• Community use</li><li>• Minimum standards; applicable law</li><li>• Supply of trained teachers and health workers (remote locations)</li></ul>
<b>Housing</b>	<ul style="list-style-type: none"><li>• Toilet/sink/shower</li><li>• Drinking water</li><li>• Electricity</li></ul>

<b>Infrastructure</b>	<ul style="list-style-type: none"> <li>• Roads, bridges, utilities</li> <li>• Public Use <ul style="list-style-type: none"> <li>○ Within vs outside concession area</li> </ul> </li> <li>• Maintenance responsibilities</li> </ul>
<b>Utilities</b>	<ul style="list-style-type: none"> <li>• Unmetered vs Metered--Encouraging conservation</li> <li>• Transition to public utilities</li> </ul>
<b>Small holders/Outgrower programs</b>	<ul style="list-style-type: none"> <li>• Assistance—provide stumps and training on land from GOL</li> <li>• Regulated pricing</li> <li>• Exclusivity of buying right, coupled with obligation to purchase <ul style="list-style-type: none"> <li>○ Security/poaching issue</li> <li>○ Other concessionaires may provide better pricing</li> </ul> </li> </ul>
<b>Agricultural extension support/</b>	<ul style="list-style-type: none"> <li>• Assistance to local farmers</li> <li>• Industry organization</li> <li>• Promote best practices among small landowners</li> <li>• Reluctance to fund nationwide organization (risk that funds will not be properly used)</li> </ul>
<b>“Buy Liberian”</b>	<ul style="list-style-type: none"> <li>• Give preference where quality comparable</li> <li>• Relatively little available from local sources at present</li> </ul>
<b>Value-added downstream activities</b>	<ul style="list-style-type: none"> <li>• Refining production</li> <li>• Manufacturing</li> <li>• Relatively “soft” obligations—investigate feasibility within 10 yrs</li> </ul>

<b>SELECT LEGAL ISSUES</b>	
<b>Resettlement</b>	<ul style="list-style-type: none"> <li>• Sparse small communities</li> <li>• Issue exacerbated by long-term development cycle and dormant plantations</li> <li>• Control of process</li> <li>• Cost sharing</li> </ul>
<b>Ensuring Performance</b>	<ul style="list-style-type: none"> <li>• Performance Obligations—primarily continued development/commercial production in accordance with original plan</li> <li>• Milestones</li> <li>• Defaults/Termination</li> <li>• Retain rights to developed portion</li> </ul>
<b>End of Term/Extension issues</b>	<ul style="list-style-type: none"> <li>• Ownership of trees and infrastructure</li> <li>• Payment for extension</li> <li>• Effect on financing</li> </ul>
<b>Applicable Law</b>	<ul style="list-style-type: none"> <li>• Environmental, health, safety</li> <li>• Stabilization of non-fiscal law</li> <li>• MFN provisions</li> </ul>
<b>Transfer of Control Restrictions</b>	<ul style="list-style-type: none"> <li>• Effect on financing</li> <li>• No mortgage on trees</li> <li>• Single mortgagee</li> <li>• Subconcessions</li> </ul>
<b>Water for Concession Use</b>	<ul style="list-style-type: none"> <li>• Concern over lack of enforcement</li> <li>• Risk of change in quality/volumes over time</li> </ul>
<b>Subcontractors</b>	<ul style="list-style-type: none"> <li>• Rights to tax benefits</li> </ul>
<b>Force Majeure</b>	<ul style="list-style-type: none"> <li>• Renewed civil conflict</li> </ul>
<b>Contract amendment/changes of circumstances</b>	



## **SYMPOSIUM ON LEGAL ASPECTS OF LARGE SCALE INVESTMENTS IN LAND: IMPLICATIONS FOR FOOD SECURITY AND RURAL DEVELOPMENT , FAO, Rome, March 4, 2011**

### **Background Paper by the World Food Law Institute: Vision and the way forward**

#### **The Need**

Food security is currently a popular theme. It must be a perpetual driver of policy and law rather than merely a topic-of-the day. Food security must be a constant goal, which is supported by the needed policies, laws, regulations, and programs at the national, regional and international levels.

Law and lawyers are essential to successful progress toward food security for all. Yet few attorneys are knowledgeable about – much less interested in – the legal and cross-disciplinary concepts and rules that can make food security and rural development policies successful. While an attorney might be an expert in constitutional, contract, commercial, property, finance, investment or trade law, there is an insufficient number of lawyers who can critically understand the interplay of these basic legal disciplines with food security and rural development. For example, few attorneys can navigate property law with the burgeoning issue of real property rights, or large scale investment in land as it affects food security or water rights, climate change and food security. Another crucial area where there is insufficient cross-over legal expertise is intellectual property, where awareness and knowledge about topics from seeds and plant rights, to technology and technology transfer, to branding and geographical indications (to name only a few) must be nurtured.

A critical medium for most of these attorneys is having a resource to consult and interact with. Participation in the *Strengthening Legal Expertise* network of contacts

with colleagues whose legal work affects food security or rural development will be one means of addressing this need to catalyze efforts.

From the G-20, to the African Union, to the United Nations system to regional and national entities, the world is finally re-awakening to the need to promote global food security and to an awareness that the basic food needs of a large percentage of the world's population are produced in rural areas. The legal expertise needed to support these developments and to secure policies and laws that will guarantee future food security is needed.

## **The Vision**

The idea and vision for *Strengthening Legal Expertise for Food Security and Rural Development* was developed by the World Food Law Institute, in cooperation with the U.N. Food and Agriculture Organization and in discussions with the Institute for the Unification of Private International Law (UNIDROIT) and the International Development Law Institute (IDLO). The vision will be implemented by the World Food Law Institute, in cooperation with FAO and other partners.

The vision is for a global network or community of attorneys (1) who can share their knowledge and understanding of relevant and evolving policies, laws, regulations and cross-disciplinary relationships, (2) who will be supported by regular exchanges and networking opportunities, executive training institutes, research and publications and (3) who will positively influence legal developments related to improving worldwide food security and ensuring rural development.

To accomplish the vision, *Strengthening Legal Expertise* must identify and support a core group of attorneys who agree with the vision, will engage actively in the network and will join networking events and colloquiums.

## **The Strategy**

A strategy is essential to achieve the vision, because the strategy will provide a plan for achieving the vision and will differentiate *Strengthening Legal Expertise* from other legally-focused efforts. The vision is for the creation of a network: of informed lawyers, of legal information and publications, of exchanges, of regular meetings and



interactions, of knowledgeable counsel who can consult and rely on each other in order to provide insightful advice to their clients.

While the targeted audience could include law students and related non-legal professionals, only lawyers will be the focus of the full range of programs. This will include lawyers from throughout the world who are private counsel, governmental officials and judges. Some will be specialists in areas closely related to food security or rural development. Others professionals in related fields - such as agronomy, economics, nutrition, science and technology – will be included in many of the programs.

*Strengthening Legal Expertise*, in a sense, will provide services. Specifically, a principal value of participation will be the global legal network with an agriculture and food security focus that provides interaction and the exchange of experiences and information. In addition the attorneys involved will be supported through publications and institutes, among other possibilities.

The first steps for Strengthening Legal Expertise will be built around the following steps:

- 1. identify and contact the potential participants, by region
- 2. research, design and begin to circulate a regular on-line publication of brief legal papers about a theme, beginning with large scale investments in land to support the goals of food security and rural development
- 3. create and begin the network (informal information sharing, in-person networking opportunities)
- 4. develop a curriculum for a one week Executive Knowledge and Leadership Colloquium regarding commercial aspects of large scale investment in land or another legal topic to be held in Summer 2012 by the World Food Law Institute in Washington, D.C.
- 5. decide the theme for 2012 and develop a five year strategy; and
- 6. foster enhanced institutional cooperation regarding each annual theme.

## **Conclusion**

To achieve success in global food security and rural development, it is essential that there be more insightful and knowledgeable lawyers to advise governments and other clients, to negotiate expertly and to judge disputes properly. *Strengthening Legal Expertise* will address these needs by creating the cross-over from basic legal knowledge about property rights, intellectual property and other topics related to food security and rural development, as well as the supporting networking opportunities and information. This cross-over must be managed, if the oft-stated food security and rural development goals are to be met.