



Land Tenure in Development Cooperation

Guiding Principles



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Technische Zusammenarbeit (GTZ) GmbH

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Preface

Land tenure issues are becoming increasingly important worldwide. Problems such as high population pressure, increases in resource degradation, food shortages, transformations of political systems and regional and supra-regional resource conflicts have brought the land issue to the public's attention.

Land tenure and land tenure systems are of fundamental importance for efficient agricultural production, stemming poverty and conflicts and attaining social equity. Thus, they are essential for securing enduring, self-supporting and sustainable development. Thus, 'good governance', participation, rule of law, certainty of the law, and access to productive resources, are (once again) of key importance for policy formulation and development cooperation.

These 'guiding principles' of "Land Tenure in Development Cooperation" are intended to be a contribution for applying German development cooperation options more effectively. That is, it should be used to improve the economic and social situation of the people in the partner countries and facilitate their participation making them a partner in the development process.

Problems of land tenure and land tenure systems demand answers to questions on the control of power, securing and the security of fundamental rights and the creation of prerequisites for long-term, productive investments. The form of land tenure and consistent land policies contribute towards future agricultural productivity worldwide, the many and diverse land uses in rural areas, the environmental impact thereof, and coping with the complex and dynamic processes of urbanization.

In the past years, Germany has actively supported international conventions and declarations which especially demand certainty of the law for land tenure and access to land for groups at a disadvantage. The most important agreements refer to the following:

- Agenda 21 (UNCED-Conference in Rio 1992)
- World Summit on Social Development (Copenhagen 1995)
- World Women's Conference (Beijing 1995)
- Habitat II Conference (Istanbul 1996)
- World Food Summit (Rome 1996)

In addition, the German-specific experiences after the reunification show how eminently important a land policy with efficient instruments for land administration and land development is to secure individual rights, to allow for state activities based on clearly defined rules and the promotion of private investment.

The 'guiding principles' are intended to systematize the discussion on land tenure and to generate specific technical knowledge of land tenure systems in the development policy discussion. It should facilitate decision making and provide the instruments for policy dialogue and project implementation. In addition, the critical discussion on goals, tasks and instruments of land policy in different social and cultural environments should be promoted in the 'guiding principles', and thus a contribution for further development of a future-oriented land policy be made.

The 'guiding principles' address all those committed to development cooperation. It should be considered a challenge and an opportunity to involve land tenure and its systems more in the development policy discussion and in project work. In view of the new, i.e. revived interest in the land issue and the rapid progress of insight, the present material can only be considered an interim balance, that is "work in progress".

This 'guiding principles' are the result of intense cooperation between the respective areas in the BMZ, KfW, GTZ and project partners.

The work of the GTZ was substantially designed and supported by an interdisciplinary scientific advisory board for "Land Tenure in Development Cooperation". Many thanks go to the members of the board. Special thanks also are extended to the project partners and field staff who contributed valuable experiences and contributions to the submitted 'guiding principles'.

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1 Land Tenure Systems and Development: Problem Outline and Introduction

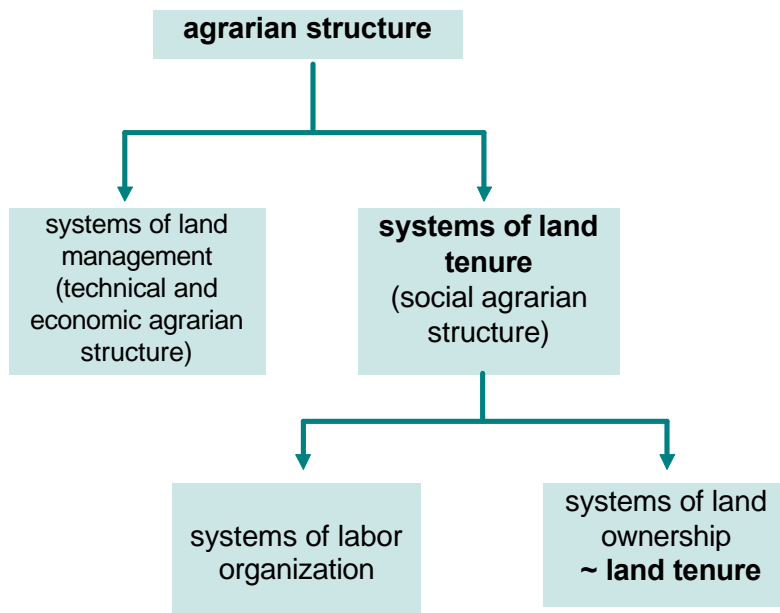
1.1 What are the Guiding Principles Concerned With?

The 'guiding principles' deal with land tenure and land tenure systems and their actual and necessary consideration in development cooperation.

Land tenure includes public and private rights and written and unwritten sets of laws. In the broad sense, land tenure is also seen as the equivalent to land tenure systems; this way of viewing land tenure concentrates on the relationships between people and land.

Land tenure systems include the entire scope of land tenure relationships and are part of the more comprehensive property rights system. Thus, they set the framework for implementation of land policy and land-related objectives.

Overview 1: Classification of fundamental terms



Source: Kirk 1998, based on Kuhnen 1982.

Land tenure systems are composed of a static and a dynamic component. The *static* component subsumes instruments for land administration (*cf.* 4.3) while the *dynamic* component

comprises instruments for land development and reform processes (*cf.* 4.4; 4.5; 4.6).

Land tenure comprises the habitual and/or legal rights that individuals or groups have to land, and the resulting social relationships between the members of the society.

To better cope with this field

- the conceptual foundations for appropriate consideration of land tenure systems in development cooperation are established,
- the instruments for this are identified, further developed and operationalized as far as possible, and
- the basis for decision making is improved resulting in a better development policy which considers rational, and often differing objectives and conflicts of interest on national, regional or local levels.

1.2 For Whom are the Guiding Principles ?

Staff in development cooperation and in partner countries

The target group of the 'guiding principles' is the staff of development cooperation in partner countries in the South and in transforming economies such as the successor states of the Soviet Union and those inland. The 'guiding principles' support those having a conceptual and operational, informational and advisory need for the integration of land tenure issues in development cooperation.

Decision-making bodies in partner countries

Decision-making bodies in partner countries are a further target group. Its results are designed to stimulate further in-depth analysis of "their" land issue and for aiding in the decision making of discussions regarding the further development of land policy in their country.

Politicians involved with development cooperation

The paper is directed towards politicians involved with development cooperation at home to make the connection between the shaping of land tenure systems and the attainability of the development policy objectives transparent. In addition, it is a guide for decision making and offers suggestions.

1.3 What is the Reason for Development Policy Interest in Land Tenure Systems?

The respective formulation and shaping of land tenure systems have a crucial influence on socioeconomic development. The land tenure systems, a framework and impetus for individual and group dealings, shape and mold the degree and direction of economic development, policy making, power structures within a society, transformation processes and the way in which the people relate to their natural environment. This is especially true for *agricultural and rural development*, but it is also increasingly true for *suburban areas*.

Existing land tenure systems, however, are often formed such that the fundamental development objectives, e.g. economic growth, social justice, employment, participation, independence and environmental preservation, are obstructed or target conflicts are intensified. Deficits in land tenure systems, for example, a severely limited transferability of land due to lease or sale prohibitions, hinder or impede

- activities for the increase in agricultural production and productivity (*sectoral approach*) and
- activities for the improvement of living conditions in rural areas (*regional approach*).

Strong interdependencies exist between both. Development processes in the *urban and suburban areas* are gaining in importance due to an increase in urbanization and sectoral change.

The following issues are a preliminary highlight of the many conflict-laden mutual relationships between the final shaping of land tenure systems and the achievement of development objectives:

Land Tenure Systems and Economic Growth

The concentration of the most fertile lands by large landholders, for example, in Latin America leads to a suboptimal combination of production factors (land, labor and capital). Smallholders in serious difficulty are often forced to intensify their farming and to place a high value on present consumption at the expense of long-term investments, while large farms having extensive fertile lands use them very extensively or leave them fallow. Their intensification and growth potential were thus insufficiently realized. Economic liberalization, export-

Land tenure systems - a fundamental framework condition for development

Realization of development objectives

Concentration of land and misallocation of scarce resources

New dynamic medium sized farms

oriented policies and new economic unions (e.g. MERCOSUR, ASEAN), however, bring about changes expediently.

This bimodal land distribution is only slowly being replaced by a growing group of dynamic, productive and market-integrated mid-sized farms. Examples such as Chile show that agrarian reform can contribute considerably to the creation of these types of agricultural business forms.

Land distribution has a strong poverty and environmental impact

Land Tenure Systems, Poverty Alleviation and Environmental Preservation

Smallholders often destroy the ecological balance by farming unsuitable natural areas, for example, steep slopes having a high erosion potential. In their daily struggle for survival, they often have no other choice than to overexploit their limited resources. Environmental problems in many regions and poverty could *also* be reduced by a redistribution of (land) resources. However, also large farms often contribute to the destruction of the ecological balance by cultivation monocultures and by excessive pesticide applications.

Agenda 21, Chapter 3: "Poverty Alleviation"

"Creation of the prerequisites for a poverty-oriented development by the governments of developing countries (e.g. by decentralization, delegation of responsibilities, regulating lease conditions, making land accessible, credit systems...)"

(translated after BMU 1992:19)

Lack of incentives and unreliable planning

If property rights in land are uncertain and constantly in question, then measures for the protection of resources are hindered. Farmers will only invest long-term in the preservation of their natural resources if they can be sure that they will receive the returns on their investments.

Accessibility to land and the right to employment

Land Tenure Systems and Employment

Despite the rapid structural change, more recognition and discussion must take place also in agrarian societies because the problems of land access and the right to employment cannot be solved independently as they are interconnected. This is true for the majority of African countries, for Asian countries and those

transforming economies in which the agricultural sector still plays an important role in employment opportunities.

However, the fact that in Asia, for example, approximately three-fourths of the agricultural households no longer have sufficient land to secure their livelihood and multiple employment as well as employment and income outside the agricultural sector are gaining importance can no longer be ignored. Accessibility to diversified employment opportunities with agriculture being only one of many alternatives and less so the accessibility to land require changes in land tenure systems and require new legal and regulatory provisions regarding the functions of land.

Multiple employment

Land Tenure Systems, Social Conflicts and Political Instability

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

Violent land disputes

The stemming of violence is an inherent goal of a society's development. The fact that smoldering conflicts and the loss of political stability are detrimental to the investment climate should not be forgotten. The revolts in Chiapas, Mexico, from one day to another destroyed the superficial picture of a new "tiger" in Latin America. They showed the public and potential investors how shortsighted it is to endanger industrial strategies by tolerating socioeconomic marginalization and stagnant agrarian reforms.

Political stability

Land Tenure Systems, Concentration of Power and Participation

The land issue is also a power issue

The development of market forces due to liberalization, globalization, newly formed regional associations (APEC, ASEAN, MERCOSUR, NAFTA, SADC) and regulatory and policy reforms has reminded the public conscience once again that, historically, land issues are also power issues. Economic and political power facilitates the concentration of land and as a result intensify the concentration of power amongst a few. Many members of the society are forced to live under marginalized conditions. This has already been seen in the history of failed agrarian reforms in Latin America.

Purchase of land and increase in power of the elite and of bureaucrats

Currently, in many countries market-assisted land reforms, restitution of expropriated land, and newly emerging land markets show that the rural and urban elite and a corrupt administration are very active in using their early knowledge to amass large areas of land and to further develop their power. Urban and rural poor, especially women, hardly participate in this process of change and thus remain a marginal group.

Land Tenure Systems, Reforms and Transformation

Newly designed land tenure systems

Economic development, market economy reforms and transformation have (once again) moved the relevant economic order and the legal regulatory policy into the focal point of development policy discussions. Agrarian reforms, especially newly designed land tenure system will have key functions. In this process the main goal of agrarian reform is therefore to secure an independent, market-oriented organization of agriculture whether it be a collective, e.g. as an autonomous cooperative, a family farm or a private medium or large-sized farm with wage earners.

Private property or "collective property"

The elementary condition for success is the clarification of the term 'property' and the identification of the aspired model. While private property became the model for increasing productivity and sustainability in agriculture in Germany after the reunification, many of the successor countries of the Soviet Union and in Central and Eastern Europe are striving towards these goals within different systems land ownership (private property, "collective property," and state property).

Land Tenure Systems, Urbanization, and Informal Suburban Development

In the next millennium the majority of people worldwide will live in cities. The number of "megacities" having a population greater than ten million will grow to 25 with 19 of them being in developing countries (*WBGU 1993*). This rapid urbanization process challenges institutions of urban land tenure like the efficient registry of deeds or urban planning activities tremendously and requires innovative future-oriented concepts.

The number of informal, in part illegal settlements and places of work in suburban areas is growing. Uncertain rights for building on land hinder investment decision making and the creation of job opportunities, promote land speculation and invoke new conflicts on ownership and user rights.

The rapid growth of cities creates diverse massive environmental and waste disposal problems within a very small area. A clear designation of responsibility through the identification of the owners and users of landed property is, therefore, an elementary prerequisite for the identification of those causing pollution, for the allocation of costs and for the development of cost-sharing procedures for a reduction of environmental pollution.

Urbanization, "megacities", and challenges for urban systems of land tenure

Informal settlement of suburban areas

Land tenure systems and environmental protection

1.4 Which are the Most Important Problem Areas?

Experiences continent-wide and specific to a country show that a deficient, unequal system of land tenure is an obstacle to development efforts in the agricultural-rural sector and for overall economic and social change.

1.4.1 Land Tenure Systems and Agricultural-Rural Development

Presently, adequate and affordable food supplies must be made available to nearly six billion people. This increase in agricultural production, however, is hindered or even averted by the following:

- Farms which are too small with lacking capital and insufficient education of the smallholders,
- High land concentration amongst large landholders with limited interest in cultivation,

Increase in agricultural production

- Uncertainty of ownership, leasing and user relationships that, for example, do not offer tenant farmers incentives or development opportunities,
- Considerable limitations on the access to land for the landless,
- Increasing tendency for agricultural land to be divided into smaller plots, for example, by forms of inheritance,
- Lack of mechanisms for resolving land conflicts,
- Decay of autochthonous land tenure institutions with latent endangerment of community pasture, water and gathering rights and over exploitation of natural resources,
- Insufficient individual or cooperative organization for combating erosion, maintenance of irrigation systems and infrastructure,
- Unequal distribution of water rights,
- Inadequate access to technical innovations for smallholders,
- Lack of regulations and limitations on user rights for the maintenance of an ecological balance (fertilizer application, feed supplements, pesticides), and
- Insufficient legal foundation for the mobility of user rights in line with decreasing interest in agricultural land use, especially for large landholders.

Photo 1: Intensive agriculture in the highlands of Ethiopia



(Source: Arndt)

An increase in employment opportunities, the efficient use of human resources and improved work conditions are necessary for the production of goods in demand, to generate income, to integrate rural populations better in the society and to reduce the migration from rural areas to the cities not having climaxed yet in Africa or Asia. Systems of labor organization should not be separated from the dominating system of land tenure since the maximum use of labor potential is hindered by the following:

Efficient use of human resources and improved work conditions

- Increasing landlessness,
- Capital-intensive farming practices having a low productivity by large enterprises with wage laborers,
- Lack of incentives and opportunities for advancement for employees,
- Failure of labor rent and share-tenancy development and lack of mechanisms for finding solutions to conflicts in disputed work or lease contracts,
- Lack of organization of the workforce for representation of their interests or their deliberate suppression.

The reduction of poverty is not only necessary to satisfy basic needs, but also to secure a life with human dignity. Only a fair distribution of income allows as many people as possible to be a part of the benefits of development (participation vs. marginalization). An inequitable system of land tenure impedes this in part by the following:

Growth and more equal distribution of income

- Exploitation of the poor, especially the landless, also by the largely undiminished power of the large landholders,
- Dependency of many tenant farmers as a result of legal uncertainty and non-social lease conditions,
- Income distribution according to power, not contribution to production,
- Limited freedom in decisions on land use,
- Lack of mechanisms for conflict resolution,
- Low mobility of labor, land, and capital due to dependency relationships (bonded labor),
- Unproductive investments by the elite and a state price policy in the interest of the old rural elite and urban groups, and
- Lack of union-like organizational forms for collective action.

1.4.2 Land Tenure Systems with Overall Socio-Economic Development

Effects of land concentration

The effects of land concentration are multifaceted.

- It increases the power and influence of large landholders which form a state within a state creating legal presumptuousness and legal uncertainty;
- Power due to land ownership leads to political influence and steers politics in a favorable direction for the upper classes of society;
- When power is concentrated, ideas of social responsibility regarding property are attenuated or disintegrated;
- Such extreme political inequality influences the political stability and the entire development of a society.

Lack of adaptation to changes of interests in agriculture

Interest in agriculture has been altered sustainably within the process of socioeconomic development and sectoral change. Up to now, the existing system of land tenure has often prevented and delayed adaptation of altered interests of land ownership.

- Economic growth, a higher standard of living and (international) migration cause the interest in agriculture to be differentiated;
- Division of plots of land due to inheritance reduces the size of many farms below the subsistence level. Thus, the majority of the agricultural households seek work off the farm or they work at the marginal level in severe poverty;
- The youth have only a limited interest in taking up agriculture;
- Instruments for the transfer of user rights to individuals / households that are motivated to work in agriculture are lacking, or they are not accepted, i.e. they are blocked by powerful interest groups.

Insufficient adjustment to new functions of land

Due to sectoral change and an acceleration in dynamics in developing regions, land is used for other functions than in pure agrarian societies. An inequitable system of land tenure can hinder the necessary adaptation of these new functions:

- Urban agriculture, suburban development, squatter movements and livestock keeping in and near the cities demonstrate the limits of the functionality of existing institutional regulations for land used for agriculture;
- Increasing land speculation, "windfall profits", and strategies for avoiding taxes are not collected and absorbed by appropriate (fiscal) instruments;

- The increasing interest in social security through land is often in conflict with the objective of increasing agricultural production;
- The (often informal) transfer of agricultural land to land for urban settlements necessitates amended, i.e. totally new legal regulations and fiscal instruments.

It follows that the existing relationship between state land policies, the implementing administration, the legislation on land and the system of land tenure requires frequent examination.

- The takeover or forced acquisition of former tribal rights by the central government often leads to insecurity, contradiction, legal vacuums and arbitrary use of power by the administration;
- The legislation which forms the framework is inadequate to some degree; however, it is also partially excessive, for example with lease restrictions, through which the government considerably restricts the land user's freedom to make economic decisions;
- Such governmental interventions in the land tenure systems and land use pattern have detrimental effects on the efficiency of production;
- However, the government does not attend to the requirements for an appropriate institutional framework (German "*Ordnungspolitik*") resulting from the social responsibility from land ownership.

Re-examination of the relationship between government land tenure systems

1.5 Objectives of the Guiding Principles

The following five objectives of the 'guiding principles' are evident from the preceding problem outline:

- It shows the current global and region-specific explosive nature of the land issue in times of rapid economic, social and cultural change.
- It processes the experiences of the past in search of solutions to land tenure problems and conflicts, and it verifies its relevance to the current explosive nature of the development policy constellations.
- It identifies areas and leeway for dealing with development cooperation within this interdisciplinary topic and proposes methods and instruments and offers support.

Five objectives

- It attempts to make a contribution for the improvement of the conceptual foundation for appropriate consideration of land tenure in development cooperation.
- It creates prerequisites for improving the expert abilities of the partners involved in the development cooperation.

Guidelines of German development cooperation

The ‘guiding principles’ are based upon the goals and guidelines of German development cooperation. They are to improve the economic and social conditions for the people in the partner countries and to facilitate the development of their creative abilities. The development policy principles agree with the results of the 1992 United Nations’ Conference on the Environment and Development (*UNCED, Agenda 21*).

Principles for action

The ‘guiding principles’ should offer support for approaches for reforms for the solution or reduction of land rights problems.

- An improvement of resource allocation by defusing the land issue, especially for the benefit of small and middle landholders;
- The support of access to land for (rural) groups living in poverty;
- The creation of higher legal security in the transfer and use of land, especially for women;
- The design of sustainable land use patterns; and
- The demand for education and training in the field of land tenure systems and land management.

Agenda 21

"Expanding human requirements and economic activities are placing ever increasing pressures on land resources, creating competition and conflicts and resulting in suboptimal use of both land and land resources." (Section 10.1)

"To ensure equitable access of rural people, particularly women, small farmers, landless and indigenous people, to land, water and forest resources and to technologies, financing, marketing, processing and distribution." (Section 14.17)

"...to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources." (Section 10.5)

"Implement policies to influence land tenure and property rights positively with due recognition of the minimum size of land-holding required to maintain production and check further fragmentation." (Section 14.9 c)

"Governments....should review and re-focus existing measures to achieve wider access to land (Section 14.8 b), assign clear titles, rights and responsibilities for land and for individuals or communities (Section 14.8 c), develop policies in extension and training, ...(Section 14.8 e), and develop guidelines for decentralization policies for rural development through reorganization and strengthening of rural institutions." (Section 14.8 d)

(translated after BMU 1992)

Sovereign partner countries and the high potential for conflict regarding land issues require a strict demand-orientated approach in development cooperation. This necessarily requires the prior and accompanying critical policy dialogue between the partners.

Development cooperation advisors can point out shortcomings or undesirable consequences, call attention to rights of discriminated groups, play the role of a mediator (neutral trustees or 'honest broker') between the various involved parties.

The embedment of land tenure institutional aspects into the cultural, economic, political, technological and ecological environment makes an interdisciplinary approach absolutely necessary. Any planning which is not complex would often leave the success of land tenure-related development cooperation projects

Demand oriented

The role of counseling and mediation

Interdisciplinary approach

to framework conditions which are way out of control for the expert, thus, also, to chance.

Culture-specific-oriented

A change in land tenure systems occurs within the framework of regional and local structures of society, cultural norms or economic constitutions. An inductive course of action and not simply the transfer of models having had success in other situations forms the core of a culture-specific orientation.

Socio-cultural identity

Law is also tied to a culture. Fundamental regulations found in land tenure are sanctioned normatively by culture. However, reforms in the systems of land tenure often result in long-lasting changes of the cultural environment. Ignoring these cultural factors, therefore, questions the efficiency and sustainability of development cooperation projects. It especially endangers the acceptance of the projects by the population.

Process-oriented

A large span of time often lies between the first debates, the problem analysis and an often step-wise reduction or elimination of obstacles in the way of development based on land tenure. Due to the large number of relevant actors, the strongly diverging interests and the complexity of the instruments (for example, regulations for implementation), the processes are seldom straightforward. They are partially erratic, they may come to a standstill or they may even be broken off temporarily.

Planning flexibility and openness

Flexibility and openness of planning and implementation are thus very important. A process-oriented approach meaning step-wise, iterative planning and implementation must therefore be a basic characteristic of programs in the area of land tenure systems. Last but not least they should therefore be understood and be put into practice as a "mutual learning process".

2 Global Importance of the Land Issue, Guidelines and Property Systems

2.1 Increase in the Explosive Nature of the Land Issue

Land tenure problems are gaining in importance worldwide. The high population pressure, increase in resource degradation, region-specific food shortages, transformation of political systems, (violent) regional and supra-regional resource conflicts and "land grabbing" by the urban and rural elite as well as by the poor have brought the land issue to the public's view.

Photo 2: The land issue in the daily press



Source: "The Economist"

Many states have given rise to uncertainty of the law through their frequent, massive and erratic interventions in land tenure (taking into public ownership, re-privatization) and important

The problem of substantial state intervention

basic rights (family law, right of inheritance, water rights, etc.). In many regions these uncertainties are even stronger due to an overlapping of autochthonous and "modern" legal systems. A comprehensive legal system regulating the access and use of land which is consistent and transparent and easy for every user to utilize does not exist (with a few exceptions) in developing or transforming countries.

However, it should not be overlooked that only the government can take measures to eliminate an unequal distribution of land, especially in Latin America, but also in Asia; and, for example, only the government can create a situation in which the notion of property includes the feeling of social responsibility.

Neglect of land tenure in development cooperation

Despite increasing land conflicts and continual degradation of land, the international development cooperation has neglected the land tenure issue too long or accepted it as a fixed framework condition unable to be influenced. Land tenure systems are fundamental for efficient, sustainable agricultural production, to stem poverty and violence and for social equality. In addition, land tenure systems are basic elements for securing the development process in a sustainable manner. Global and region-specific issues differ and cause varying key problems.

2.1.1 Global Trends

Scarcity of land, degradation and conflicts

Population growth, conversion of agricultural land due to urbanization or industrialization and the degradation of land are rendering land scarce for agricultural purposes. This is even true in areas that have been regarded as having relatively abundant land. The conflicts between different user groups such as crop farmers, mobile livestock keepers and forest users, and between the indigenous population and immigrants or urban dwellers and agriculturists are thus intensified.

Obstacles for increased food production

Population growth and an increase in purchasing power demand more and a higher quality of food to be available. Agricultural production is behind its potential due to shortcomings in the land tenure systems such as farms being too small, lack of incentives as a result of uncertain lease conditions, reduction in soil fertility and land immobility. This is reinforced by deficient development support schemes for smallholders and an often unfavorable price policy.

Changes in land use pattern due to industrialization and urbanization

In view of rapidly growing cities and sectoral change with a declining contribution from agriculture to the national product and employment, the change of land use from cropland to other

forms is increasing rapidly. From 1990 to the year 2020 a total of approximately 14 million hectares (approx. 475,000 ha/yr.) in developing countries will be converted for urban purposes (Rosegrant et al. 1997). Even though this loss of potential cropland does not limit agricultural growth globally (see below), in countries like China in which only nine percent of the area can be used for agricultural purposes, major concern about loss of land due to infrastructure and urbanization exists or, at least, should exist.

The meaning of the loss of land due to urbanization and industrialization

"There is no doubt that this rapid urbanization will remove some agricultural land from production. Indeed, the conversion of land from agricultural uses to higher valued uses of the fringes of urban areas is part of the process of economic development, generating in most cases significant economic benefits. Biased urban and industrial growth strategies, together with the neglect of the agricultural sector, have also led to significant damage to prime agricultural land. However, there is little evidence that the process of land conversion to urban uses poses a serious threat to future global food production.[...] A possible loss of 14 million ha of agricultural land to urban uses in the developing countries appears small compared to potential expansions in crop area, and the continued increases in cropping intensity on existing cultivated areas."

(Rosegrant et al. 1997)

Measures for sustaining soil fertility act as investments for increasing soil productivity since they increase future yields and the value of the land as a capital investment. When property rights are not definite or uncertain, then farmers live in permanent uncertainty as to whether they will receive the yields of their financial or labor efforts. They must fear expropriation, expulsion from their land or a worsening of their lease conditions and thus include these in their actions and planning. Uncertainty of the law is the largest hindering factor for productive and future-oriented land use.

Population pressure, governmental interventions in the local authority structures, migration, increasing individualization of

Lack of investment due to legal uncertainty

Pressure on communal property

property rights and changes in land use, for example, due to new technologies undermine autochthonous communal property regimes step-by-step. As a preliminary end point of this process, their property belongs to the state or private parties worldwide. Though a "re-communization" is often discussed, it is on the one hand hardly possible to directly connect this with institutionalized regulations of the past due to changes taking place so rapidly. On the other hand new models must first prove to be efficient.

Discrimination of women

Women are usually robbed of their usufructuary rights and in secondary rights (wood gathering and access to water) particularly when communal property is transformed into private or state property. Thus, they are often forced to seek other economic niches. Households led by women find themselves in marginal situations quickly. Since the spirit and text of state laws often deviate considerably from reality, it is difficult or impossible for these women to defend themselves in conflict situations against male interests.

Poverty and unequal distribution of resource ownership

Income distribution and the extent of poverty (not only for women) are determined in agrarian societies by the provision and access to land since only few countries exhibit true land shortages (e.g. Bangladesh and Rwanda). Land reforms for the equal distribution of property and land are a necessary but by no means a sufficient prerequisite for overcoming the varying problems due to poverty. Once allocated property rights can often not be used productively due to governmental prohibitions (limitations as to which crops can be cultivated) or continuous exercise of power by groups ruling over the poor (large landholders over their tenants and squatters, blackmail for protection money). Lacking complementary economic resources (physical infrastructure, farming technology, capital markets) enhance these effects.

No longer sufficient social security through land

Property and land act less and less as a source of social security for agrarian populations. Here, the continuous decrease in land area per person combines with the fact that food and shelter (which were available as social security in agrarian societies) are no longer sufficient today. In addition, the need for cash is continuously increasing, and smallholders can hardly raise it anymore.

Waning interest in agriculture

The interest in farming is decreasing due to decreasing land area per family and increasing land degradation. A change in attitude towards farming has particularly taken place in the

younger generation. Their interest is no longer so focused on taking over the farm from their elders, but rather on employment possibilities outside the agricultural sector. In time, mechanisms will be necessary for land transfer to those households which would like to continue farming. The differentiation between households involved in farming that are dedicated to farming and have sufficient area and those having areas so small that they can subsist only with off-farm income requires a new system of promotional policy (*Kubnen 1995*).

An increasing number of landless people require productive employment either in rural or in urban areas. For them, measures of regional development (for example, training for non-agricultural jobs) are more important than land and agricultural policies. Since the absorption capacity in the formal industrial and in the service sectors is very limited, rationalization in farming (like mechanization) can have precarious results. Informal sectors offer many seeking jobs a meager living, however only with low legal security.

In many countries the implementation of agrarian reforms has a low priority. Governments argue that their financial situation does not allow for these reforms, and they are not sufficiently supported by international donors. Compensatory payments for expropriation due to land reforms or the establishment and care of new institutions like "land register" cause problems. The organizational abilities of the administration are not only limited by inadequate education and lack of materials (e.g. in land valuation or in land register), but also by internal blockades in the flow of information. The representatives of the large landholders in parliament attempt to escape their expropriation by implementing massive special-interest policies (*Section 3.5.2*). New laws which are inadequate and full of loopholes are a consequence thereof; in addition, they intensify the burden to the administration and the legal uncertainty. Since corrupt sections of the bureaucracy can simultaneously be beneficiaries of ambiguous legal situations, the will for reformation is often non-existent.

Formal institutions dealing with land tenure conflicts often do not correspond to basic legal criteria. Disputes over land issues, for example, are often processed by the same administration that already made the contestable decision; thus, favoritism and corruption can hardly be controlled. Knowledge of adequate implementation of modern land tenure is seldom widespread, thus

The need for employment opportunities

Governments often are overtaxed with reforms

Inadequacy of formal legal institutions

offering the well-informed elite possibilities for manipulation. Trust in the legal settlement of land disputes cannot develop in the population under such circumstances.

Sociological dimensions of corruption

Access to and ownership by the indigenous populations of land, the major resource of production, were irrevocably interfered with during British colonial rule. Prior to colonial rule access to and ownership of land by the community at large had been sustained in most of our societies whose social hierarchies were less pyramidal and in which the ethic of the social predominated. Major transformation was effected when colonial rule elevated the individual self-attribute to predominance by introducing the culture and economics of individual land tenure. The seeds of corruption were sown.

Through colonial legal fiat, the indigenous populations were rendered landless and became squatters on their own ancestral lands as ownership became a prerogative of the British Crown. This fundamental disinheritance was "legalized" either through a decree or a "legislated" instrument by an unelected and, hence, an undemocratic colonial legislature. In the legislation under the East African (Lands) Order in Council, the figment of legality in dispossessing Africans of their land by obtaining an agreement through a "treaty" with elders or chiefs was discarded.

At the political level, the indigenous populations were marginalized from power *en masse* through the policy of racism. The cultures, institutions and values of the Africans were corrupted by the institutions and values of imposed British culture. Within such a social environment of disequilibrium, corruption broke loose. However, it rarely became a "public" concern because it was basically confined within the European population with its victims being Africans. Also, because of the widespread illiteracy among the African people, and because the colonial regime was an autocracy, avenues to express concern about the existence of such a social menace were discouraged. For example, the British colonial regime handed over to Lord Delamere 100,000 acres of the best Kenya land at the cost of a penny per acre. Also, at a give-away price, Lord Francis Scott and the East African Estates Ltd. got 350,000 acres. If this is not corruption, then one should not quibble over the prevailing practice of the KANU regime of giving "government" land and property at a throw-away price to its supporters.

(Kibwana et al. 1996)

Shortage of functional land markets

The high hopes set in the creation of land markets, especially by the neoliberal economists, do not fulfill the expectations to the foreseen degree. This is partially due to problems in the registration of titles, partially to limitations on land transactions (prohibition of lending and leasing) and lack of transparency in

the land market. Thus, the efficiency of the land markets is limited up to now.

2.1.2 Regional Focal Points

These global trends are combined with acute region-specific highlights.

The current agrarian structure and land tenure in "long-settled" regions of Latin America are the result of the contradictions from colonial times between the large landholders on the one hand (latifundium) and the smallholders (minifundium) on the other hand (*Thiesenbusen 1995*). In addition, there are forms of ownership created in the newer agricultural colonization period around the change of the 20th century that have been emphasized since the 1950's especially in the humid tropical lowlands. An increase in the transition of commercial farmers to modern agriculture has been noted as well. Although there has been an increase in production as a result, its economic dynamics have hardly improved the social problems.

Latin America

Despite migration to the cities, population pressure is on the rise in many rural areas. In addition, the divided inheritance of land intensifies the situation as it has a devastating effect on the minifundium. Migration, promoted in part by the government, to available land reserves of the savanna and tropical rain forest can at most buffer or delay the resulting social tension. Besides government-supported programs, spontaneous, not planned migration is also increasing. Illegal occupation of land (squatting) is not only concentrated on state property or communal land of indigenous groups in the humid tropical lowlands. Since the 1950's, land occupation of private property in the "areas long settled" is also rapidly rising (*Mertins 1996*).

Increasing land conflicts lead more and more to severe tension that is released by regular public violence. In the last decade, approximately 1000 people were killed in fighting for land in Brazil alone. In many countries the indigenous communities are especially affected.

Population growth, market integration, land degradation, the introduction of modern production methods and urbanization are causing land shortages to be an issue more frequently also in Africa. Colonial and national government land policy interventions have accelerated the breakdown of autochthonous communal land rights. Together they have intensified the dispute about access to land. The juxtaposed existence of autoch-

Africa

thonous and "modern" structures, values and legal systems weaken each other. A lack of orientation and lawlessness is thus propagated (*Kirk 1998a, Münkner 1996*). The dissolution of autochthonous land tenure causes especially the poorest to lose their social security. In many regions the low productivity on the smallest plots is resulting in increasing numbers of families not being able to meet their needs from farming, so they are migrating to cities to improve their living situation.

Conflicts of land use and access to land within and between countries are increasing in number and violence. In many regions these conflicts escalate to civil wars particularly along ethnic boundaries. In the Northern part of Ghana, over 2000 people died in 1994 due to land conflicts and a quarter million fled. Streams of refugees effect new land conflicts with the result that the danger of further escalation is inherent (e.g. in Burundi, Rwanda, Rep. of Congo).

Asia

Production increase due to the "Green Revolution", experiences of millions of migrants (primarily to the oil-producing countries) and the positive economic development have caused the stagnation in numerous rural Asian areas to be overcome since the end of the 1960's. Simultaneously, however, the farm size has further decreased due to population pressure and partitioning of holdings (*Kubnen 1995*). Already, approximately three-fourths of all Asian farming households no longer have enough land at their disposal to live at the subsistence level. Nevertheless, in some Asian countries (like the Philippines), the potential for agrarian reform in the sense of expropriation of large landholders and a redistribution of land remains.

The interest in farming is decreasing due to further reduction in the amount of arable land a family has. In time, mechanisms for the transfer of land to households that desire to farm will be necessary.

In many regions land is being assigned new functions. Due to the increasing urbanization and industrialization, ever increasing amounts of arable land in suburban areas are being transformed into housing areas, industrial areas, infrastructure projects and recreational areas. This conversion of land is a trigger for conflicts over and over again because urbanization affects fertile land in the lowland areas much more than marginal land.

In some Asian countries as well, the overlapping of different legal systems like national laws and autochthonous rights leads to conflicts and insecurity (e.g. Indonesia and Malaysia).

Photo 3: Rice terraces in Indonesia



(Source: U. Scholz)

A far-reaching restructuring process through the transformation of an economic system with central planning into market economies was the result of the political and economic collapse of the centrally planned economies in the former Soviet republics and in Central and Eastern Europe. The model for the future foresees organizational forms that are decentralized and have market-oriented incentives. However, they are not necessarily exclusively private property-based (*Csaki & Lerman 1996*). In all countries undergoing transformation, the rural population and the decision-making bodies fear the risks of individual land cultivation of family farms and the risk of giving up the security of the former state-owned farm. The reservations against collectives, such as production cooperatives, negative distribution effects and the social consequences of deregulated land markets are great. It is expected that land concentration might increase; land speculation might occur on a large scale; land will be sold out to powerful urban groups and financially strong international investors; and ethnic conflicts over land will take place. The complexity required for a reformed land tenure system is often too much to handle for the administration and judiciary concerned with the transformation.

Transforming economies

2.2 Models and Concepts around Land

Change in the "social construction of land"

The concepts and guiding principles for land issues have been subject to rapid change in the past years. Land stands for property, it is an object of agricultural and industrial use, i.e. a production factor besides labor and capital. Land embodies many more dimensions such as homeland, place of ancestry, a prerequisite for realizing individual freedom, basis for survival, but it is also an object that is taxed and desired by governments and interest groups; it is a basis of power and dependency and a cause of conflict and war. All these ideas tie the physical object to the human idea of how to monopolize, own, use and secure it.

This "social construction of land" (*Bromley 1996*) is currently being re-examined and determined by market economy reforms in most of the partner countries, by further reaching transformational processes in the Central and East European countries and the former Soviet Union, by the globalization of national economies, and by the discussion on social responsibility with respect to property in the far-reaching structural changes of industrial societies.

Guidelines and evaluation criteria

The respective land tenure systems in developing and industrial societies are based on values and norms that can only rarely be taken out of their respective context. The 'guiding principles' are based on merely four guidelines that intentionally also accompany the new orientation of German development cooperation. They provide the foundation for evaluation of land tenure systems:

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

2.2.1 Certainty of the Law and Reforms

Certainty and security of the law constitute the key concept for every development policy discussion on the problems and challenges concerning land tenure.

Project failure and lacking legal security

Regardless of whether one considers the failure of governments, development cooperation or NGO projects, one is confronted with the lack of security with respect to land. This secu-

rity is so natural for us that we hardly take notice of it any more in successful market economies, e.g. the security of being able to keep and bequeath land in use or the security of collateral that a creditor may demand. The fact that this security is not available in all societies is not necessarily apparent since there is a plethora of alternative policies disguising this deficiency.

Promising measures towards a change into market economies remain with only limited consequences as the majority of the population pushing for entrepreneurial opportunities has limited possibilities for obtaining credit and being granted a loan based on land. This limitation is due to land not being registered at the land registry, the land being non-transferable in some countries as it is state property or the land only being able to be utilized in a limited fashion due to prohibitions and restrictions on land cultivation.

Of course, the land use rights do not remain unchanged in such situations. In colonial times the so-called traditional authorities further developed (they were often new creations themselves). These were responsible for land distribution and conflict arbitration. Analogously, the creation of these "traditional authorities" is currently occurring in the follower states of the former Soviet Union. The lack of functional legal institutions, especially in areas where land is increasing in value, has not led to a vacuum, but rather to a mobilization and rediscovery of clans, tribes and religious brotherhoods. They are characterized by having very flexible (one could almost say vague) legal principles. Collectivism or hierarchies are implemented as organizational principles.

With respect to development orientation, it is not desired that smallholders be afraid of the possible effects of an increase in value of their land under these conditions. The more powerful could acquire more land due to the increase in land value through public measures like road construction, erosion control, irrigation or private investments such as clearing or planting trees. The use of law as an instrument of uncontrolled power is present in both African and Asian countries. The practices of some state administrations follow neither the laws of the traditional nor modern authorities. In the case of a conflict, the administration not the court makes the decision. They randomly expropriate the land to benefit their own individual interests, or they only become active when blackmail money has been paid and "award" the land under massive pressure to solvent urban

Lack of collateral

Emergence of legal insecurity: the new role of "traditional authorities"

Law in the hands of uncontrolled power

investors or political followers. These people by no means use the land more intensively than the previous smallholder.

Overview 2: Certainty of the law in the transfer and use of land



Legal security enables flexibility

When legal security exists for the transfer and use of land and the institutional enforcement of legal claims is present, then the key prerequisites for socioeconomic development are existing. The base is less and less the control and command state of the past, but rather the private sector either as an individual business or a cooperative in competition with (para-) governmental establishments (e.g. in the former Soviet Union or African countries). The risk of private economic decisions is only calcu-

lable when governments' activities are predictable. Legal security thus also gains an eminent sociopolitical and institutional dimension derived from the immediate economic meaning.

In order for the law to serve as a system as free from conflict as possible for humans living together, it must be unambiguous, clear and reliable. Certainty of the law means that those possessing the rights can be certain that their rights will be valid as long as they are not revoked in a legal and comprehensible way. Therefore, legal security cannot be separated from the rule of law.

For this to happen, the three following things must be equally guaranteed:

- Certainty of assignment of law,
- Rapid information on attainable rights or rights to be respected, and
- Conflict arbitration.

Certainty of assignment is existing when the legal system provides flexibility and diversity by differentiating between property rights (lease, mortgaging, sale, bequeathal, etc.) and when these rights are transferable in their different forms.

The local land registry and cadastre can be a source of quick information. However, these are only not a threat and a "weapon of the powerful", especially in the case of decentralized organization, when they are managed and controlled by other legal authorities (courts, but also notaries and chartered surveyors). The law only then remains the most important orientation if transactions are mutually agreed upon and at an acceptable cost, and if solutions through institutions having more legitimacy can be found in an acceptable amount of time and at affordable prices in the case of a conflict. Delays lead to a bypass or circumvention of the law.

Courts and arbitrators, in hierarchical order, are the authorities responsible for arbitration. Of course, without authorities (e.g. bailiff) to implement decisions made by the court, the decisions are of little value.

Legal pluralism, i.e. competing acts or orders in view of the very same pieces of land, must not be tolerated, but in view of clearly marked areas, autonomous corporations might have a say in shaping such institutions. Water acts or hunting rights might

Certainty of assignment

Prompt information on transactions

Hierarchical order of authorities responsible for arbitration

be managed by specific associations (e.g. cooperatives) which could set up their own statutes. However, such rules and regulations must be made subject to judicial review.

As long as clear assignments, quick and inexpensive access to public information and clear arbitration are guaranteed such regional or object-related differentiation may work more smoothly than centrally organized law systems.

2.2.2 Rule of Law

Rule of law limits governmental arbitrariness

Rule of law means having respect for the constitution and human rights, the creation or reinforcement of independent parliaments and an independent judiciary (division of power). Rule of law is exemplified by courts being bound to the law. It also includes the independent judicial review of controversial governmental measures. Thus, criteria for decision making and processes for awarding land, land valuation, expropriation for public interest, and taxing of land become transparent and controllable. Rule of law is, therefore, able to limit the arbitrariness of governmental and private activities. It makes the activities predictable and secures the institutional enforcement of legal claims. Legal security for which rule of law is a prerequisite promotes the development of the economic and social potential of the people and their private decisions.

The elements of the rule of law:

The rule of law encompasses the following elements:

- a guarantee of basic rights
- the separation of powers
- the legality of administration
- the constitutionality of laws
- the independence of judges
- prohibition of the retroactive effect of criminal laws
- judicial remedies and judicial review
- certainty as to law and justice

Source: School of Administration (1997)

Public awareness and acceptance

The different historical experiences that the European countries have had with reform and transformation show two things.

The public discussion on bills (in Germany at the time of creation of the BGB, the German Civil Code) is critical for the new land tenure systems to be accepted. Legitimacy can only be attained if the new law is more differentiated than the old, and if it is understood by those affected by it. It can only be preserved if tasks traditionally bound to land tenure are taken over by other institutions and if legal security is guaranteed by public proceedings and quick, low-cost arbitration or enforcement of the law.

Rule of law always enables and requires an increase in participation of the involved and affected groups.

2.2.3 Participation in Designing Systems of Land Tenure

Without participation of all those directly and indirectly affected by a new or modified system of land tenure, autochthonous land tenure rules and local knowledge cannot be integrated in this process, since the respective design of land tenure regulations is always normatively sanctioned. The law is also always culturally bound even when the fundamental provisions for land access, its use, its bequeathal, the modes of distribution (50:50 share of the harvest for sharecropping) or mechanisms for solving conflicts demonstrate predominately strong cross-cultural parallels.

If any reformed legislation will be able to reflect the complexity and differentiation of current land tenure system in practice it is urgently needed to integrate the different actors and interest groups in the process of its formulation. The legislator in the capital is often hardly in a position to do so.

This is true, for example, for the connection of collective property rights with entitlements to benefit streams, e.g. social security. Young people receive the right to cultivate land, though it is possessed by the collective and is controlled by traditional authorities (tribal lands and lineage lands). However, they must provide for the elders, not only their own parents. Currently, this connection is disintegrating. The land is being used, the benefits are taken, but the responsibilities are disregarded. The community elders can hardly take legal action for securing these rights.

If the current tendency continues, the poverty of many older people will increase (*cf.* 3.6). It is crucial that differentiated regulations are elaborated with the active participation of the affected members of the community in the design of the legal framework

Securing autochthonous land/property rights

Example: the nexus between collective property rights and entitlements to benefit streams

which affects the effectivity of the land tenure conditions. Legal action can be taken in order to obtain enforceable rights to pay for somebody's keep on the one hand and claim encumbrances on land on the other hand within a modified system of land tenure and legal and regulatory framework.

Transfer of information

Actors on the political level and economically active groups striving for the legal rights to use land must be informed about the many and diverse approaches to solutions in the case of modifications and about the conceivable greater complexities. Blockades that stem from the false alternatives of the status quo on the one hand and, for example, a simplified form of privatization and individualization on the other can only be avoided in this way. Both the international comparison of the various agrarian reforms and land tenure concepts and the inclusion of historical experience of present industrial countries are necessary.

Securing a consensus in the case of conflicts

In the case of land tenure problems that are politically delicate and characterized by serious conflicts of interests, participation is the prerequisite for finding a consensus among those involved and keeping the conflicts within limits.

2.2.4 The Meaning of Property

Property rights systems - a core element of the economic system

The property rights system is a core element of the economic system. Because its form was considered the fundamental difference between market economies and centrally planned economies, historically the "great" theoretical, ideological debates took place especially on the justification for existence of property. The current debates in transforming societies are no longer about the conflict between property and not having property, but about the conflict between state and private property (*Knieper & Kandelhard 1995*). The dispute is about who carries the property title, not its substance. Simultaneously, discussions about the political and legal power bound to property and its limits are being conducted.

Uniformity of the term property

The central theme of the market economy system is property including the property of land. This property must be defined uniformly and universally for legal understanding, not according to different subjects (individual, community, state or foundation). Such uniformity should be founded in the constitution. Property must be available to all market players, i.e. the state as an involved party must also have access to it, so it can purchase property (=state property) or privatize existing (state) property.

The concept of property can only be introduced within the framework of the constitutional order, and the codification of the term property should not be confused with the term privatization as is repeatedly done in the current debate on land reforms. The transfer of property rights from one person to another and also from the government in previous centrally planned economies to new private owners (commonly called "privatization") occurs within the general forms of civil law. It is regulated through a contract and the formal transfer of the title of ownership (e.g. through the change in the land registry). If the state decides to transfer former state property, then this must lead to a final transfer of title as well.

Property is not identical to privatization

Systems of land tenure and land ownership must, therefore, always be considered in conjunction with other bodies of law, which form a framework for the economic system, such as contract law, family law, inheritance law, tax law, water law and environmental law. The economic use of land and its resulting social dynamics are decisively influenced by these framework conditions. The codification of property must go hand-in-hand with the codification of public law and the legislation of the administration of economic transactions. (*Knieper & Kandelhard 1995*)

Property and other bodies of law

The existence of property does not lead to the end of economic, social and environmental policies of the government since property, especially with regard to the property of land, is generally socially bound and should also serve the public weal. Even private property excludes in no way access to the state, it is subject to general social obligations and restrictions. The protection of the environment and management of air space and mineral resources can be realized as supraordinate tasks of the state or of decentralized self-administered authorities.

Social responsibility and the restriction of property

2.3 Property Regimes in Land A Socioeconomic Analysis

2.3.1 Property Regimes: An Overview

A wide variety of land tenure systems can be found in developing and transforming countries. Fundamental elements have continued to develop autochthonous systems on an evolutionary basis; others were introduced by colonial administrations, and these were often disposed of and replaced by the in-

Common structures in various land tenure systems

dependent national states. Others still were cast out by socialist revolutions and reintroduced in part in recent years after the collapse of socialist systems. Therefore, parallels and overlapping of the different spheres constitute the existing systems of land tenure.

Four idealistic systems of land tenure

The following four idealistic property rights systems in land can be distinguished from one another:

- Private property,
- State property,
- Common (communal) property, and
- Systems with unrestricted access to resources (=open access).

A socioeconomic analysis highlighting the strengths and weaknesses of the various land tenure systems can be found in the following summarization of the key ideas and their institutional foundations. In addition, the efficiency of the systems under various conditions and their limitations are presented (*Baland & Platteau 1996, Bromley & Cernea 1989, Hardin 1968, Kirk 1998a, Ostrom 1992*).

Land tenure institutions

Institutions "[...] are the humanly devised constraints that structure political, economic, and social interactions. They consist of both informal constraints (sanctions, taboos, customs, traditions and codes of conduct) and formal rules (conventions, laws, property rights)." (*North 1991*). A strict division between institutions and organizations is often hardly possible as organizations are created to operationalize institutions in specific situations, for example, through businesses, households, land registries or departments for land development.

Private property

Key ideas and principles

- *Private property* in case of clearly defined ownership rights and user rights guarantees the owner the yield of his investment exclusively,
- however, it also assigns him responsibilities (encumbrances, servitudes), imposes duties and liabilities when the responsibilities are disregarded (compensation, default).
- The *Document of Title*

Benefits and problems

- Since the private land owner receives all of the revenues due from his investment, the saying that he can turn "sand into gold" has a sound basis. The prerequisites are, however, having a sufficient farm size, having total freedom to make decisions on land use patterns, a positive attitude towards work, a high regard for savings and investments and external support (access to new technologies, credit, marketing and supply organizations, etc. The ability to pass on or sell the land can then be very moti-

Private property

Key ideas and principles

- gives the owner the right to use the land within the limits of the law (land use plans, environmental protection restrictions),
- to exclude others from resulting revenues,
- to sell, to bequeath, to give away or to lease,
- to pass secondary rights (e.g. hunting or gathering) on to third parties or to mortgage the land.

Private property probably does not exist anywhere in its pure form including in northern countries as ecological restrictions, *social responsibility* or land taxes must be considered.

Very different *agrarian structures* have developed based on private property.

- Family farms exist in egalitarian structures like in areas with market oriented agrarian reforms (Kenya, Taiwan, and South Korea),
- or in very inegalitarian structures such as in Latin America. haciendas, commercial middle-sized farms and marginal existences coexist on the basis of private property of land (*Wachter 1996*).

In addition, individual private property does not necessarily mean self-cultivation as especially in Asia and Europe the majority of the land is used by *tenants*.

Benefits and problems

- vating to maintain the value of the land by farming sustainably.
- However, private property is not a necessary condition for an economically successful and sustainable use of land. For example, one of the prototypes of a productive modern farmer is the German "domain tenant", who leases the land for 12 to 20 years from the state.
- Private land property loses its productive function if it is used as an object for speculation when land is not liable for taxation or if it is used primarily to secure one's assets.
- Private property requires differentiated functional markets for goods and land, labor and capital markets in order to develop. It necessitates a large number of "external" institutions and basic rights for further support like a highly efficient land registry, contract law, inheritance law, family law, tax law.
- Owners can be bound to a social and increasingly ecological sustainable land use by the law.
- The government is free to introduce maximum (ceilings) and minimum sizes (floors) which regulate transfers of private property in the case of sale or inheritance, for example. It can also prohibit the sale of land to foreigners, it can prohibit mortgage of the land, and it can introduce preemption rights.

State property

Key ideas and principles

If land becomes state property, it is usually to enable the government to implement its ideas on its functions with respect to distributional and social objectives or allocation efficiency

Benefits and problems

- Governments, regional and local authorities or parastatals claim the ultimate competence for the distribution and use of land resources. Whether the state actually takes over the management of the

State property

Key ideas and principles

and modernization.

- State property can come about through conquest, formal nationalization of prior crown lands, purchase, gift, expropriation with or without compensation or by land takeover when there is no clear title.
- To overcome the colonial inheritance, many states which had become independent nationalized the land and experimented with direct state influence on the resource management. Land reforms were attempted especially in the 1960's and 1970's. However, when the socialist economic and social order collapsed, *state divestiture* was again on the agenda worldwide.

Benefits and problems

land use and its revenues is its own decision. It often transfers both to individuals or groups and limits itself to the reservation of title. Governmental land, however, can be leased or used by state-owned businesses.

- Having total responsibility of resource use has proven to be very unproductive for most countries since the financial and administrative capacities and the training requirements of the state are not sufficient. In addition, the states are hopelessly over-taxed in their attempt to secure appropriate land management. Potentially discriminated groups could lose the resources required for securing their livelihood by state mismanagement (e.g. mobile livestock keepers and forest users).
- The direct cultivation of state farms has rarely been successful due to lack of incentives and capabilities. Paternalistic governmental restrictions for individually or communally used land often cause damage, even if they were planned for the modernization of agriculture.

Common (communal) property

Key ideas and principles

Common or communal property of land provides the following:

- has secured the livelihood of groups of farmers, livestock keepers, hunters and fishers over centuries;
- allows for the sustainable use of spatially isolated resources and secures the preservation thereof in the long term through social control and sanctions;
- enforces relatives and residential groups that could not have realized using land individually as private property to remain together;
- guarantees the old and the sick their entitlement benefits.

Common property is the property of a well-defined and demarcated group that uses the land communally according to known and mutually accepted rules. Non-members of the group are often excluded from use or have lesser rights. Therefore, common property should not be confused with open access.

The systems of autochthonous common property must be differentiated from the collective ownership of land. *Autochthonous land ownership* is based on informal institutional arrangements that have evolved up to the time the area was colonized or it became part of a national state. These systems dominate in Africa, in indigenous peoples in Latin America and Asia and in nomadic groups of livestock keepers in northern Africa and the Near East.

The Mexican agrarian reform transferred large landholdings partly into communal land, called Ejido. Land to be cultivated was granted to the community members on a heritable basis, while pastures are used commonly.

The *collective ownership of land* is the result

Benefits and problems

- A socially legitimate authority is given the power within the group. Its task is to manage the resources as a common trust, to limit their use and to secure their regeneration for the next generations.
- Conceded individual claims are always only temporary and cannot be sold outside the group.
- If the endogenous systems of authority and sanctions remain functional, then the preservation of resources can be secured. The threats to the system are due to internal and external factors, however (*Wachter 1996*).
- When the group is opened due to market activities, migration and external land users (city dwellers, new settlers, projects), then these criteria become diluted stepwise and people become less responsive to incentives and sanctioning mechanisms.
- The second key problem of the internal organization lies in the insufficient work and investment incentives for the individual, simply known as a "free rider situation" or the "prisoners' dilemma." Finally, the inability to sell the user rights makes individual access to credit and its business progress more difficult since they cannot mortgage the land.
- The main problem, however, of communal property lies undoubtedly in the fact that the control of access for externally interested can only rarely be held. This is always the case when the independent national state does not explicitly protect this form of ownership through its legislation and/or becomes involved in the rules and regulations of the community. Then, the danger that endogenously sanctioned norms will disintegrate exists, and the transition to unlimited access to resources is probable by individuals dealing in their own self-interest.
- The adaptation of communal ownership could

Common (communal) property

Key ideas and principles

of socialistic revolutions and collectivization (previous "peasant associations" in Ethiopia, Ujamaa villages in Tanzania, etc.). In particular, it is state ownership with collective land use and division of labor.

In addition, in Israel individual ownership of land was also eliminated (Kibbutz), however due to other ideological reasons.

Benefits and problems

hardly keep up with the speed of the processes of change that affected it externally; for example, the increase in population and the change from subsistence-oriented to market-oriented production is enforced by economic globalization, by migration and erosion of the traditional group solidarity.

Systems of open access

Key ideas and principles

This is not a property system on its own, but rather is a lack of property. In these cases in which the access to land is unlimited, land becomes a good which easily can be plundered. Since no one can be hindered from using the revenues of the resource, hardly any incentives for individual investments in resource protection exist.

Benefits and problems

- Systems having de facto open access to resources and their disastrous consequences can be found on all continents, including the industrialized countries if one includes air and water. Surmounting these situations is a particular challenge for development cooperation.

Islamic land tenure

Property rights systems in land are often based on religion. The spiritually sacred character of the African communal property was already discussed. The importance of the religiously founded Islamic land tenure is increasing worldwide. Even if many institutional regulations can be attributed to the depicted basic property regimes, absolute private property with unlimited tenure rights is out of range since according to Islamic understanding Allah alone has the right to absolute ownership of all worldly things and individuals have only limited use of earthly goods. In practice, a wide variety of graded rights similar to ownership that can also be bequeathed have evolved. Thus, the Islamic philosophy of property is, for example, more similar to the African way of thinking than the northern ideal of private property.

Religious concepts of tenure and property rights

As with customary concepts, Islamic tradition holds that land initially belongs to the person who "vivifies" it. Also Islamic laws provide for defined rules of inheritance both for males and females, either as shares or residuaries, as in Pakistan.

Under Islamic tenure systems, land is classified into four main categories: *mulk* (land owned by an individual with full ownership rights); *miri* (land owned by the state, which carries *tassruf* or use rights which can be sold by the owner or inherited, but over which the state retains ownership); *waqf* (land "stopped for God" and owned by religious foundations); and *musha* (land owned collectively, originally under tribal tenure). In urban areas, *mulk* land became widespread and facilitated the transfer and sale of land, though in some cities extensive areas of land remain in *waqf* ownership, restricting access, transfer and development.

(Payne 1997)

2.3.2 Forms of Land Access

Societies have developed a large repertoire of legitimate and illegitimate forms of access to land which ranges from land cultivation to formalized rules of purchase. Independent of whether individuals, family groups, communities or the state is the landowner, some fundamental institutional regulations for access to land can be identified worldwide. Most societies differentiate between access possibilities for different groups of people. For example, the purchase of land by foreigners can be subject to special laws. Women often only gain access to land through their social relationships with their husbands.

The first cultivation of fields in agricultural societies and the digging of a well by those involved in animal husbandry are reasons for long-term rights to resources (in Africa, mostly as common property and in Latin America almost exclusively as private property), as long as no competing person or group makes a claim. These rights are created, for example, when immigration to a previously unsettled area occurs. In Africa, as a result, most permanent rights can be bequeathed only within a founding lineage, but they are also transferable to non-members (outsiders) temporarily (Kirk 1998a). However, they cannot be sold. Compared to immigrants, the founding group always has priority. The claim of ownership is manifested in the apparent

Comparable regulations worldwide

First cultivation or planting of trees

results of the labor input, i.e. the cultivated fields, but also in the planting of trees or simple demarcation of the boundaries.

Illegal seizure and clearing of land in Latin America

The illegal seizure, clearing and use of state or private land by spontaneous colonists in Latin America constitute an important problem, as they contribute to the destruction of the tropical rain forests. In the Brazilian Amazon and in the Amazon areas of the Andes, the percentage of illegal use is 53% and 77% respectively of all cleared forest area (*Mertins 1996*). As compensation for the agrarian reforms that did not take place, the spontaneous colonization was tolerated and even supported by the subsequent legalization of the farmer's activities and awarding of a title of ownership. However, in the colonized areas of the Amazon, the farmers were often followed by forced sale of their land to financially sound groups as a result of indebtedness or due to violent conflicts (*see below*).

Allocation of land to group members

Land is allocated by local land tenure authorities. In the course of the life cycle of a family, household heads in Africa receive additional land from a commonly owned reserve. This also applies if married sons separate from their families and establish their own household. Once such land, inclusive of fallows, is thus allocated, it remains their property. In most cases such land may be devised. Arable land no longer needed, e.g. in old age, will again be included in a commonly owned reserve.

Allocation of land to "foreigners"

Allocation of land to non-members of the group owning the land is of a provisional nature. They are not allowed to transfer the land once it has been awarded without permission to a third party, nor are they allowed to bequeath it. They are often able to use the land for an indefinite period of time. Symbolic gifts in return for the land tenure authorities were not of substantial value, so as not to be confused with lease payment (compare with the lending of land). However, a smooth transfer to a lease situation may occur if the value of this "gift" is high enough.

Lending land

Families allow individuals or groups to use the land they own for a period of time *without* expecting a fixed or quantitatively significant return. The borrower usually has total freedom in deciding how to use the land. However, two limitations exist. Investments that would change the character of the land such that the borrower could claim ownership are not allowed (*Kirk & Adokpo 1994*). This especially includes the prohibition of planting trees, building houses or digging wells. With the resulting ban on tree planting, autochthonous land tenure often fails to protect natural resources sufficiently. As a result, the

lender of the land often reserves the right to spontaneously take it back without announcing it before-hand. Thus, a lack of certainty of the law can present a problem.

In the case of land lease, the tenant receives the right to use the land, and in return must pay a fixed monetary payment or payment in kind (a portion of the harvest) or with labor. Both fixed rent and sharecropping are possible. In the case of a fixed rent, the tenant must make a fixed payment (e.g. money, goods or labor on the owner's other fields) which was set in the contract. In the sharecropping situation, the payment is set as a percentage of the harvest (worldwide often 50%) and thus depends upon the harvest yield (*Hayami & Otsuka 1993*). In Asia, sharecropping arrangements are usually for one year; they are normally extended, but only if the tenant "behaves".

The lease duration is set in advance only in the best situations; it is only then that the tenant has a clear long-term view for making investment decisions. The degree of autonomy with respect to the structure of cultivation, land use and management practices is dependent upon the type of lease and the agreed-upon arrangements.

Complicated tenancy and sub-tenancy systems have developed in Asia and Latin America that could only partly be simplified or limited through agrarian reform measures (*Kubnen 1982, Mertins 1996*). Occupational tenancy and sharecropping arrangements, for example, are used for the supply of haciendas with cheap labor in Latin American countries. If the tenant is lacking alternative forms of income, then the lease conditions are dictated by the owner. The lease relationships are, on the one hand, cemented in lifelong, semi-feudal dependency structures as a result of a high degree of indebtedness; and on the other hand often characterized by legal insecurity due to verbal, ambiguous and ad hoc amendable contracts.

In recent times, lease relationships in the densely populated coastal areas of African countries are gaining importance (*Kirk 1998a*). Sharecropping is becoming established here as well. It is linked with a high degree of legal insecurity and the threat that the owners will take back the land any time without letting the tenant know in advance.

Lease is illegal in some countries, or its duration and amount are regulated. However, since freely agreed contracts upon lease rules enable the parties to come to a consensus on the amount of other inputs, such as draft animals and the calculation of local

Lease arrangements

Types of lease in Asia and Latin America

Types of lease in Africa

State attempts to regulate lease contracts

natural risks, labor input, uniform regulations for the entire country may not always be to the benefit of the tenant. In Indonesia, for example, informally arranged rent arrangements are dependent on the region and may lie above or below the legal guideline (*Löffler 1996*).

Inheritance

Inheritance is the most common form of land transfer not only in the case of private land property, but also in autochthonous land tenure systems where land (and trees or wells) is passed on within a lineage or extended family. The majority of the inheritance is patrilinear in African and in many Asian countries.

Inheritance rules

Inheritance rules have an influence on the distribution of land, especially on the farm size structure. As a rule, the land is distributed amongst all of the sons/children. In addition, rules for the distribution according to the number of wives and their sons exist. According to Islamic laws, the wives are entitled, at least theoretically, to a clearly defined percentage, however, in reality, they usually (must) pass it on to their brothers.

Problems of divided inheritance

The divided inheritance of land as it is practiced worldwide has many socioeconomic and ecological effects, especially for smallholders. By continuously dividing up the land for inheritance purposes, the micro-landholders are no longer in a position to survive economically. This is particularly the case in Asia and Latin America ("minifundio" in Latin America). Legalistic administrative attempts to halt the fragmentation by setting minimum limits for land size according to farm management criteria (3-10 ha in Latin America, often less than one hectare in Asia or Rwanda) are disputed since they are circumvented and difficult to verify. A lack of off-farm employment opportunities and unsuccessful migration with uncertain living conditions in the cities make the cautious implementation of these alternative rules of inheritance more difficult (such as compensation for those renouncing their rights to their inheritance) to secure undivided inheritance of land.

Donation

Giving land as a donation while the testator is still living occurs, for example, when a son marries and starts his own family and thus requires land. In Africa, the oldest sons are sometimes compensated (with the donation) as they have had to work harder than the younger sons to support the older generation. Gifts are often given as a gesture to poor relatives or to those dependants for whom one feels responsible. This leads to development or to reinforcement of patron-client relationship in

Asia or Latin America. Very often, however, intangible services in return are hidden in these land transfer transactions, such as unconditional political loyalty, permanent availability for help in a crisis situation, etc.

Property rights in land are transferred through purchase on land markets, i.e. one receives the land for a non-recurring service in return. This is primarily monetary, but it can also be labor. Land markets that function can make it easier for the owners to have access to credit since land can be used as collateral for the credit institution. It is usually only lucrative if the land can really be sold. In the situation where there is massive indebtedness amongst smallholders, land markets relieve the concentration of land into the hands of a few, resulting in mass poverty.

Free land markets are, therefore, controversial also in international development cooperation and are often the subject of state restrictions. However, imposed social restrictions are problematic with respect to the efficiency of allocation. They usually cannot prevent "informal grey" markets from being created if great interest in selling exists, for example, to finance a wedding, burial or in the case of illness. The lacking legal foundation implies insecurity, and it can be exploited to the benefit of a corrupt bureaucracy. Though land markets may be legal, they are not necessarily legitimate on the local level. The sale of land within a village may cause considerable conflicts.

Since the 1980's, high expectations for a more dynamic land market have come from an increased demand of market economy principles. The intent is to achieve a more equal distribution of ownership through "market-led land reforms" and to avoid expropriation from land through land reform (*Binswanger 1996, Vogelgesang 1998*). Incentives for selling parts of large landholdings to small and mid-sized farmers do not make nearly sufficient land available for all those desiring it (Latin America, Southern Africa).

Violence can secure access to land de facto, although it is not considered legitimate in any legal system. With the loss of the state monopoly on violence, the danger exists that local conflicts about the interpretation of generally accepted access regulations are solved with violence. In this manner smallholders, "squatters," in the Brazilian Amazon region are driven away by the landowners who are usually large extensive cattle farmers. Pistoleros are hired to carry out their interests. The new owners

Purchase and sale through land markets

Market-led land reforms

Violence

can thus be "spared" the difficult development phase of land clearing and construction of the technical and social infrastructure.

Currently, the following institutional regulations for access and use of land are of importance in Latin America:

Overview 3: Regulations for the access and use of land in Latin America

Ownership in a Legal Sense	Tenancy	Other User Rights	Lacking Legal Foundation
<ul style="list-style-type: none"> • <i>Public (state) property</i> (baldio) • <i>Common property</i> <ul style="list-style-type: none"> – indigenous communities (ejido, comunidad indigena) – cooperatives • <i>Private (individual) property</i> <ul style="list-style-type: none"> – large landholdings (latifundium) – small landholdings (minifundium) 	<ul style="list-style-type: none"> • <i>Cash tenancy</i> with cash crops (short-term contracts; usually medium-sized farms, up to a few 100 ha) • <i>Occupational tenancy</i> usually small farms, bound to traditional latifundias (colonato, concertaje system, etc.) • <i>Share tenancy</i> usually small farms in connection with medium to large farms 	<ul style="list-style-type: none"> • <i>Non-codified</i> i.e. indigenous groups, usually in the humid tropical lowlands • <i>Codified</i> i.e. indigenous groups and/or families in Mexican ejidos or Peruvian com-unidades; often a combination of community (pasture) and family (arable lands) user rights 	<p>illegal land take-overs (squatting) and use of the following:</p> <ul style="list-style-type: none"> • <i>Public lands</i> and • <i>Private lands</i>

(Mertins 1996)

2.3.3 Women's Land Tenure Situation

Weaker legal position than men

The opportunities for women to gain access to land vary strongly from country to country, possibly even more strongly than between continents. However, it can generally be said that women are in a weaker legal position than men (*Agrarwal 1994, Davison 1988, Fortmann 1998, Hall 1996, Lastarria-Cornbiel 1996, Wachter 1996*). Their rights are often only indirectly defined (through their husbands). They obtain land rights through their role as daughter, sister or wife, i.e. by birth or marriage.

Women are, for the most part, exempt from the possibility of having comparable (to the men) permanent and secure rights for land use in autochthonous land tenure in patrilinear societies found in most of Africa. They can typically only assert secondary rights. (Matrilinear rules must not necessarily mean that women have more rights, but that men gain access to land via the mother's side of the family.)

Secondary rights

Women's rights for land use and complementary resources vary:

Differentiated user rights

- Working in the family's fields renders the right to a percentage of the harvest;
- Working in the husband's fields renders claims to a percentage of the harvest, however, it usually flows into the household pool directly;
- Independent cultivation on allocated fields allows women the freedom to manage and use the harvest as they wish. This could be a short-term use, such as for one season of cultivation or the permanent use of a field;
- Women seldom have ownership rights of trees, however, of their fruits as long as it is not a plantation;
- Gathering rights for wood and fruits in community forests (to the extent that they still exist!).

Overview 4: Land rights of single women in Kenya



An unmarried woman without children has the right to remain in her father's compound where she cultivates with her mother, or she may be given a temporary plot of land to cultivate. It is assumed that she will eventually "marry away." In cases where a woman is unmarried but has one or more children the situation is economically precarious. Either she must leave her father's home to become a wage earner in an urban center or she remains at home and contributes her labor to her mother's production unit. Occasionally a father will give his daughter a plot of land, though he is reluctant to do so because it means in the future there will be less land for his sons. A young unmarried mother of three...summed up the feelings of others in her situation...: "The thing I wish for most is some land of my own. If I had some land, then I would be able to develop it so I can take care of my children. But the way things are, girls do not inherit land.... I am dependent upon my parents to help with the children. If I could inherit a portion of land, like my brothers, then I could be self-sufficient."

Although it is now legal for daughters as well as sons to inherit land, in practice fathers continue to transfer land to sons.... The position of separated women is similar to that of never married women...usually a woman must return to her natal home.... Upon return, a woman usually becomes part of her mother's production unit. If there is no land available at her parent's home, she has no choice but to sell her labor off the farm.

Once a man dies, his wife's access to land may be at risk. Whereas the normative pattern in precolonial Kenya was for a younger brother of the deceased to marry the widow which ensured her continued access to family land, there is currently no such guarantee.... A widow may find her use rights threatened by the deceased husband's male relatives, or in some cases by her husband's grown sons who have inheritance rights where she has none.

(Davidson, 1988 cited in *Lastarria-Cornhiel*, 1996:22)

In the case of divorce, women must often abandon the fields they have been cultivating. However, according to traditional law, single divorced or widowed women, often have the minimum social security through secondary rights on their family's land. In general, however, it is a dangerous situation for women during times of eroding autochthonous land tenure rules. Women are excluded from their ex-husband's fields without receiving a plot from their own relatives. Thus, the typical divorced woman will increasingly be without land.

Higher landlessness rate amongst single women

The myth propagated by politicians, lawyers and development planners that the European-inspired land tenure secures equal access to land for both genders and thus also to credit, new technologies and extension has been out of touch with reality for quite some time.

Land registration for household heads only

Besides having the function of making women independent of their husbands, the registration of women's rights is also important for securing the family's property. In the case of temporary or permanent migration of the male family members, the women become de facto household heads thus gaining the authority to make decisions to a great extent. But the land is only rarely registered under the names of the women so that in cases of conflict they can hardly defend their interests.

Gender, rural fertility / mortality and land tenure

The FAO study, *Gender, rural fertility/mortality and land tenure*, offers examples of the disparity that women suffer in access to land throughout the world - the consequences of which have a direct influence on demography.

In India, daughters usually waive their land rights in favour of a brother to avoid being denounced as "selfish" and thus risk being alienated from their natal families. This often results in social pressure for women to bear as many sons as possible, as this can be their only means of security for access to land.

In the Near East, women rarely own land, and when they do, the land is often controlled or managed by male relatives until marriage, after which the titles are transferred directly to their sons.

Not only do women not have access to land but, when the security of tenure is menaced, women tend to be among the first group to lose user rights.

(Herrera, Riddell and Toselli 1997:63)

Registration of women's rights

When the state enacts laws, it often neglects to explicitly mention the woman's rights to family property or with respect to the law of succession and regulations governing marriage and divorce. Tanzania and Botswana are positive exceptions. Women are allowed to be entered in the land register, and it has been shown that the registration of land titles is very effective for securing women's property rights. Usually, however, formalization of land tenure leaves the women in a worse position than before. When they register, their secondary rights from autochthonous land tenure are rarely transferred into a uniform national legal framework, and only the male heads of the household are registered.

Rights of women in the transformation process

In the transformation of previous socialist economic systems, women are the first to lose their jobs after the kolkhoz or other production cooperatives have been dissolved. They are forced back to old women's roles or farm the land having very uncertain lease conditions. In Uzbekistan unmarried women are allowed to lease land. However, the owner receives all or a part of the benefit from the investments made. This restricts the willingness to make investments, e.g. in horticulture or trees.

Lack of enforcement by the courts

In the case of conflict, it is very difficult for women in both autochthonous and state law where courts of law and tribunals are male-dominated to enforce their claims in, for example, inheritance disputes, unresolved user rights or theft of an animal (*Kirk 1996a*). Even in matrilinear societies women have difficulties defending their claims without the support of the male family members. Since women are usually less literate, the access to formal rights is more difficult for them than for men.

Women's patterns of reaction

Women are by no means passive objects of this discrimination. They develop a variety of strategies to gain better access to land, for example, through alliances, exploitation of corrupt civil servants or purchasing land within urban areas. They may also search for niches within animal husbandry, trade or small business or production. Women have especially taken advantage of the new possibilities, have opened up new markets and thus also earned profits.

2.3.4 Land Tenure Within the More Comprehensive Concepts of Resource Tenure

Population pressure, commercialization of agriculture and many other factors that have already been analyzed have not only increased the demand for croplands, but also for pastures, trees and water. The people in rural communities do not work exclusively as crop farmers in rain-fed or irrigated areas, as pastoralists, gatherers or fishermen in rivers, but rather use many of the natural resources together (multiple resource use) (*Swallow et al. 1997*). The people exploit many of the primary and secondary rights bound to them. In suburban areas multiple patterns of land use are on the rise (construction land, urban agriculture and gardening, wood for construction, water for private households and industry, etc.).

Degradation of not only croplands, but also of the quality of pastures, the increased exploitation of water resources for irrigation, for households and industry, and overfishing are the results of an overuse of resources. The shortage of croplands can be compensated short-term by expanding into pasture and forested areas resulting in far-reaching resource tenure effects there as well. This endangers not only the sustainable development of cropping systems, but also pastoral, forest systems, and watersheds and fisheries. This has been proven to be the case in the Niger Delta in Mali (*Baland & Platteau 1996*).

Therefore, land tenure must always be considered in the context of all economically used and potentially used natural resources in a particular space. The French meaning of the term land tenure (*foncier*) includes cropland and all natural resources that are linked with it like trees, pastures, watering places, forests and rivers including the fauna (*Hesseling & Ba 1994*). It includes rights to water in as far as they are relevant for livestock keeping and crop cultivation. Based on these connections, it would be justified to utilize the German term "*Ressourcenrecht*" as the English terms "*resource tenure*" or "*resource regime*" which are already inculcated in the language (*Bromley & Cernea 1989*). Such development of terms would serve to reinforce the meaning of an holistic view and an interdisciplinary approach in this field.

Therefore, the guiding principles always consider land tenure systems along with their interdependencies with other institutional regulations or the use of other natural resources. However, the guiding principles cannot deal with water rights and the right to use pasture land, trees and forests and their related poli-

Interdependency of resource use and rights thereof

Interactions taking place due to overuse

From land tenure to resource tenure

Limitations of the guiding principles

cies in the same depth as "land" and its directly related uses. Therefore, only selected problem areas without claiming to be complete or with a regional emphasis are presented in the following paragraphs with respect to further resources. Literature references allow for more in-depth information.

**Rights to pasture use -
the misunderstanding of
the "tragedy of the
commons"**

In the recent past, very few agrarian institutional arrangements have been so intensively analyzed as the rights to pasture use (*Baland & Platteau 1996, GRET 1996, Kirk 1998a, Lane & Morehead 1995, Lawry 1990, OSS 1996, Scoones 1995, Swallow & Bromley 1995, van der Brink et al. 1995*). This has been due to the increasing interest in creating stable conditions for common property and the foundations for collective action, i.e. its management and maintenance. The trigger for this has been the degradation of pasture land. It was wrongly interpreted as a one-sided typical "social dilemma", i.e. as the "tragedy of the commons" (*Hardin 1968*).

If herds are privately owned by mobile livestock keepers and pastures are physically and legally accessible for more than one user, then competition begins. All users strive for a greater percentage of the pasture land. This behavior is explained by an individual's rational pursuit of maximization. However, this is to their disadvantage and to the disadvantage of the entire society. This view, the political foundation for transforming pasture land into state or private property, had become important, but was greatly criticized and refuted. The view did not give enough credit to internal group rules on limitations and control of resource use and the boundaries the different user groups draw between each other.

Differentiated views

It has been recognized by now that the endangerment of communal pasture rights leads especially to the result of a breakdown of indigenous institutions regulating its use. This is a direct result of the conversion to state property and making the land available to the public, i.e. for all interested users or as the result of a failed attempt of privatization.

**Key complementary
resources**

It is indisputable that the preservation or the loss of efficiency and the quality of communal pasture land is definitely influenced by the rights to key resources like watering places, wells or wadi lands. The right to dig new wells and to divide the water amongst the interested users opens up new areas as potential pasture land. These areas were previously possibly held in reserve, but further herds will move into the area more rapidly and

the land will become overused, especially during times of drought.

Development policies and pastoral resource degradation

The construction of large-diameter wells and public boreholes for pastoral use has stimulated the degradation of grazing land and has led to the appearance of circles of desertification in pastoral areas where water was previously scarce and accessibility was limited. Typical examples are the sylvo-pastoral Ferlo area of Senegal or the deep borehole Christine in the Sahel of Burkina Faso.

(Benoit 1985)

Population pressure, market access and changes in land tenure have a fundamental effect on the change in rights for using trees and forests. Population pressure has caused land which was once forested to be transformed into land used for pasture and cropping. Nationalization or privatization of forests and repealing the community's resource tenure systems have had different effects.

Particularly in Asia and Latin America, private investors, public servants and the military make use of concessionary licenses and exploit the land in a non-sustainable manner. In Africa the artificial division of the patrimony of autochthonous users of forest, pasture and croplands and the simultaneous inability of the government to control the land itself and sustainable cultivation led to a slow but serious destruction of tree stands in the forest with daily conflict that resulted in part in violence (*Baland & Platteau 1996, Deacon 1994, Shepherd 1991, Place & Otsuka 1997, Otsuka et al. 1998*).

Experience with irrigation systems in "hydraulic societies" for thousands of years, especially in Asia, has resulted in a wealth of experience on how to design water rights and the community organization of water allocation. In many countries the government has taken a dominating role in the allocation of water through new laws after independence and large irrigation projects (e.g. Gezira in Sudan). Their role is increasingly being questioned as it rarely led to the efficient distribution, use and management of water resources.

Rights to trees and forests

Water rights

Therefore, a variety of approaches for transferring the responsibility to water user associations are being pursued. However, if the result is merely that the management of water receives more attention and not the redistribution of user rights, then the long-term success will probably be low. Also, in this case, the transfer of user rights de facto and de jure are prerequisites for planning security, freedom in decision making and willingness to make an investment (Meinzen-Dick & Jackson 1997, Meinzen-Dick & Sullins 1994, Ostrom & Gardner 1993, WBGU 1997).

2.3.5 Autochthonous and "Modern" Systems of Land Tenure – Overlapping, Parallels and Conflicts

Regarding the term "autochthonous land tenure"

The term "autochthonous land tenure" has become accepted as a neutral term. It emphasizes the one born in the location (autochthonous), local origin of the legal norm and is thus the contrast to imported legal concepts ("modern" or "allochthonous" land tenure). Quite often the terms "indigenous land tenure" and "customary rights" are used identically. (Correspondingly, in German and French the terms "*autochthones Bodenrecht*" and "*droit foncier indigène*", respectively, are utilized.)

With some reservation few typical special features of autochthonous land tenure can be named that are valid for Africa, and parts of Asia and Latin America: traditional peasants' rights having a basic collective tendency, spiritual rights, inequality of subjects of the laws and unwritten laws. In contrast, in Europe combinations of private and common property (the German "*Allmende*") are definitely signs of still vivid autochthonous land tenure rules.

Current relevance

Fortunately, autochthonous land tenure is increasingly being spoken of instead of "traditional" land tenure. The rights are not traditional, pre-colonial rights, but rather institutional arrangements that can be differentiated from colonial and national law, but continue to be vital and effective and have proven to be adaptable within limits. The discussion on economic, social, and environmentally related effectiveness or limitations of autochthonous land tenure continues to be controversial. While many government administrations are very skeptical about respecting and actively supporting autochthonous land tenure, the international donors and NGOs have become its defenders (*cf.* 4.4.4).

Overlapping rights of different users

Land can be used simultaneously by several groups of people in different ways. The right to cultivate land, to harvest fruits growing on its trees, to trespass through it with animals, to bury

dead on it or to gather or hunt on it can vary widely. This alone is not a characteristic of autochthonous land tenure, but should also be a leading principle of legislation made by a national state. Any attempt, at privatization that does not consider this complexity is susceptible to marginalize weak social groups as their current rights are given to the new owners.

Decentralized autochthonous land tenure and a national uniform land tenure exist in Africa, Latin America and Asia, juxtaposed to one another even if their rules contradict one another. Indigenous structures are rarely integrated in national law. Some warn that in such an attempt, the specific characteristics of autochthonous land tenure would be lost and it would be robbed of its identity.

These parallels between differently designed land rights can be explained by the (unwanted) incomplete introduction of the ownership forms preferred by the colonial and national governments. It is often the cause of bloody conflicts. In general, free land (in the eyes of the colonial powers) was declared state property which the European settlers could purchase, while the remaining land continued to fall under autochthonous land tenure. Registration of common property was only partly done.

The colonial governments in Africa and Asia preferred the western concept of individual property over the traditional communal law. The long-term goal was its introduction. It was intended to support the sale of marketable products, thus opening up new sources of income. Independence in many countries in Africa brought additional changes in the national land tenure, for example, collective farms were established on state lands under the guise of socialism. The new elite continued with colonial policies insofar as they attempted to create a uniform national land tenure which was intended to replace indigenous rules or at least reform them.

In Latin America autochthonous systems of land tenure were superimposed much earlier with colonial structures. The rights were displaced and suppressed in part, but also revitalized and integrated as an important element in the state land tenure. Such was the case with the "ejido" system after the agrarian reform in 1917 in Mexico. The system is based on Aztec forms of common property and land use rights. In the 1960's and 1970's the agrarian reforms which took place in Colombia were modified and also codified when land was distributed. In Peru, the collective property from pre-colonial times was even restored.

Parallelism of land tenure systems

Continuity of central government policies in Africa and Asia

Modification and codification of autochthonous land tenure in Latin America

However, in most of the Latin American countries a further relaxation and annulment of autochthonous land tenure have been seen since the 1990's. The increasing international interest in securing the rights of the indigenous people has, however, produced very different approaches with varying success for the transfer of their land collectively or individually.

Without doubt, this will continue to be one of the greatest challenges for each country's land policy, for development co-operation and for NGOs. They will have to take care that autochthonous land tenure principles are considered and maintained. However, the search for innovative solutions to this are just at the beginning.

3 Land Tenure Systems in Focus - Lessons Learned, Challenges and Options for the Future

3.1 Land Tenure Systems and the Natural Production Basis Interactions and Conflicts

Multifaceted interactions and an increasing potential for conflict exist between the sustainable preservation or degradation of the natural production basis and the design of the agrarian structure, especially land tenure systems.

Massive and increasing environmental problems are the central driving force for accelerating, often unplanned changes in the systems of land tenure. High economic and social costs are bound to this.

Poverty-stricken, land-hungry peasants can only rarely realize the principles of land cultivation, that is adapted to the location and environmentally protective, for example, on steep slopes in Nepal or in the Andean region of Latin America. The results of this includes: runoff of valuable topsoil into the valleys, loss in land value, degradation of land, desertification or conflicts on erosion damage, migration, shortage of laborers and the abandoning of these sites.

The expansion of arable farming to marginal pastoral areas as a result of population pressure, deterioration of land fertility or mechanization, for example, in the Sahel, strengthens the land tenure position of settled farmers. It promotes the individualization and privatization of land at the expense of community access and distribution regulations of pastoralists.

Inversely, pastoralists practicing extensive stock keeping increasingly have problems surviving in degraded areas threatened by desertification. Work relationships, division of labor and social security systems break down as a result of the deterioration of indigenous land tenure. Marginality, migration to cities and a decrease in the contribution of semi-arid areas to the national product can be the consequences.

In many regions the water supply for irrigated areas is no longer continuously secured. Due to a lack of drainage or the drilling of deep wells, increasing salinization and reduction in yield potential are slowly progressing. The typical conflicts between those with property upstream and those downstream are becoming more intense. The community of nations is at a

Environmental problems require change of land tenure systems

Erosion, loss in land value, migration

Questioning the land tenure systems of pastoralists

Collapse of their systems of land tenure and of labor organization

Water shortages, salinization and water rights

crossroads: Unless appropriate measures concerning development and environmental policy are taken up, there will be dramatic water problems especially in partner countries. This could escalate to a world-wide crisis through long-term side effects like migration, infection, conflict export, or common trade interlockings (WBGU 1997).

Water as a constraint for global food security

"Tightening water supplies have been accompanied by rapid growth in demand for water. [...] Globally, water withdrawals are projected to increase by 35 percent by 2020 [...], with growth in developing countries much faster than in developed countries. Developed countries as a group will increase water demand by 22 percent [...], more than 80 percent of which will be for industrial uses. The serious pressure on water resources will however be in the developing world, where water withdrawals are projected to dramatically increase by 43 percent. In sharp contrast to past growth patterns in developing countries, the absolute increase in domestic and industrial water demand will be greater than the increase in agricultural water demand. [...] The combined share of domestic and industrial use in total water demand in developing countries will hence more than double from 13 percent to 27 percent, representing a significant structural change in water demand in developing countries."

(Rosegrant et al. 1997)

Exploitation of forests

Reduction of tropical forests is being forced as a result of improper commercial logging, clearance, overuse, fuel wood consumption and measures for infrastructure. In some countries the government created this problem by passing rigid laws against forest use for local inhabitants. The economically difficult situation forces local people that were banned from using the forest to gather wood or wild fruits to exploit their previous village tree stands in an unregulated, quasi-anarchistic manner. The results are thus much more dramatic as forests offer many possibilities for use (apart from fuel wood, building materials, food, fodder, medicinal herbs and "hundreds of everyday things").

Uncertain land rights prevent the protection of resources

Uncertain, questionable land rights prevent long-term resource protection measures from being effective. Farmers will only plant grasses and legumes to improve their pastures, plant trees and take measures to prevent erosion if they are sure that they will receive the benefits of their investments. Exclusive property rights like private property, but also the long-term user

rights which can be inherited are those which are most probable to promote a long-term planning perspective and the implementation of land use patterns which are resource-protective.

While fertile, highly productive land is concentrated in the hands of a few in many regions and remains partially uncultivated, poor farmers have often been displaced to marginal, ecologically fragile sites. Smallholders in the Dominican Republic, for example, often cultivate intensively land having poorer quality such as in mountainous or dry regions.

The conditions for land cultivation should not be separated from the systems of land tenure in their impact on soil preservation and conservation (*cf. Overview 1, Section 1.1*). The soil can be damaged due to excessive application of fertilizers and incorrect application of pesticides. A "code of land use" does not exist in many countries yet. The code regulates and restricts not only the land use rights and the application of fertilizers and pesticides, but also the intensity of use, use of hillsides, etc. (see Rural Code in the Niger).

Unequal land ownership distribution displaces smallholders to marginal sites

Code of land use

Photo 4: South African Township



Source: GTZ

Clarification of water rights is often a serious problem in areas where irrigation is necessary. If water ownership and use rights and the mode of water distribution and management are not clearly determined, then problems of uncertainty of the law arise. In addition, the distribution of responsibilities between the state and users with respect to management and maintenance is often

Uncertain water rights and inefficient water use

not regulated. This frequently leads to the wasting of water and, indirectly, to damaging the soil and a reduction in its yield potential.

Off-farm sources of income and neglect of resource protection

When off-farm employment is found, the interest in farming and the preservation of resources decreases. In addition, many of the protective measures are very labor-intensive and are thus neglected such as the maintenance of terraces on hillsides and measures for the prevention of wind erosion. In general, these tasks are performed during times that are less labor-intensive in the farming production cycle. When the amount of land available to a family for farming is no longer sufficient, then the peasant is forced to find off-farm sources of income during these less labor-intensive times. As a result, the necessary skills, for example, for repairing terraces are lost in the long term.

Environmental protection and processes of displacement

Increasingly, nature reserves and national parks have been allocated. This is also due to the UNCED and to national environmental action plans. In the core of protected areas, no types of use are allowed, while sustainable use is required in buffer zones. Thus, the local population that used the area traditionally for gathering, hunting or stock keeping is banned from the core areas by strict laws de jure, however, they still use (illegally) the land de facto. The displaced forest inhabitants then compete with others (in part, external users) for the resources the supply of which is becoming more and more limited. Approaches for a participatory buffer zone management attempt to avoid conflicts between the forest authorities, legal and illegal users.

Insecure rights lead to resource destruction in the lowland areas of the Amazon

In general, the Indian inhabitants of the Amazon lowland areas use their territories very extensively, i.e. as a combination of farming, hunting, fishing and gathering. This way of managing the land in no way reflects the predominant conception of economically sound land use of the majority of the population since it is focused on subsistence and not for the market. Therefore, the Amazon region is considered "tierra baldía" or land without an owner to them. Anyone can own the land if he cultivates it. This point of view is also the basis for the governmental settlement programs which can be seen all over the Amazon region and for the spontaneous taking of land by landless immigrants and land speculators. Paradoxically, this serves as a valve for land reforms that have not been implemented or cannot be enforced in adjacent regions.

So as not to be totally driven from their territories, the resident ethnic groups feel compelled to cultivate their land "effectively" according to the standards of the majority of the society. They hope to acquire legal land titles in this way. An intensification of land use is in fact hardly possible or sufficient as a shortage of both labor and markets to sell the produce exist. Thus, many groups switch to using the land for extensive livestock keeping despite the ecological problems tied to this form of land use. This is sufficient evidence for the government that the land is being used though it destroys the tropical rain forest sustainably and over a broad area.

(Bliss & Gaesing 1996:17)

3.2 Dimensions of Land Scarcity in the Development Process

The United Nations has estimated that the world's population will grow from approximately six billion to eight and a half billion people in the next 30 years. Other prognoses are even more pessimistic. Ninety-seven percent of the growth will occur in Africa, Asia and Latin America (*WBGU 1993*). The growing population must be fed; higher demands on the quantity and quality of food products must be satisfied (increased percentage of animal products). Because expansion of arable land is quite limited, increasingly areas are being cultivated that are hardly appropriate for the production of food or livestock production. In addition, croplands the size of the Netherlands have to be eliminated from agricultural production every year due to over-use or misuse. Land is also increasingly being required for

Population growth and land scarcity

settlements, traffic routes, industrial plants and recreational areas.

Population growth and land scarcity

Poverty and rapid population growth are positively correlated. Where per caput income increases, population growth declines and vice versa. In other words, the higher the incidence of poverty, the higher the population growth and consequently more people are afflicted by hunger and malnutrition. That means poverty, rather than population growth, is the leading cause of hunger and malnutrition. It is also evident that most of the people afflicted by hunger and malnutrition live in the poorest parts of the world (particularly South-Asian and Sub-Saharan African countries) where unemployment is high, income distribution is skewed and standards of living are low, thus reinforcing the obvious connection between hunger and poverty and not between hunger and population growth.

Likewise, scarcity of agricultural land is not the primary cause of food shortages although it does exacerbate the problem. There is adequate arable land for cultivation and food production in the world. A lack of arable land for food and agricultural production is not the cause of hunger and starvation.

(Gebremedhin 1997)

3.2.1 Reduction of Farm Size, Increase in off-Farm Activities and Waning Interest in Farming

Worsening of the "land-man ratio"

The ratio of land available for cultivation and the total population is worsening. In Asia this has led to the problem that many households do not have enough land to secure a living. For example, in Indonesia 70% of the farms are comprised of less than one hectare; in West Java, 73% of the farms have areas of less than half a hectare. Similar conditions are developing in East Africa (Kenya and Rwanda). Correspondingly, off-farm labor and sources of income are increasingly in demand.

Table 1: Farm size in selected Asian countries

Country	Average Size of Holding (in ha)	Share of Holdings below 1 ha (in %)
Bangladesh	1.3	54
India	2.0	55
Indonesia	1.0	70
Republic of Korea	1.1	65
Pakistan	4.6	17
Nepal	1.2	66
Sri Lanka	1.5	78 (1.2 ha)

Source: 1980 World Census of Agriculture, FAO, Rome 1983, quoted by Kuhnen 1995

A change in attitude towards farming has taken place amongst the younger generation (*cf.* 2.1.2). Their interest is already more towards the "access to income" and not to the "access to land." If the parental farm has sufficient land and possibilities for irrigation and mechanization exist, then the willingness to continue with farming is present. However, if the resources, equipment and possibilities for development are insufficient, then off-farm opportunities and/or migration are sought.

Multiple employment often arises. The household head takes up non-agricultural work besides his work on his farm or works as an agricultural laborer on other farms. These multiple employments bring additional income (very often from non-agricultural sources) into the household. If the off-farm job is lost, then the cultivation of the own farm can be intensified at any time, especially if landowners design their lease contracts flexibly so that they can self-cultivate their farms without problems at any time. Such a flexible land market for usufructuary rights cannot be valued enough in economically dynamic regions.

The differentiation between households with enough land that are dedicated to farming and those with only enough land to subsist requires a new approach of promotional policies. Agricultural policies with their classical instruments (price, innovation and structural policies) are appropriate for the households

Differentiated interest in farming

Potential off-farm income sources

Instruments for supporting "multiple employment"

having sufficient resources at their disposal. Those types of agricultural policy measures are of little interest to other households having too little land to subsist. Regional development (that can include agricultural policy measures) offers more appropriate promotional instruments (e.g. training, social security, generation of employment opportunities).

Land transfer to interested farmers

Land policies must meet new objectives. Land should no longer be in the hands of those not interested in farming, but transferred to those households desiring to continue with intensive farming. Few are willing to permanently give up land due to the uncertainty of off-farm employment, fear of speculation, reservation of land for construction for the next generation. New institutions for the creation of an efficient land market with a high degree of flexibility and quick ability to adapt to changing conditions are necessary.

Estimation of future developments

The speed with which smallholders give up farming is variable. On the outskirts of large industrial centers this development occurs rapidly, similarly in marginal locations (e.g. the Sahel). Planning with an outlook towards the future that includes the opportunity costs of government policies is required. It is not worthwhile to channel major investments into agriculture if it can be expected that a high proportion of agricultural land will be abandoned in only a few years.

Effect on the necessary land distribution for agrarian reforms

The greater the chance is of finding employment outside of agriculture, the more questionable it is to distribute small plots of land in agrarian reforms. The landless will accept them, but then will look for better income sources very soon if the prerequisites for profitable modern cultivation are not given.

New organizational forms in agriculture

The more certain and profitable employment is outside of agriculture, the less time is invested for the farm. In such cases, the land should be transferred to those that guarantee an efficient agricultural production. New forms of cooperation have emerged in different countries that are examples for others: entire or partial transfer of labor in agriculture to others (immigrants), contract farmers, hired contractors with their own machines, support of cooperatives for machines, farm assistants, etc.

3.2.2 Change in the Meaning of Land for the Rural Population and the (Urban) Elite

In many regions, it is no longer that easy to separate rural from urban. Many rural inhabitants have moved to the cities, but

retain their close relationships with their home villages and their rights to land. "Land" is also becoming more important as a recreational area and for the retirement of urbanites. In some countries it is customary for wealthy urbanites to buy land either as a country seat, as a tax-free investment or as a promising object of speculation.

The more land gains in value due to it being incorporated by urban expansion, infrastructure development, incentives for export production or other similar activities, the more intensively urbanites and the rural elite use their informational leads to purchase land before (small) farmers. They usually learn about development plans or infrastructure development much earlier than those who would be directly affected in the rural areas. They know the subsidies which have been decided and are informed on the current land laws (registration procedures). They have good contacts to the local authorities, have sufficient financial means at their disposal and are credit-worthy. Thus, the urbanites and rural elite can use the legal regulations to their benefit (*cf.* 3.5.5).

Asymmetries in information

Land grabbing in Mozambique

In the Beira corridor and remote areas of Mozambique smaller to medium-sized areas are being settled by immigrants from other regions. This is going on under the assumption that no control of land access and land use is currently taking place and that in the future all existing farms will be legalized to create a basis for land administration and land management.

This form of "land grabbing" is being practiced by lower and middle authorities having sufficient knowledge about current and possible land policies in the future. They specifically seek areas that are considered unsettled and upon which there are currently no land conflicts. In neighboring populations the word is spread that the appropriation of land is legal. To support this, an official-looking document with a stamp is presented. The boundaries of the chosen parcels are marked and the vegetation is cleared. Knowing that the official registration of land concessions is inaccurate and due to the war that lasted for decades, the land in this region is already considered awarded.

(Effler 1996:122f.)

Thus, the elite often purchase estates as a tax saving or as an object for speculation. In Brazil alone from 1974-1988, numerous extensive cattle farms having farm sizes ranging be-

The elite purchase land

tween 15,000 ha and several 100,000 ha were established through tax incentives in the Amazon area (*Mertins 1996*).

"Narcolandia"

Since the early 1980's, the drug producers and drug dealers emerged with large landholdings in the east and southeast lowlands of Colombia; slightly later, the same occurred in Bolivia and Peru. The drug Mafia bought huge haciendas together, "Narcolandia," to produce cocaine. As they were protected by paramilitary units, they could produce cocaine relatively undisturbed.

3.2.3 Spontaneous Occupation of Land – Self-Help or a Threat to State Authority?

Causes of spontaneous occupation of land

The illegal occupation of public and private estates and thus the informal creation of farms is an especially widespread phenomenon in Latin America (*Mertins 1996*). Reasons for this are the following:

- Termination of smallholder lease and employment contracts,
- Decimated farm sizes by divided inheritance,
- Insufficient and especially uncertain income as a daily wage laborer,
- Repatriation of unsatisfied former rural-city migrants.

Land occupation at the agrarian colonization frontier

The occupation of land (squatting) occurs at the agrarian colonization frontier or pioneer frontier, on the one hand, and on parts of unused or only extensively used large and mid-sized farms, on the other hand. The spontaneous and the "state-directed" colonization of arable areas, i.e. the occupation of public land that was cleared and then used for shifting cultivation, occurs at the pioneer frontier. The promotion of squatter farms occurs through the construction of roads whether desired or not (Amazon region of Brazil) and the establishment of state agrarian colonization areas with a minimum of basic public infrastructure (schools, health services).

Occupation of private estates

The occupation of private estates (land invasion) in areas suffering from failures of agrarian policy and social crisis is usually organized by a larger group living nearby. The goal is to meet the enormous demand for individual ownership of land or for more land by the lower social strata in the agricultural community.

Tolerating "squatting" on public land

The occupation of public land is almost always tolerated. In some way the squatters stake a claim to the land which they have

cultivated according to the motto: The land should belong to the person who cultivated it. The toleration of squatters also needs to be seen in the context of the strategy "colonization instead of agrarian reform" in Brazil, Ecuador and Colombia. Supposedly, "land without people" serves as a valve for "people without land," i.e. it is a distraction for acute social tension and the resulting land conflicts in the densely populated rural areas.

In contrast, those occupying private estates illegally may be forced off the land by the police or military and not necessarily in a non-violent manner. They are usually required to leave the land within a certain time span after occupation (varies between 30 and 120 days). They do not have to leave the land until the owner pays for melioration already carried out by them (e.g. constructed buildings, fences, and permanent crops).

The main problem the squatters have is that they lack legal security, i.e. the missing land title which needs to be entered into the land registry. The title would also afford them access to subsidized public credit programs and to the formal land market (*cf.* 3.10.2). The creation of a formalized land tenure system is one of the main problems in the agricultural sector for all countries in Latin America. It is necessary for the generation of investments and for implementation of measures for modernization of the agricultural sector.

Not nearly enough farms have been legalized in all Latin American countries, although the awarding of a large number of land titles for occupants of state property comprises the most comprehensive agrarian reform measure. However, for members of the lower strata, it is quite difficult and expensive to acquire a land title for occupied state land unless it is within a specified program for the awarding of land titles for squatters. Since land tenure security is so important, it is necessary for development cooperation to not only identify the current land tenure situation, but also to specifically offer legal support for the determination of legal claims to ownership and for the application of land titles.

Millions of people leave rural areas and migrate to urban areas in search of work and income. For the majority, however, there awaits a life on the urban fringe without any perspective of an adequate place to live and certain employment in formal sectors. Agricultural land is often spontaneously occupied for settlements nearby the cities. Often, huts are erected overnight as it is the case in South Africa. Within limits, it is possible for the people,

Forcing squatters off private land

Squatters' main problem

Legalization of squatter farms

Spontaneous occupation of land in sub-urban areas

despite a high degree of legal insecurity, to build up a basic infrastructure and to construct settlement structures through self-help.

Table 2: The percentage of the urban population living in informal settlements

City	Population 1980 (1,000)	Estimated population in informal settlements (1,000)	Percentage
Addis Ababa	1668	1418	85
Bogota	5493	3241	59
Ankara	2164	1104	51
Lusaka	791	396	50
Manila	5664	2266	40
Mexico City	15032	6013	40
Karachi	5005	1852	37
Nairobi	1275	421	33
Lima	4682	1545	33
Sao Paolo	13541	4333	32

(UNCHS 1984)

New conflicts and solutions

Spectacular eviction of illegal settlers with bulldozers and in part with violence takes place at regular intervals not only in Latin America, but also on the urban fringe of metropolitan areas in Africa and Asia. However, in Latin America ideas are already being implemented to push legalization of spontaneous settlements forward on the outskirts of cities by simplified land registration systems (*Lastarria & Barnes 1995*).

Squatting as an occupation

The number of people clearing rain forest areas as a lucrative "business" is rising in Guatemala, Colombia, Brazil, Peru and Bolivia. By clearing the forest, the land is occupied and the plot is declared as own property. In Brazil, the colonist is declared the owner after cultivating the land for one year as long as no other governmental or private legal claim to the land can be proven. Thus, an area of land which is traditionally used for crop

cultivation becomes an object of speculation and is sold at a certain point in time for a profit to medium to large-sized landholders. In this manner "squatting as an occupation" contributes considerably to a rapidly advancing pioneer frontier of forest clearing. The individual benefit is in no proportion to the resulting soil degradation. (Comparable processes are found also on the outskirts of cities.)

Conflicts with indigenous groups are an additional problem. They are forced from their ancestral land or from land occupied by squatters. The security for survival of indigenous groups (e.g. through reservation policies) lasts only as long as it does not conflict with the economic interests of the squatters.

Conflicts with indigenous groups

3.3 Land Tenure Systems, Agricultural and Rural Development

Land tenure influences agricultural and rural development in many and diverse ways. Its design affects the farm size, production structure, productivity, use of labor, capital formation as well as other sectors in rural areas.

3.3.1 Farm Size, Agricultural Production and Productivity

Agricultural production per unit area is influenced by the farm size and its corresponding factors. Smallholders must use their land more efficiently to secure their living. They are limited by insufficient availability of technical innovation, lack of support institutions, agricultural policy measures and instruments, uncertain property and lease conditions and an unequal distribution of water. After land allocation, for example, following land reforms or resettlement, new farmers often experience a reduction in production. This is often due to friction stemming from transition that can be overcome by the respective incentives. A prerequisite for this are measures of land management reforms. This is currently especially true for transforming economies in Central and Eastern Europe and the former Soviet Union.

The farm size also influences what will be produced and how much will be sold at the market. Comparatively speaking, small farms keep more livestock, farm more for subsistence and are more likely to plant annual crops. Large farms' strength is in arable farming, cash crops and with perennial crops.

Structure of production and market share

Small farms do not always have the highest productivity

The rule that small farms have a higher productivity is being discussed anew time and time again (*Binswanger et al. 1995*). The rule is not always true. If a smallholder is forced to use the land intensively due to not having any alternative income sources, i.e. to subsist, then this rule is true. Here, an egalitarian, even distribution of land would especially support increases in productivity. The situation is different when interest in farming is lost due to alternative employment and migration. However, even in regions with strong technological improvements in agriculture, the small farms do not necessarily have the highest productivity. They cannot afford the required investments and cannot realize economies of scale adequately. In this situation, medium-sized farms integrated in the market have the highest productivity.

Land for the landless?

In view of the worldwide process in development (although very different), it is necessary to contemplate if and when it still makes sense to grant very small plots of land to the landless if they will not be able to build up a sustainable existence in the longterm. An alternative would be, therefore, to consider whether it would be worthwhile to enlarge the farm size of those farms which are too small. However, social and economic goals come into conflict in this situation. In the past, many countries have decided to increase the size of existing farms instead of distributing land amongst the landless. This decision was made because the state could not afford to pay for the necessary equipment such as draft power, machines, seed and support services with public funds.

3.3.2 More Efficient Use of Labor and Improved Working Conditions

Rural underemployment and property rights in land

Many developing countries and countries in transition are characterized by widespread underemployment. Those seeking employment cannot find any or not sufficient amounts or they cannot find a job according to their qualification. The (extended) family supports them and they try to contribute to their subsistence doing a wide variety of jobs (escape jobs). In regions with large farms, this situation is intensified due to a relatively labor-extensive and to some degree capital-intensive production system. Crops are grown which can easily be mechanized. In the case of share tenants, the labor intensity is higher, but due to the little amount of land allocated to them and the prescribed choice of crops, the labor available is not efficiently used here either. After land reforms with expropriation, the remaining portion of

previous large landholdings is often intensively farmed with machines. The number of hired laborers falls even if new prospects for promotion are generated, for example, for tractor drivers, mechanics, etc.

In contrast, small farms are more labor intensive; in an attempt to compensate for the lacking farm area, the land is worked more intensively. For example, fodder is gathered as grass and herbs on trail sides to save land for crops. Small farms absorb more labor, although at the expense of underemployment, i.e. by dividing the available work and harvest. Therefore, the division of large farms through land reforms means more work macro-economically, but within limits.

Primarily, this means more work for those already employed, thus a reduction in underemployment. However, few new employment opportunities are created. Often this additional work falls on women and children.

More work on small farms

More woman and child laborers

3.3.3 Growth and a More Equal Distribution of Income

In agrarian societies the amount of land owned determines to a large extent the distribution of income. Those owning a lot of land have a correspondingly high income at their disposal; those with little land earn a more modest income. The landless attempt to acquire some of the income from the landowners by selling their labor. Power and property (land) determine the living situation, not the contribution to the output.

In addition, the unequal distribution of land causes the poor to be dependent on the wealthy who may also exploit them. It is particularly burdensome in this situation since one person is multiply dependent on another by a lease, employment and/or credit contractual relationship.

Considerable and increasing differences in income exist regionally as well. Areas of growth and marginal locations (irrigated areas vs. dry sites) increasingly drift apart. Larger landholders have often claimed the best locations. Large farms are rarely found in mountainous areas. It is also true in this situation that a rapid agricultural development is better for creating employment and income opportunities compared to land reforms.

Ownership of land determines income

Dependence

Regional differences

3.3.4 Capital Formation

Capital formation in agriculture and in rural areas is important for its long-term effects on production and its contribution to

the economy on the macro level. The existing land tenure system decisively influences the type and extent of the capital formation.

Monetary capital formation

Compared to non-monetary capital formation, the monetary capital formation plays a smaller role. Large farms and their owners usually pay little tax (legal or illegal), so they have a relatively high amount that they can voluntarily use to build up savings and capital. Although small farms are often exempt from paying taxes, their potential for monetary capital formation is considerably lower.

Non-monetary capital formation

Non-monetary capital formation is of key importance. It occurs in the form of labor input for the improvement of the production and living basis. Often this occurs in small increments, but over the years they sum up to something considerable in many households. Today's cultivated areas were created in this way (terraces, irrigation channels and paths). However, families with large farms also make contributions for prestigious reasons or for economic interests (access roads, wells, repairs to the temple, etc.).

Special meaning for small farms

Small farms build up capital through labor input (clearing or planting trees, clearing stones from the fields, erecting fences and increasing livestock herds instead of consuming them). An externality problem is usually not created since the benefit of these efforts falls for the most part to the family that made the effort. On the village level, however, it is more difficult as only a few projects interest all inhabitants equally. This is also dependent upon how strongly communal property rights in resources and community spirit still exist.

The government's role in land reforms

When changes are made in the agrarian structure with land being distributed to smallholders, the organization of capital formation must usually be taken over by the government in the transition phase as large landholders (the losers of the reform) lose interest in making investments. Since governments are less in the position to do this, the chances for land reforms decline.

3.3.5 Interactions Between Agricultural and Rural Development

A close interrelationship between agricultural and rural development exists. Agricultural development causes and accelerates the expansion of industry and services in rural areas due to an increasing demand. This has a positive effect on production volume and agricultural diversification because positive effects are based on the activities in rural industry (primary

products and demand for high quality food). This can be observed very well in regions of rapid development like in the main areas of the "green revolution."

The prerequisites for this are, however, existing possibilities of development in both sectors. This is hardly the case with large landholders having limited business/commercial interest. Little opportunity exists as well in regions with extremely small farms to expand rural economic relationships beyond the subsistence level. In this situation, it would be better to first reduce the land pressure, though it is difficult to achieve.

If the dynamics of the development process increase in rural areas, then it affects the use of the land. In the beginning, the newly created small-scale businesses are often conducted by relatives on the land of the smallholders. This often continues to be the case especially if the business is of a seasonal nature. If the business is expanded considerably, then more land is necessary for storage places, production halls, etc., which must be covered by the existing farms. Little change occurs in the ownership situation due to this process, at least not in the first generation. The land remains in the hands of the family. Its use is transformed in part from agriculture to non-agricultural activities. As a result, the access by external agents increases due to the dependency on investment opportunities.

3.4 Structural Change and Land Conversion

Structural change (in agriculture) leads to a redesignation of land use patterns. In many regions different land use forms compete with one another resulting in conflicts on various levels.

Agriculturally used areas are expanding at the expense of forest land. It has been estimated that already more than eight million km² of the virgin tropical rain forest have been converted for agricultural purposes. Of those, approximately three million km² are used as pasture. Large areas of forest have been cleared especially in Central and South America for agro-industrial projects such as extensive cattle farming.

Arable farming is moving closer to areas where livestock is raised. For example, in Butana, Sudan, the pasture areas used by pastoralists were reduced due to the continuous expansion of irrigation schemes and mechanized rain-fed cultivation. To achieve this change in the land use pattern, the national govern-

Agrarian structural prerequisites

Land demand for commercial purposes

Forest land converted to pasture or arable fields

Pasture areas converted to arable fields

ment repealed the autochthonous land tenure system, formally converted the land to state property, allowed free access and privatized the most valuable arable areas.

The conversion of natural pastures to arable land in Butana, Sudan

The access to resources necessary for survival was secured in the past with a combination of land tenure systems. Natural pastures were common property and wadis and wells were privately owned by families. The social and economic consequences of the lost pastures as exclusive common property were that the pastoralists' mobility was restricted and familiar strategies could no longer be followed. Due to the mechanized crop cultivation on large areas in the South of Butana, the property rights between stock keepers and crop farmers has changed sustainably. New market and dependency relationships have evolved.

While in the past the ethics of the Shukriya enabled the use of pastures free of charge in the area of Gedaref since it was common property, now sorgho straw and water must be purchased in dry years.

(Kirk 1998a)

Agricultural and forestry land converted to construction and/or recreational areas

With the growing urbanization and industrialization, the need for land for non-agricultural purposes strongly increases. Thus, the following uses compete for the limited factor land:

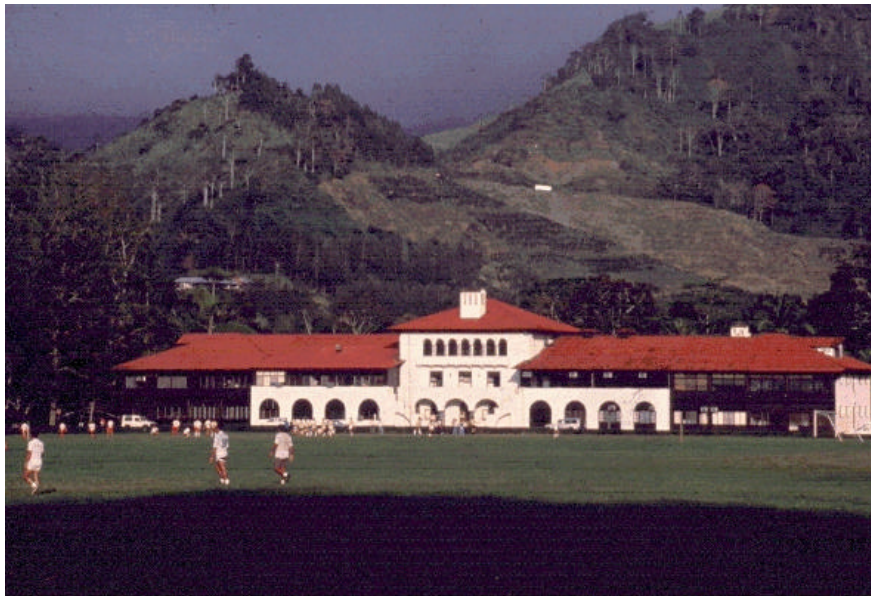
- Residential areas and shopping centers,
- Industrial plants,
- Natural reserves and watershed areas,
- Recreational areas and land-intensive places to play sports (golf courses),
- Agriculture and forestry,
- Transportation/infrastructure measures.

Increasing dynamics of land conversion

The dynamics of transforming agricultural land for non-agricultural purposes are illustrated with an example from Java. The sites that are selected for conversion are very often ones that are highly productive, can be irrigated, and are easy to access due to

a well-developed infrastructure. An efficient land use planning for securing the high agricultural potential of the region and to avoid numerous conflicts over land could help to improve the situation.

Photo 5: Transformation of an agricultural area for a golf course



(Source: GTZ)

Transformation of rural land to urban land in Indonesia

The agrarian census of 1993 shows that the land used for agriculture has been reduced from 6.4 million to around 5.5 million hectares in Indonesia in the previous ten years. Particularly painful for agriculture in this case is the high percentage of highly productive sawah land which has been taken out of agricultural production in this period of time. All in all, the amount of the reduction was more than 400,000 hectares within the period 1983 - 1992. This is equal to an average loss of around 1.4% per year and an estimated loss of more than 500,000 tons of rice per year. How quickly the transformation is taking place can be seen in the time period from 1969 to 1985 when 1.2 million ha were brought under irrigation through the erection of new irrigation facilities. At the end of the 80's, 25% of the land had already been converted to non-agricultural uses.

(Löffler 1996:55)

3.5 Land Conflicts and Possibilities for Reconciling Differing Interests

The causes of land conflicts are many and involve many actors. Solving land tenure conflicts and finding possibilities for reconciling differing interests must, therefore, follow respective cultural-specific norms and guidelines and include institutions on different levels. The chances for success at finding solutions are low if the influence of power groups on the law leads to the manipulation of constitutional authorities, if legal claim and the legal reality with regard to the ability of autochthonous and "modern" institutions are blatantly far apart from one another, and if those immediately affected cannot participate enough.

3.5.1 Dimensions of Conflicts

Spectacular, violent conflicts over land have a high degree of interest for the media around the world as opposed to the forgotten daily disputes over arable land, land for construction, pastures, rights to use the forest and water rights. The conflicts hinder an efficient sustainable land use, undermine existing social

Spectacular violent outbreaks and the daily conflicts over land

relationships and enforce the disbelief of the afflicted due to government failure.

The uprising in Chiapas, Mexico, the land disputes in Brazil with more than 1000 deaths in the recent past, the outbreaks of violence in Ghana, Senegal or Niger and the frequent use of force in the Philippines as a result of land reform demand fundamental political and international approaches for solutions.

If 40% of the households in Nicaragua are involved in acute or simmering conflicts over land titles and disputes and if conflicts between the locals and the immigrants over boundaries between "adat" and "public law" smolder in Indonesia, then there is a need for action. Contributions for de-escalation must be offered and permanent and more stable authorities trusted by both sides should be strengthened.

In Mozambique, an African transforming country, multi-levelled land conflicts hinder economic and social development.

Land tenure conflicts in Mozambique

Land tenure conflicts in Mozambique occur primarily between the following:

- The state and smallholders (and in some cases larger commercial interests) due to expropriation of lands by the state and over state farmland that smallholders have occupied as squatters, laborers or former owners,
- The state and commercial producers over land alienated more than once by the state and over short-term leases,
- Competing private commercial producers,
- New commercial producers and returning Portuguese interests or between new commercial interests and old Mozambican capital from the colonial period,
- Joint venture enterprises and private commercial interests,
- Commercial interests and those of smallholders,
- Smallholders, particularly between displaced or reintegrating and local (native) populations,
- Government and the opposition parties over the distribution of land concessions outside the scope of the law in their respective zones of influence.

(Myers 1995:30)

In Indonesia, a country with high economic and population growth, rapid sectoral change and advancing urbanization, the problems have in part totally different causes.

Land tenure conflicts in Indonesia

Land tenure conflicts in Indonesia occur primarily between the following:

- Amongst the members of a community over the acquisition of land that is managed according to autochthonous law (Adat Land),
- Recognition of Adat rights in government development projects,
- Conflicts over compensation payments,
- The local population and migrants,
- Transfer of land titles to farmers,
- State-supported and spontaneous migrants,
- Between agricultural and forestry enterprises, the local population and the state,
- Differing objectives and interests of the various government departments.

(Löffler 1996:41)

3.5.2 Models and Institutional Efficiency in Solving Conflicts

Models and norms for solving land tenure conflicts are a mirror of the predominating land tenure problems. They are also subject to rapid change.

Cooperation

Values like cooperation, reputation, trusting each other and reciprocity are experiencing a renaissance due to the newly growing recognition of the strengths of communal land tenure. Collective decision making and action for the use of marginal pasture lands, social forestry, or water users associations are not only theoretically reevaluated, but "rediscovered" and promoted in many forms.

Endangerment of traditional norms and models

However, solutions that were negotiated and based on a consensus, where all involved could save their face (re-integrating an individual into the group or the trustee function of the village chief), as a guideline for solving conflicts are controversial. This is especially true when village authorities functioning as the holders of these models have already misused their positions, as in Ghana or Benin. For example, when they sold land to "strangers" and thus kindled the first conflicts.

Limits of "imported" legal norms

"Justice," "legal equality," or "individual freedom" are difficult to implement at the local level. They often are experienced as "out of culture" and not authentic. This is even more valid for

"imported" concepts that are inspired in a European or Anglo-American way of thinking. These deal uncritically with sweeping terms like (private) property, possession or leasing and try to formulate claims and rights which are equally valid for everybody.

When autochthonous land tenure remains in existence, the procedures and authorities for settling conflicts are embedded in comprehensive social institutions and power structures. Suggestions for amicable conflict solutions are based on oral traditional legal standards and in the past on successful formulas for compromising. In times of rapid change, due to new sources of income, market integration, mobility and the shortage of land the traditional standards rapidly reach the limits of their efficiency.

The national jurisdiction which is only functional within its limits has been superimposed on or has replaced existing autochthonous institutions to a large extent. In the best case, an informal "division of labor" is created between both systems. In most countries, however, latent or public conflicts over responsibilities and validity of judgments dominate.

The state jurisdiction is overtaxed in finding solutions to conflicts on the regional and local level despite recent reforms in the economic and legal systems. Too few courts of first instance jurisdiction exist in rural areas. The specific socio-legal education of the assigned lawyers and judges is still insufficient. In Mozambique, state courts avoid getting involved on the district level over conflicts between smallholders, as they are of the opinion that smallholders do not understand the laws anyway. In addition, the latter cannot afford a law suit and the judges cannot understand the structures of the autochthonous laws themselves.

The model of the rule of law and the separation of powers has not been sufficiently implemented in the majority of the partner countries. In these countries the attorney's work is hindered and governmental influence on court judgments continues. Correspondingly, the people's trust in the jurisdiction is low, and the path to the courts is avoided at all costs (also in the face of fees, transportation costs and money necessary for bribes).

Other recognized groups in the society become useful as arbitrators for settling conflicts due to the lack of trust in governmental solutions to conflicts. For example, the Catholic church offers a forum for discussion in a number of countries by

**Autochthonous
authorities**

State jurisdiction

**"Too much for local
courts"**

**Missing trust in the state
jurisdiction**

Religious institutions

Committees for conflict arbitration and solutions

bringing opposing parties together (*Justitia et Pax 1997*). Islamic authorities or Buddhist associations perform similar deeds.

Increasingly, new organizations for the arbitration of conflicts are being formed and some which were neglected for a long time are being reactivated through governmental initiative, development cooperation and through autonomous self-help groups. They are comprised of local, legitimate land tenure authorities and representatives of the state administration.

In Kenya, "arbitration boards" have a long (colonial) history already; in Senegal, the committees are a result of the land reform; in Tanzania, it is hoped that cooperative conflict solving will be successful as a result of the post Ujamaa Reforms of the land tenure systems. In Asian countries the committees have sometimes been derived from tenant and water user associations or NGOs that were able to achieve a limited amount of autonomy from the government for settling conflicts.

Support for self-help

In many countries NGOs offer assistance with legal support to the local people. They spread information, educate attorneys, offer free legal advice and support the local population during trials.

The Legal Aid Institute of Indonesia offers assistance in legal rights matters

The Legal Aid Institute (Lembaga Bantuan Hukum-LBH) offers legal advice in Indonesia, with offices in several big cities. They explain and advise on rights to locals. The objectives of the LBH are the following:

"to give legal aid free of charge to the poor sector of the general public irrespective of their religion, ethnicity, descendance, political affiliation, ideology or social and cultural background;

to develop and promote the understanding of the values of the state law and of human dignity and basic human rights in general and in particular to increase legal consciousness among the people, both the officials and the common people, so that they become aware of their rights and duties as legal subjects;

to make efforts in influencing both the process of improving and innovating laws and their implementation.

(Löffler 1996:43)

3.5.3 Conflict-Solving Levels

The local level was and is the central site for settling land tenure conflicts in agrarian societies, i.e. rural areas. Autochthonous land tenure in which land, family and inheritance laws are treated as one unit remains the guideline for decision making (e.g. "Adat law" in Indonesia).

Pressing environmental problems, the implementation of the UNCED process and market economy reforms illustrate the importance of a decentralized system for conflict resolution. The systems keep the issues public and those involved present and guarantee that the problems remain near the people. The interactions between opposing crop, pasture and forestry user interests can only be determined as a first step in this way, and then comprehensive resource use models can be drafted.

The rural land code in Niger

The Niger's most recent land reform effort is the new Rural Code, which recognizes and empowers customary land tenure practices and institutions. The Code's objective is to establish a national-level legal and institutional framework for increasing local participation in resource management. It recognizes customary ownership rights and incorporates local tenure and land management systems.

Considering customary tenure systems as a proper base for development, the Rural Code allows remarkable flexibility in dealing with land tenure matters without shifting away from the security of tenure that these systems offer.

(Herrera, Riddell and Toselli 1997)

This middle level for conflict arbitration has only been established in a few countries. These authorities have often been unjustly neglected (sometimes intentionally) by the government. An urgent need exists for strengthening these to enable them to settle conflicts over resources like pastures and forests and for defusing arguments between pastoralists and crop farmers.

A uniform legal body of the national states founded on Euro-American norms, areas of law and various stages of appeal can intentionally provoke conflicts of autochthonous law. However, it can also offer new forms of coexistence.

Local level: The key role of conflict arbitration

Resource protection causes a renaissance

Regional level: an urgent need for expansion

National level: the Euro-American "model"

Instruments of the new elite

The governmental administration of justice has primarily been applied in urban and suburban areas, for example, in disputes over the registration of private property. Trials are time-intensive and expensive since the process constantly has to be actively pushed and bribes are not uncommon. Here, indigenous, old-established owners often clash with external innovative farmers or speculators from the city (*cf.* 3.2.2).

3.5.4 Efficiency of Autochthonous and "Modern" Institutions

Autochthonous law and reformed legal framework

Reforms of the legal and regulatory framework very often demand the inclusion of autochthonous instruments for conflict arbitration and the participation of local authorities in the legal process. This can reduce the direct costs of a functional administration considerably, for example, if intimate knowledge of the problem situation or short, informal channels are utilized. However, a lack of democratic transparency may be the price.

Should autochthonous methods of conflict resolution be embedded in modern state land tenure regulations?

The concrete acknowledgment of autochthonous instruments for conflict arbitration in state law and the practical boundary between the two legal spheres remain a challenge to be dealt with. Autochthonous law is only mentioned vaguely, for example, in land laws or in the ordinances for implementation. The danger exists, therefore, that the autochthonous law will neither be taken seriously or it will not be applied. The attempt to codify "customary law" explicitly as a part of the legal bodies, for example, to erect inflexible patterns thus, robs autochthonous law of its adaptability as was the case in Laos.

Indigenous conflict solutions and modern state land tenure in Mozambique

In one fascinating case, local state officials in Inhambane Province were forced to call upon customary leaders to resolve several land disputes, as the local population was unwilling to accept their decisions. The decisions made by the customary officials were later "recorded" by local government officials and granted some degree of official status

(Myers 1995:16)

The percentage of those working in agriculture in village committees for conflict arbitration is declining especially in South and Southeast Asia due to socio-economic development. Correspondingly, values, goals and the type of arbitration decision have changed often to the benefit of the non-agricultural portion of the population. Increasingly, the law of the central government will go into effect.

Conflict arbitration which is based on autochthonous rights treats the involved parties differently in Africa. "Equal in the eyes of the law" according to Euro-American understanding is only rarely ensured. Women usually receive rights to land only via their husbands; the young are in a weaker position compared to the older generations in land conflicts; the old-established have legal priority over immigrants; and the crop farmers possess more comprehensive and better defined land rights than pastoralists. The conflict between state law which is based on equality regardless of who the person is, his sex, his ethnic group, etc., and the legal reality is virtually insolvable.

Autochthonous land tenure can rarely be applied to settle conflicts that reach much further than the community. It often cannot be applied in the following conflict situations: between neighboring communities whose (often fuzzy) boundaries were created by administrative actions, between smallholders and expanding agricultural enterprises, or between smallholders and the government.

As long as functional lower court authorities are non-existent and professional associations of attorneys are not permitted, then the effect of state conflict arbitration will be limited to the cities. If only loose connections between both systems exist,

Effect of social mobility

Inequality of legal entities on autochthonous law

Both systems have a limited "range"

then the positive aspects of each will be systematically played off against one another and undermined. The discrepancy between the demands of reform and the legal reality creates new conflicts.

3.5.5 Imposition of Uncontrolled Power on the Law and the Need for Participation

"Vested interests"

Policy system reforms through structural adjustment and transformation processes allow the interests of individuals and the power of interest groups to appear anew. The initiated redistribution of power leads to considerable opposition.

Thus, the will of the Tanzanian administration to reform the land administration is barely distinctive since decentralization and democratization considerably restrict their influence on key resources and make decisions more transparent. In Niger, the commissions for conflict resolution are filled with members of the nobility who mostly favor the interests of the wealthy owners. In Nicaragua, high public servants acquired valuable land during the change of power at the end of the Sandinista regime, thus handing down additional smoldering conflicts and legal insecurity to the new system.

Role of the military

In Asian countries such as the Philippines and Laos, large tracts of land have been removed from legitimate owners and users. The tracts are under military control. The military repealed the law and has implemented a highly controversial strategy of exploitation, for example, through clearcutting and extorting compulsory levies from the local people. (However, the positive influence on the principles of the rule of law must be recognized in countries where the military operates within its legal rights.)

Violence and land conflicts

Not only in Cambodia do Mafia-like interest groups react swiftly to a quickly formulated and implemented legislation to legalize illegally purchased land by registering their titles. This process is often referred to as "land laundry." In Chiapas, Mexico, governmental authorities awarded the rights to land that was actually the property of the indigenous people to interested ranchers (*cf.* 2.3.2).

"Valves" for land conflicts

The long history of land reforms which have failed shows that massive social conflicts due to anticipated land reforms are attempted to be defused through symbolic policies. In Guatemala and Brazil, the government promotes the colonization of rain forest areas and in buffer zones around national parks to take the edge off land conflicts and to postpone the problems to the future. In 1992 the NAFTA agreement "freed" the export-

oriented large farms from the sword of Damocles from an anticipated redistribution of land in Mexico since the new primary agricultural policy goal was international competitiveness.

The refusal of African local authorities to continue to lease land to "outsiders" or to allow trees to be planted postpones immediate conflicts with land-seeking smallholders and agricultural enterprises. However, it creates new conflicts with the state administration and development projects in which resource protection is the focus.

"...It is unlikely that the government on its own will move in the direction in democratizing land tenure given vested interests within the state. A consistent and organized voice from civil society has to develop to take up the land issue" (*Shivji 1996*). This critical estimation by the chairman of the "Presidential Land Commission" in Tanzania puts the main problem of the participation of the affected in solving conflicts in a nutshell.

Decentralization and the solving of land tenure problems according to the subsidiary principle are goals which have been declared as a part of the reform process in most developing countries (*Gordillo 1997*). Land forms a crucial element of a constitution, and therefore those immediately affected by the fundamental revisions of the regulations of access and use of land should be consulted from the very beginning. International donors send very strong signals in this respect. The implementation of the reforms down to the local level demands corporate joint solutions, so that the composition of the committees and the procedural sequence are more uniform. The gap between autochthonous and modern solutions to conflicts from the "top" and from the "bottom" can only be reduced in this way.

Equipping the local population with more authority and responsibilities also requires stronger participation of the public in selecting members of arbitration committees and local courts.

"Empowerment" in no way guarantees that the rights of all involved persons will be acknowledged in hierarchical societies, as in Asia. Despite agrarian reforms after a revolution which had the goal of breaking up existing structures of power and dependency, the traditional elite regained influence quickly.

The basic values of land tenure conflict resolutions, such as decentralization, democratization and subsidiary, remain an

Defensive strategies for conflict avoidance

Decentralization and the role of international donors

Empowerment on the local level

Strengthening the "traditional elite" vs. participation

(Budget) autonomy

empty shell as long as they are not accompanied by financial and planning autonomy for the "small administrative units" (e.g. through land tax at the community level). Only they can enable the (re-)construction and the maintenance of necessary institutions, flexible ways of dealing with conflicts and responsibility for designing development and land use plans.

3.6 Land Tenure and Social Security

Land - an instrument of social security

In agrarian societies, social security results primarily from clear and certain land ownership and tenancy relations. Farming secures the food supply, creates income and, if necessary, enables credit to be taken up. The life of the extended peasant family secured existence in old age and for those alone. In many regions, this traditional system is quickly dissolving without alternative social security systems already being in place.

Dissolution of traditional social security systems

The widely practiced division of estates causes farms to become so small that the security basis for relatives and through relatives is no longer given. Pressure to find off-farm sources of income which can usually only be obtained in distant places arises. If these sources of income prove to be uncertain, then the dependants and the weak that stayed behind rapidly find themselves in serious difficulty. This leads to their dependence on welfare (if it exists), religious foundations or permanent food aid (e.g. for pastoralists in the Sudan).

The widespread right of every member of a particular lineage or ethnic group to receive a land allotment in Africa if they truly farm the land is weakened by dissolution of traditional social fabric of the ethnics. Population growth up to the point where no more land is available for allotment also weakens the system.

In the former centrally planned economies, the large collective and state farms were the basis for social security of the old and sick members of the collective, including their family members. The more land is separated from the large farm for small family farms or agricultural enterprises, the weaker the material foundation is for the support of the elderly and sick, for education, for pre-schools, for stipends, etc.. Here, as well, not enough alternative social security systems exist yet.

3.7 Agrarian Reforms: An Unanswered Challenge

Definition: agrarian reform

The term "land reform" describes measures for revising the distribution of property in land. The term "agrarian reform" can

be defined as a bundle of measures for overcoming the obstacles to economic and social development that are based on shortcomings in the agrarian structure. Agrarian reform includes both the conditions for land tenure (like ownership, lease, etc.), known as reform of land ownership, and those aspects of land use (like farm size, supporting institutions, etc.) called land management reform (*Kubnen 1982*).

Many goals are intended to be reached simultaneously through agrarian reform. In the past, great expectations were anticipated, however "a frequent problem is that as one goal is attained others escape the policy makers' grasp. For example, to assure that marketable production remains high, transitional or "rich" peasants may be selected as land recipients. While this helps to keep farm production at an acceptable level, lower-income peasants do not benefit and the goals of equity and justice are shortchanged." (*Thiesenhusen 1996:20*). (For further in-depth analysis on agrarian reforms, see as well *Binswanger et al. 1995* and the literature quoted there.)

List of agrarian reform goals

1. Political goals

- Adjust village social and power structures
- Eliminate the feudalistic structure and large landholdings
- Satisfy smallholders, leaseholders and farm laborers
- Democratize the society
- Protect the society from revolutions
- Redistribute existing land
- Reduce the inequality of landholdings
- Partition of large farms
- Protect the leaseholders, reduce the rent limit or eliminate the lease and replace with ownership

2. Agrarian policy goals

- Promote family-based farming
- Reorganize the farm size structure
- Create cooperative large farms

3. Economic goals

- Intensify agricultural production, mobilize the agricultural production potential, colonize new land
- Improve the factor and market contribution of agriculture
- Diversify production
- Create additional employment opportunities

4. Social goals

- Distribute income and property of the rural population more equally
- Improve the social status of the rural population

(Bergmann 1980; Kuhnen 1982)

Opportunities and limitations of agrarian reform

The extent of an agrarian reform depends upon the intensity of the planned measures, especially the determination of the maximum ceiling for the amount of landed property allowed. This can vary from country to country depending upon the political ideas of the reformer, but also on the land capability and farming system. The maximum size, for example, in South Korea was three hectares, in the Philippines seven hectares and in Egypt after the agrarian reform law of 1952 it was even 126 ha (reduced to 42 ha in 1961) and in Cuba 402 ha in 1959 (reduced to 63 ha in 1963). The number of people and the amount of

land that have to expropriated and the number of those receiving expropriated land is based upon the maximum ceiling.

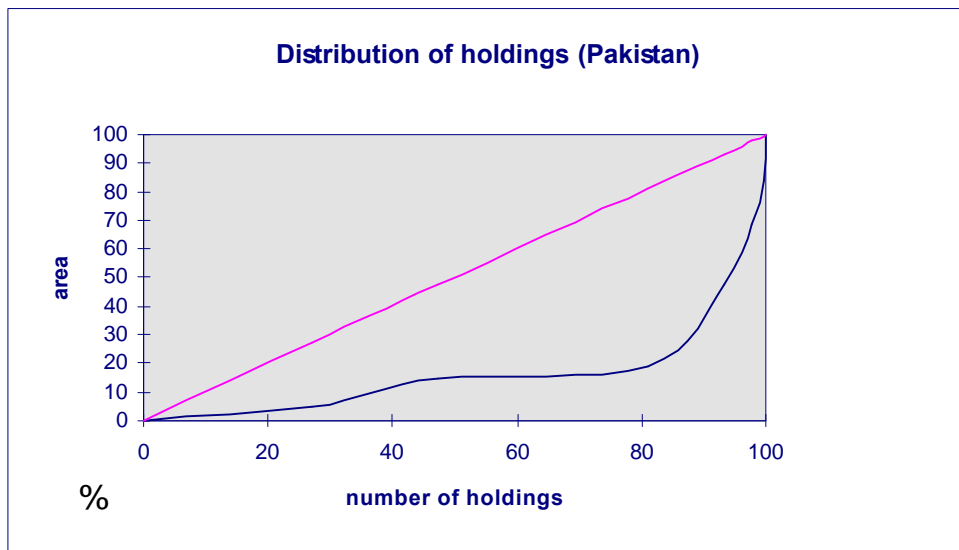
When one considers the fact that the large group of medium-sized landholders are not affected by the reforms, it is not surprising that even in the case of drastic agrarian reforms such as in Iran, Syria, Sri Lanka and Egypt only 10% to 25% of the land was redistributed, and only 10% to 22% of the agricultural households received land as a result of the reform. More radical agrarian reforms such as in South Korea and Iraq that effected a redistribution of 65% and 60%, respectively, of land and in which 77% and 56%, respectively, of the households received agricultural land are an exception.

The magnitude of these ranges should be considered when land reforms are evaluated, especially with respect to its effect on production. The psychological effect of agrarian reform is a fundamental contribution to rural development. The reforms show the lower strata that the influence of the once powerful landowners can be weakened, while their social status is in fact improved.

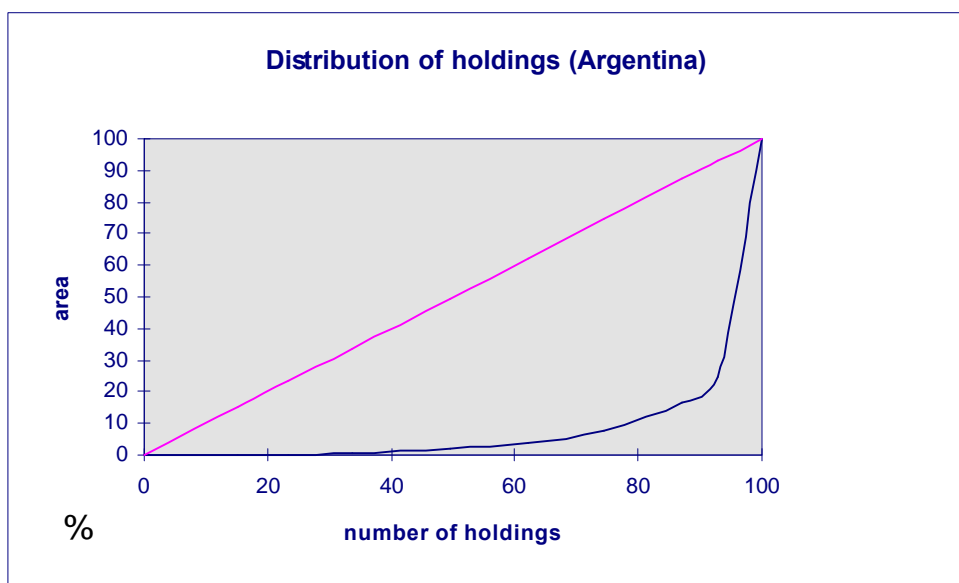
The following Lorenz curves show examples of the relative equality or inequality of the land distribution in four countries. (The higher the Gini coefficient, the more unequal the land distribution and the stronger the deviation from the diagonal which corresponds to equal distribution. The Gini coefficient, therefore, corresponds to the quotient of the area between the diagonal and the distribution curve and the total area underneath the diagonals. It can have a value between zero and one).

Extent of land redistribution

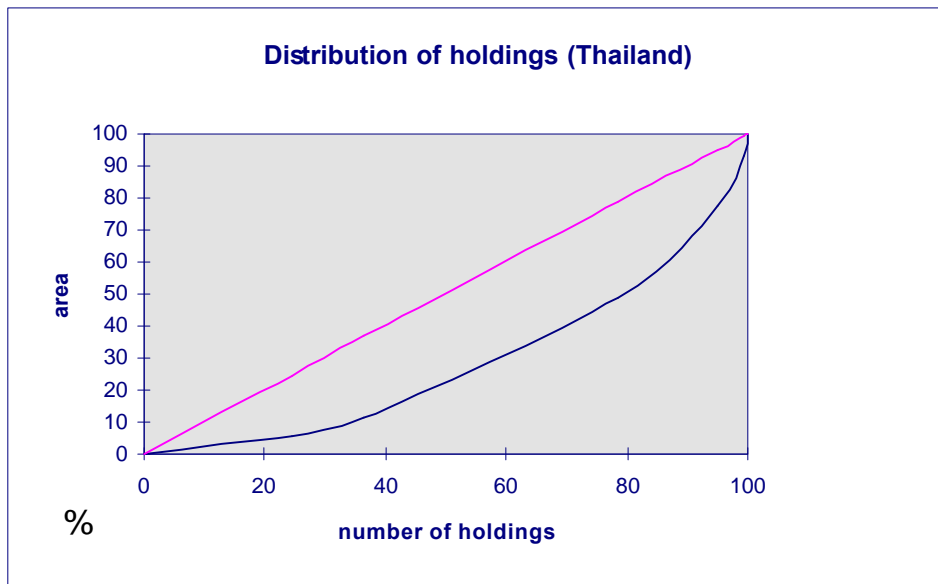
Overview 5: Distribution of holdings in selected countries



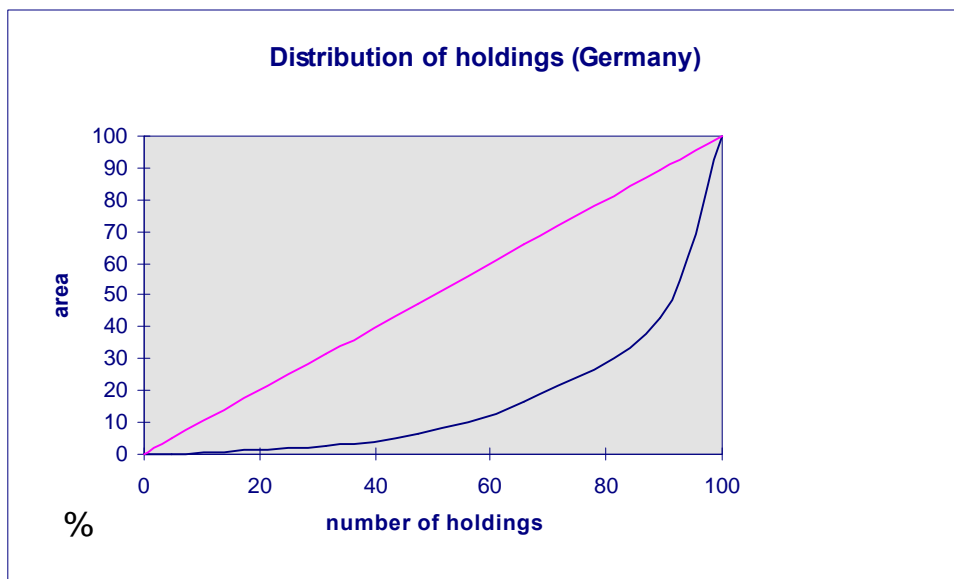
Gini Coefficient (Pakistan 1988): 0.67



Gini Coefficient (Argentina 1988): 0.83



Gini Coefficient (Thailand 1988): 0.42



Gini Coefficient (Germany 1993): 0.65

Source: FAO data material

3.7.1 Attempts at Agrarian Reform

Land reforms were implemented in many Asian countries immediately after independence. Land reforms with a strong redistributive effect in East Asia (Korea, Taiwan and Japan) were successful. The reforms triggered high production and income growth. They are the corner-stones of the current "East

Land reform in Asia

Asian Miracle." The success, however, is often coupled now with massive environmental problems.

In South Asia (India and Pakistan) land reforms only showed limited success. The main reasons were that the government only weakly enforced the reforms, and that powerful large land-owners developed successful opposing and avoidance strategies. Measures for improving the tenancy situation have weakened the traditional landlord-tenant relationship, however, they have not been replaced by new, more efficient institutions responsible for land allocation and use. The land reform measures in South-East Asia were also weakened and postponed due to a strong and powerful opposition.

FAO: Earth Summit + 5 Progress on the road from Rio

Land tenure reforms can have a very positive impact on land management. China and Vietnam, as well as several countries in transition, have begun allocating land to individuals and families. In several cases, production increases have been spectacular, and for the first time in a millennium, more trees are being planted than cut down.

Progress Report FAO, June 1997

<http://www.fao.org/waicent/faoinfo/sustdev/EPdirect/EPRe0029.htm>

"Green revolution"

Although not particularly an agrarian reform in the narrow sense, the so-called "green revolution" has had a distinctive influence on the agrarian structure. This introduction of wheat and rice species with a genetically high yield potential together with complementary inputs led to large increases in agricultural production in the irrigated regions of South and Southeast Asia. Additionally, technological change was triggered by the "green revolution" that had extensive consequences for the agrarian structure and widened the gap between "poor" and "rich." A new stratum of progressive, well-educated farmers evolved. They produced intensively and market-orientated on their larger farms. Due to the fact that more and more landlords started cultivating their fields themselves, many of the former tenants were dismissed. Many of the smallholders also gave up farming

and rented out their land, as they did not have any access to the new technologies at first.

In some African countries land and agrarian reform debates are presently key issues in political discussions. In southern Africa the form and extent of redistribution of land from large farms owned by former settlers must be clarified and the hunger for land of thousands must be satisfied with the transfer of power to the black majority. In Mozambique, the mismanaged large landholdings with degraded land not only have to be privatized, but land must also be distributed as equally as possible amongst war refugees. In addition, the claims for restitution of former Portuguese large landowners must be politically satisfied.

In East Africa the most comprehensive market-oriented land reform was accomplished in Kenya at the end of the colonial era already. After four decades negative effects can also be seen, for example, the underestimation of problems involved in managing the land register, the neglect of women's rights and new conflicts between crop farmers and livestock keepers. In Tanzania, the extensive suggestions of the "Land Commission" for reformation of the "Ujamaa" agrarian reform have met with strong reservations by the government and administration that have delayed the process.

In Francophone West Africa only Senegal has implemented an extensive (and controversial) land reform in the past that strengthened the village community's land allocation and policies. Recent approaches in Niger for the creation of a "Code Rural" have come to a halt since the last *coup d'état*.

In general, the reforms of land ownership in Africa have had less impact than those in Asia and Latin America in the past, but will have high priority in the future, especially in the SADC region. The most extensive socialistic approaches were carried out in Ethiopia, Angola and Mozambique. The experiences with a centrally planned economy and state property are well-known and usually depressing (poverty, hunger, forced resettlement and civil war).

The situation in most Latin American countries continues to be characterized by juxtaposed latifundias and minifundias. The latifundistas who control wide areas of land are very powerful economically and politically. The smallholders, tenants and agricultural laborers often do not have access to land or they have been forced to marginal sites. The Catholic church has supported the minifundistas in their attempts to exercise their

Land reform in Africa

Land reform in Latin America

rights for a long time, thus promoting land reforms "from the bottom" (*Justitia et Pax 1997*).

Agrarian reform was carried out in four countries of Latin America by the 1950's: Mexico (1915), Bolivia (1952) and Guatemala (1953). Cuba is an exceptional case as it underwent its third land reform already in 1994 as a result of "privatization" of governmental farms. Its first was in 1959 in which large governmental farms and production cooperatives were formed. Since 1961, further agrarian reforms were enacted in Chile, Ecuador, Colombia and Peru. The reform measures in Chile were rescinded in part after the military coup in 1973. Agricultural land was newly structured through allocation of private property returned to its previous owners and the sale of government lands.

All agrarian reforms in Latin America have been disappointing from the viewpoint of the "campesinos," since land was reclaimed by changing governments or juntas or watered down by bureaucratic measures, i.e. the creation of "valves" (agrarian colonization) and finally resulting in failure. In El Salvador, Nicaragua and Brazil the measures for agrarian reform were also implemented incompletely or inadequately. The Chiapas rebellion in Mexico since 1994 clearly illustrates the current land tenure dramas that are a result of attenuated land reforms in Latin America.

Land reforms in the Near East and the Maghreb countries

The first comprehensive agrarian reform law in the Near East was enacted in 1952 in Egypt by Gemal Abdel Nasser. After Syria's "unification" with Egypt and the new administration in Iraq which came into power through the revolution in 1958, both countries implemented land reforms with Egypt as their model. In the following years Iran (1962), North Yemen (1962) and Afghanistan (1975) enacted land reforms. While the expropriated landowners in these countries (with the exception of North Yemen) received compensation for their loss of property, its value, however, declined quickly from year to year due to inflation. In the North African countries (Tunisia 1956/57, Algeria 1962, Morocco 1962/66 and Libya 1970) land reforms were carried out in which the land owned by foreigners was expropriated without compensation and redistributed.

Table 3: Changes in the size distribution of land ownership in Egypt, 1951 - 84

Size of ownerships (feddans)	1951		1965		1984	
	% O	% A	% O	% A	% O	% A
Less than 5	94.3	35.4	95.0	57.1	95,2	53.0
5-10	2.8	8.8	2.5	9.5	2.5	10.4
10-20	1.7	10.7	1.3	8.2	1.3	10.9
20-50	0.8	10.9	0.9	12,6	0.7	11.9
50-100	0.2	7.2	0.2	6,1	0,2	.7,5
100 and over	0.2	27.0	0.1	6,5	0.1	6.3
Gini Coefficient (landownership)	0.611		0.383		0.432	
Gini Coefficient (landholdings)	0.715 (1950)				0.456 (1975)	
Note:	%O: Number of ownerships, percentage %A: Area of ownership units, percentage One feddan equals 1.04 acre, or 0.42 hectares.					

(El-Ghonemy 1990)

The political and economic fall of centrally controlled economies having rigid plan guidelines, state land ownership and forced collectives for agricultural production was not only limited to the successor countries of the Soviet Union (*cf.* 3.9.3). In these transforming economies the measures for divestiture of agriculture are still the focal point of the discussion. The complexity of land tenure issues are often too much for the legislature and the institutions responsible for implementation to handle. Divestiture is especially difficult since a market for secure property rights must be established. Privatization of state farms often opens up possibilities for private "land thieves" and for the state to make money, so privatization does not necessarily

Land reforms in the former socialist countries

Recent land reforms in socialist countries

mean that transparency, equal distribution and/or high productivity are the results (*cf.* 3.9).

If the privatization process extensively destroys farms, then the result may be "pulverization" of the farming structure. For example, very small farming units were created in Albania and Rumania that hardly appear able to survive. Correspondingly, attempts to consolidate the land and enlarge farm size exist.

Since the 1980's, socialist countries in Asia (China, Laos and Vietnam) have also begun reforming their agrarian policies and legal and regulatory frameworks. They promote the temporary transfer of land (long-term user rights) and family farms. In 1994, a market for land use rights was begun in China.

Eritrea on the other hand strengthens again the role of the government in control over land.

Land proclamation in Eritrea

"In 1994, the newly independent nation of Eritrea enacted proclamation No. 58/1994, known as the Land Proclamation, a major piece of legislation concerning land tenure and administration. The Land Proclamation represents a fundamental redesign of land tenure in the country. Based in part on the perception that existing customary systems are impeding progress in the agricultural sector, the Proclamation vests ownership of all land in the government, and provides for the issuance of usufructuary rights or leaseholds over land to individuals. The state, in short, rather than the clan or the village, is now the source of all land rights.

(Lindsay & Gebremedhin 1997)

National governments

3.7.2 Influence of National and International Interest Groups

Various groups are identifiable having differing interests in agrarian reform measures.

Representatives of the government often do not believe that smallholders would be able to cultivate fertile land productively with modern methods. In addition, administrations are often dominated by large landowners (*cf.* 2.1.2). National governments also fear that if decentralization occurs too quickly, then the unity of the country may be threatened. Therefore, they attempt to assign as little responsibility as possible to the provincial and

local levels with respect to land allocation and land management. In many countries no continuity in agrarian reforms is guaranteed due to the rapid changes in administrations. The implementation of the measures is often too much for the bureaucracy. Only strong administrations are in a position to put through unpopular measures. All of these complications make it more difficult to reach the original goals of agrarian reforms.

The local and regional governments are especially interested in having more power in the decision-making process and more financial autonomy. However, if governors of the provinces are appointed by the central government and the central government can also award land concessions in the province, then the actual influence of the local and regional governments remains very little. Key persons can gain personal benefits through their "gate-keeper" function.

"International capital" is comprised of a very heterogeneous mixture of sources, thus generalizations are not possible. Investors expect a coherent, transparent and market-friendly administrative and legal framework for their involvement. An uncertain legal status (duration of a lease and rights obtainable through legal action) may prevent foreign investments (e.g. in Mozambique).

The international donor community is also a very heterogeneous group that in general, has internal coordination problems. They consider land policy reforms to be an important goal in many countries (see Agenda 21, World Food Summit). At the same time, however, land tenure issues, especially the successful implementation of their objectives, is an extremely complicated and politically sensitive matter since they affect the basic rights and the sovereignty of partner countries. Bilateral donors have limited possibilities to influence, for example, policy dialogue on land reforms. Multilateral donors, such as the World Bank, for a long time strictly imposed their policy without giving space for a dialogue. A critical examination and a new evaluation thereof have been going on for the past two years in conjunction with the FAO and IFAD (*Binswanger 1996*).

Large landholdings may be either agricultural enterprises with a modern management or "haciendas" with vast partly fallowing estates. Efficient farms using modern technologies are interested in market-oriented institutions, promoted exports and low taxation. In other cases, owners are absentee landlords

Local and regional governments

International capital

International donor community

Large landholdings

having only little interest in the cultivation of their land or any change of the status quo.

Commercial / progressive farmers

Commercial or progressive farmers are extremely interested in technological progress. They utilize governmental and private support institutions and they cultivate their land efficiently. The farmers are becoming increasingly engaged in the political representation of farmers, especially in Asia (members of parliament, founding of peasant/farmer associations) in order to influence agricultural policy to their benefit. The flexible adaptation strategy of their farms is supported by a dynamic land market.

Smallholdings

The category of smallholdings is a very heterogeneous one. Smallholders have different interests concerning land markets and registration. There is the hill farmer who feels his land threatened by erosion; and the farmer in the Sahel region whose interests conflict with those of nomads. In the suburban areas there are highly specialized, successful exporting horticultural enterprises (i.e. cut flowers), whose existence is questioned by non-agricultural interests (transformation into land for construction). Finally, there are smallholders with a vanishing interest in farming. Usually smallholders lack the power to influence politics. Farmers' organizations to put pressure on their objectives to enlarge their holdings are still missing in most places.

Tenants

The category of tenants is a heterogeneous one too. It is necessary to distinguish between different forms of tenancy (e.g. sharetenancy, cash tenancy). Tenants are interested in high leasing security and a rent which is foreseeable. In many areas the tenancy relationship is not the only relationship between land owner and the tenant, but rather a bundle of relationships exist (e.g. credit, labor and loyalty services). Tenancy is usually neglected in the course of agrarian reforms.

The landless

The landless have high hopes for agrarian reforms. In the past years the number of landless has grown in rural areas. They often do not have any alternative employment possibilities other than as seasonal agricultural laborers. In Brazil the landless have shown that their organizational potential has grown, for instance with their march to Brasilia. Historically, most governments have omitted the landless in their agrarian reforms since they not only need land, but also working capital and equipment. In general, the administrations did not find themselves in a position to finance these.

Urban investors

Urban investors are interested in buying up land without being subject to many limitations. They use the land as a place for

retiring in old age, as investment objects or for speculation purposes. In the process they are interested in deduction possibilities and non-taxation of land. They also purchase agricultural land as a financial investment; they invest in machines and irrigation and hire a market-oriented farm manager.

The number of NGOs has increased tremendously in the past years (for example, there are more than 100 NGOs in Mozambique), and they have become more influential in some countries (Bangladesh, Philippines and India). Amongst them are many church-affiliated NGOs. In general, they try to protect the rights of the smallholders and the landless. They also attempt to improve attention of the media to land tenure issues and at the same time offer financial, organizational and legal support for these groups. Many local NGOs are interwoven with the international NGOs and are involved in cooperative activities. The more effective the NGOs are, the stronger is the antagonism of the administration which can result in active oppression of these organizations.

NGOs

3.7.3 Causes for Failing of Land Reforms

The causes for the failing of land reforms can be very complex. Some of the reasons are massive problems in the implementation and parties that impede or oppose the reforms. A key question is always from where the land for redistribution comes.

State-owned land can be redistributed to landless and smallholders (e.g. in Ethiopia or on the Philippines). In some countries the government bought privately owned land following the "willing seller, willing buyer" principle and redistributed it to individual users (e.g. in Zimbabwe or in Mexico). This principle was for instance applied to land of large landholders who could pay off their tax debt this way.

Registration of unoccupied land

In many countries it is difficult to find unoccupied, "free" land for redistributing activities. For this reason land owned by the military or churches or land previously purchased from large landholders was adjudicated in Brazil to be redistributed.

On the one hand, it usually is easier to provoke the "voluntary" sale of land by threatening with a land reform than to undertake expropriations with compensation; on the other hand there are a lot of possibilities for attenuation of this process. Often only land of inferior quality is sold or fake deals are made with relatives.

Sale after the threat of reforms

Expropriation

In many agrarian reforms extensive expropriation of private property was planned, but with the exception of agrarian reforms in socialist countries these were commonly not fully executed. In all other cases expropriations were only carried out with compensation (*cf.* 3.7.4). An upper ceiling is set for the landownership and exceeding property is expropriated. This ceiling determines the extent of the redistribution of land and is a rather political decision. In some cases the ceiling is lowered step-wise.

Implementation problems

The large landholders affected by the agrarian reforms will use their influence extensively to impede, undermine and weaken the implementation of reforms. The major problems regarding the implementation are the following:

- Unsatisfactory financing for ambitious land reform programs (lacking financial resources for purchasing of land or for compiling a new land register).
- Unclearly formulated land laws and regulations or ad hoc legislation (e.g. in Tanzania) produce lengthy court trials delaying the reform.
- Uncertainties about existing land rights. Often land registers are on a very basic level or not at all in existence. Endless trials and revisions are the result.
- Unsatisfactory competence of the administration for the implementation of the reforms and insufficient and often changing personnel.

Corruption of civil servants on all levels

Modifications in the political balance of power (e.g. in the parliament);

Lack of ability of weak governments to assert themselves and enforce land reform laws.

Opposing activities

Attempts to resist the effects of reforms are made on every level. As a rule, the result of this is that the success of the reforms is much lower than the high expectations. When the political balance of power is modified, then a reform reversal may occur if there is a fast change in the administration. An example is the military coup in Chile in 1973 which led to the restitution of land to the former owners.

Opposing powers of agrarian reforms in latin america

In Mexico, governments after Cardenas underwrote the demanding industrial sector in cities and the commercial farming sector. Sometimes this compensatory treatment is politically justifiable. When Guatemala's Arbenz left out cities in his zeal for agrarian reform, urban dwellers united in a coalition that helped reverse this oversight. In Chile, much of the reaction against Allende came from the urban middle class, which tired of bearing what it perceived as the inflationary price of agrarian reform. Although the political cost of ignoring an outspoken urban group in the course of land reforms is usually high, the economic cost of satisfying urban and rural sectors concurrently is usually astronomical. Another important technique that governments used to neutralize reforms was economic populism. To pay up-front costs of reform and attendant welfare expenses elsewhere in the economy, without matching expenditures with savings and with a cavalier attitude towards foreign exchange reserves, governments fueled inflation. This harmed the beneficiaries and all but devastated the nonbeneficiary rural poor, for whom inflation was a body blow. There are two recent cases where land reform played an obvious role in economic populism: the end of Allende's rule in Chile and the late 1980's in Sandinista Nicaragua. In both countries, agrarian reform was an important part of the programs aimed at assisting the poor; in both cases, hyperinflation flared as savings fell far short of expenditures.

(Thiesenhusen, 1996:108 f).

3.7.4 Conditions for Successful Agrarian Reforms

It is important that agrarian reforms be implemented quickly to be successful. If the implementation drags, then the speed with which the reform continues usually decreases as opposing activities increase. Those opposing the reforms then attempt to water down the measures more and more.

As a rule, compensation in the case of expropriation is planned. However, the actual amount is a political issue which depends upon the government's power and ability to implement the reforms. If compensation is very high, it can burden the government financially. Therefore, it is rarely paid at one time. The expropriated often receive public bonds to be used to pay taxes or to purchase industrial stocks. (They often lose value due to inflation).

It is often attempted to bring the rate of the compensation into balance with the purchase price that the beneficiaries have to pay for their "new" land. However, the rates of the purchase

Quick implementation

Compensation in the case of expropriation

Land tenure and land ownership reform

price cannot be too high, otherwise the liquidity and the prescribed "correct" cultivation will be limited.

Reforms of land ownership are necessary for the elimination of large landholdings and to change the power structures in rural areas, but they are not sufficient. Land management measures which accompany the reforms such as improvements in land cultivation are imperative for reaching the goals like an increase in production or the increase in the contribution to the market. The following are a sample of the measures:

- Improvement in extension services,
- Making credit available,
- Improvements of marketing structures,
- Access to factor markets (labor and capital) or
- Access to product markets
- Reform of complementary resource tenure legislation (e.g. water laws).

Increase in production

An increase in production can be expected in the long term after agrarian reform has taken place. In the initial phase of a redistribution, the "new farmers" often lack experience in farming. Increases in production can be expected especially if land management reforms accompany the land ownership reform. Better legal security can also contribute to an increase in production.

Successful land reform in Taiwan

An egalitarian land reform, rapidly implemented and combined with the diffusion of technology and the provision of service met with great success. Taiwan's land reform (including the service organization "Farmers' Associations") is considered to be the most successful of all land reforms aiming at solving the problems of the time. Within a few years, instead of food imports, the country started to export food products. In the absence of any noteworthy industry, the next step, supported by trade liberations and the devaluation in 1958, was the production and export of labor-intensive specialized agricultural products (mushrooms). The unimodal agricultural development maximized the intersectoral linkages and stimulated the growth of small-scale industries for labor-intensive exports (textiles, etc.), thus creating off-farm employment.

(Kuhnen 1996)

3.8 Settlement and Resettlement

Settlement and resettlement refer to the planned transfer of people to areas, the agricultural potential of which has not been fully utilized. Settlement and resettlement involve projects designed to gain land through irrigation, drainage or clearance of forest, and projects designed for land use intensification by dividing extensively used large landholdings into smaller units. These projects occur spontaneously or through promotion by the government.

Spontaneous settlement is initiated by the settlers themselves and is carried out without support by the government. Spontaneous settlement in rural and urban areas often follows governmental road construction measures (to give access to new areas, e.g. Transamazonia). In rural areas this type of settlement takes place on governmental forest areas as well as on poorly utilized large private landholdings. These settlements frequently do not have an appropriate legal status and are often found on marginal land. Lawlessness and a high risk of expulsion lead to rapid exploitation and soil degradation in many cases. Measures for sustainable transfer of land in spontaneous settlements on government lands after the fact are being undertaken in some countries.

Spontaneous settlements

Settlement programs supported by the government

The "Kampung Improvement Program" in Indonesia is an example of this in urban areas, and the improvements to the informally created hut-settlements are an example on the outskirts of towns in Latin America. Access to roads and to water and electricity supplies are subsequently provided as it is the legalization of the land which was occupied.

In many countries settlement programs supported by the government or private sponsors are implemented; they are often very complex and costly measures. The cost for the Indonesian transmigration program is estimated at approximately US\$ 10,000 to US\$ 12,000 per family. Large-scale settlement programs often implemented together with dam projects are increasingly being disputed (Volta River Project in Ghana, Aswan Dam in Egypt and the Three Gorges Dam in China).

These settlement programs covering large areas are declining in importance as less and less potentially suitable land is available, and environmental aspects and the acceptance of indigenous rights oppose development of tropical rain forests. The relatively high costs for implementation and service are also too much for many countries. An effective alternative to the complex settlement programs with respect to cost and organization is the combination of spontaneous settlements with the flexible approach "Plan as you proceed" (for example, settlement of the Buginese from South Sulawesi in South Sumatra, Indonesia).

Examples for successful settlement projects and for those which have failed can be found. Many elements of these programs can act as risk factors. Therefore, the land tenure conditions must be clarified, so that in settlement areas no competitive groups can claim the land, pasture and/or tree rights. In the Côte d'Ivoire, for example, the government nationalized cropland and forest areas within a settlement program and made the land available to new settlers disregarding the rights of local groups. Since the new settlers received the user rights provisionally, a "double" legal uncertainty was created, i.e. for the indigenous and for the migrants.

Goals of governmental resettlement programs

The goals range from accommodating flood victims to creating better living conditions for the homeless in urban areas (see box below).

Potential goals of resettlement programs

- Reduction of population pressure (from Java to Sumatra and outer islands),
- Even out regional disparity,
- Economic development, new options
- Enable groups of landless to have access to land and productive resources (Kenya, Brazil, Zimbabwe),
- Reward for soldiers and veterans (Ethiopia, Angola),
- Settling nomads,
- Enable political refugees, those affected by natural catastrophes or former civil war soldiers economic and socio-cultural alternatives for their future (Mozambique),
- Securing and increasing food production,
- Developing new land,
- Creating new employment opportunities,
- Integration of ethnic groups within the framework of "nation building",
- Strategically securing border regions,
- Aversion of land reform (Brazil).

Many problems exist with resettlement measures. The following are among the most important: the selection of settlement sites, the selection of settlers, land suitability and environmental impact, the financing of the settlement projects, the minimum farm size, the financial share to be paid by the settlers, the support services to be made available and the legal situation such as not taking existing rights of indigenous groups into consideration and issuing the new land titles.

Problems with the resettlement measures

3.9 State Divestiture

3.9.1 The Meaning of State Divestiture

Divestiture is a generic term for worldwide macro-economic reform processes having the goal of reducing the degree of direct governmental influence on agriculture, industry and the service sectors and allowing market forces to become more effective.

Divestiture occurs through structural adjustment programs which were started in the 1980's in a growing number of Latin American and African countries under the supervision of the International Monetary Fund and the World Bank. The programs comprised the currency devaluation and the reduction of trade interventions with the help of fiscal and monetary policies

What is divestiture?

Structural adjustment and reforms of the institutional environment

and the dissolution of inefficient and oversized public sectors to the benefit of private sectors. Liberalization was not limited to product markets, but also included the creation and increased efficiency of land and other factor markets. This required reforms of the institutional environment, especially of land tenure systems.

Transformation processes

With the fall of the former Soviet Union and the "Second World," a profound restructuring process took place for a further group of countries in the economy and the society "from plan to market" (*World Bank 1996*). An economic order based on central government planning gave way to a new order with a decentralized market economy. For many African countries, the former Soviet Union and Indochina, this meant a totally new legal and regulatory framework: separation of powers, new land, contract, family and inheritance legislation and the implementation of this framework on the regional and local levels.

Family farms and secure ownership and user rights

The dissolution of large state landholdings with wage earners and productive cooperatives (LPG in the former GDR, kolkhozes) enforces the family farm as one model besides others (autonomous cooperatives, agro-industries). Its success as an economic form and way of living depends on secure ownership and user rights to land, either as registered private property or through permanent user rights which can be bequeathed (e.g. hereditary tenancy) or other forms of lease (fixed lease with a monetary or labor payment or as shareholding). Thus, the organization of land cultivation and land tenure reforms are interwoven with one another and cannot be divided.

Cooperation in agriculture and land tenure

Though family farms are favored by many governments as the most suitable organizational form of land cultivation, the people especially in the former socialist countries fear competition in a free market economy and the many and diverse risks associated with entrepreneurial activities. Correspondingly, cooperative forms of production, marketing, supply and credit remain attractive for them despite the discreditable concept of the cooperative by forced collectivization. Too little has been publicly discussed to date whether the new creation of registered private property is really a necessary prerequisite for households and/or farms willing to work cooperatively (supporting cooperatives) or whether also certain long-term lease conditions can be offered to families who leave the collective to become self-employed. This would be possible, for example, in Russia within the current legal framework and without the necessity to wait for the lengthy

process of decisions concerning the introduction of private property together with the appropriate administration (*see as well 3.10.2*).

The decision makers as well as the rural population in countries undergoing transformation and reforms fear the distributional effects and the social consequences of deregulated land markets. Large-scale land speculation, land concentration, total sale of land to powerful urban groups, and landlessness are feared. As a result, most governments favor strong social ties in property ownership. This is manifested not only in the fact that state reservation of title of property and land remains in existence, but also in prohibitions and restrictions of sale and leasing or prohibiting the sale of land to foreigners. Parallel, "gray" markets are tolerated as a result.

Restitution of landed property to former landowners and users is of central significance in the transformation process not only for the German reunification, but also for other countries undergoing transformation in Central and Eastern Europe and in some developing countries. Due to the socio-politically explosive nature of this core question, the majority of the parliaments and governments decided on a very restrictive approach keeping the circle of beneficiaries small.

**Governmental influence
on the development of
land markets**

**Restitution and
compensation for former
landowners**

Table 4: Agricultural land privatization: restitution and distribution

Country	Restitution in historic boundaries	Free distribution to workers and members of co-operatives	Small farms:	Medium farms:	Large farms:
			Under 5 hectares	< 100 hectares	over 100 hectares
(in percent)					
Czech Rep.	Yes	No: sale and lease	1.3	5.3	92.4
Slovakia	Yes	No: sale and lease	2.4	1.9	95.7
Hungary	No: vouchers		22	20	58
Poland	No	No: sale and lease	14	63	23
Slovenia	Yes	No: lease only	47	46	7
Albania	No	Yes	~95	~2	3
Bulgaria	Yes	No: lease/use right	30	6	64
Romania	Yes	Yes and lease	~45	~10	~45
Estonia	Yes	No: lease only	25	15	60
Latvia	Yes	Yes and lease	23	58	19
Lithuania	Yes	No: sale and lease	33	32	35
Belarus	No	Yes: land shares	15	1	84
Kazakstan	No	Yes: land shares	0.2	4	96
Russia	No	Yes: land shares	4	5	91
Ukraine	No	Yes: land shares	13	2	85
<i>Selected EU Countries</i>					
UK			0.5	35	65
France			1.7	72	27
Italy			21	56	23
Greece			35	62	3

Source: OECD 1996:146

Return to principles based on the rule of law

Independent of the country-specific path and the instruments used for divestiture, the actors involved are striving towards regulations based on rule of law for the transfer of land and in the case of conflicts and changes of its use. Key topics include the following: heeding the separation of powers, criteria set by

the administration which are comprehensible for the public for deciding on land distribution, price determination, taxation, etc. (*cf.* 2.2).

In many countries such as Ethiopia or Cambodia which have seen the most different dictatorships and political regimes come and go within a generation, however, the people are not acquainted with attested rights uninfluenced by arbitrary rulers.

The new designing and redesigning of the legal and regulatory framework are used to create consistent regulations valid not only for the access and use of land, but for all other economically usable natural resources as well. This resource legislation is supposed to optimally record the diverse interdependencies between different resources (e.g. agroforestry, agriculture in conjunction with pastoralism, irrigation agriculture or preservation of biodiversity and agricultural production), to consider the environmental impact and to attribute the impact to the responsible parties. This enables the sustainable use of resources for the following generations. National and regional environmental and forestry action plans, developed as a result of the UNCED process, support the realization of the new approach. The discrepancy between the complex lead models and implementation in reality is considerably large, however.

**State divestiture,
resource rights and
sustainability
(Agenda 21)**

3.9.2 Forms of Divestiture and Privatization

Key elements of divestiture are the privatization of land or the returning of land into the community's hands, building up an economic incentive system with functional markets, defining the new role of the government in agricultural and land policies, and the successful implementation of the institutional changes on all levels.

Agricultural estates belonging to the state are not only being disbanded in the follower countries of the former Soviet Union, but also in Africa, Asia and Cuba. Since the land belongs to the state, it must be clarified whether long-term user rights should be issued or if the land should be sold to shareholders. It is imperative that decisions be made quickly as many estates are in poor farming condition with a probable meager harvest. Therefore, clear legal property incentives are a necessary prerequisite for every investor.

**Dissolution of state farms
in transforming countries**

The performance of socialist agricultural production cooperatives is being critically evaluated *ex post*. Correspondingly, a disintegration and partial privatization process has taken place

**Production cooperatives
are beginning to
disintegrate**

worldwide. The reasons for this, the lack of efficiency and the unwillingness to work, are seen in the "free rider" argument and in the high costs for the coordination and control of labor (transaction costs).

Re-privatization in Ejidos, Mexico

One of the oldest land reform movements was partially curtailed due to the agrarian law passed in 1992 in Mexico. Mexico had to fulfill the economic and technological demands for an unimpeded export-oriented production on deregulated product and factor markets following its membership in the GATT and newly founded free trade zone NAFTA. To achieve this, the strong restrictions placed on the transfer of privately used Ejido land were repealed (bans on sale, lease and loaning of land) which were originally designed to make the return to a "latifundismo" more difficult.

Privatization of Ejidos, Mexico

"The reforms of 1992 had two main objectives: (1) undermine the social sector formed by *ejidos* (and indigenous *comunidades*) by allowing their properties to enter the land market; and (2) to encourage private properties by enlarging the limits to the size of holdings and by creating a new type of owner, stockholder firms (*sociedades mercantiles*). While individual plots were favored with flexibilities in size, stockholder firms may own up to twenty-five times the individual limit. As a consequence the flow of land now has a different direction: from the social sector to the private sector."

(Toledo 1995, in: Thiesenhusen 1996:32).

Markets for land use rights

Countries which shun establishing private property take a different country-specific route to at least secure the temporary transfer of land by newly codifying the land use rights. Secondary rights also play an important role such as hunting, gathering, trespassing and compensatory rights for use by third parties. The importance of these with respect to economic efficiency and social security is often underestimated.

Problems with re- acknowledging indigenous communal rights

Within the transformation process a legal acknowledgment of autochthonous authorities and regulation mechanisms for the allocation of land is demanded. In the case of conflict, the connection between land, forest, water and environmental legislation and their implementation in villages, communities and regions is required. The difficulty in coordinating the individual

approaches through horizontally and vertically integrated solutions such as the creation of prerequisites for financial autonomy of the regional authorities is often underestimated. In addition, the efficiency of communal systems of resource management depends clearly upon variables and processes specific to the group like homogeneity and group size, degree of dependence on the resource for subsistence, previous experience with cooperation in other areas, leading personalities as catalysts and the ability to make physical boundaries for pasture areas, forests or watersheds (*Ostrom 1992*).

3.9.3 Land Legislation Reform

Consistent systems of land legislation are the basis for flexibility and adaptability of land tenure and dynamic industrial development as well. These are a big challenge for governments. The following must at least be integrated into the system:

- Property rights systems (private, state and communal property),
- Resource tenure legislation (laws on land, water, forest, biodiversity),
- Trade and social rights, including investment and foreign trade legislation,
- Contract law,
- Family law and law of inheritance,
- Community law,
- Tax law,
- Autochthonous law ("customary law"),
- Independent judiciary and administration of justice,
- Fundamental aspects.

Complexity of the framework for the land legislation

Every government must, therefore, make very similar decisions with respect to the need for regulations of:

- Degree of limitations on private property,
- Degree of regulating the land market,
- Restrictions on lease relationships,
- Treatment of foreign investors,
- Amount of land which can be accumulated,
- Role of land in obtaining a mortgage,
- Type of integration of autochthonous law,
- Gender equality,
- Securing an independent judiciary and law enforcement.

Only an overview of the problems based on these points can be given below.

Opposition to private property

Many reforming and transforming countries have not yet acknowledged (or re-acknowledged) registered private property of land as a fundamental system of ownership despite far-reaching liberalization of the economy (Uzbekistan, Vietnam, Ethiopia, Angola, etc.). This is officially due to the foreign nature of the "imported" characteristics of this institution (e.g. Africa). These countries are searching for appropriate land tenure institutions themselves.

Threatening conflicts over land distribution

A latent danger of increased land concentration, an increase in inequality of the distribution of wealth or the smoldering ethnic conflicts over land are the causes of the problem. "We cannot privatize land. We have seen people take up arms for it." (Statement in the Land Tenure Workshop in Uzbekistan, see *Eckert & Elwert 1996:53*).

Ideological reservations

The listed reservations are explainable ideologically as the "socialization" of private property was always at the center of socialistic revolutions. Since the current administrations of many reforming countries continue to be represented by the same political power that was also responsible for the socialist system (Ethiopia, Benin, Laos, Uzbekistan, etc.), the return to private property would throw out the traditional models which were a source of identity for the society and it would render the policies of the past illegitimate.

Lack or destruction of land register information

Private property requires a functional land register system (*cf. 3.10.2*). In many developing countries such a system has only

been established for urban agglomerations, and they are rarely updated. After revolutions, land registers were manipulated (Benin or Nicaragua) or in part systematically destroyed (Cambodia). Thus, high costs for reestablishing the land register arise for the national economy and many countries do not wish to pay such transaction costs.

All reforming and transforming economies have established permanent land use rights in their constitutions or land laws in the recent past. These use rights are transferable to a large extent. Even where registered private property is not permitted, selling and buying land are factually possible and tolerated. The temporary private use of (state) land is regulated by a broad spectrum of forms of leasing, heredity, gift giving or renting. This land is very similar to privately owned land concerning the flexibility for transferring and, therefore, offers great opportunities for dynamic economic and sectoral change.

The obsession of exaggerated accuracy for detail in the process of formulation of the land rights leads to inconsistencies. This occurs especially in the traditional "control and command" state (e.g. Laos, Cambodia, Uzbekistan). Laws assume the character of ordinances in this process that have been used in the past dictatorship for ruling their people. This accuracy limits the individual scope of decision making and action and impedes quick economic and social change.

Countries like Laos or Cambodia that have relied extremely on external legal and economic advice during the transformation process are, once again, subject to the danger of unverified adoption of "out-of-culture" concepts for land rights and regulations concerning family law and law of inheritance. Western concepts may possibly contradict autochthonous or Islamic regulations.

Since countries are mainly pursuing the goal of strengthening family farms with the allocation of leased land once in the hands of the state or production cooperatives, deciding on the minimum amount of land required or the maximum farm size to prohibit land accumulation is necessary. No conformable solutions are possible as it depends on the "man-land ratio" in a specific area, the proposed farming system, the land capability and the availability of water and the distance from urban markets.

The design of tenancy relations is one of the most sensitive areas of reform. Often, the lease conditions are different for

Heritable permanent use rights a necessary alternative / supplement

Inconsistencies in overloaded books of laws and isolated reforms

Contradictions due to uncritical adoption of Euro-American legal tradition

Upper and lower ceilings for the new distribution or redistribution of land

Reformed tenancy systems

different situations such as when the state leases land to either family farms, cooperatives or agricultural industrial businesses or between private land users. Since the reform in Vietnam, land for annual crops is leased for 20 years and land for permanent cultures for 50 years (*Hayami 1994*). Therefore, leaseholders have a longer planning horizon and can implement soil improvement measures.

Complementary promotional services

To achieve this especially in the post-socialist countries, complementary access to working capital, machines, credit and advisory services must be certain. Many of these services were provided in the past by the state cooperatives which have been dissolved. Strong dependence has remained, however. Independent farming is hardly possible; families often do not even strive towards it during times of upheaval. Land redistribution and the new design of leasing are not very effective without accompanying agricultural policy impulses.

Table 5: Major features of land policy in the former Soviet Union

(excluding the Baltic states) (Csaki & Lerman 1996)

Country	Land distribution procedures	Restrictions on size of holdings	Buying and selling of land
Russia	<p>All rural residents get land for household plots: privatization of household plot</p> <p>Land of collective and state farms is privatized by distribution of land shares to members and workers, including pensioners and employees of social services</p> <p>Land withdrawn from collectives by individuals exiting with their land shares to start a private farm</p> <p>Free basic allotment of privately owned land allocated from state reserve to any citizen who wishes to start a private farm</p> <p>Leasing of state land above the privately owned allotment</p>	<p>Size of subsidiary household plots limited by local conditions (usually 0.6 - 1 ha)</p> <p>Cap on free privately owned land in private farms based on the "district quota" (ratio of land to number of beneficiaries in each district), ranging from 20-200 ha: excess land can be leased or purchased without limit</p> <p>Ten autonomous republics of national minorities do not recognize private ownership of land</p>	<p>No moratorium on land sales by Presidential Decree of Oct. 1993; permanent legislation specifies 10-year moratorium (except for household plots)</p>

Country	Land distribution procedures	Restrictions on size of holdings	Buying and selling of land
Ukraine	As in Russia	Subsidiary household plots limited to 0.6 ha privately owned land, 1 ha total Caps on free privately owned land in private farms based on the "district quota"; private farms limited to 50 ha agricult. land, 100 ha total	6-year moratorium on land sales (except household plots); during the moratorium alienation only to land authorities
Moldova	As in Russia, but land shares also allocated to the non-farming rural population (February 1995 amendment)	Household plots limited to 0.75 ha Land may be withdrawn from collectives in massifs not smaller than one whole "crop rotation field" (Feb. 1995 amendment)	10-year moratorium on land sales
Belarus	Privatization of household plots All land for commercial farming remains state-owned, and farms only get use rights	Privately owned land limited to 1 ha Private farms on leased land limited to 50 ha arable land, 100 ha total	Lease rights not transferable
Armenia	All arable land distributed in private ownership to former collective members and non-farming rural population Pastures retained in state ownership		
Georgia	Half the arable land distributed to households, but all land remains state owned. Draft land code recognizing private ownership is debated in Parliament (mid-1995) Most pastures intended to remain in state ownership	Draft land code prohibits excessive fragmentation of land by imposing a minimum size of holdings	
Azerbaijan	All land remains state-owned No significant land reforms, except augmentation of household plots Land privatization program based on Russian-Ukrainian model Most pastures intended to remain in state ownership		

Country	Land distribution procedures	Restrictions on size of holdings	Buying and selling of land
Kazakstan	All land remains state-owned Land distributed for augmentation of household plots and allocated to independent private farmers		Individual and collective use rights fully marketable (April 1994)
Kyrgyzstan	All land remains state-owned Land distributed for augmentation of household plots and allocated to independent private farmers Constitutional amendment recognizing private ownership submitted to Parliament (Feb. 1995)		User rights secure for 49 years and fully marketable (Feb. 1994)
Uzbekistan	All land remains state-owned Land distributed for augmentation of household plots and allocated to independent private farmers Constitutional amendment recognizing private ownership submitted to Parliament (Feb. 1995)	Maximum size of private farm determined by local conditions (availability of irrigation, etc.)	Alienation only to local land authorities
Turkmenistan	Private ownership of land allowed by 1992 Constitution Virtually no land reform, other than augmentation of household plots and incipient private farms; formal "reorganization" of collective farms into "farmers' agglomerations"	Maximum size of private farm determined by local conditions (availability of irrigation) Fragmentation through inheritance below a "productive minimum size" prohibited	Alienation only to local land authorities

Regulations for private leasing

Negative experiences have been made with the overregulation of landlord-tenant relationships. Minimum standards for lease contracts, however, have proven to be effective instruments in the strengthening of legal security. The following are examples of the standards: contracts put in writing or clear witness regulations, minimum lease duration, clear determination of the responsibility of the landlord and the tenant and the way of payment. This is also valid for all other private legal contracts involving the transfer of land (mortgage, inheritance, sale, etc.).

African and Asian countries fear, often mistakenly, too low production incentives and especially a polarization of the distribution of wealth in the case of land leasing, and thus laws prohibit particular leasing forms including shareholding. Leasing prohibitions lead inevitably to parallel "gray" markets increasing the risks for both landlord and tenant.

Parallel markets due to lease prohibitions and limitations

Governments have had to clarify whether the restitution issue belongs in the constitution, i.e. on which level decisions dealing with restitution should be made (laws, ordinances, etc.) in controversial debates. In Laos and Cambodia, a deadline has been set after which the claims can be sought. This results in land expropriated immediately after the socialist upheaval in the 1970's not being amendable. In addition, political refugees are often omitted from the group allowed to make claims. Especially the influential, but also returning emigrants willing to make investments have attempted to politically influence legislation to their benefit. Offers for compensation are often unattractive for old owners considering that the public purse is empty. Nicaragua attempted to generate funds by selling state farms. In Germany, the debate has come up again in February 1998 if land in the former GDR which was expropriated by the Soviet military government between 1946 - 49 should be restituted.

Dealing with restitution claims

When expropriation and collectivization are also connected with far-reaching resettlement of the rural population such as in Ethiopia and Tanzania, then all attempts of any kind to return to the pre-revolutionary status quo are an illusion.

Dealing with those who were forced to resettle

In most law codes on land tenure considerable importance is placed on the ability of the government to claim land which is privately used for a "superordinate public interest". This type of expropriation is possible when land is being used "inefficiently" or "incorrectly." It is, of course, hardly possible to determine if such a case is being presented. In Uzbekistan lower public servants and unfortunate neighbors start such lawsuits supported by money for corruption.

Possibilities of expropriation for a "superordinate public interest"

The range for dealing with autochthonous law is wide; the reforms can be distinguished as "replacement reforms" and "adaptation reforms." (*Bruce et al. 1995*). While the former attempted to replace autochthonous law in Africa, reforms in individual countries are now intentionally building upon autochthonous law (e.g. Niger, Botswana, Gambia and Senegal). However, if customary rights are written down or otherwise deter-

Dealing with "customary law"

mined (restatement), their flexibility may be lost and what is enshrined in the laws is only the momentary current status.

Adaptation reform models

"Adaptation reform models, while not idealizing indigenous tenure systems, attempt to build upon them. They recognize the considerable capacity of those systems to evolve to meet new social and economic challenges, and seek to create a supportive legal and institutional environment for that evolution. That environment is generally thought to include explicit recognition of the applicability of indigenous tenure rules, strengthening of local institutions to administer those rules, and provision of appropriate means of dispute settlement. Adaptation anticipates the need to reform specific elements in those systems, both particular rules and institutional arrangements, but emphasizes the need to create democratic processes within local communities to facilitate self-reform rather than imposition of reforms through national law. It emphasizes incremental change."

(Bruce et al. 1995:4)

Autochthonous law has been kept alive not only in Africa and in parts of Asia, but in the follower states of the former Soviet Union in the minds of the people and through secret implementation. In the majority of the cases, however, it is dealt with on the side or ignored when new systems of land tenure are formulated thus allowing potential conflicts.

Land tenure within a broader legal framework

If land is to be transferable completely, then, as explained above, a legal framework is necessary in which all legal areas are coordinated and integrated with one another. Laos is an example of a country which has attempted to construct a consistent framework of resource rights within a short period of time which meets the said requirements.

Securing credit

Since the use of land for (bank) securities historically often has led to a one-sided benefit for the creditor, to expropriation and landlessness, many administrations have an ambivalent attitude toward securing credit with land.

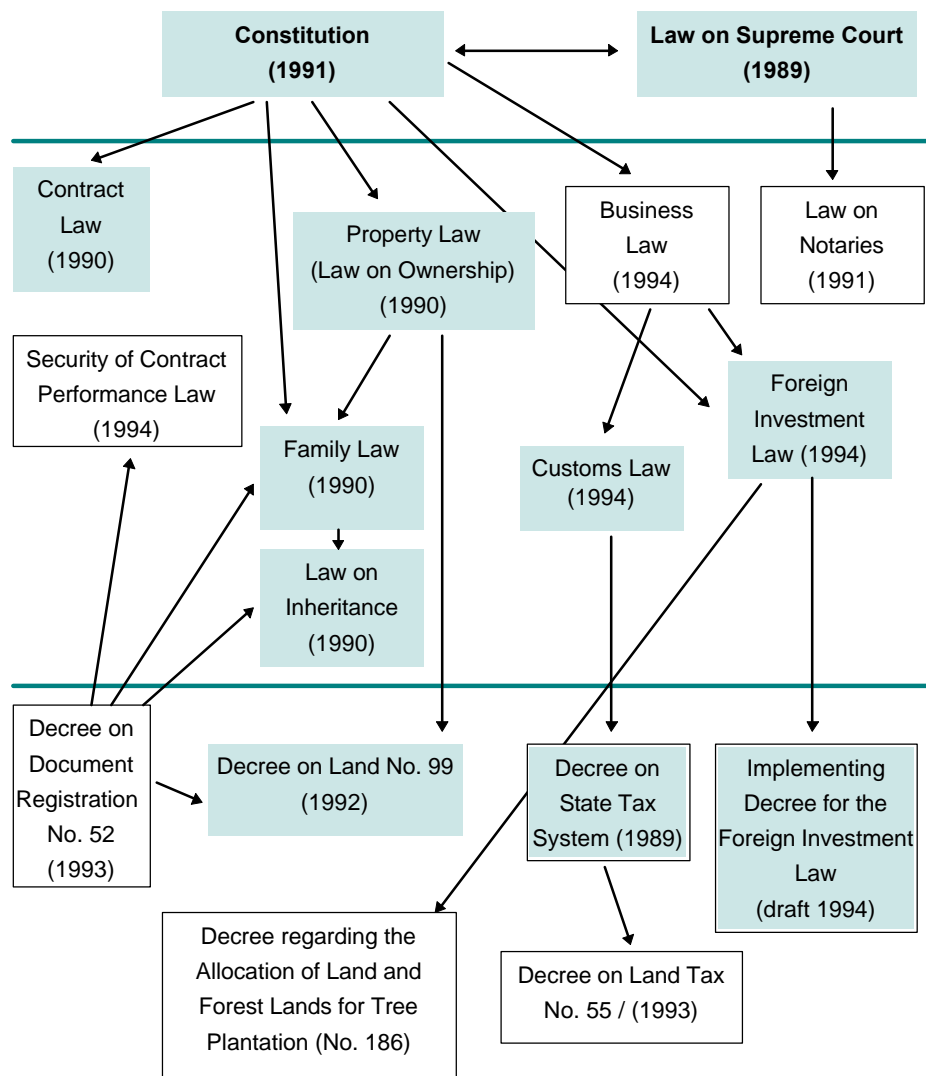
Securing credit only with registered land ownership?

In Uzbekistan only "private farmers" have access to credit, while the constitution only acknowledges permanent use rights for such farms which, in turn, are considered private property in economic dealing. Tenants are discriminated in view of credits

granted. In contrast, rural commercial banks award credit against land upon which permanent tenure rights according to autochthonous law in Laos exist. The credit costs, however, increase due to the substantial expenses involved in securing the credit when the status of the property must first be proven by questioning witnesses and through certification from neighbors.

Even if private ownership is not a necessary prerequisite for securing credit, many countries still lack mechanisms and instruments for securing these functions in the case of long-term user rights or by hereditary tenancy.

Overview 6: Land tenure and a legal and regulatory framework The case of Laos



Source: Kirk 1996a

With respect to the economic development, the importance of land tax has decreased compared to the other direct and indirect taxes. For some countries, however, the taxation of land is still an important source of income, especially where the tax is collected and used at a local level.

Land taxes in Benin

In the early 1990's, 75% of all revenue in city communities was generated from four types of taxes in Benin. Amongst them, the land tax made up 61% and 64% in Cotonou and Parkou, respectively, for the year 1991.

(Kirk & Adokpo-Migan 1994)

In summary, in most countries a long learning process is required and a considerable need for implementation exists for linking land law with other complementary areas of law.

3.9.4 Effects and Problems with Privatization and Divestiture Programs

Influential interest groups are aware of the political, economic and social repercussions a new draft of the land tenure systems would have. Therefore, a large number of people are following the process of privatization and are attempting to influence it to their benefit. The distribution of property rights in land is, of course, coupled with the distribution of power in a developing society. Economic power is expressed as bargaining power, concerning, for example, concessions for forest development, lease conditions for arable land or the ownership transfer of former state farms. As a result, the transformation process can be blocked for extended periods of time by coalitions of the "old" powers and through "rent-seeking" strategies of persons in key positions. Thus, each country makes its own very different experiences. In the following the process in Laos is summarized; the actors typically involved here may also be found in many other countries though their roles may vary.

Strategies of the involved actors

Actors involved in the process of divestiture in Laos

1. State party

- Key positions in the administration (rent seeking)
- "Gatekeeper" function: economic, but not political change
- State property remains in the constitution
- Individual money-making with land

2. Military

- Beneficiaries of forest state property (establishment of its own businesses)
- Establishment of "black purses" through revenue from the sale of land

3. Bureaucracy on all levels

- Between numbness/inactivity and active cooperation with donors
- Coalition with donors to push through land laws
- Over-demand on the local bureaucracy for the implementation

4. Smallholders

- Public forum if at all through NGOs (protection of autochthonous rights)
- Goal: Securing access and use of land after war

5. Village communities

- Strong solidarity and resistance to investment by "strangers" continues
- Strengthening of their position through reform legislation

6. National entrepreneurs

- Fight for the restitution of expropriated land
- Representation of the family's interest for those living abroad

7. International capital

- Most powerful and successful "pressure group"
- Goal: Securing investments for the exploitation of resources
- Guarantee return of profits (e.g. lumber businesses)
- Strong bargaining power, influence on legislation

8. International donors

- Catalysts for reformed systems of land tenure
- Primarily "top down" approach, but also participatory approach
- Countervailing power against purely economic interests

(Kirk 1996a)

The demand for combining national land tenure and autochthonous rights in a sensible way and giving each its own space is difficult to realize. This problem is made clear in the land register. On the one hand an expensive national land register is established, and on the other hand, an informal land registration program based on participation is started up in rural areas at the same time (Benin, Cambodia or Laos). Since the systems underlie different ministries, the measures are not coordinated with one another. Whether the informal system can be transferred to the more formal system with the progressing urbanization of villages, and whether the standards are compatible with one another is usually not considered since they are financed by different institutions.

Loopholes and inconsistencies in the legislation

Many countries have not sufficiently secured that new laws are not in contradiction with existing decrees. For example, in Uzbekistan the new land law does not provide for private property whereas the decrees on the provincial level do. The list of such uncertainties and inconsistencies is endless.

Contradictions in the legislation

In many countries writing up new property rights systems, it is neglected to enshrine the responsibilities and encumbrances connected with it. This includes the obligation of securing land value (land improvements or road construction), sovereign rights of the state (power lines, etc.) or rights of other groups of the society (right of way or of routes for trespassing pastoralists) which are insufficiently considered. Multifaceted material for future conflicts is found herein.

Easements and encumbrances

Besides these problems from the daily world, many well-intentioned innovations proved to be too complex to be implemented. The number of committees for land distribution and for solving conflicts on the local level has grown with the new, participatory land legislation. If these are established complementary to existing organizations, then it is merely a renaming of known structures. If the composition of the committees is practical, then will it be possible to overcome opposition from the local population? These are only selected problem areas that need to be solved individually.

"Flood of committees"

"Daily problems" with implementation

Typical problems with implementation are the following:

- The education of the lower and middle levels of the administration is insufficient with respect to the implementation of new regulations.
- Management experience is lacking to deal with the process of privatization with professional competence on the spot.
- Opportunities for further training are lacking.
- Administrators lack willingness to take responsibility and make decisions since they have only merely passed on orders from the "top" to the "bottom." ("The top will only hear what the bottom thinks the top wants to hear." *Eckert & Elwert 1996*).
- Laws and decrees are lacking or worded too complicatedly.
- The competencies between administrations are not clarified, especially if comprehensive resource concepts are advocated.
- Personnel is lacking to follow the participatory processes for the identification of village land in cases of boundary conflicts and to start a local land register.

Decentralization and subsidiary

In many countries the knowledge on the reformed legislation and the demands which are made (again) on mayors, village chiefs and local public servants is little. Decentralization is felt as an "act of pardon" often not having to be fought for, which strengthens local power centers. Those with this power in Uzbekistan are the mayors and the former leaders of the kolkhoz. In Laos, they are the elected village chiefs which gained legitimacy already during the socialist era and have continued to work after a smooth transition. In Benin, the reform was coupled with the renewed strengthening of the traditional chiefs and kings as trustees of autochthonous law.

Seniority and "old authorities" also gain power in this way. Whether their feedback goes to the "top" and thus the control is secured from the "top" is questionable in view of the poor communication and empty state treasury.

Winner-loser

Generalizations are not possible, however, the presence of those affected in the process of political bargaining of new systems of land tenure is a basic condition for validating the claims.

Women

Women's claims are formally reinforced by reform legislation. The majority of them, however, will probably never know about the laws since men have little interest in spreading them, and women are prevented from further education and mobility in many countries. The framework has been created for women to

have equal rights to land, but it is still hard work for this to be implemented on the village level. In addition, women also need to show interest in policies for their benefit.

The former elite, those expropriated, are the winners of divestiture even if their entire land was not returned to them. This can be seen in the returning families in Laos, Cambodia and Mozambique. The traditional elite like chiefs in African countries also belong to the winners (*see above*). The winners in the former Soviet states are the former leaders of the kolkhoz. They were able to secure land for themselves, purchase stocks from withdrawing members and they continue to have a strong influence on land distribution.

"Old" elite

Entrepreneurs shaped by the city and high public servants have used the privatization process to secure land for themselves since they have a considerable lead with respect to information regarding the interpretation of laws and often possess enough money. They use the land productively in part, but it also serves as security for old age and as an object of speculation. In Mozambique, speculators obtained at least 20 million hectares in concessions to be used for agriculture between 1992 and 1994.

Urban groups

Market economy-oriented reforms have the danger that smallholders rarely gain access to land of high value since they are not in a position to purchase this land with their own capital. Few promotional programs for obtaining credit for this exist. The necessary information about the "procedures for purchase" is lacking for the smallholder. The danger is increasing that they will be cheated by more dynamic groups, or they will lose their land again later when they cannot repay the loan.

Smallholders

While pastoralists have a stronger lobby to represent their interests now than in the past, they continue to be at a disadvantage structurally. If they are still mobile, they may be represented in committees, but these committees are not always responsible for them if the conflicts are inter-regional (corridors for migration routes and access to watering places along the corridor). A "pastoral code" has been created only in very few countries which is targeted to their inter-regional needs (like Niger, Mongolia).

Farmers vs. pastoralists

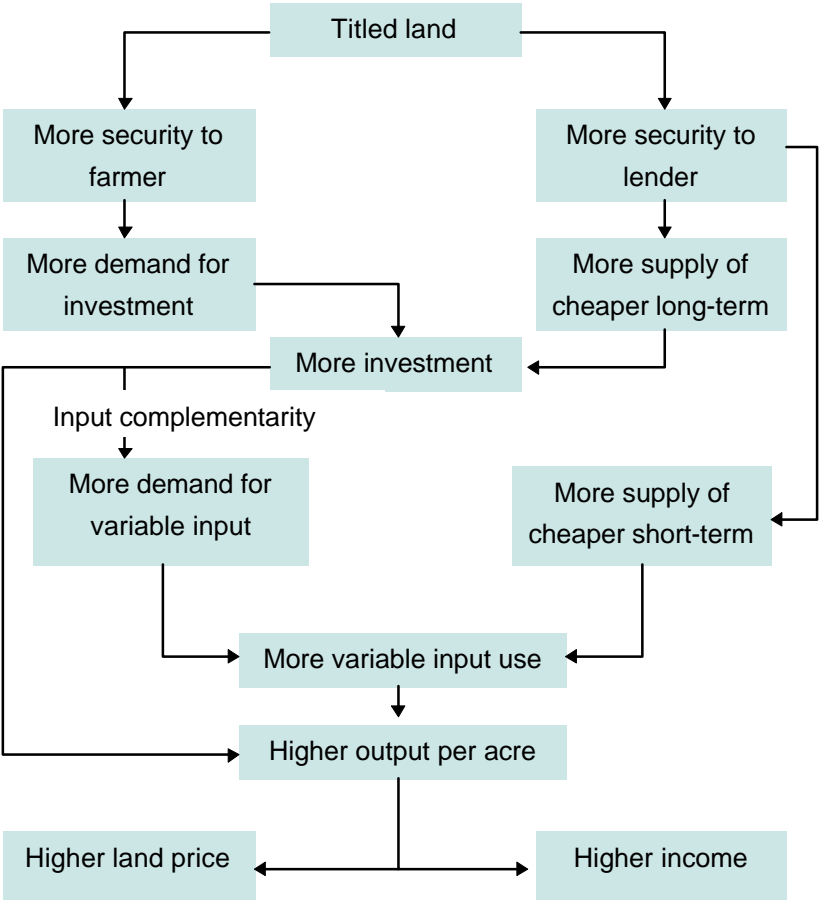
3.10 Land Markets: Origin, Functions and Dynamics

Land markets are fundamental for the transfer of property and use rights. A functional land market, one in which land can be purchased, sold, leased and exchanged, contributes considerably to the generation of optimal farm sizes, supports the change in agrarian structure and often first enables innovations.

However, history around the entire world has shown that land is a socially sensitive, politically explosive factor in all societies. Correspondingly, great fear, resentment and critical voices are connected with the creation and dynamics of land markets.

In the following overview the typical key roles of land markets are illustrated, whereby the basic thesis which is followed assuming that registered private property is an indispensable requirement for its functionality is debatable.

Overview 7: Land ownership security and farm productivity



(Source: after Feder 1987)

3.10.1 The Importance of Land Markets

The origin of land markets

The most important factors supporting the creation of land markets are the following:

- Population growth: Many areas with a high population density are characterized by active land markets. They develop in suburban regions, coastal zones and around fast-growing villages.
- Implementation of new technology and inputs,
- Expansion of product markets requiring corresponding factor markets,
- Extension of infrastructure and communication (improved access to markets after road or railroad construction; the inflow of urban capital is thus facilitated),
- Waning interest in agriculture,
- Growing interest in non-agricultural land use. Therefore, land is required for industry, construction or infrastructure.

Restricted transferability

When land can be transferred freely through land markets, land is expected to be used most productively. However, an efficient land market can also lead to making the rural labor market more flexible (such as employment of wage earners after leasing).

Conditions for success

Consideration of the following legal and economic principles is of fundamental importance for efficient land markets, especially in countries undergoing reformation and transformation.

Risks of restricted transferability

However, fears that when land is freely transferable, domestic and international entrepreneurs and people from the urban centers dominate the land market using the land not only as an investment object, but as a way to build savings or as an object for speculation have often been confirmed. The issue of efficient agriculture is often only secondary for them.

For a free market option the legal and economic foundations could be based on the following general principles, although most countries prefer minimum regulation on land markets (cf. 4.3.2):

- a) abolition of moratoria on land transactions;
- b) elimination of restrictions on the size of individual land ownership, land holding, or farm size (including leased lands);
- c) elimination of price restrictions or price controls in land transactions;
- d) free choice of the form of usufruct rights (e.g. share-cropping, leasing, etc.);
- e) elimination of land-use restrictions (e.g. obligation to grow designated crops), other than those associated with environmental considerations, including soil and water conservation;
- f) minimization of preferential rights to land purchase by the Government, the members of the large farm to which the land parcel originally belonged, neighboring landowners, or any other buyers;
- g) simple, fast and low-cost ownership transfer process for land, with low fees charged only for the registration of the land transaction itself;
- h) no taxation on the sale of land;
- i) legal acceptance of land title, land lease, and land use rights as mortgageable collateral for credit;
- j) easy public access to land information (parcel descriptions, ownership, liens, etc.).

(Csaki & Lerman 1996:228)

In a number of countries landowners are subject to few limitations by the state regarding land transactions. Land can be freely traded. However, the majority of the countries have placed often comprehensive restrictions on the transferability of land, on land use and the maximum and minimum ceilings of land ownership.

Thus, the government limits land transfer in Kenya (prohibition of mortgage and leasing). Countries such as Nigeria, Ghana or Sierra Leone allowed a group (family land) to be entered in the register at certain periods in time. Land transactions continue to require a consensus from the group and are not possible unrestrictedly. Similar situations exist in many transforming countries.

In many countries maximum and minimum ceilings for land ownership have been determined. A maximum has been set to break up large estates and to avoid a strong concentration of land. The upper limit is often dependent on the farming system

Regulating the land market

Maximum sizes (ceilings)

(*cf.* 3.7). Such ceilings have often been circumvented by large landholders by fictitiously dividing the land.

Minimum sizes (floors)

Determination of minimum sizes is to prevent farms from becoming too small, i.e. becoming uneconomical. Additional legal requirements are designed to hinder plots from being divided up smaller than a certain minimum size.

Legal regulations for land transactions and preemptive rights

In contrast, little experience has been made with land transaction laws and preemptive rights. The goal of these laws which are applied in Germany in urban and rural development programs would be to control and influence transactions of agricultural and forest land by implementing transfer allowances. They should ensure that land is cultivated by the farmers themselves and that land is not purchased by "absentee landlords" as speculation objects and that the land is not further divided. Family farms or cooperatives could be promoted that way depending on the land and agrarian policies.

Taxation of land

In many developing countries land tax plays a rather minor role based on its volume. However, the issue as to whether the tax could be raised more efficiently is often discussed. The tax could then be utilized for financing investments, services and decentralization.

The fixing of the existing ownership relationships and the valuation of land as a tax base require an efficient administration which is in a position to manage a land register, conduct land valuation, determine the rate of taxation and collect taxes. In many countries this has not been the case up to now, such that often other, indirect taxes are raised instead.

Often, a progressive land tax is introduced as a means of avoiding land speculation and to induce large landholders to adopt more intensive cultivation systems. In reality these taxes are often circumvented by fictitiously dividing the land or through exception regulations. In addition, the tax can distort the incentives for production.

Markets for land use rights (tenancy markets)

Markets for land use rights are often not completely developed and are dominated by those offering land. Potential tenants complain about a lack of legal security and fear life-long dependency. For external observers lease contracts may appear *ex post* as being very long-lived. However, they must often be renewed annually and thus require "good behavior" from the tenant.

Large landholders in Asia are no longer exclusively involved in lease markets. Small landholders are starting to lease their land

too. In such situations, the lessee and tenant generally have the same social and economic status.

The dynamics of lease markets in the East and Central European countries will play a key role in the future. Models are being tested in which a stepwise land ownership transfer can be practiced.

Tenancy markets in the former socialist countries

1. Awarding clearly fixed lease contracts,
2. Proof of the ability to efficiently cultivate the land during the tenancy period,
3. Preferential conditions for land purchase after several years,
4. Tenancy markets in socialist countries.

Markets for land use rights also play an important role in socialist countries like Vietnam and China. These types of markets began to be supported in 1994 in China. The user rights can be used as security for obtaining credit. In Vietnam secure user rights with a duration of 15 years were introduced in 1988. These rights were then increased to 20 years for annual cultures and 50 years for permanent cultures in 1993, whereby the state remains the owner of the land. Simultaneously, in 1993 measures for the implementation of Land Use Rights Certificates (LURC) designed to reduce the transfer costs and make the transfer of land easier were prepared.

3.10.2 Land Markets and Land Registration

A prerequisite for functional and efficient land markets is clear proof of ownership. Land surveys and registration alone, however, are not sufficient since continuous updating of the land register must be guaranteed. An incomplete registration of land often has worse consequences than no land registration at all. In Kenya, for example, such centralized registration was begun, but never finished, so in many villages the condition is unregulated and grave land conflicts are emerging.

Pros and Cons of Land Registration

What economic, legal and social meaning do registration and entry in the land register have? A main criterion for its success is whether they lead to an increase in productivity and growth of production. Are there advantages in efficiency if land titles are registered compared to traditional forms?

Advantages of land registration

The registration of land can bring to the landowner numerous economic benefits. The following are examples:

- Farmers possessing a title are willing to invest more in their land (permanent cultures and protection from erosion), they apply more inputs for promoting production (fertilizer) and, on average, obtain a higher yield than farmers without the land title (e.g. in Thailand, Honduras, Paraguay and Costa Rica).
- Farmers possessing title to their land have easier access to formal credit and may receive higher amounts of credit than farmers without the land title.
- Land markets in regions with systematic land registration are more dynamic than regions without (e.g. in Thailand).
- The land prices for registered areas are higher as a rule than those not registered (see example from the urban area of Jakarta).

Advantages in Efficiency for Registered Land

Atwood emphasizes that in a distorted environment, introduction of land titles may decrease equity and efficiency. *Feder et al.* find that in Thailand [...] output is 14 to 25 percent higher on titled land than on untitled land of equal quality. The market value is also much higher for titled land than for untitled land of similar quality. For Indian reservations in the US, characterized by the coexistence of different tenure arrangements, *Anderson and Lueck* find that output on tribal and individual trust land was lower by 85-90 and 30-40 percent, respectively, than on fee simple land. Less rigorous evidence is provided for Costa Rica by *Salas et al.*, who estimate a positive relation of .53 between farm income and title security. Studies in Brazil and Ecuador also suggest a positive association between farm income and titles. But several studies have demonstrated that the credit market advantages of titles account for the lion's share of their effects and that ownership security is not significantly correlated with titling. Titling may have no significant effect at all, when legal or customary rules limit land transactions and credit markets are weak.

(*Binswanger et al. 1995:2722 f.*)

Table 6: Price differences in city property with and without land titles in Jakarta, Indonesia

Distance from City-Center (km)	Registered Titles	Tax Receipts	Unregistered Titles without Tax Receipts
	<i>High Infrastructure</i>		
0-5	514,828	403,044	324,662
5.1-10	206,783	186,912	160,934
10.1-15	98,660	82,505	79,185
Over 15	48,070	39,778	41,292
Overall	199,083	157,280	145,845
	<i>Low Infrastructure</i>		
0-5	403,702	323,641	232,162
5.1-10	143,304	124,935	102,878
10.1-15	45,338	43,494	43,352
Over 15	27,031	21,944	18,068
Overall	139,642	106,577	92,323

(Dowall & Leaf (1990), in Feder & Nishio, 1996:12)

The following are the main risks and problems with land registration:

- Registration on a voluntary basis reaches only a diminishing minority due to a lack of information, the complexity of the process, centralized implementation and the resulting high cost.
- Registration merely offers specific groups more legal security. Entries as a person by the head of the family only serve to reinforce the power of the old compared to those possessing secondary rights such as the young and compared to women. A step-wise transfer of land (as a gift) while the family head is still living to the benefit of the older sons can only be realized with high costs.
- The formality of land registration is often out of sympathy with custom and tradition like the system of traditional inheritance (without the Land Registrar being notified) or secondary rights and thus giving rise to informal dealings.

Risks and problems with land registration

- The access to strategic information on the procedures is asymmetrical. Those with management and legal experience or financially strong groups are more likely to use this to their advantage than are the rural landowners. This is due to the former being more familiar with the procedures and recognizing the long-term advantages of being entered in a land register through life in the city compared to people in villages in which no grave land conflicts have occurred so far.
- Registration will not solve the investment problems in agriculture if technology is unavailable or unadapted or if extension services are lacking.
- The costs for maintaining and controlling the efficiency of the land register are underestimated. Keeping registries up to date is difficult due to the inadequacy of the administration. In addition, those affected have not internalized the procedures, refrain from bringing the information up to date or they consciously avoid it in order to create a legal gray zone or to save land taxes.
- Correspondingly, legal uncertainty increases again when land is sold based on false entries in the land register.
- The standard hypothesis that only registered land affords security of credit is an estimation which is not critical enough since credit is not only dependent on land offered as security, but is based on the allover credibility of the lendee and often granted informally. This more likely requires stable social relationships between the lender and lendee than land security.
- The registration of land titles is a very insufficient prerequisite for promoting development in agriculture if parallel changes in further economic framework conditions are not also implemented (infrastructure development and labor mobility) (*Kirk 1998a*).

Forms of Land Registration

The forms of land registration can be divided into the "registration of titles" (including the "Torrens System") and "registration of deeds."

Torrens System

The "Torrens System" (named after its founder Sir Robert Torrens) is one of the best-known models for land registration (registration of titles). It was implemented the first time in South Australia in 1868. It basically applied the Prussian land register system as have many other countries. A main principle is that the legal title of a plot can be identified directly in the register so that no retrospective search is necessary using old documents to

inspect the title. It is obligatory to register all land transactions in the Torrens System. It secures a governmental guarantee of this information in the register. Three principles are connected with the registration of titles:

- The mirror principle (the register faithfully reflects all facts which are material to title);
- The curtain principle (the register is the sole source);
- The insurance principle (an injured party will be compensated by the state, if the register has a flaw and fails to reflect the title correctly) (*Palmer 1996:64*).

The "registration of deeds" is based on the "deed" as the primary proof of rights of disposal. A rudimentary "registration of deeds" is a system in which the transfer documents (certificates) are kept in a public office (notary). "A deed is only executed when there is some change in the possession of a right and a register of deeds is a record of transactions in rights and not of the rights themselves." (FAO 1995:36).

In this system the quality of the documents is not inspected. Whether the (land) transfer documents are consistent with prior documents deposited in the register is also not examined. This system is widespread in Latin America, for example. The following are examples of the many possible improvements imaginable to this system:

- Quality controls of the received documents to ensure completeness of the register information.
- Index the documents based on parcels through the introduction of obvious parcel identification.

The registration of titles is based on a land register for proving property rights in contrast to the registration of deeds. With a registration of titles those currently possessing the legal title can be determined for a specific plot. This information is generally recorded in the land register through which the holder of the legal title can be identified.

Thus, the distinction between the two systems lies in the differing quality of the information. If improvements to information management are made for the registration of deeds (e.g. examination of the received documents), this system can hardly be distinguished from the registration of title. The difference between the two is mainly relevant for those countries living under British "common law."

Registration of deeds

Registration of titles

Registration of autochthonous tenure

Neither the registration of deeds nor the registration of titles copes adequately with the complex forms of autochthonous tenure. Indeed, those countries introducing land registration have tended to ignore the subtleties of autochthonous tenure giving rise to informal dealings in land taking place outside the register. Only recently improved methods of registration of autochthonous tenure are being applied (South Africa, Fiji).

Multidimensional approach

Therefore, it is logical to choose a multidimensional approach with the following corner points instead of either a "registration of titles" or a "registration of deeds" system: (*see Palmer 1996:96*)

- *Jurisdiction-wide coverage* (the more parcels recorded in the formal land register, the more beneficial it is);
- *Quality control* (examination of incoming documents, certification of documents by property professionals, efficient methods for storing and retrieving information);
- *Currency* (The information in the register should be kept up to date, so later transactions can be entered after the registration without any problems (e.g. division of land in the case of inheritance));
- *Guarantee* (Entries in a public register are protected by jurisdiction and legal judgment);
- *Indemnity* (In the case of mistakes in register entries).

Land Registration Used as a Planning Instrument

Data base for planning

The existence of reliable maps based on surveys including aerial photographs and an incontestable land register support planning initiatives in all areas having to do with "land." Land registration and the registration of secondary rights are fundamental for understanding (agrarian) structures and therefore also the planning basis for land use planning, measures for improving the agrarian structure, protection against floods, taxation, agricultural statistics or the regional and urban development.

Advantages from an accurate large-scale survey and a precise and up-to-date record of the land rights

- Large-scale maps based on surveys including aerial photographs are of the greatest assistance in the preparation of inventories of natural resources in land, water, and vegetation which are essential to planned agricultural development.
- Such maps are also necessary in the carrying out of detailed geological, soil productivity, land use, erosion, farm management and other surveys and classifications in connection with agricultural development.
- No major project of agricultural engineering (irrigation, drainage, flood control, electrification, soil conservation, etc.) is possible without very accurate large-scale maps of the area affected.
- The orderly investigation, conservation and exploitation of forest resources demand the proper mapping of forest areas, and maps are even more important in all schemes of reforestation or afforestation.
- The administration and development of inland and estuarine fisheries require accurate large-scale maps and the registration of existing rights in land and water
- All forms of public financial or material aid to farmers (subsidies, grants-in-aid, credit, seed or fertilizer distribution, pest control, plant protection, etc.) are rendered much easier and more economical by the existence of cadastral maps and records of rights.
- Large-scale maps greatly facilitate the application of all sampling methods in statistical research connected with the land.

(FAO 1995:6 f)

Land Registration and Credit Security

Despite the expenditure of millions of dollars to formalize property rights in developing countries in the past decades, success has been limited. In many cases, the access to credit was not improved after the land was registered.

The lacking security of land is often seen as a hindrance for credit awards to smallholders. However, registered legal titles are not sufficient for obtaining credit. Thus, legal systems can impede credit awards or collection thereof in the case of over-indebtedness. In India, the restrictions on collectors' rights prevented the banks from awarding credit to smallholders.

Are land titles sufficient?

However, even when no legal limitations exist, banks are still hesitant to award credit to smallholders. In Peru, for example, 10,300 plots were registered up to 1995 in rural areas with the registration program RP (*Registro Predial*) and only 600 mortgages were taken up (*Palmer 1996:136*).

The banks' hesitation in awarding credit

The hesitation on the part of the banks can be explained. In the case that the smallholder cannot pay back the credit, the credit security can often not be put in monetary terms. Clearing the family from the land cannot be realized in light of an active group solidarity. Even if it should happen, the neighbors can refuse to purchase the offered plots from the bank, thus the value of credit security rapidly sinks (for example, the Philippines and Kenya).

Credit security and credit awards in Peru

"Banks are reluctant to give credit to small farmers, even if they have registered title deeds, because they are considered high-risk producers.[...] Banks that do offer individual credits prefer medium-sized farmers (farmers with more than 20 hectares of irrigated land) with the ability to produce highly rentable cash crops (for example, asparagus for export).[...] When bank credit is available, it is minimal and usually given out through an intermediary such as an NGO. In addition, significant requirements other than registered title are imposed. It is clear that these credit lines are experimental in the sense that they are small loans given under very controlled circumstances. The loan period for most of the credit is equal to the number of months need to plant and harvest a crop.[...] Very little long-term credit for farm improvement or machinery is approved, and there is no credit available for the purchase of land."

(Lastarria & Barnes 1995)

Further factors influencing the awarding of credit

Registration of land is undoubtedly an important factor for proving credit worthiness. Land can function as an object of security for the credit supplier. The following are further factors which may play a role in the awarding of credit:

- Income and income stability for paying back the loan,
- High transaction costs due to the awarding of many relatively small loans,

- Women are at a disadvantage with regard to credit access,
- Restrictions on the use of the loan.

These amongst other factors illustrate that registration of legal title alone is not sufficient for obtaining credit.

Credit security and community property

Communal systems constitute a special case. Communal land is not considered adequate collateral in formal credit systems because of constraints on sales to outsiders. Issuing individual titles in communities that maintain such constraints may improve neither the security of tenure nor access to credit, although individual titles would be helpful to avoid barriers to the emergence of rental markets within the community. Until the restrictions on transfers to outsiders are eliminated, a community title could be issued to ensure the community's security of ownership against well-connected outsiders. *Platteau* advocates registering land as "corporate property" as a way of decreasing the costs associated with titling while reaping many related benefits such as insurance, flexibility of land allocation, and the utilization of genuine scale economies in subsidiary activities. Experience with group ranches in Kenya suggests that imposing group titles from above is unlikely to be successful, while issuing individual titles does not prevent farmers from taking advantage of scale where they exist.

Another case for community titles concerns common property resources, such as communal pastures, forests, or other marginal lands. Such areas constitute an important safety net for the poor that may be particularly important in high-risk environments where alternative means of insurance are unavailable. Community mechanisms for managing common property resources have tended to weaken with economic development, and privatization of such resources in India has led to significant increases in yields. But the preservation of common property resources could be desirable from an equity perspective since privatizing these lands takes away a part of the social safety net for the rural poor. Providing a community title for these lands can protect communal rights from outside encroachment and prevent the poor from being excluded from communal property.

(Binswanger et al. 1995:2722)

3.10.3 Increasing Importance of Informal Parallel Land Markets

Considerable distortion of land markets can be found in many countries. In Nigeria, Kenya or Guinea-Bissau the government

The origin of parallel land markets

restricts the leeway for dealing with private property by issuing prohibitions against mortgages and leasing. This often leads to legal standards being ignored in part or circumvented, and the land is sold and mortgaged on informal shadow markets. Thus, in Nigeria the majority of the population obtained their land through transfers, purchase or lease, which are not sanctioned by either autochthonous or state law.

Effects of informal land markets

In reality, land transfer restrictions are often evaded in this way. Secret sales of land, however, cannot be judiciously enforced. This is even more valid since the sale of land must often be disguised as the sale of trees or as mortgage. Correspondingly, hidden risk premiums are often added to the sales price; this is then the difference between the market price and the shadow price. In former socialist countries such as Tanzania, Benin and Mali large amounts of land have already been transferred on these markets.

Information costs

Restrictions of sale also increase the informational costs for potential buyers since land registers, if they exist, do not necessarily have the most current information on ownership relationships. The potential buyers must, therefore, clarify who may also have rights to the plot. If land registers are not kept up to date, undocumented transfers and further partitioning of the land will continue. The claim that an entry in the land register is a main prerequisite for functional undistorted markets, so that inter-subjective comprehensible economic criteria determine the transfer of resources to their best use no longer allowing relative networks or ethnic decisions to lead, is difficult to implement in view of the administrative bottlenecks in many countries.

4 Fields of Action for Development Cooperation

4.1 Land Policy

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

Land policy requires clear guiding principles, objectives and instruments

Overview 8: Inhibiting and driving forces in land policy

Inhibiting forces

- Centralised government institutions and their authoritarian practices
- dominance of state institutions and excessive regulations on interactions between the various stakeholders
- paternalistic practices of decision making
- political and institutional corruption (land grabbing, monopolisation of power, patronage, lack of moral accountability)
- uncertainty of land tenure
- contradictory laws
- inaccessible land dispute structure and lack of finality in the resolution of land disputes
- autochthonous land tenure system versus individualised property and statutory law
- gender inequality
- dissipation of local expertise
- monopolised information policy, rivalry and reluctance to part with power
- playing donors off against one another

(Zimmermann 1998)

Driving forces

- Liberalisation of the public sector and decentralisation of the institutional structure
- partnership and deconcentration
- active participation of beneficiaries and those affected in decision-making processes
- auditing of government agencies to ensure social and professional accountability and effective disciplinary measures
- land tenure security
- comprehensive land legislation
- linking traditional rules and traditional advocacy associations with the judicial system
- flexible multiple land tenure arrangements
- gender-sensitive approach and participation
- co-evolution of local, regional and national and international capacity
- transparency, easy access to land-related information, fostering of synergetic effects through incentives and networking
- commitment and complementary international partnership

Contributions of development cooperation to the formulation of policy

Development cooperation can be an important contribution to the formulation of policies when the partner explicitly requests it, and it can reduce the danger of policy failure along with the negative effects on economic efficiency, social equality and preserving the natural environment. Development cooperation supports approaches to reformation processes

especially when they contribute to implementation of action plans from international conventions (Agenda 21) and the development cooperation principles of democracy development, rule of law, decentralization and combating poverty alleviation.

4.1.1 Models

Models and principles can be read in and derived from the Charta of Human Rights, Agenda 21 and conferences following Rio 1992, the structures of existing societies' systems (degree of democracy and the separation of powers), the economic order (decentralized, market economy and the idea of property) and the written constitution (strengthening of important social groups, protection for minorities and equality for all people before the law).

**Derivation of models and
of principles of land
policy**

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

Article 14 (Property, Right of Inheritance, Expropriation)

Property and the right of inheritance are guaranteed. Their content and limits shall be determined by the laws.

Property imposes duties. It should also serve the public weal.

Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.

Article 15 (Socialisation)

Land, natural resources and means of production may for the purpose of socialisation be transferred to public ownership or other forms of publicly controlled economy by a law which shall provide for the nature and extent of compensation. In respect of such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply mutatis mutandis.

A land policy which is designed for stability and to create trust must at least fulfill the following:

- Long-term-oriented and secure from the influence of daily politics and strategic behavior of politicians prior to elections;
- Imparting visions regarding the aspired path of development;
- Based on and tied to existing systems, expectations and successful practices to keep credibility;
- Focused on an evolutionary process of change to avoid revolutionary upheavals;
- Including an intensive dialogue between the government and citizens and within civil society (e.g. concerning integrated land use planning).

Namibia: Outline of a national land policy

Fundamental Principles:

- equality before the law,
- a mixed economy based on several forms of ownership,
- a unitary land system, in which all citizens have equal rights, opportunities and security across a range of tenure and management systems,
- a focus on the poor,
- the rights of women,
- security and protection to all legally held land rights, regardless of the form of tenure or the income, gender or race of the right holder,
- public accountability and transparency.

(Govt. of Namibia 1996)

Land policy models are controversial and differ for various cultures, religions and political systems. Discussions between the partners about these models in the policy dialogue (*see section 4.2.1*) or in national forum discussions are usually necessary:

- The rule of law does not necessarily mean equality of all people before the law in every country or equal opportunity for men and women to the access to land and its use.
- A country-wide binding, uniform system of land tenure based on the monopoly of power held by the state is often incompatible with indigenous regulations governing the access to and distribution of land.
- The deliberate promotion of groups which are seen as being at a disadvantage by the international development cooperation such as the landless poor and women through land policy is not necessarily desired socio-politically nor can they be politically implemented (yet) in every society.

Development cooperation should help to clarify when and to what extent an active land policy is required. During transformation processes (e.g. in the former Soviet Union states), in the case of far-reaching market economy reforms (e.g. African countries), or in countries with a very dynamic economy, an active anticipatory land policy is especially required. If, however, a consistent and recognized system and an effective land administration exist, then the chance exists for the involved

Models are controversial and must be discussed

Private contracts and state framework policy

parties to legally make private contracts of various sorts themselves on transparent land and lease markets (the state, however, is one of many participants in the market). Since the results of these land tenure agreements do not necessarily conform to the society's objectives if they enable land concentration or accelerate the rate of environmental destruction, then the government should not leave everything to the forces of the market. The government should intervene in the land policy and at least set a binding framework.

Land policy and land reform. Innovations in the operations of the World Bank Group

If small farms are so efficient, why does the market not transfer the land to them?

- Tenancy & sharecropping are often illegal or overregulated,
- the poor cannot buy because land prices often exceed present value of farm profits,
- nonagricultural investors use land as hedge against inflation, as tax shelter, and to gain access to subsidized credit, and these effects are capitalized into land values,
- macroeconomic stability and agricultural policy reform to eliminate these incentives are necessary conditions for successful land reform.

(Binswanger 1996)

Guiding principles do not just have to be formulated for the land issue alone, but also for a consistent and often complementary water policy, which has to include:

1. The basic supply of fresh water to be guaranteed for the present generation,
2. The global supply of fresh water to be maintained for future generations,
3. Fair access and user rights to be guaranteed, also with regard to border crossing water resources and
4. The cultural identity and the political self-determination concerning fresh water to be considered

(WBGU 1997).

4.1.2 Objectives of Land Policy

Three main superordinate objectives are the guiding minimum necessary for a land policy. However, each country will have a different emphasis based on its situation.

Main land policy objectives

- Efficiency and promotion of economic development,
- Equality and social justice and
- Environmental preservation and a sustainable pattern of land use.

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

Efficiency objective

- Develop a uniform legal and regulatory framework providing equal access to and use of land for all private and legal persons, collectives and the state;
- Decide precisely between private contract law (civil law) and public law (e.g. land transaction);
- Generate clear responsibilities and liability regulations for private and public persons;

- Improve the efficiency of land and tenancy markets;
- Allow for sectoral changes (industrialization and multiple employment) through land policies and anticipation of new land functions (environmental and recreational value, etc.);
- Create legal and institutional structures for land banking, land use planning including expropriation (serve the public weal);
- Secure the financial base for public land administration;
- Make certain that land is easily transferable provided no transition regulations require temporary restrictions (e.g. in the case of land reform);
- Land tenure reforms should not only be utilized as a threat, but implemented consequently when they are seen as necessary due to extremely unequal distribution of land.

Distributional objectives

The objective to contribute to equity objectives through land policies and to promote social stability involves controversial decisions. Thus, the question is whether the social responsibility of property is recognized by the constitution or laws as is the case in Germany, for example. Dealing with the conflicts in interest between urban and rural, "modern" and "traditional" and wealthy and poor population groups is necessary. The following are important aspects for this:

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

Land policy is increasingly also becoming part of environmental policy. It is an approach for maintaining the natural production potential and for prompting sustainable land use.

- A comprehensive code on land use is demanded by many countries. However, this has only been rarely realized;
- Land use planning and land banking aid in the declaration of protected areas;
- Elaboration of participatory, environmentally sustainable local land use concepts for communal resources;
- The efficient coordination of varying administrations and institutions is another aspect of the objective.

4.1.3 Strengthening the Role of Important Groups

A land policy considering efficiency, equality and environmental soundness as objectives must especially strengthen the position of the following:

- the *poor* in rural areas and in the urban fringe (poverty orientation) and
- *women* (gender orientation).

This is especially necessary as women often also belong to the group of the rural very poor.

In addition, the legal situation of *indigenous population groups* has often proven to be quite precarious, and national *non-government organizations* which also represent their interests are not fully recognized. The work of development cooperation therefore also gains another special supporting task.

World Food Summit (Rome 1996)

Plan of Action

Establish legal and other mechanisms, as appropriate, that advance land reform, recognize and protect property, water, and user rights, to enhance access to the poor and women to resources. Such mechanisms should also promote conservation and sustainable use of natural resources (such as land, water and forests), lower risks, and encourage investment.

(FAO 1996)

Poverty orientation

In developing societies, every third person is categorized as extremely poor since he or she has less than US\$ 1.00 per day at his/her disposal. The imbalance between the poor and the wealthy increases steadily worldwide. Among the approximately 1.13 billion people living in poverty the percentage of women and children is especially high.

The lack of access to land, increasing conflicts between those searching for land and those with land, and the degradation of the natural living basis due to overuse of land, forests and water resources associated with poverty and massive conflicts with urban settlements and land tenure as a result of migration are dramatic milestones within a global process. Therefore, the Rio Conference and the World Social Summit have set the fight against poverty as the main priority.

Programme of action of the World Summit for Social Development (Copenhagen 1995)

Improved access to productive resources and infrastructure:

Expanding and improving land ownership through such measures as land reform and improving the security of land tenure, and ensuring the equal rights of women and men in this respect, developing new agricultural land, promoting fair land rents, making land transfers more efficient and fair, and adjudicating land disputes.

(UN 1995)

The fight against poverty is a cross-sectional responsibility; it embraces all sectors and policies and must be fought in rural as well as urban areas. Even if the access to important production factors such as land and to support services (credit, extension services) is not sufficient alone, the access is a necessary prerequisite in many cases for further aspects in the fight against poverty (e.g. participation in economic processes).

The fight against poverty a cross-sectional responsibility

Habitat II Conference (Istanbul 1996)

A global action plan - strategies for implementation

"In order to make the access to property, land and the rule of law in land use issues easier for all economic and societal groups, the government should provide the following on the appropriate level:

- Create legal framework conditions for assisting those to help themselves [...];
- provide institutional support, reliability and transparency for the land cultivation, provide exact information about land ownership and land transactions and about the present and planned land use as well;
- investigate innovative regulations that do not represent complete legalization for the improvement of the rule of law for land use problems, especially, as the complete legalization may be too expensive or time-intensive [...];
- support measures providing equal access to credits for buying, renting or leasing land for women and guaranteeing equal protection of the rule of law in the land use for women;
- in particular, promote the participation of local and non-governmental organizations [...]."

(translation after BMRBS 1997)

Gender orientation

Special concern has to be given to gender-specific possibilities and obstructions for land access, land use and to the situation of women. More than two-thirds of all working hours are performed by women. They take care of a large amount of agricultural work, but only have a title to less than one percent of the land worldwide. The women's situation is worsening with the degradation of traditional structures and, therefore, often the land rights of women (secondary rights) further erode.

Demands of the Women's World Conference

On the one hand it was pointed out at the Women's World Conference in Beijing in 1995 that women's land access is a key problem, but on the other hand a clear reminder was made of the fact that women are especially affected by poverty.

World Women's Conference (Beijing 1995): Strategic goals and measures

- Support of women for obtaining affordable living space and for the access to property and land,
- Ensuring the access to and the power of disposal over property and land,
- Ensuring the access to free or less expensive legal advisory services,
- Implementation of legal and administrative reforms to give women unrestricted and equal access to economic resources including the right to inherit and the right to ownership of property, land and other investments [...].

Report from the Fourth World Women's Conference, Beijing 1995

Within the framework of a poverty- and gender-oriented development cooperation, a rational and consistent land policy specific to each country must give particular attention to the rights of the following groups which are often at a disadvantage:

- Indigenous peoples,
- Pastoralists,
- People living in forest-edge villages and using the forest (to collect wood, grass, fuelwood, etc.),
- Small tenants in irrigated areas or
- Squatters in (sub)urban areas.

In general, indigenous communities have an intimate historical and spiritual relationship to their land. Therefore, supporting measures should take individual and communal ownership, tenure and user rights of their settled and used land into special consideration. In addition, they should be effectively protected from forced resettlement, expropriation without compensation and other interference in their living and economic space.

Democratization and the building up of multi-party systems accelerate the formation of different interest groups. Their stronger involvement in political, economic and social life, including their involvement in shaping parliamentary work on all levels, should not be impeded.

Advocate of particularly disadvantaged groups

Indigenous groups

Strengthening the representation of interests

Interest groups in Brazil s congress

[...] factors which should be taken into consideration are the political rappers de forces within Brazil's Congress as well as in the country. The Democratic Union of Ruralists (UDR), with 170 members in congress, endorses landowner interests and opposes proposals in favour of an agrarian reform process. These allies were quite important in the process which culminated in the election of President Cardoso. On the other hand, there is the Landless Movement (MST), supported by the Workers Party (PT), encouraging land occupations throughout the country with a maximalist vision of the problem. In the middle there are other small forces which are trying to elaborate a new way of looking at the agrarian reform process.

<http://www.fao.org/waicent/faoinfo/sustdev/Ltdirect/Ltan0006.htm>

NGOs

NGOs play an important role in the area of legal advisory services, the implementation of land reforms and enforcing the rights of the poor and underprivileged (*cf. 5.5*).

Religious institutions as mediators for land conflicts

Religious institutions very often also play an important role as mediators in the case of land conflicts. Such has been the case in the past in Latin America, in the Philippines and also in Islamic countries.

4.1.4 Land Policy Instruments

Land policy instruments

Development cooperation should contribute to the identification of essential land policy instruments. It should also contribute to further developing and modifying land policy instruments according to the framework conditions and needs of the partner countries and, if necessary, the development of new concepts.

Universally recognized, widely applicable instruments

The following are the most important, worldwide recognized and flexible land policy instruments; they are further explained in the sections below (*Zimmermann 1998*):

- *Instruments for improving legal security*
(harmonization of inconsistent and/or contradictory stipulations on land tenure. - In some countries up to 500 laws and regulations must be considered in this area. Closure of loopholes if an obvious necessity for regulations exist; making access to land-related information easier; creating

transparency especially in the case of land transfer procedures and efficient contractual conditions; law of inheritance);

- *Instruments for land administration* (land registration and cadastre, land adjudication, land market regulations, lease regulations, land banking, land and property valuation) (see section 4.3);
- *Fiscal instruments* (land taxation, taxes on land value, levies, taxes and fees on transactions, incentives);
- *Instruments for rural land development and land tenure* (agrarian structure development plans, reallocation of land, land use planning, land consolidation, land readjustment, e.g. for irrigation, urbanization and further instruments for influencing the use of land (see section 4.4));
- In addition, *instruments for urban land development* which can only be mentioned briefly in this publication (land banking, urban land readjustment, regularization);
- *Specific instruments for the accompaniment and implementation of agrarian reforms and transformation processes* (see section 4.6);
- *Instruments for conflict resolution*, i.e. dealing with informal occupation of land (see section 4.7); and
- *Instruments for capacity development and participation*;
- *Instruments for project management, program implementation, financial management procedures*;
- *Instruments for participatory approaches to problem analysis, resolution and impact assessment*;
- *Instruments for quality control and accountability*;
- *Instruments on training, (higher) education and applied research* (see section 4.8).

4.1.5 Challenges and Fields of Action

The complexity of land tenure problems, the different aspects of the objectives of land policies and the wide use of available (or necessary) instruments illustrate the urgency with which the development cooperation is challenged in these working areas; thus, presenting them with an enormous task. Correspondingly, the necessary fields of action affect all areas of society and economic activities directly or indirectly.

Development cooperation can contribute to the improvement of land policies. Family farms require other instruments in comparison with cooperative self-help groups, commercial large

Challenges for development cooperation

Group-specific and gender-specific different effects of land policy

landholdings, plantations and state farms. While small family farms are strongly dependent upon instruments for legal security of land, access to credit or for the improvement of leasing conditions, large landholders, for example, are more likely to benefit from the limitations on land sales being lifted, so they could expand. Innovative cooperative forms in agriculture can hardly be further developed against the state.

Clarification of the conflict in objectives and undesired side-effects

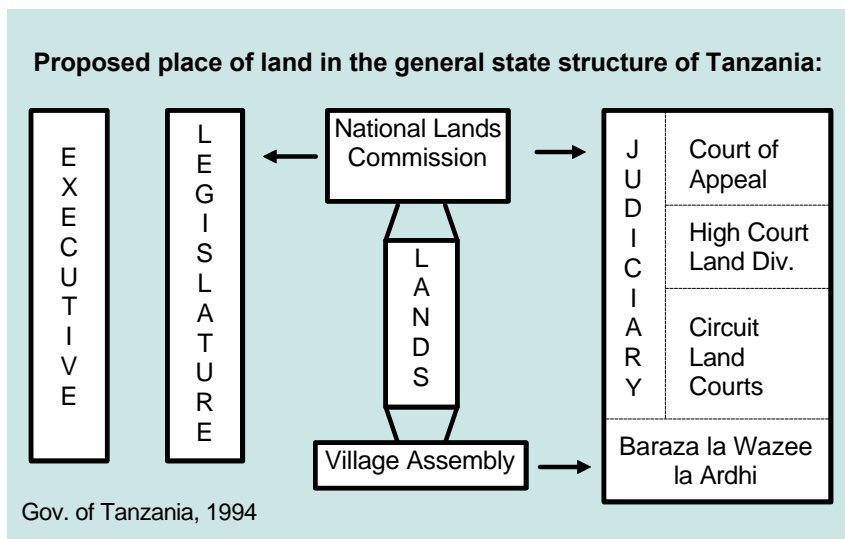
Development cooperation can make the dealing with land policy instruments in a more differentiated and cautious manner easier. However, in the ideal case, land registration is neutral with respect to the efficiency and distribution objectives though they can in fact lead to land concentration and expropriation of households with traditional and secondary rights through the use of strategic information and economic power. Thus, conflicts between efficiency and distribution are preprogrammed. Raising land taxes does not have to be distributionally neutral if large landholders can avoid progressive taxes by dividing their land among family members and the tax thus has a regressive effect as it burdens the (rural) poor the most.

Accompanying and supporting the reform process of land policy

Development cooperation should work very closely coordinating and cooperating with other donor organizations. Development cooperation must examine to which extent it should accompany and support the entire reform process individually based on the political intentions of the respective partner country. For example, the way the work in Tanzania of the "Commission of Inquiry into Land Matters" (*Government of Tanzania 1994*) was assisted by Scandinavian countries. This included the following amongst other things:

- Direct financial support of the "Land Commission's" work,
- Support of round table discussions, workshops, etc.,
- Publication, dispersal and reflection of the results (Report of the Presidential Commission of Inquiry into Land Matters).

Overview 9: Proposed place of land in the general state structure of Tanzania



The following matrix highlights the most important areas requiring action in land policies and suggests corresponding activities. It is preliminary in nature and can be supplemented.

Fields of action and activities

Challenges/Need for Action	Activities
1. Promotion of democratic development	
1.1 Control of power	
1.1.1 Participation in land matters	<ul style="list-style-type: none"> Consistently involve all those affected and their organizations in all decision-making processes
1.1.2 Reliable appeal authorities for settling land conflicts	<ul style="list-style-type: none"> Judicial and non-judicial authorities for appeal and procedures for providing legal security and for strengthening arbitration of conflicts
1.1.3 Creation of openness and transparency on land issues	<ul style="list-style-type: none"> Land law and land tenure information should be understandable in the local language Land register and cadastre should be accessible to the public In the case of the transfer of land public accessibility and transparency of prices should be created
1.1.4 Separation of powers (executive & legislative power)	<ul style="list-style-type: none"> Develop a comprehensive, consistent legal framework (constitution and laws providing the framework for further laws) Intensify policy dialogue

Challenges/Need for Action	Activities
1.1.5 Separation of authorities for implementation and control (land administration & jurisdiction)	<ul style="list-style-type: none"> • Develop consistent and practical regulations for implementation • Create appropriate legal infrastructure on all levels
1.1.6 Creation of "Countervailing Power"	<ul style="list-style-type: none"> • Strengthen land tenure-specific interest groups and representation on all levels • Increase the inclusion of education and training • Ease the access to the public and media
1.2 Secure political stability	
1.2.1 Promote the democratically based ability of enforcement by the state	<ul style="list-style-type: none"> • Strengthen the jurisdiction/administration on all levels • Support the establishment of business schools/colleges • Intensify the further education of judges and lawyers
1.2.2 State guarantee of the institution of property	<ul style="list-style-type: none"> • Create an uniform understanding of ownership/ property and make the access to land for private groups and the state possible • Create private and public legal spheres
1.2.3 Settle land conflicts between interest groups	<ul style="list-style-type: none"> • Improve the efficiency of existing institutions • Promote mediation of interests • Develop a model for settling conflicts at the local level • Promote land and agrarian reform where appropriate (including the rights of women)
1.3 Secure human rights	
1.3.1 Promote the implementation of results of international conventions into national law	<ul style="list-style-type: none"> • Intensify policy dialogue • Include conditions based on international conventions in development cooperation
1.3.2 Secure basic rights such as freedom of assembly and the protection of minorities	<ul style="list-style-type: none"> • Improve the access to land as an instrument in the fight against poverty (in agrarian societies) • Secure the informal secondary rights of disadvantaged groups

Challenges/Need for Action	Activities
2. Promote legal security	
2.1 Create/reform systems of land tenure deserving confidence and acceptance	
2.1.1 Advisory services for the creation of non-contradictory legal framework	<ul style="list-style-type: none"> • Consider indigenous legal systems in formal legal judgements • Determine clear expropriation and compensation regulations • Limit user rights, e.g. for avoiding negative social and ecological effects
2.1.2 Exchange of international experience and advisory services for the formulation of a land policy	<ul style="list-style-type: none"> • Demand that registration and documentation be obligatory • Promote changes in agrarian structure • Create interim regulations in the case of land reform and transformation
2.2 Unequivocal application of laws/implementation of land policy	
2.2.1 Clear and unambiguous application of land/resource legislation	<ul style="list-style-type: none"> • Employ simple, practical procedures for registration
2.2.2 Transparency/ information on laws and ordinances	<ul style="list-style-type: none"> • Make court decisions public (press and TV) • Facilitate access to the land register
2.2.3 Non-governmental advisory services on land tenure	<ul style="list-style-type: none"> • Promote the media and implement advisory service events for target groups • Support NGOs and local counterparts
2.2.4 Mediation	<ul style="list-style-type: none"> • Develop models for arbitration procedures at local level • Conduct workshops/seminars for settling land conflicts between the persons involved
2.3 Integration of gender aspects	
2.3.1 Advisory services for the formulation of land policy which is fair to both genders	<ul style="list-style-type: none"> • Consider gender equality when creating laws and regulations • Control, and if necessary, demand the implementation of gender-sensitive laws and programs (especially when privatizing and converting autochthonous structures)

Challenges/Need for Action	Activities
3. Create/strengthen institutional structures	
3.1 Implementation of laws and ordinances	
3.1.1 Create suitable institutional structures	<ul style="list-style-type: none"> • Promote efficient land administration • Support those people involved with land management • Implement coordination and control of measures
3.1.2 Create a technical infrastructure	<ul style="list-style-type: none"> • Promote land administration • Promote instruments for evolutionary change in agrarian structures and urban rehabilitation
3.2 Guidance of processes of reform and change	
3.2.1 Advise decision makers on future options/development paths and their consequences	<ul style="list-style-type: none"> • Increase competence in the areas of land tenure systems by workshops, round table discussions, exchange of experiences, etc. • Propose ways for results from international conventions to be applied nationally
3.2.2 Define laws for structural adjustment/interim regulations: rural vs. urban, traditional vs. modern, state vs. private, informal vs. formal	<ul style="list-style-type: none"> • Define the new role of the government • Initiate partnership models for public/private sectors • Define interim regulations for reform processes • Apply procedures for registration of informal property and land use claims
3.3 Control the misuse of power by the administration	
3.3.1 Improve administrative, legal and technical competence	<ul style="list-style-type: none"> • Implement education and training in administrative procedures, land taxation, land valuation, planning techniques, etc. • Control the dealings of the administration • Make decision-making processes transparent
3.4 Improve cooperation within the administration	
3.4.1 Promote a cooperative atmosphere within the entire administration	<ul style="list-style-type: none"> • Perform an organizational analysis • Sensitize those affected to the need for change • Fight corruption
3.4.2 Construct formal and informal management networks	<ul style="list-style-type: none"> • Promote activities and agreements between institutions (e.g. through round table discussions, and agreements) • Create public forum discussions

Challenges/Need for Action	Activities
4. Promote subsidiarity	
4.1 Define the new role of the government (overcome state failure)	
4.1.1 Define the boundaries of the government's competence	<ul style="list-style-type: none"> • Formulate the core responsibilities of the government at different levels
4.1.2 Overcome a one-sided centralized land policy	<ul style="list-style-type: none"> • Conduct lobby work on the new role of the government • Promote models of cooperation for the public/private sectors

Challenges/Need for Action	Activities
4.2 Create efficient, lean, decentralized systems	
4.2.1 Create and promote decentralized structures	<ul style="list-style-type: none"> • Facilitate the cooperation between the local administration and autochthonous structures • Support (greater) financial autonomy
5. Respect cultural identity	
5.1 Strengthen indigenous communities	
5.1.1 Systematic inclusion in land issues	<ul style="list-style-type: none"> • Make culture-specific norms and values transparent and integrate them into promotional measures • Initiate and promote representational forms of interests
5.2 Avoidance of the un contemplated adoption of norms and values of others	
5.2.1 Analyze the socio-cultural effectiveness of programs	<ul style="list-style-type: none"> • monitor and evaluate the socio-cultural impact of land tenure development • Integration of impact assessment in Monitoring and Evaluation
5.3 Acknowledgment of customary rights through state institutions	
5.3.1 Step-wise adaptation and further development of autochthonous land tenure	<ul style="list-style-type: none"> • Identify fundamental functions of autochthonous land tenure • Define options for further development
5.3.2 Efficient linkages of new and traditional institutions	<ul style="list-style-type: none"> • Secure scientific accompaniment • Secure autochthonous claims and secondary rights at registration • Guarantee external support by moderation/mediation • Further develop instruments (e.g. PRA)

Challenges/Need for Action	Activities
6. Create economic incentives	
6.1 Generate a development potential	
6.1.1 Identify obstacles specific to the development of land tenure	<ul style="list-style-type: none"> • Examine political restrictions - impact analysis • Examine the effectiveness of fiscal instruments • Examine the effectiveness of instruments for structural improvements (agrarian structure, urban development)
6.1.2 Demonstrate and stimulate complementary agricultural/economic policy measures	<ul style="list-style-type: none"> • Improve infrastructure, extension services, credit, etc. • Propose ecologically and socially sound regional development • Identify non-agricultural employment opportunities • Reduce administrative obstacles for land transfer
6.1.3 Promote the dynamization of land markets	<ul style="list-style-type: none"> • Create transparency of the land market
6.2 Establish long-term planning and investment security	
6.2.1 Establish and guarantee unambiguous and transparent legal framework	<ul style="list-style-type: none"> • Create regulations for contract security • Create regulations for land to be used as collateral • Promote reliability of governmental planning • Promote accountability of the public sector • Secure financing of governmental planning
6.2.2 Record rights of ownership and use	<ul style="list-style-type: none"> • Secure registration and documentation of property rights
7. Guarantee social soundness and the link to poverty	
7.1 Reduction of polarization due to unequal resource access and distribution	
7.1.1 Identify the causes of tension and conflicts	<ul style="list-style-type: none"> • More research on socio-cultural resolution of land conflicts (out of courts) • Conduct socioeconomic studies and workshops on every level
7.1.2 Demarcate target areas and possible fields of action	<ul style="list-style-type: none"> • Analyze potentials • Examine agrarian reform and alternative options - agricultural and non-agricultural income options and land redistribution

Challenges/Need for Action	Activities
7.2 Absorb detrimental distributional effects of divestiture and transformation	
7.2.1 Design socially sound reform processes	<ul style="list-style-type: none"> • Identify winners and losers • Work out future scenarios
7.2.2 Identify and include particularly affected groups	<ul style="list-style-type: none"> • Develop adapted transitional regulations • Conduct an impact assessment (reduction of favoritism and guaranteed access for marginal groups)
8. Generate knowledge	
8.1 Improvement of the capacity for problem solving	
8.1.1 Improve the know-how for taking responsibility of the self-perception of the interests of local groups	<ul style="list-style-type: none"> • Promote innovative approaches (participatory local rule making) • Prepare and distribute materials in the local language • Improve the acceptance of local regulations by government institutions • Promote interest groups
8.2 Sensitize to land tenure relevance	
8.2.1 Improve the knowledge of political decision makers and in development cooperation	<ul style="list-style-type: none"> • Point out the possibilities and limitations of autochthonous regulations • Support the willingness for land policy reform processes • Become familiar with impact assessment in the case of land tenure changes
8.2.2 Improve the knowledge of the legislature and judges	<ul style="list-style-type: none"> • Increase the sensitivity to autochthonous and modern land tenure • Conceptualize and conduct training for the application of laws and regulations
8.2.3 Increase expert competency on the planning and implementation levels	<ul style="list-style-type: none"> • Improve the specific capacity for developing methods, for the application of instruments and for quality control • Establish a land register or other documentation system • Point out options for land taxation and land valuation

Challenges/Need for Action	Activities
8.2.4 Improve the education and training competency in the area of land tenure in partner countries	<ul style="list-style-type: none"> • Further develop curricula for training institutions and universities • Elaborate teaching materials and case studies • Establish centers for documentation • Conduct region-specific workshops • Conceptualize and conduct training for local consultants • Initiate national and international e-mail conferences
8.2.5 Improve education and training competency in the areas of land tenure and its systems in development cooperation	<ul style="list-style-type: none"> • Guarantee complementary scientific support of projects/programs • Establish an international network • Promote the exchange of experiences • Promote capacity development (workshops, etc.)
8.2.6 Support applied land tenure research	<ul style="list-style-type: none"> • Strengthen the research capacity in partner countries • Intensify international research cooperation
8.2.7 Promote the spread of knowledge	<ul style="list-style-type: none"> • Distribute new teaching and informational materials (newsletter, internet) • Build up networks for gaining and spreading information

4.2 Policy Dialogue and Advisory Services to Policy Makers

4.2.1 Policy Dialogue

Policy dialogue enables previous experiences to be processed; it is controversial with respect to the conditions for its success and effectiveness. Are politically and economically strong partner countries willing to participate in such a dialogue? In smaller less influential countries is the discussion still about whether they should have an equal say, or is it nothing more than a case of the "emperor's new clothes" for an uncompromising policy of conditionality? Are donor countries ready to rethink their own positions and accept suggestions based on such a dialogue? Finally, are all those participating in the dialogue sufficiently prepared for this challenge and are they then entitled to do so (e.g. with respect to setting boundaries of competency between ministries and within the development cooperation)? With respect to this,

Policy dialogue in critical discussion

a very thorough and critical evaluation is necessary even in the case of land issues.

Internal policy dialogue

Policy dialogue in the area of "systems of land tenure" must not only be intensified between international partners, but also within the development policy makers in Germany. Information deficits must be reduced (possibly also in scientific circles giving policy advice). Reservations with respect to the theme and operationalization of land tenure problems discussed in governmental negotiations and when implementing projects should be reduced. The following would be suitable to accomplish this:

- Bring together executives from the ministries, technical cooperation, financial cooperation, political foundations and NGOs for seminars to create awareness;
- Deal with this area in the scientific advisory committee of the BMZ, in the committee for economic cooperation (AWZ of the German Parliament) and the respective EU departments;
- Include this topic in international forum discussions, and other conferences on agricultural growth, sustainable resource management and the fight against poverty in international agriculture research (Amman conference in September 1997 of ICARDA; DSE and IFPRI, Rio follow-up conferences, ISCO conference in Bonn 1996, FAO follow-up conferences).

Guidelines for the policy dialogue between partners of development cooperation

A policy dialogue should be oriented towards the "indications for the promotion of political, legal and administrative framework conditions within the bilateral governmental development cooperation" (BMZ). They emphasize the following:

- The respect and preservation of *human rights*: The access to land for women and the security of autochthonous rights as well as those of minority groups are a particular challenge;
- The creation of *legal security*: Crucial economic incentives for high productivity and long-term farming possibilities can only occur if there is legal security.
- The *participation* of the population in the political process: This includes, for example, strengthening local ownership and user groups in the codification of property rights and land use planning and the integration of local know-how;
- The establishment of a *market economy system framework*: as has been attempted in many transforming and reforming countries already with respect to newly formulated systems of land tenure.

German development cooperation possesses favorable prerequisites for credibility and the power to convince in policy dialogue. This is founded, for example, in the following:

- Experiences with the problems of transformation of land tenure (e.g. in the New German States after the reunification),
- Only few interventions in autochthonous land tenure as a former colonial power which have a direct impact up to now,
- It possesses a model of property which especially emphasizes social responsibility,
- Many years of experience with a decentralized land administration,
- Multifaceted agrarian structure and effective instruments to facilitate the process of change in different types of land use.

Based on the experiences to date, the policy dialogue concentrated on the following fields of work:

- Increasing the partner's awareness to arising and deepening land tenure issues (effects on the economy and society due to land conflicts, blockades from power struggles in the bureaucracy, investment stalemates, etc.);
- Discussions on comparable land tenure problems in neighboring countries with similar socioeconomic and political structures and the approaches for solving land disputes and application of land tenure instruments (e.g. the assessment of opportunities and risks of land registration in Thailand as a case study for neighboring Laos);
- Suggestions as to the type and extent of land tenure problems to be expected in the future if the current land policy is sustained (problems with leasing, insufficient intensification in agriculture or environmental problems in African countries, fragmentation due to inheritance and necessary redistribution of land in parts of Asia, growing use of violence due to landlessness in Latin America);
- Initiation of a wide discussion on the future of agriculture and rural areas (limited access to land, waning interest in agriculture, off-farm income);
- Discussions on rural/urban linkages;
- Discussions on various options for land policy and its effects in comparable countries;
- Strengthening the mediation/facilitation capacity;

What can development cooperation contribute to the policy dialogue?

Possible fields of work in the policy dialogue

- Development cooperation should function as an advocate for disadvantaged groups (see above).

Expert contributions to the policy dialogue

Due to the multifaceted areas of land policy implications, experienced experts must be included in the discussion process earlier for an effective policy dialogue to take place. They are in the best position for conducting long-term effectiveness analyses of political measures, to recognize conflicts in objectives and to point out secondary effects.

4.2.2 Advisory Services to Policy Makers

Policy advisory services on systems of land tenure and land policies are gaining in importance

International institutions of development cooperation are increasingly realizing the key role that land issues play in the future development of many countries. Thus, policy advice on land tenure and land policies is gaining in importance. Up to now, land policy advice has been concentrated in the Central and East European countries, the former Soviet Union, transforming countries of the South (e.g. Mozambique and Laos) and those with far-reaching market economy reforms.

Prerequisites for successful policy advice

Advice on policy making starts with economic, institutional, political and legal framework conditions which can be arranged *internally*. In view of the sensitive field "land," the following are required in any case:

- Process orientation,
- Flexibility,
- Close agreement of the partner and
- An interdisciplinary approach.

Integration within existing working areas of policy advisory services

Advisory services on land tenure and land policies belong to various fields of activities of development cooperation based on their contents such as agricultural policy, economic and social policy, legislation, good governance. The creation and improvement of framework conditions for functional systems of land tenure and land policy belong to this.

Efficient advisory services and the promotion of the partner's own *analysis and advisory service capacity* for policy issues and for following a development strategy (consistent framework, definition of property, linking systems of land tenure with family law, law of inheritance, fiscal policy, etc.);

Support for a *socially sound design and implementation* of reformation policy and social policy (focus on disadvantaged groups, al-

ternative social security systems which were conducted by the forced collective in the past, etc.);

Advisory services for the establishment of state and private institutions that guarantee that the potential of an improved system of land tenure can be fully utilized (e.g. decentralized land registration, agricultural support institutions and transparent leasing laws);

Development and establishment of market economy-oriented governmental income and expenditure systems (financing of land administration and land tax).

Policy advice for the formation of legal framework conditions of a reformed system of land tenure and the legal protection of the adopted land policy is undoubtedly an area unto its own. Without question, certainty of the law and the ability to implement legal claims are prerequisites for the further development of the system of land tenure by the private and cooperative sectors. It was also determined at the World Women's Conference that legal advisory services are particularly vital for improving the situation of women. The following are relevant areas of activity:

- Rule of law concepts and instruments such as advisory services in constitutional issues, human rights issues, mediation, ombudsmen, improvement of court and management procedures, spread of law, and especially the support of political participation;
- Support of legislation in private and public economic law and a reform of the economic administration;
- Support of the implementation and application of legislation.

Examples of existing and planned approaches for policy advisory services by the development cooperation

- Ongoing dialogue between DUMA/Russia and BML / Germany
- Land Law Reform in Uganda (USAID)
- Promotion of governmental legal institutions (Namibia) (GTZ)
- Advisory services for economic legislation and privatization (Albania and Armenia)

The profile demanded by a government advisor is correspondingly high. A broad professional qualification is an indis-

Legal advisory services in the stricter sense

Qualifications of government advisors

Coordination of donor interests: opportunities and risks

pensable prerequisite based on good economic, legal, social and ethnological knowledge. This knowledge must be coupled with the ability to communicate, mediate and coach, and the individuals should have a broad background of personal experience with land tenure issues.

The agreement and coordination of the position of different donors and the institutions in the partner country can place stress on the arguments in the policy dialogue. This can be useful for the very sensitive nature of political problems of land tenure and land policy. However, the partner may very quickly see the situation as an imposition and/or the risk of becoming dependent. Therefore, it is particularly important for partnerships to point out possibilities ("if" → "then" relationships) and use normative advisory contents very carefully.

Recommendations for the strengthening of donor coordination

[...] The coordination process should remain under local control. Experience with socio-economic reforms suggest that progress may only be attained if local communities are the driving force and not external pressure.

Any approach should therefore be based on a particular political, cultural and religious heritage and also consider ethnic and socio-economic differentiation. Thus it is certainly advisable to prefer a cooperative approach including the partner country and, also, to ask various stakeholders for their opinion instead of conditionalizing.

(Diaby-Pentzlin 1997:xiv)

4.3 Instruments for Land Administration

Land administration

Land administration includes the regulations and measures of the following:

- The rights to land and its fundamental elements,
- The use of land,
- The valuation of land.

Fundamental objectives of land policy are implemented by the land administration. It provides the background information for structural change and transformation processes. The establishment of an efficient comprehensive structure for land administration is increasingly becoming a part of development cooperation in countries with a dynamic economic development such as in Southeast Asia, Latin America, Southern Africa and in the transition countries (*ECE 1996, University of Florida 1996*)

Land administration project, Indonesia

Project goals:

1. Acceleration of land titling and registration
2. Improvement of the Institutional Framework for Land Administration
3. Development of Land Management Policies

Principal Partner Institution:	National Land Agency BPN
Human Resources:	2300 staff
No. of parcels in Indonesia:	55 million
WB loan for the first phase:	US\$ 80 million
Tech. Assistance Australia:	US\$ 15 million

(*WB Staff Appraisal Report, 1994 and Grant 1996*)

4.3.1 Land Register and Cadastre

Land registration is the core of the land administration (*DVW 1993, Henssen 1990, Williamson 1997*). In some countries there is one register for all of the land information (e.g. The Netherlands). In other countries, however, the information is divided into two registers based on historical and cultural backgrounds. (In Germany the two registers are called "*Grundbuch*" (land registry) and "*Kataster*" (cadastre)) (*see also section 3.10.2*).

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

Therefore, it is fundamental for development cooperation to have knowledge on the historical and current background of

Land register information

Advantages of a systematic establishment of land registers

land tenure and land register in the respective country in advance.

Advantages for the individual owners or the community based on a systematic establishment of the land register are the following:

- Improved certainty in law with respect to land;
- Stimulation for investments and sustainable use;
- Improved access to credit;
- Security and efficiency of property transactions;
- Minimization of land conflicts and the costs associated with them.
- Advantages for the government are the following:
 - Efficient basis for raising a land tax;
 - Basis for structural adaptation like land reform, land redistribution and rehabilitation of urban areas;
 - Control over land transactions;
 - Efficient basis for planning (land use planning, effective procedures of land allocation and permission for specific land use);
 - Effective management of information in the public administration.

Disadvantages

Disadvantages include the following:

- High institutional and financial cost for the establishment of the land register and especially its upkeep;
- The concern that the establishment of a land register strongly changes or manipulates autochthonous land tenure;
- The concern that the establishment of a land register means the land ownership becomes individualized and secondary rights will be ignored;
- The concern that the land register will soon be out-of-date because changes are not entered due to different reasons (save costs and cover-ups).

Well-conceptualized systems for land registration, however, do not alter any rights. Instead, they describe legal and objective facts. The challenge is found in the attempt to register undocumented complex land tenure contents, norms and secondary rights as they exist. This is so they will be made transparent to the public and, if necessary, legal action can be taken.

Simultaneously, the continuous development of autochthonous land tenure and its adaptation to local challenges must be guaranteed through innovative local solutions. Countries with newer development are the Côte d'Ivoire, Madagascar and Fiji.

International experience

International experience with the establishment of land registers shows that its promotion can be successful especially if it is a priority with the following socioeconomic prerequisites:

- Population pressure in densely populated areas;
- Significant investments;
- Lively land market;
- Heterogeneous social structure;
- High land shortage

The adaptation of methods and techniques to the amount of the land value is a basic prerequisite for the "feasibility" of the establishment of a land register. As a guideline, the cost is usually approximately one to four percent of the land value (personal data collection of *W. Zimmermann, GTZ*). For economic action it is, therefore, necessary to adapt methods to the socio-ecological zone and land value.

Table 7: Cost comparison for the establishment of a land register with respect to a precision gradation and areas of use

Area type	Mapping type and scale	Survey type and scale	Cadastre?	Costs to establish cadastre (US\$ per ha)
Urban	1:500-1:2000	Aerial (1:6000-1:10000) & ground survey	yes, multipurpose	50 to 200
Peri-urban	Orthophotomaps 1:2500-1:5000	Aerial survey 1:15000	yes	20 to 60
Densely pop. rural	Orthophotomaps 1:5000-1:10000	Aerial survey 1:15000-1:30000	possibly	5 to 40
Populated savanna	Orthophotomaps and maps 1:10000	Aerial survey 1:30000 or high resolution satellite	according to need; simple	2 to 15
Savanna agricultural	Photomaps 1:20000	Aerial survey 1:30000-1:50000 or high resolution satellite	generally no immediate need	1 to 5
Forest and tree crops	Base maps 1:20000	Ground & air survey + satellite images	possibly	
Rangeland and semi-arid	1:100000	Satellite images + ground & air survey	no	

(Falloux 1989 and Zimmermann)

Public/private partnerships, decentralization combined with new technological developments and a tendency of prices to decline as a consequence can lead to considerable increases in productivity and therefore reduction of costs. The following are examples of some technologies utilized: GPS (Global Positioning Systems), digital orthophotos (on CD-ROM), GPS-supported aerial photography, new high resolution satellite systems, electronic field books, etc.

Some important questions to be answered before starting a land registration initiative: Land registration systems and institutions

1. Who is responsible for forming and implementing land policies and land reform (ministries, departments)? Level of expertise to formulate and administer policies?
2. What are the policies and laws existing and being implemented concerning cadastre and what are the effects? How are land policies integrated in the national context (urban and rural)?
3. What are the mechanisms for monitoring the implementation and consequences of land policies?
4. Which government departments are responsible for data related to cadastre (adjudication, demarcation, survey and registration)? How do they co-operate in land-related efforts (exchange of data, administrative relationships)? Is the private sector involved?
5. What are the procedures for adjudication, demarcation, survey and registration? Is the approach systematic?
6. Are efforts of land registration decentralized (central register or local court registers of deeds and other documents)?
7. What is the percentage of land registered, what are the costs?
8. Are registers up to date?
9. What are levels and skills of those involved in land information systems? Are there possibilities for training? Facilities for training and education?
10. Does the public have access to land-related data? How about data subject to copyright or security restrictions (aerial photography)?
11. Land tenure and land registration
12. What rights in land are recognized by custom and law?
13. Is customary law recognized by the government and embedded in the legal framework concerning land issues?
14. Are interests in other resources related to land recognized (overriding interests, for example, squatters, usufructuary rights)?
15. Is the title to land guaranteed by the government?
16. What laws constitute titles?
17. How do the procedures to get title look and how long does it take to register land?
18. How are rights to land transmitted (sale, gift, inheritance)? How long does it take to transfer property from owner to owner at what costs? Are transfers of land required to be registered?
19. What rights are documented (leases, subleases, easements)? Are the registers complete in terms of spatial cover, owners, terms of rights (among others)?
20. What is the relation between the informal and the formal land market?
21. Are strata titles recognized? Are rights recognized referring to space above and below ground level?
22. What happens to land where the owner cannot be traced?
23. Can disputes over land be described? How often do they occur? What are main reasons for conflicts?
24. What are mechanisms to solve conflicts (traditional and official)? Who resolves those disputes?
25. How are boundaries of parcels determined? Are they visible from the air?
26. Who is responsible for the preservation of boundary marks? What are penalties for disturbance of boundaries?

(Additional information on:

- Land surveys and mapping
- Land valuation and land tax
- Planning and land development)

Source: Dale & McLaughlin 1988

(References (adapted): P. E. Dale and J. D. McLaughlin, 1988)

Experiences with development cooperation

The regular establishment of land registration is currently being supported in Egypt, Jordan, Cambodia, China (Shanghai), Georgia (together with the German state Saarland) and Paraná, Brazil (together with the German state Baden-Württemberg).

Early agreement between technical cooperation and financial cooperation is recommended, on the one hand, for the promotion and financing of projects for the establishment of land registration; on the other hand, agreement with the decision makers of the land tax administration on possible co-financing is also suggested.

Experience with the establishment of land registers using simplified methods for rural and urban areas exists for the following countries, for example:

- Paraguay (small town development),
- Benin (resource management),
- Dominican Republic (dryland forest),
- Cambodia (land registration),
- and projects for the rehabilitation of squatter areas.

The instrument, Participatory Rural Appraisal (PRA), adapted to systems of land tenure is appropriate in specific cases (such as for RRD projects, resource management or forestry) for developing a basic understanding of the land tenure situation. Thus, the project can be correspondingly adapted. An overview on the procedures for the documentation of autochthonous land tenure in Africa is described by *Le Roy et al. (1996)* (see also 4.4.4).

4.3.2 Land Markets

The importance of land markets

Land markets are subject to some degree of governmental control or guidance in almost all countries if they are derived from the principle that land cannot be traded like a commodity on the free market, but also fulfills functions derived from social responsibility of property and the public weal (legislation on land transfers).

The dynamic differences between land markets in Ecuador

Land markets in Ecuador have been studied on a regional comparative perspective. The study that FAO carried out in Ecuador analyzed the characteristics of land markets in two of the three regions of the country, the coast and the highlands.

The coast is a productive agricultural area where export crops such as cacao, banana and sugar cane have been cultivated since the colonial period. The highlands, where many of the Indian communities are settled, have less productive land, and agriculture is based on traditional food crops.

The results of the study demonstrated that land transactions (both purchase and disposal) in the more traditional and subsistence sectors of the regions, particularly in the highlands, only take place with people who are known and accepted by the community. For these peasant groups, land possesses both a social and economic meaning. On the one hand, land is considered an asset that allows them to assure their economic subsistence. On the other hand, it is a source of social and economic recognition in the community. Land transactions in these groups are usually controlled by the peasants themselves, are informal and usually involve few or no transaction costs. In general, the peasants prefer to rent or to sharecrop their land instead of selling it.

In the more economically dynamic zones where export crops are cultivated, such as the coast, the land markets are open. Land transactions are usually registered, and the participants do not have the social acceptance of the group where land is located. Analyzing the data of both regions, the coast and the highlands, the study found that land markets become more open and dynamic when land prices rise because of increases in technology, changes in agricultural activity (a shift, for example, to export crop cultivation), infrastructure improvements or changes in land use (from rural to urban, or for tourism purposes).

(Herrera, Riddell and Toselli 1997)

The significance of the land market was already described in *section 3.10*. In summary, the following development-oriented activities for the increase in efficiency, transparency and social functions of the land market were formulated at the GTZ seminar on "Urban Land Management" in Ecuador in 1993:

- a clarification of the private and public sector roles, both at the central and local levels, in land markets;
- more willingness to incorporate the private sector, NGO's, community-based organizations, private consultants and other interested parties in the management of land markets;
- a larger emphasis on making land registration and titling procedures more appropriate to the needs of the poor and more accessible to them;
- a reduction in public sector monopolies of land allocation and land management;
- the evaluation and auditing of land market institutions;
- the auditing of land use control systems;
- the design of more simple legal and regulatory systems;
- the evaluation of the use of power for compulsory purchase of land to see that it is not overused;
- the assessment of formal and informal land markets and dissemination of the results in order to increase information and knowledge about the functioning of land markets;
- low taxation on land transactions;
- easy access to land information (land register, cadastre, valuation);
- capacity building and training of personnel dealing with reformed land markets.

Development cooperation projects and programs involving the mobilization and regulation of land markets can benefit the target group.

An example of a GTZ-supported project in Latin America

Project executing organization:

UN Economic Commission for Latin America and the Caribbean, Santiago, Chile

Project objective:

The project executing organization is better qualified for an implementation-oriented advisory service for the further development of land markets with special consideration given to smallholders and the poor peri-urban population. It advises the countries in Latin America on the development of land tenure.

Measures:

- Systematic analysis of relevant information on the land market of selected countries;
- Evaluation of the formal and informal land transactions;
- Suggestions for the design of the land market with respect to economic, political and ecological stability and social balance;
- Advisory services for the possibilities of combining rural development, land use planning, resource management and measures for the regulation of the land market;
- Discussion processes between representatives of relevant institutions and interest groups.

4.3.3 Land Banking

Land banking is one of several instruments to regulate land markets in rural and urban areas and protected areas (nature reserves and water conservation areas). The goal of land banking is usually the foresighted availability of land for specific target groups and specific purposes like for community development, for guiding of land use and/or for the control of land prices. It should help the land market function efficiently and not to extend public ownership.

Land banking with foresight for public and agrarian structural purposes should provide the necessary land for economic and infrastructure development and land development in urban areas. In addition, it should make land provisions for social infrastructure and rehabilitation purposes endure.

Land banking

Policy on land banking to:

- Improve access of the poor or other specific target groups (like smallholders in irrigation projects) to land
- Support the implementation of urban and rural land development projects
- Reduce inflation in land price and reduce land speculation
- Promote public/private partnership
- Improvement of the land tenure structure

Rules for land banking

Rules for land banking are the following:

- Obtain adequate legal powers for land banking. Plan land acquisition in only essential cases and on priority basis and ensure the provision of appropriate roads and public amenities especially in the urban expansion areas.
- Maintain adequate supply of land to the market whenever necessary to regulate smooth functioning of the land markets and to control undesirable increase in land prices.
- Plan a realistic time frame for land banking and to cover only that quantum of land which can be effectively managed within the capabilities of the government.
- Plan for appropriate interim use for the acquired land by the government until public use occurs by allotting the land for the period on lease and deciding the permissible use.
- Provide consistent supervision and transparency to avoid misuse and corruption.
- Establish flexible executing agency with the necessary legal, organizational and financial competence (e.g. joint venture between the executing agency and development bank).
- Make sincere and adequate efforts to improve the technical and managerial skills of the personnel engaged in land acquisition and land development processes.
- Dispose land to the low-income groups at cost price with long-term easy conditions for payment; cost price to include the cost of land plus the overhead expenses of the administration including the interest on the capital invested.

Before establishing a land bank, detailed research on the costs, the actual benefit and the possible alternatives is required. Legal

requirements for land consolidation and land readjustment include regulations for the generally simplified management of project-related land banking.

4.3.4 Land Valuation

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

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

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

The effects of various variables on the land price are summarized in the following table:

Table 8: Expected effects on land prices

Changes in: (other things constant)	Expected Effect on Land Price	Main reason
Increases in output prices	+	Increases the value of the marginal product of land (VMP)
Increases in input prices	? (-)	Depends on the effect on output prices
Increases in the output/input price ratio	+	Increases the VMP of land
Technological change	+	Increases production per unit of land (VMP increases)
Soil conservation programs	? (+)	Depends on the capitalization of the soil conservation, that could be a function of the initial degree of soil problems
Increase of subsidies for agricultural production	+	Assuming subsidies have real impact on production costs, they increase the VMP
Increase in transaction costs in the output or input market	-	Decreases the real net rent received by the tenant/landowner
Increase in landowners' fix costs (depreciation, maintenance costs)	-	Reduces the net rent that could be obtained from land. Also induces renting instead of buying.
Increase in searching, bargaining and transfer costs in the land market	-	Reduces the net rents that could be obtained from land. Also induces renting instead of buying.
Property taxes	? (-)	Increase in owner's costs but the effect depends on the relation between taxes and inflation, and on the type of taxes.
Income taxes	? (-)	Reduces the net land rents, but it depends on the relation with inflation.
Inflation	+	1) Speculative, increases attractiveness of land as asset 2) depending on the effect on real output prices, affects demand (VMP)
Increases in real interest rate	-	Changes the opportunity cost of investments, makes more attractive other sectors.
Increase in expected future capital gains	+	1) With perfect information the expected gains tend to be real gains, then price bubbles could be observed. 2) With less information, more speculative movements and price overreaction.
Reducing fixed zonifications (agricultural land/urban)	? (+)	Breaking up fixed zonifications tends to open the market. Final effect will depend on what alternative uses for land come to be relevant.
Credit programs to buy land	+	More demand for a fixed or quasi fixed asset supply
Population growth	+	More demand for agricultural output (more demand) and more demand for space.
Government programs	? (+)	Depends on the program, but usually the possibility of capitalizing government benefits increases the capital gains (subsidies, etc.)

(C. Trivelli 1997:7f, www.fao.org/waicent/faoinfo/sustdev/Ltdirect/Ltan0016.htm)

4.3.5 Land and Property Tax

The land and property tax can be an important source of income for the public budget (*ECE 1996*). The land tax is especially relevant for community management with respect to decentralization. The tax can contribute 70% - 90% of the income from taxes within local communities. It is important as an instrument for supporting the communities' budgets.

Relevance of the land and property tax

Most tax policy experts favor leaving land and other property taxation as a revenue source for local government. This is so for several very important reasons. First, although the sums collected are minimal from a national perspective, they are usually significant from the perspective of local and municipal governments. Second, the local use of property tax revenue creates an incentive for keeping good local records at the parcel level, reducing national administrative expenses and overheads. Third, this approach creates a mechanism by which the local community can take a proactive role in implementing environmentally sound, sustainable land policy, since decisions on who and where to tax are made at the local level. [...] An effective land taxation policy has always to walk a very fine line of efficiently collecting revenue while not discouraging investment.

(Herrera, Riddell and Toselli 1997)

Its advantages are the following:

- The tax is relatively simple to raise since the object is visible.
- The tax is a stable form of taxation since the basis for calculation minimizes fluctuations in the tax.

The land tax is especially important for development cooperation in decentralization, privatization, community development and tax reform projects.

The working group on "The Reform of Land-Based Taxes" gave the following suggestions for land tax reform at the international GTZ seminar "Urban Land Management" in Ecuador in 1993:

- To improve the credibility of local governments by increasing transparency, equity and implementing appropriate legal settings, appropriate regulatory procedures and broadly accepted expenditure concepts, e.g. increase the ratio between capital investment and operation.
- To develop strategies for the sustainability of financial reform projects.
- To determine the property tax base potential. Property tax revenue depends on the tax base, the coverage ratio, the valuation ratio, the assessment ratio, the legal tax rate, and the collection ratio. Improving each of these components will lead towards maximization of the yield.
- To always consider valuation and taxation systems when deciding about cadastre projects.
- To keep in mind throughout the reform process the following elements that lead to a successful property tax reform:
 - keep objectives clear
 - keep policy simple
rather than rely solely on property information and valuation, concentrate on efficient tax collection
 - keep operation processes simple
 - establish correct incentives and resist temptations
 - introduce innovations through pilot projects
(e.g. public/private partnership for tax collection through local banks; SISTEP, Indonesia)

Fiscal instruments of indicative planning

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

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

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

Land tax and production incentives

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

such as in Honduras, that large landholders utilize the most fertile areas as pasture, while the smallholders suffer from a land shortage.

In Brazil, Chile, Guatemala, Panama and Thailand, a "penalty tax" was raised on fallow land or land used in an undesirable way. In Brazil, however, this led to the negative effect of more areas being cleared.

Table 9: Income from land taxes in Chile and Indonesia

	Year 1981	Year 1991	Percentage of tax for agriculturally used land (in %)	Percentage of tax for non-agriculturally used land (in %)
Chile (US\$ million)	123.0	202.0	13	87
Indonesia (Rupia billion)	135.4	574.3	13	87

(Lincoln Institute of Land Policy 1994)

4.4 Land Development Instruments

The need for improved land management is obvious in a changing environment. Matching land use pattern with land tenure structure and matching public policy with local or individual interest are a permanent challenge in rural as well as in urban areas (Larsson 1997). A set of instruments can facilitate the process for adaptation with the focus on participation and local empowerment.

4.4.1 Agrarian Structural Development Planning (ASDP)

The ASDP is an instrument used in the planning and decision-making processes for rural regional development (BML 1996). It is primarily implemented in preparation of and in accompaniment with regional rural development, land consolidation and village development projects. In rural areas undergoing rapid structural change the ASDP has proven to be useful as an implementation-oriented instrument in which an agrarian structural guideline can be turned into a plan of action. It is effective when *agrarian structural deficiencies or problems* with respect to development of rural areas must be resolved.

ASDP - an instrument used for planning and decision making

The demands of the ASDP are primarily the following:

- Orientation for future planning of agrarian structure,
- Conception of change in agrarian structure with respect to rural regional development,
- Concept for mutual adjustment of land use and structure of ownership,
- Integration of community and rural development,
- Pointing out competing land use claims and conflicts and criteria for settling conflicts,
- Suggestions for concrete projects and measures which can be implemented.

Recent examples where ASDP has been applied are the following:

- The new German states,
- Portugal - a project for land consolidation and land readjustment,
- Pereslawl county, Russian Federation (with GTZ support).

4.4.2 Land Consolidation and Land Readjustment

Land consolidation and land readjustment are the most comprehensive of all land tenure instruments. They are applied for the development of rural areas for the elimination of deficiencies in the agrarian structure considering the existing ownership and for matching the land use pattern with the land tenure structure.

Land consolidation and land readjustment have supported the changes in agrarian structure in the West European countries (with the exception of Great Britain) since the end of the last century. Partner countries with considerable deficiencies in agrarian structure in regions where there are primarily smallholders and where advice for participatory local approaches for solutions are demanded are showing increasing interest (*Larsson 1993*). Germany has about 100 years of experience with the legal and technical aspects of land consolidation (see, for example, *Land Consolidation Act, FRG ArgeFlurb 1988, Thöne 1995*).

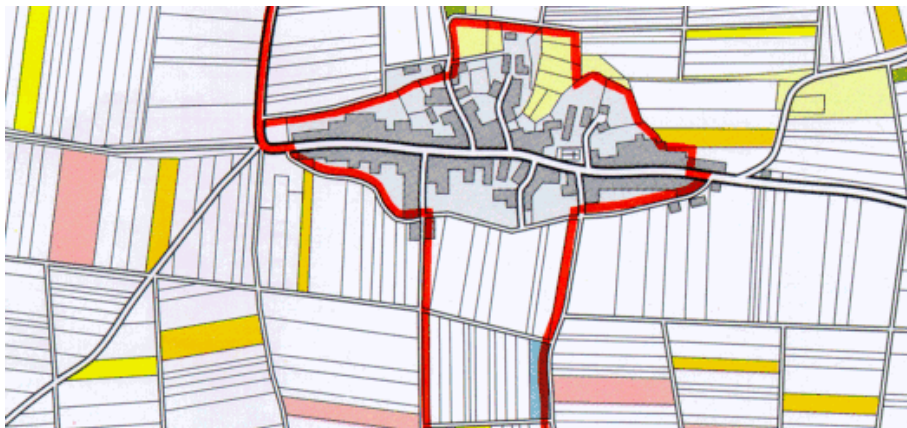
In Asia, the countries of Japan, Indonesia, South Korea, India and Taiwan also have comprehensive experience with land consolidation and land readjustment. The relatively high cost and time and institutional factors are a consequence of the comprehensive legal, organizational and financial framework.

Overview 10: The Historical development of agricultural structure in a South German community

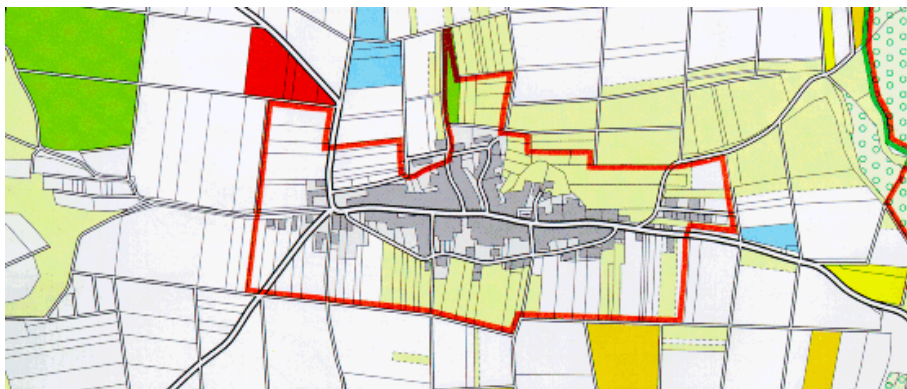
Elaboration of cadastre in 1830:



First land consolidation procedure 1890 including privatization of forest land and construction of rural roads:



Second land consolidation procedure in 1970:



colored areas: land ownership and tenancies

Land consolidation and land readjustment

- Regulates the use of land on the basis of a land use and infrastructure plan agreed upon by all affected institutions and serves to reconcile the interests of regional development, land use planning and those of the individual land owners;
- Eliminates the deficiency in the agrarian structure such as the fragmentation of property and the poor development of the project area; thus it fundamentally increases the productivity;
- Regulates the ownership, user and protective rights to land and water and contributes considerably to settling conflicts of use and for harmonization of interests;
- Mobilizes the change in structure additionally through project-related land banking, lease regulations and efficient regulations for avoiding expropriation in the public's interest such as for the construction of infrastructure and protected areas;
- Guarantees democratic rules for the active participation of the target group as individuals and as a mutually supportive group (participants in the association);
- Makes a diverse range of land readjustment processes available for the different challenges in rural areas which include the voluntary exchange of land, simplified types of land consolidation and the comprehensive readjustment of the planning area;
- Creates a comprehensive legal and organizational context for those land development and infrastructure planning measures which have a far-reaching intervention in the ownership structure such as the following:
 - Irrigation projects,
 - Settlement projects,
 - Establishment of smallholder plantations (e.g. Sumatra),
 - Dams and reservoirs,
 - Special resource protection projects.

Development cooperation has had experience with simplified and less expensive methods in Portugal and Indonesia.

**Experience with
development cooperation**

- Projects for supporting the establishment of the executive agency structure for a national program for land consolidation and land readjustment in Portugal from 1982 to 1990. The GTZ supported the training of counterparts, the organizational and methodological development and the transfer of technology in the institutional structure and in projects.
- Advisory services of a limited extent and the exchange of experiences by experts in Indonesia in 1994 and 1995 (*see BPN 1995*).

4.4.3 Land Use Planning

The model for land use planning was formulated in the Guidelines for Land Use Planning (*GTZ 1998a*) and in "Experiences of Land Use Planning in Asian Projects" (*GTZ 1996a*) as follows:

Land use planning

"Land Use Planning in technical cooperation is an iterative process based on the dialogue between all of the actors involved. Its objectives are the commitment to decisions on the sustainable use of land in rural areas and the initiation and support of the corresponding measures for implementation."

Further principles of land use planning are that both the methods and contents should be oriented towards the local conditions and should be based on the local environmental knowledge and traditional strategies for solving problems and settling conflicts. Land use planning is founded on the idea that development is a process from the "bottom" and is based on self-help and responsibility for one's self. It is an interdisciplinary task and should serve to improve the planning and acting competence.

The land use plan is implemented by local target groups with the support of state offices and regional development organizations as "lead agencies". Technical cooperation projects support the planning process by assisting with the development of strategies for implementation and the establishment of efficient monitoring and evaluation systems (M & E) (*Entwicklung und Ländlicher Raum 2/96*).

The implementation of land use planning usually affects the rights of individuals or communities. Reconciling the interests is, therefore, only possible on the basis of a consensus and the total acceptance of rules. Matching land use pattern and the land tenure structure is an ongoing process. Adjustments can be achieved by individual consensus building or by legal procedures like land readjustment (*Larsson 1993*).

Experiences of land use planning in Asia

Most of the projects dealing with rural development follow an integrated approach often incorporating a land use planning component:

- Projects of Regional Rural Development (RRD) with emphasis on natural resource management (TG-HDP, NWP-DZPDP, RRDP, GDP, CUP)
- Projects of Social Forestry (IRM, PAK-SFDP, INDO-SFDP, FG-FP)
- Projects of Natural Resources Management combined with Institutional Development (LREPP-II, LUPAM, CIAD, UMWP, IGWSDP)

4.4.4 Taking Autochthonous Land Tenure into Consideration

Sharing of local and external knowledge

The prerequisites for considering and including autochthonous rules within a national legal system are innovative approaches that attempt to share external and local knowledge. The goal should be to develop newly adapted land tenure models that do justice to rapid economic and social change while being based on traditional rules and knowledge and accepted and lived by the local people (*Münkner 1995*).

Active participation of locally involved persons in the gathering of information

A land policy having this as its goal must be founded on detailed knowledge of the present land tenure systems and practices. It must especially develop an understanding for the connection between the practiced land tenure, current economic patterns of use and the social importance of land. Therefore, incentives are required for locally involved persons to participate actively in the process of gathering information on the practices of autochthonous land law, its interpretation and conveying the historically evolved regulations.

Two examples for the preceding on different levels are the following:

- Drawing up the "Report of the Presidential Commission of Inquiry into Matters of Land Law" in Tanzania on the national level (Govt. of Tanzania 1994) and
- Drafting a "plan foncier" (land plan) within the "Projet de gestion des ressources naturelles (PGRN)" in Benin. This plan was made on the local (and regional) level including negotiations about content and meaning of different autochthonous practices in land tenure (*LeRoy* 1996).

"Participatory law making" appears to be a promising way to create a legal framework that first, corresponds to the demands and expectations of the concerned persons, secondly, reflects the general public's interests and, thirdly, is able to actually achieve the desired combination of new ideas and institutions concerning land tenure on the one hand, and the existing local practices on the other (*Münkner* 1998).

Comparable to the process of participatory land use planning, laws should be developed and finally shaped in a series of successive meetings on different levels in a dialogue involving attorneys of the state and representatives of farmers, pastoralists, forest users or fishermen. Fundamental for this process is the unhampered flow of information in national or local languages and the coaching and accompanying by neutral observers, e.g. scientists.

Since these decentralized processes are more time-intensive and more consuming than the law making behind closed doors, the development cooperation would be invited to a financial engagement. For the following reasons this would be a long-term high-yield investment:

- The chances increase that the local population comprehends the new "hybrid" laws better and that they identify more with the law, so that it will be accepted and respected.
- An educational effect for other sectors of an ideally confidential cooperation between the "top" and the "bottom", i.e. between the state and the citizens, develops.

"Participatory law making"

Information in national and local languages

"Participatory law making" as a long-term high-yield investment of development cooperation

4.4.5 Rural Settlement Programs

Settlement programs within the framework of national action programs were suggested at the World Conference on Agrarian Reform and Rural Development (*FAO 1979*):

Settlement of unoccupied public lands

In countries where a significant land frontier exists, the government should consider action to:

- Promote settlement on new land of the largest number of landless households consistent with sound environmental considerations and provide the necessary infrastructure and economic and social services to ensure their success.
- Ensure that such schemes have technical and economic viability and are supplementary to, not substitutes for, agrarian reforms necessary in already settled areas.

(FAO 1979)

Coupling technical cooperation with financial cooperation is ideal for securing quality and sustainability of settlement programs. The following two projects are examples of such cooperation:

- OPHIR, Sumatra, Indonesia (GTZ, KfW)
- GASP, Kenya (GTZ, KfW).

The NESP-OPHIR project in West Sumatra / Indonesia

The OPHIR Project is embedded in the Indonesian government's NES/PIR concept. But it further was extended to involve the component "participation" (= NESP). The heterogeneous composition of the settler groups and in particular the participation of people with organizational and administrative skills as well as the willingness and ability of many settlers to take on responsibility and leadership in the farmers' organization was a decisive basis for the high degree of self-administration and participation of the settlers in the course of the project.

Emphasis must be placed on the successful combination of financial and technical cooperation within this project. Components of the financial cooperation were the setting up of an oil palm plantation complex of 6,000 ha, i.e. 1,200 ha for the nucleus plantation, and 4,800 ha for the 2,400 small farmers. This includes the infrastructure facilities (houses with water supply, community facilities, village streets, plantation roads) as well as the construction of a palm oil mill with a capacity of ca. 36,000 tonnes of palm oil and 5,700 tonnes of palm kernels per year.

The technical cooperation supported the 2,400 settler families on the plantation in setting up and running a functioning farmers' organization for the management of the oil palm plantation.

The GASP settlement project in Kenya

The GASP Settlement Project is being conducted in the coastal area of Lamu/Tana River under Kenyan-German development cooperation.

Project partner: Ministry for Lands and Settlement, Kenya

Project objective: Securing the settlement of the landless in capable areas in the coastal region on a long-term basis.

Sustainability is composed of four elements:

- Economic carrying capacity
- Environmental compatibility
- Social organization of the settled families
- Securing land and user rights

Region of settlement	Number of plots	Area in ha	Population in 1997	Expected population in 2012
Hindi Magogoni	750	7700	2100	5700
Lake Kenyatta I	3600	15000	28000	35000
Lake Kenyatta II	600	2300	600	5200
Witu I	1750	15000	4400	13200

Planned project period 1977-2004 (Project documents GASP/GTZ)

The Kenyan Government was also supported to establish a local land registration office in the project area in order to speed up the issuing of land titles to the settlers.

4.4.6 Land Tenure for Irrigation Projects

The sustainable success of irrigation projects is directly dependent on how the claims and needs of the target group are considered. Only cases which involve a process of intensive coordination with all participating parties and guarantee the existing rules and laws within the project concept concerning land and water can be widely accepted.

The implementation of an irrigation project requires massive interventions of land ownership and land use rights in many cases. These interventions are usually unavoidable (e.g. compensation for developed or flooded areas, changes in water rights and partial land consolidation). A major hindrance for this process is the lack of adapted legislation as in most cases project-specific ad hoc regulations with all their disadvantages must be fallen back upon.

For the preceding reasons it is necessary to check in the early phases of the support of an irrigation project whether a demand for advice services concerning water rights and land tenure regulations exists, and how it can be integrated into the project concept.

The following instruments of land tenure can be considered for **Land tenure instruments** the implementation of irrigation projects:

- Mobilization of land via project-specific land banking, (including preemption rights);
- Preferred sale to the target group (e.g. smallholders in the project region);
- Land consolidation, land readjustment;
- Long-term leasing and land and water usage regulations;
- Sale and purchase via land markets;
- Land valuation (before and after project implementation).

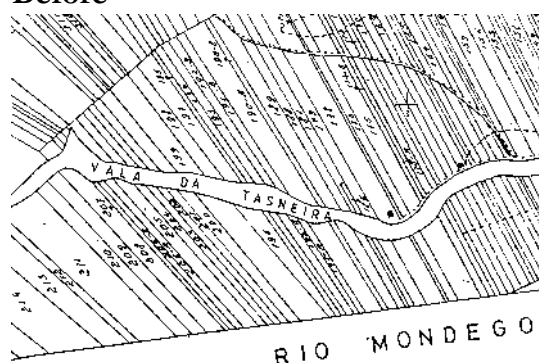
Irrigation project with land readjustment, Mondego, Portugal

The irrigation project in the Rio Mondego valley covers an area of 15000 ha with 36000 plots (before the land readjustment) and 9300 landowners. The area is cultivated by 6000 smallholders.

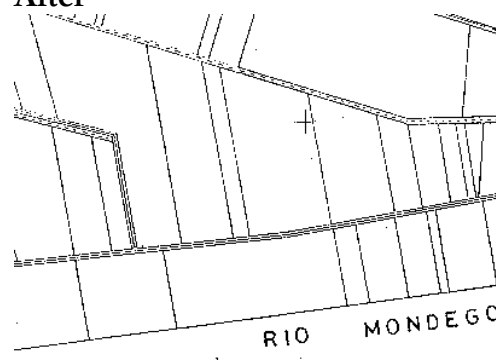
The GTZ supported the project executing agency on behalf of the BMZ in the fields of land readjustment, operation planning for the irrigation systems and infrastructure, and support services for new farming systems. The KfW supported the project executing agency by financing the infrastructure for flood protection, irrigation and drainage devices and rural road construction.

The realization of economically viable farming systems especially for the smallholders was enabled by the application of land readjustment procedures with integrated land banking and leasing regulations.

Before



After



Irrigation Project, Mondego, Portugal: Before and After Land Readjustment -

4.5 Instruments for Urban Land Management

High rates of urbanization have outgrown the management capabilities of cities in the developing world. The existing formal urban planning standards and tenure regulations have in most cases proven inappropriate to meet the challenges.

Informal and often illegal urbanization processes are bypassing formal planning regulations and creating parallel structures in order to tackle their existential problems.

The need for better and more flexible land management is obvious. Minimum requirements for the growing sector of urban agriculture and the strengthening of urban/rural linkages are examples for new development goals and appropriate land management.

4.5.1 Dimensions of Urban Land Management

Urban land management

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

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

Fields of application of land information systems for urban development

- Existing tenure status and obligations,
- Level of land-related fees and taxes,
- Legalization of tenure in formal and informal settlements,
- Urban land readjustment,
- Provision, operations and maintenance of urban infrastructure,
- Urban land market.

(GTZ 1996c)

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

Land use and settlement plans for improving the efficient use of land have been attempted in many urban areas and their fringes. A concept for suburban development is the "Guided Land Development" (GLD) (Payne 1997:43). According to the GLD, state departments responsible for the necessary infrastructure such as roads, utilities and sewage should make these available before private urban development begins. Land development should be steered correspondingly in urban areas with this plan. The plans for land development are elaborated and discussed with the landowners and the state departments in a participatory process.

Guided land development

4.5.2 Urban Land Readjustment

The concept of urban land readjustment was developed in Germany as an urban planning tool more than a hundred years ago and was altered for the local conditions in Japan, Korea, Taiwan and other countries. Especially in the Asian countries Indonesia, Malaysia, Thailand and India legal and organizational prerequisites for the transfer of land used for construction are created and programs are implemented (Larsson 1993).

The concept of land readjustment

The concept of land readjustment is based on the following principle: The owner relinquishes a part of his property in favor of infrastructure facilities and development measures. The present structure of land distribution is adjusted to the guidelines of

the urban planning, so that the new property layout allows for as meaningful, optimal development as possible.

Urban land readjustment implements the guidelines of the urban land use plan with the active participation of all owners and enables the interconversion of agricultural land and land to be or expected to be developed for urbanization, development or rehabilitation without speculative deals.

The land readjustment procedure is only one of various options for matching urban land use and ownership structure. This procedure is ideal for areas with small plots where the majority do not want to renounce their right to ownership or are interested in building or rehabilitating themselves. Urban land readjustment is a highly developed model for partnership between the community and private sector (*Larsson 1997*).

Urban land readjustment in Indonesia

Since 1985 when urban land readjustment was introduced in Indonesia, approximately 9,000 ha of land for expected urban development involving 55,000 people have been readjusted and developed.

(*BPN 1993*)

4.5.3 Dealing with Squatter Settlements

State institutions and local administrations are increasingly tolerant towards illegal settlements, especially on the fringes of rapidly growing cities. Violent solutions for the enforcement of existing land rights (concerning property and use) are not promising and inappropriate in the light of the dynamic urbanization processes in most partner countries.

Models for solution

Models for solution can be comprised of the following steps:

- Initiation of a formal or informal structure for the communication and cooperation between the institutions and the affected parties,
- Integration of the squatter settlement into urban planning and development,
- Linking of rehabilitation and legalization programs,

- Support for organizing the affected parties and their permanent involvement in the process of planning, decision making and implementation,
- Development of a locally adapted model for granting legal security of property, leasing contracts, land trusts or other legal forms of status,
- Appropriate financial participation by the affected persons for the costs of basic infrastructure and land purchase.

Standardized solutions cannot be found, but innovative approaches on the basis of the specific local conditions show various options for acute conflict resolution.

Guidelines and specimen cases for the legalization of squatter settlements in the vicinity of GTZ projects in Kenya, Senegal and Brazil are reviewed amongst others in the following documents: *FASE/GTZ/IPPUR, 1997, GTZ 1998b, GTZ-Workshop on Land Management (formal/informal) for squatter areas, 1998.*

Community Land Trust (CLT), Kenya a tenure model

The CLT is a result of various efforts of exploring adequate tenure systems. A combination of traditional African and Islamic land tenure systems was modified and adjusted to the local situation of the Bondeni squatter settlement. The tenure model is based on communal ownership. The community owns the land and the members of the community act as trustees with no right of ownership to the land but usufructuary rights. Officially, the rights to the land are secured by registering it in the name of the community. Each individual owner of structures is owner of the developments and improvements undertaken on the land plots. These developments and improvements but not the land itself can be inherited and bequeathed. The land cannot be sold but the developments made on it. Land and development have been split up. The basic principle of this model is to secure tenure sustainable for the whole community which in effect will allow individuals to benefit. Speculation and forces of a land market are reduced.

Lüthi 1995

*See also: GTZ Video included in attached CD-ROM:
Our Land in Trust: Community Land Trust Model Voi,
"Small town development project Kenya"*

4.6 Instruments for the Implementation of Agrarian Reforms and Transformation Processes

4.6.1 Types of Agrarian Reforms

Types of agrarian reforms

Agrarian reform is usually part of a process of extensive political and economic reforms. Recently various types of agrarian reforms shaped the process of land redistribution in numerous countries:

1. Land redistribution in favor of smallholders and the landless on the basis of expropriated large landholdings (usually with compensation), state property and/or land market interventions. Recent examples are South Africa, Brazil, Colombia and the Philippines;
2. Privatization of ownership or use rights in the transforming countries (examples: Eastern Europe, Central Asia, Laos, Vietnam, Angola and Mozambique);
3. Legal and institutional reforms (examples: Namibia, Zimbabwe, Tanzania and Bolivia);
4. Land reforms in favor of pastoralists and traditional local groups (examples: Mongolia, Mali, Niger and Maghreb).

4.6.2 Reform of Land Ownership

Registration of land of large landholdings and distribution to beneficiaries

Besides the necessary legal regulations, a large number of administrative measures and complementary support is necessary to reach the objective of land reforms, i.e. the expropriation of large landholdings and their redistribution in favor of the landless and the smallholders. First the ownership conditions of the large landholdings have to be investigated and registered. Also, plots of the new owners have to be identified and registered.

Additional complementary measures

The simple redistribution of land is no guarantee for an increase in production and income for the reform's beneficiaries, although this is often aspired to with the implementation of land reforms.

4.6.3 Reform of Land Management

Establishment of supporting institutions

The new cultivators usually lack knowledge and experience in management. It is necessary to support the inexperienced farmers appropriately with the supply of inputs, loans, etc. The

essential supportive actions contain the usual instruments of agricultural policy like extension services and further training, establishing credit and market systems for the sale of the products and the purchase of production factors and supporting the creation of cooperative structures.

All of the above measures should be integrated into the process of the reform of land ownership. In countries where these elements of a reform were inadequately or not taken into account at all, the inexperienced farmers were often not able to utilize the land allotted to them. As a result of low yields and increasing debts, they had to surrender their land soon after they had received their new property.

Reform of land management secures success of land ownership reforms

The crucial role of human capacity building

"Agrarian reform requires accompanying development of the capacity among the reform beneficiaries for capital accumulation in terms of human capital (education, training) and social capital (civil society associations) as well as productive capital. Along with this, they must also have full access to national, legal, political and economic (markets, input, etc.) institutions."

(Herrera, Riddell and Toselli 1997)

4.6.4 Market-oriented Model of Negotiations

The degree to which the objectives of numerous agrarian reform programs are fulfilled is limited due to the resistance of influential large landholders, lengthy and cumbersome expropriation processes, and an inefficient reform administration. This diverts the discussion on agrarian reform more and more towards alternative market-based solutions of the redistribution process by negotiations, wherein the state provides the legal and organizational framework (*Deininger 1998*).

Limited fulfillment of goals

Market-assisted model of negotiations

The fundamental elements of the market-assisted model of negotiations are the following:

- The access to land takes place directly by the presumed purchaser via the land market.
- Transparent rules for the land market and an orientation for land prices are developed.
- The supervision of the redistribution process is carried out by a decentralized commission. An additional land reform administration is not necessary in every case.
- Land banking can be meaningfully used as a complementary instrument in certain cases.
- The financing is provided by the favored target group itself (single persons, traditional groups, etc.). This group also obtains a special status for the access to credits, subsidies and advisory services. South Africa and Brazil are exemplary models of a market-assisted, but state-controlled land redistribution.

4.6.5 Impact Assessment of Agrarian Reform

Monitoring and evaluation

Impact assessment is done by means of monitoring and evaluation. Assessing and controlling the performance and impacts of agrarian reform programs include the collection of data, the interpretation of results, and an analysis of the constraints encountered.

Impact indicator

Impact indicates the effect(s) agrarian reform programs have had in terms of technical, economic, socio-cultural, institutional, or environmental changes. Assessing such impact is therefore to determine whether concrete measures have indeed contributed to the observed changes. This requires answering the following two questions:

Have anticipated or unanticipated changes (benefits or negative side-effects) occurred in the area served or covered by the measures? This may include changes in the level of production and productivity, food consumption, household income and standard of living, and effects on the natural environment.

Can these changes be plausibly related to the utilization of program measures (goods and services) by the target group?

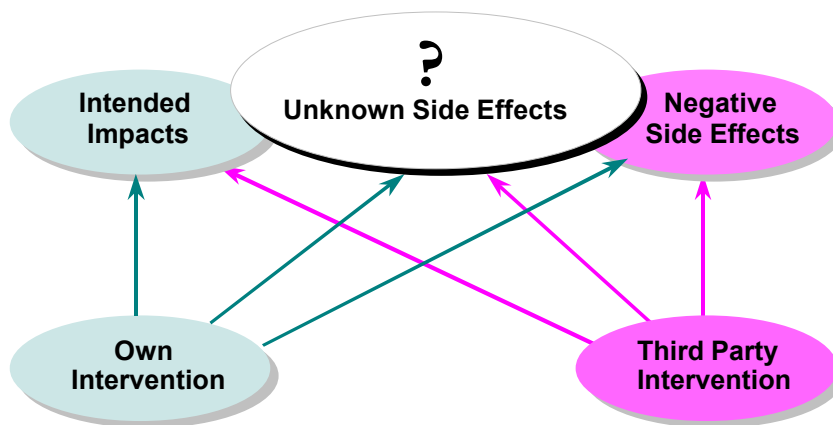
Effective impact assessment requires a set of indicators that combines the following factors:

- **Simple:** the indicators are easily measurable.
- **Systematic:** the indicators are logically linked.
- **Complete:** the set of indicators covers fully the chain of development hypotheses.

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

Unknown effects

Overview 11: Intended and unintended impacts



In order to come to a meaningful impact assessment of agrarian reform at manageable cost by means of an indicator system, the following recommendations are given:

Recommendations for impact assessment

Make sure that you have a convincing and logical hierarchy of objectives including important assumptions and possible negative side effects. Also clarify what kind of side effects still unknown may occur.

For each of these planning parameters at the different logical levels, specify clear indicators that are already available or easily measurable.

Get the baseline value (before the start of the program) for each of these indicators.

Then define phased targets (e.g. for several years) for each of these indicators, starting from the assumed implementation ca-

capacity, with clearly stated hypotheses on the degree of effectiveness for achieving the intended impacts. In case of an ex-post analysis, specify the achievements with respect to these indicators for a time-series of at least three points in time.

If used for an ongoing impact assessment within the framework of a monitoring system, the targets specified initially may be revised after the first round of monitoring information is available.

The program planning matrix provides reasonable means and tools to come to an assessment of the impacts of the agrarian reform. For whatever area one intends to do this, one can take this program planning matrix and fill its indicators with the respective figures.

What remains is the interpretation of whether or not one considers the achievements and impacts documented to mean the success or failure of the program (*Meliczek 1998, Krimmel 1998*).

4.6.6 Interim Regulations for Land Tenure in the Transformation Process

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

Interim regulations

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

Interim regulations must have an interdisciplinary concept. The desired social, economic and political results should harmonize with the challenge of feasibility, rapid implementation, consideration of the interests of the concerned parties and legal security. Interim regulations are above all "*feasible consensus solutions*".

Privatization in former East Germany

The legal basis for interim regulations here is the agricultural adaptation law ("Landwirtschaftsanpassungsgesetz (LAG)") in particular with its regulations for:

- The division and conversion of collective farms ("*Landwirtschaftliche Produktionsgenossenschaften (LPG)*"),
- Procedures for the registration and reorganization of property,
- Legal appeals and arbitration tribunal.

After the privatization of the collective farms, the agricultural land in former East Germany is

- privately owned (4.8 mill. ha),
- state-owned (1.2 mill. ha).

Most of the land now privately owned was leased within a short period of time to independent farmers or to enterprises succeeding the former collective farms. Due to this, the share of leased areas is extremely high at 88% in former East Germany.

The privatization of the remaining 1.2 mill. ha follows a three-step concept:

1. Long-term leasing (criteria for applicants are the farm development plans and the qualifications)
2. Purchase at privileged price for the leasor (on the basis of transparent rules)
3. Sale on the land market in small portions over a longer period of time. This procedure avoids hectic consequences on the land market. Existing lease contracts are protected during the change of ownership.

(Kuhlmann 1997)

4.7 Possibilities for Conflict Resolution

4.7.1 Institutions for Conflict Resolution

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

Creation or improvement of structures

different interest parties (e.g. the state's and the smallholders' interests).

Institutions and mechanisms for conflict resolution / management in West Africa

Local level institutions for conflict management:

- among pastoralists: joros (Mali), sudu baba (Burkina Faso), djaiza (Senegal), ardo (Niger)
- among fishing folk: djitigui, batigui (Mali)
- among farmers: land chiefs, customary chiefs (Ghana, Nigeria, Niger..), council of elders (Guinea, Ghana), religious leaders (Senegal, Niger...), village associations and socio-professional groupings

Administrative and judicial institutions:

formal institutions: courts, administrative authorities, House of Chiefs (Ghana), resource tenure commissions (Niger), farmer / forestry commissions (Côte d'Ivoire) and rural councils (Senegal)

informal institutions: negotiation fora (Nigeria, Niger), ad hoc commissions (Nigeria), stakeholder committees (Niger), village land management committees (Burkina Faso), management committees for agricultural lands (Côte d'Ivoire), management committees for water and woodland, local political leaders

(GRET/IIED 1996:XIII)

In Kenya, for example, "land control boards" exist, in Tanzania cooperative models for conflict resolution have been created together with the post-Ujamaa land tenure reform and in Botswana these organs are called subordinate land boards.

Land Boards in Botswana

One of the main functions of the Subordinate Land Boards is the settlement of land disputes [...] Previously, all disputes went to the customary court system, which was also under the administration of the Ministry of Lands. However, this has been changed. All parties and witnesses concerned with the dispute meet with the Subordinate Land Board (or the Main Land Board, if there is no Subordinate Land Board). Often, the Board might have to go to the plots for on-site investigation. If appellants are dissatisfied, they can appeal to the Main Board, and then to the Minister responsible for all land matters. People aggrieved by the Minister's decisions can appeal to a court of law.

Land disputes are inherently judicial and not administrative, whereas the Land Boards are solely administrative bodies and have no judicial authority. Moreover, the Land Boards have often been actors in the events leading up to disputes, which results in a conflict of interests. Hence, the 1993 Amendment to the Tribal Land Act empowers the Minister to establish Land Tribunals, which are to handle land appeals, and to enforce the Board's decisions.

(Bruce et al. 1995)

4.7.2 Out-of-the-Court Reconciliation of Interests

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

Out-of-court reconciliation of interests presents itself as a complementary activity according to the motto "settling before judging". In this process corresponding arbitration procedures can be developed and round-table conferences with the different parties (state authorities, local authorities, affected persons and mediators) can be established (*see also GTZ 1996b*).

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

Procedures

Guatemala: land administration project

Land conflict resolution, involving legal research and agrarian policy reform, is to establish a clear hierarchy of land rights, as well as a system to establish mechanisms more agile and forward-looking for settling conflicting land claims than the current judicial approach, for most cases. The project would finance

- equipment and documentation systems
- technical assistance
- training of public and private mediators and facilitators
- and recurrent cost on a declining basis.

(<http://www.worldbank.org>)

Non-governmental advisory services

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

Consideration of local authorities

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

Role of mediation in Nepal

Mediation is mostly being used to resolve conflicts in our village sites in the middle hills and the western, mid-western and far-western Terai. Here older, respected and "believable" (biswas baekomaanche) men are doing this work. They get no pay at all for such conflict settlement activity. They do not, except in very rare cases, volunteer their services, but rather are called in by one or both of the contending parties. When called, they say sometimes in the middle of the night, they never refuse to go unless they are ill. Even then, as soon as they feel better, they take up the task. Out of this they get honor and confirmation of their status. Many such mediators have long histories of doing such work and carry in their heads the "precedents" of the previous cases of conflict which they have tried to settle. Some times the role of mediator passes from father to son because of the respectability of the family. They do their work by hearing both sides of the story completely, in an open session with both contending parties. If they doubt that one party is telling the truth, they can ask him to perform "Dharma" (like taking an oath on the Bible in court), which no one doubts will produce the truth. They weigh the matters at hand, carefully, and make a judgement on the spot. Usually the judgement is adhered to, but they have no recourse to the enforcement of their judgements except the moral persuasion of their fellow villagers. When one or more of the parties to the conflict they may be mediating do not like their decision and want to take the case to higher authorities, the mediators are helpless to keep this from happening.

(Bhatia 1995)

4.8 Education, Training and applied Research

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

4.8.1 Creation Awareness

The profile of requirements for long-term and short-term experts has changed over the years. The following quotation demonstrates this for the field of land tenure:

A changed profile for "experts"

"Expatriate long and short term experts for this field should be selected on the basis of a new profile, which sees them as qualified facilitators of difficult institutional processes of change brought about by new land policies, technologies and capacity development initiatives. Both long- and short-term experts must be willing to accept an extremely complex, institutional learning process, to understand the various perspectives and interests of process participants. [...] For the capacity development approach to institutional development in land management and land information management methodological and interpersonal skills are in the same demand like technical skills. This must be reflected in particular in the selection of long-term experts to work in the partner country, [...]."

(Zimmermann, in: DVU 1995)

Create awareness

Seminars should create more awareness of the complex field of land tenure for *decision/policy makers*. In seminars lasting one or two days knowledge about the potential and limitations of different land tenure systems is taught to this group of people.

Sensitization seminars for preparing to deal with land tenure issues are also offered for *employees of the development cooperation at home or abroad*.

4.8.2 Educational Measures

Educational measures

Besides the teaching of knowledge, obtaining formal qualifications (B.Sc.; M.Sc.; Ph.D.) is a major objective. Project personnel or counterparts can be sent to relevant M.Sc. courses or Ph.D. programs for further education.

Nevertheless, the middle level (land administrator, etc.) is an essential part of education too. This is especially valid for the decentralized land administration.

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

M.Sc. programs (selection)

Master of Engineering Science	Univ. of New South Wales, Australia (Land Administration)
M.Sc. in Agriculture or Forestry	Univ. of Göttingen, Germany
M.Sc. in Regional Planning	Univ. of Dortmund, Germany
M.Phil. in Land Economy	Univ. of Cambridge, United Kingdom
M.Sc. in Land Management	Univ. of East London, United Kingdom
M.Sc. GIS for cadastral / urban management / rural applications	ITC, Enschede, The Netherlands

Ph.D. programs

Ph.D. studies in the field of land tenure systems can be conducted in different universities (Free University of Berlin, University of Göttingen, University of Marburg, State University for Land Tenure Systems, Moscow, University of Cape Town, Land Tenure Center of the University of Wisconsin and others).

M.Sc. program: "Integrated Tropical Agriculture and Forestry Sciences"

The University of Göttingen in Germany in close cooperation with other institutions of higher education (University of Marburg) will offer a new possibility for specializing in the field of resource tenure/land tenure within the framework of the postgraduate program "Integrated Tropical Agriculture and Forestry Sciences" beginning with the academic year 1999/2000 (in English). This will enlarge and expand the offers (concerning land policy, land tenure and natural resource management, key tenure issues, etc.) within the field of "Socio-economics of Rural Development" and others that have existed for several years.

Course duration and phases (24 plus 3 months)

Phase 0	Phase I	Phase II	Phase III
Pre-departure training	Lectures seminars, examinations, etc.	Field research for thesis	Data analysis and writing of thesis Bestowal of degree
3 months	10 months	8 months	6 months
(home country)	(Göttingen)	(home country)	(Göttingen)

(see <http://www.gwdg.de/~cetsaf>)

4.8.3 Training Measures

Training measures

An efficient and rapid further qualification of (project) personnel regarding certain (specialized) knowledge is to be obtained in training measures. For projects in the field of land tenure, training measures can be specially offered or existing training courses in various fields can be applied.

Training measures (selected options)

- **Marburg**

Two week training seminar on "Land Tenure and Land Law in Development Cooperation" (with special reference to Southern and Eastern Africa), Nov/Dec. 1998 in South Africa.

Target group: staff of programs and projects of development cooperation, government officials, officers of NGOs, media representatives, etc.

Objectives: to demonstrate the complexity of problems of land tenure and its importance for the development process, to present methods of problem solving and to exchange experiences.

Contents: General framework of land tenure systems, country specific situation and culture specific perception; customary tenure; objectives, instruments of agrarian/land reforms; land policy with special regard to resource protection and management, gender, market liberalization, squatting and conflict resolution.

(supported by GTZ, organized by Marburg Consult e.G.,
for further information please contact: marburg.consult@t-online.de,
<http://www.marburgconsult.de>).

- **Land Tenure Center Wisconsin:**

Land Tenure in Africa: Theories, Policies, and Practice:

Tenure is a matter of "rights" that are held in land and other natural resources. The study of tenure is the examination of the nature of those rights, their origins, their operation and how they are related to a multitude of other issues associated with the management of natural resources. The central objective of this course is to introduce students to the evolution of theories and policies on land tenure in Africa, primarily in Anglophone and Francophone countries. It examines indigenous and statutory systems of property rights in their social and economic context in Africa, and their impacts on natural resource use. Review of issues concerning the farm, commons and reserve areas and their distinctive tenure arrangements, with a secondary focus on relevant research methodologies such as Rapid Rural Appraisal.

(<http://www.wisc.edu.de/training.html>)

The middle level of education (land surveyor, land administrators, land registrars, members of land boards, ombudsman, etc.) should especially be taken into account in training measures.

4.8.4 Dissemination of Knowledge

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

Dissemination of knowledge

- Support for obtaining, translating and distributing text books, teaching material and information material related to land tenure,
- Promotion of networks for obtaining and distributing information,
- Support the organization and implementation of field days and excursions concerning land issues (e.g. land readjustment),
- Promotion of contacts and of exchange of experiences with and between cooperating countries,
- Support of the use of modern information technologies, like CD-ROM, data banks and electronic networks for information access.

The implementation and promotion of workshops in the field of land tenure in Germany or the cooperating countries support the exchange of experiences and can contribute to resolution approaches. For example, the following workshops were supported by the GTZ:

Workshops

- "Implementation of Rural Land Consolidation" (in collaboration with BPN) in Ciloto, Indonesia, 1995,
- "Land Tenure Issues in Natural Resource Management" (sub-regional workshop for East Africa, in collaboration with OSS, IGAD, ECA, Makerere Institute for Social Research) in Addis Ababa, Ethiopia (1996),
- "Exchange of Experiences for the Implementation of Land Reforms in Transformation Countries", (workshop, Eschborn, Germany, 1997),
- "International Conference on Land Tenure in the Developing World with a Focus on Southern Africa" (support for the University of Cape Town) in Cape Town, South Africa (1998),

- Workshop on "Impact Assessment of the Agrarian Reform in the Philippines", Manila (1998).

4.8.5 Applied Research

Strengthening land tenure research

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

Applied research

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

Partnerships

Partnerships like the one between the Agricultural University Bogor (Indonesia) and the University of Göttingen or between the ANA University of Madras (India) and the University of Hanover have proven to be very useful instruments for institutional development and improving qualifications. The reason is that these partnerships are laid out for a long period of time and are based on mutual confidence and personal relationships.

The following is a sample of the key issues for land tenure research:

- Further development of concepts for land policies,
- Divestiture, privatization and re-privatization,
- Land conflicts and innovative approaches to conflict resolution,
- Evolutionary options for change of autochthonous land tenure systems,
- Forms of documentation and registration of secondary rights,
- Impacts of agrarian structural change,
- Market-assisted land reforms,
- Gender issues in land tenure,
- Transfer institutions (market, inheritance, etc.).

Possibilities for the financing of significant research projects with components of resource tenure exist. For example, the German Research Society (DFG) promotes collaborative re-

search centers ("*Sonderforschungsbereiche*") in the field of international (agricultural) research.

The German Federal Ministry for Economic Cooperation and Development (BMZ) supports research projects of CGIAR and affiliated centers as well as their cooperation partners. The particular instruments for targeted funding to specific CGIAR activities are restricted core funding and special project funding.

**Cooperative research project of the IFPRI, ILRI, Universities of Göttingen / Marburg
"Property Rights, Risk and Livestock Development in Sub-Saharan Africa"**

International Research Project: Property Rights, Risk and the Sustainable Development of Livestock Production Systems in Sub-Saharan Africa

Objectives of research:

- better understand the reasons for the existence of common property regimes;
- identify the conditions under which different paths are followed (privatization processes, further development of common property, open access)
- identify how policy and other external interventions can assist communities to achieve preferred paths.

The module A of the project (1996-1999) is being undertaken as a collaborative venture of the International Livestock Research Institute (ILRI), the International Food Policy Research Institute (IFPRI) and the universities of Göttingen and Marburg, including senior scientists from ILRI, IFPRI and Marburg, a post-doctoral scientist, post-graduate students, research technicians and scientists from collaborating NARS.

The restricted core project is financed by the "Federal Ministry for Economic Cooperation and Development" (BMZ) through the "Deutsche Gesellschaft für Technische Zusammenarbeit GmbH" (GTZ). An outline for Module B is in preparation.

5 New Forms and Areas of Development Cooperation

5.1 Cooperation between Technical Cooperation and Financial Cooperation

Possible forms of cooperation

Technical and financial cooperation can be ideal partners for projects in the area of land tenure development. An important principle is the exchange of information and agreement prior to projects. In the ideal case these should be discussed already at an early stage when cooperation programs with a partner country are planned. Various forms of cooperation are possible:

The technical cooperation component has the lead function of the entire project. The contribution from the financial cooperation is the implementation of the entire or portions of the project.

The technical cooperation and financial cooperation are each responsible for clearly defined complementary tasks within the framework of an agreed-upon program. Each carries the responsibility with its respective partners for the implementation of its tasks, based on a harmonized time schedule.

The lead function of the program lies with the financial cooperation component and is supported in specific areas by measures carried out by the technical cooperation (e.g. capacity building).

Prototypes for Technical and Financial Cooperation Projects

- Land administration and land registration including the development of the legal framework,
- Land consolidation and land readjustment,
- Implementation of land reforms (e.g. in transforming countries, South Africa, the Philippines),
- Rural settlement projects (e.g. GTZ/KfW cooperation in GASP, Kenya),
- Rehabilitation of squatter areas (including land regularization),
- Implementation of smallholder plantations (e.g. GTZ/KfW cooperation in NESP-Ophir, West Sumatra, Indonesia),
- Irrigation projects with land readjustment (e.g. GTZ/KfW cooperation in Mondego, Portugal, *cf.* 4.6.6),
- Regional rural development projects (RRD) with land tenure components,
- Natural resource management and land use planning projects including land tenure and land market components (e.g. GTZ/KfW cooperation in Patecore, Burkina Faso).

Partners for technical cooperation and financial cooperation besides the GTZ and KfW could be the World Bank, the European Union and the regional development banks (AsDB, AfDB, IDB, Arab Development Bank).

5.2 Partnership between the State and the Private Sector

The prerequisites for cooperation between the state institutions and the private sector in the area of land tenure and its systems are very different and multifaceted depending on the country. However, a primary task of the government is still the establishment and further development of the capacity of the private sector through deregulation, quality control, further education, financial instruments and the reduction of the state functions in key areas.

Providing the framework for chartered surveyors and notaries and the procedure for urban land readjustment are examples of partnerships between the state and private sectors in Germany.

The following are also included in the possible state and private economy options:

State and private economy options

- Parastatal institutions (e.g. land development agencies),
- Private economy-organized state institutions,
- Concessions with public appointments (e.g. chartered surveyors or notaries for land register tasks),
- Consultants for implementation with or without trustee functions,
- Working agreements of state institutions/consultants/NGOs,
- Creation of professional associations (code of conduct, professional ethics, certification of training programmes).

The inclusion of the private sector positively affects the management of contracts, quality control, access to information, public budget structure and reimbursement of the costs for services rendered.

Three basic functions remain the responsibility of the state in any case:

1. Provision of a uniform legal and regulatory framework for land tenure systems and their implementation.
2. Contract law and transparent regulations for tenders (including quality control),
3. Jurisdiction and capacity for law enforcement.

Table 10: Institutional roles in land administration projects in World Bank-supported and other projects

Function	Brazil	Costa Rica	Indonesia	Romania	Thailand
Policy & enforcement	P	P	P	P	P
Land policy advice		P/C	P/C	P/C	P/C
Aerial photography	C	P	C	P/C	C
Base mapping	C	P	C		P
Customer relations & services			P	P/C	P
Adjudication	C	C	P		P
Cadastral survey	C/E	C	C	P/C	P
Dispute settlement	P	P	P	P	P
Registration	C/E	P	P	P	P
Records mgt/info mgt	C/E	P	P	P	P
Processes/approvals		P	P		P
Issuance		P	P		P
Project Management			C	P/C	P
Training / Education		C	P/C		P
Monitoring	C/E	P	C		P
Transactions					
Legal Services	E	E	E	P/E	P
Survey Services	E	E	P	P/E	P/E
Valuation Services	E	E	P/C		P/E
Registration	E	P			P

P = Public Sector, C = Contractor, E = Entrepreneur/private sector function.

(Holstein 1996)

5.3 Development of Partnerships and Networks

Partnerships, communication and networks are essential components of a future-oriented sustainable development. The establishment of links between the development cooperation, on the one hand, and the NGOs, bilateral and multilateral institutions for development cooperation, the UN institutions and the education and research institutions, on the other hand, has been fundamentally improved over the past years. This establishment has to be regarded as a permanent challenge.

Partnerships and networks

Examples for partnership:

- GTZ/BML partnership (Workshop "Land Reform and Land Tenure Systems in the Russian Federation, Kazakstan, the Ukraine and Germany", Eschborn, 1997)
- Seminar OSS/GTZ/IGAD/ECA ("Land Tenure Issues in Natural Resource Management in East Africa", Addis Ababa, 1996)
- African Information Society Initiative (AISII), an action framework to build Africa's information and communication infrastructure (ECA, 1996)
- Internet communication:
 - GTZ (<http://www.gtz.de/lamin/>)
 - LTC (<http://www.wisc.edu/ltc/>)
 - FAO (<http://www.fao.org>)
 - OICRF (<http://www.oicrf.org/query.htm>)
 - World Bank (<http://www.worldbank.org>) and others.

The rapid establishment of a global communication infrastructure must be used as an opportunity to increasingly include experts and institutions of the partner countries in networks. A very successful example for the realization of this approach is the international network "Environmental Information Systems in Sub-Saharan Africa"

(<http://www.grida.no/eis-ssa/eis-ssa.htm>).

5.4 Coordination of International Initiatives

The implementation of issues from the Agenda 21 and the process of political reform, especially in the transformation countries, cause a novel quality of cooperation between bilateral and multilateral institutions. Nevertheless, coordination alone

Coordinations and obligations

does not fulfill all requirements. The variety of conceptual and operational approaches of different multilateral and bilateral institutions involved in development cooperation in the field of land tenure development leads not to improved structures, but to increased uncertainties instead in cases where mutual coordination and concrete obligations are not manifested.

Efficient coordination and agreements between multilateral and bilateral institutions and the partner countries are essential for consistency, continuity and for guaranteeing the transition of isolated projects to national programs in the cooperating countries.

Principles

The following principles can be considered for coordination tasks in the field of land tenure development:

- Round table discussions of the partner institutions with multilateral and bilateral donors about concepts, implementation and financing of national reform processes,
- Formation of a consensus on the principles of land policy,
- Obligation of multilateral and bilateral donors to support complementary sectors,
- Agreements on co-financing,
- Acceptance of the ownership principle of the partner country,
- Obligation of mutual information and transparency of all measures.

Positive applicable examples are the following:

- Coordination of donors for the implementation of environmental action plans (e.g. Madagascar),
- Initiative of the UN for the coordination of international activities "Land Administration in Transformation Countries", ECE, Geneva 1996, 1997 (ECE, 1996),
- International seminars of the FAO, the World Bank, GTZ and others on land reform, privatization in transformation countries and the mobilization of land markets.

5.5 The Role of NGOs

Increasing role of NGOs

The number of non-governmental organizations (NGOs) has dramatically increased especially in Asia, but also in other regions in the 1980's. NGOs can be very heterogeneous in size, in the

degree of organization, in the field of interest and in objectives. Different forms of NGOs are larger national and regional organizations, local self-help groups and others.

The main focus of interest of NGOs is usually on topics like the promotion of training programs, assistance in legal and organizational problems, support of discriminated groups, preservation of resources. All of these topics are problems out of the heart of a poverty-oriented development policy. NGOs support and mobilize self-help approaches and self-initiatives of the local population and work together in a partnership on the planning and implementation of projects.

NGO initiatives in accessing productive resources entail securing tenure to land, water and fodder

Asian NGOs have organized themselves into networks and federations. As strong and unified groups, they are able to engage government to accelerate the process of such reforms pertaining to natural resource access. This implies making sure that agrarian reform, urban land reform, aquatic resources reform, and similar programmes are implemented speedily and effectively. These groups also inquire into the legal basis of community claims to land and other resources based on customary rights and laws. Some offer legal services to communities being evicted from their lands because of development projects, especially the indigenous peoples. [...] To push for agrarian reform, there are:

- support centres of NGOs on agrarian reform,
- community information through participatory data gathering and planning,
- field reports sent to policy makers,
- information dissemination,
- the holding of dialogues and consultations between governments and NGOs.

(ANGOC 1995:5)

NGOs, for example, support the improvement of organizing small land cultivators and landless. With direct actions or public relation campaigns NGOs produce in many regions political pressure to grant discriminated groups attention and rights.

NGOs can play an important role in the field of legal consulting and land reform implementation (South Africa, Philippines) and the achievement and preservation of rights for poor or underprivileged population groups. In some concrete cases NGOs help land cultivators to fully comprehend the

existing formal land legislation and grant these farmers financial support and advice in the case of a (legal) property argument.

Self-help organizations

A fundamental approach is the establishment and the strengthening of so-called "intermediary institutions" like professional associations. Knowledge and experiences of the development cooperation can be incorporated into this approach. Also, assistance in organizational, technical and management issues can be offered to establish these institutions or to improve their efficiency. Partnerships between manifold associations are suitable here too.

Centre for Integrated Rural Development (CIRD)

The NGO "Centre for Integrated Rural Development" in South Africa is supported by the GTZ. The GTZ promotes the target group of the rural population especially in access to resources (land, credit, etc.), training possibilities and extension services.

The international linkages between NGOs are normally very strong. The following planned UNRISD project is to contribute to the promotion of "grassroots initiatives" and networks in the field:

Envisaged project on grassroots initiatives and knowledge network for land reform

The broad objective of the project is to encourage debate, networking and imaginative project planning in the area of land reform, with the intention of encouraging progress towards comprehensive land and tenurial reforms. Undertaken in collaboration with IFAD and other members of the Popular Coalition to Eradicate Hunger and Poverty, the Project will involve gathering and exchange of information, discussion and the establishment of knowledge networks at different levels. It will also look at promising project ideas and experiences in various sub-regions and countries. More specifically, the project will have the following interrelated objectives:

First, it seeks to identify and document activities of various civil society organizations which have undertaken or facilitated land reform and tenurial improvement activities to the advantage of the poorer and weaker sections of the rural population in different socio-economic, political and ecological contexts.[...] Second, in order to understand diverse local situations within the context of broader socio-economic and institutional trends, the project will attempt to review important macro processes, obstacles and experiences concerning land reform. Different approaches, methods and significant practical experiences of country or cross country land reform programmes or projects, initiated by major grassroots' organizations, NGOs, bilateral and international institutions, would be critically assessed. [...] Third, the project will draw out the policy implications of studies, debates, knowledge networking and project planning and implementation experiences at both national and international levels. One principal aim is to show how certain civil society initiatives could be strengthened and why particular approaches to land reform have the potential of better success in some cases than in others.

(UNRISD 1997:5f)

6 Prospects for the Future

The development policy debate and the daily press make it very clear: Land tenure problems are in the limelight worldwide. By all indications, the explosive nature of the "land issue" which is often covered up by ethnic conflicts will increase in the future.

New and remaining challenges

The creative power in land tenure systems and a consistent land policy determine not only the future productivity of agriculture for securing the world food supply and the potential of multifaceted environmentally sound use of rural areas, but also coming to terms with the dynamic processes of urbanization and sectoral transformation. The results presented in the 'guiding principles' contain basic implications for future guidelines, objectives, measures and instruments of the development cooperation, policy advisory services, education and research in partner countries.

From systems of land tenure to "systems of resource tenure"?

Due to population pressure, economic dynamics and mobility, the patterns of land use will further differentiate. Therefore, land tenure should not be considered exclusively, but as a part of a comprehensive "system of resource tenure" and resource policy. This necessarily requires the concentrated cooperation of various actors for the development and proposal of innovative, future-oriented solutions and instruments.

Land and water

It is already clear that the issue of water rights, often a complement to land tenure, requires increasing attention by politics, development cooperation and the scientific community for highly productive agriculture and for urban industrial development. This includes an in-depth discussion on water management by private operations and actors by disposing temporary licenses or by creating water markets, wherever the socioeconomic and geocological conditions do admit it.

Income from non-agricultural sources

There is no question that in the future more and more (agricultural) households will no longer have sufficient land to secure their livelihood. Non-agricultural income sources and employment opportunities are increasingly necessary. An active policy far beyond land tenure problems must create income sources and employment possibilities.

Intensified land conflicts

Intensification of agriculture and the creation of non-agricultural employment opportunities alone are not going to be sufficient to limit the competition for land. A consequence will be intensified land conflicts on local and regional levels. Various mechanisms for defusing, limiting and resolving conflicts by "efficient mediators" are especially demanded.

Decentralized systems that increase the responsibility and co-designing of land allocation and land use on the local level can partially help to reduce these conflicts. The point of focus for this topic must not be limited to the "grassroots" approaches of the affected parties or a "bottom-up" approach because land tenure problems do not accommodate us by being regionally limited or limited to a specific group. The establishment of institutions and other political approaches must follow the principle of subsidiarity, i.e. they must consider the different capabilities of local, regional and national as well as international levels and must be based on networking structures.

**Decentralized systems,
the principle of
subsidiarity**

For the given reasons and the experiences with market economies and transformation, the state still plays a central, but newly defined role. Divestiture requires a new quality of state action plans, for example, for the establishment of a consistent land tenure framework and an efficient land administration. For the reformed state, neither agrarian reforms nor influencing certain aspects of land transfers nor state ownership in the case of market failure or failure of communal land management are any longer taboo.

**Newly defined active role
of the state**

This new quality of state participation is shown, for example, in the idea of the social responsibility of property. Experiences with the constitutional precept of the social responsibility in Germany can contribute to this idea.

**Social responsibility of
property**

Nations are increasingly subjected to international guidelines according to the UNCED process case that explicitly continues to deal with "land problems." This provides a special opportunity for development cooperation to speed up the implementation process and to act as an attorney for discriminated groups.

**Internationalization of
land policy**

The search for a country-specific and adequate framework for state influences is a learning process. This was demonstrated in dealing with autochthonous rights or the future of private property in the former socialist countries. Assistance by the development cooperation can expedite this learning process and cut short the trial and error procedure by comparison with other countries.

**Assistance for reforms as
a learning process**

An example for the necessity of this assistance is the evaluation of chances and risks of market-led land reforms that cannot possibly solve all land distribution problems on the agenda alone since the amount of land sufficient for this will not be offered on the market. The question arises as to what the appropriate

**Evaluation of the
chances and risks of
market-led land reforms**

"policy mix" for reforms including redistribution or employment and/or social policy is.

**The future of
autochthonous rights**

Acceptance and, if necessary, inclusion of autochthonous rights into the governmental framework of land tenure will cause on-going controversies. Previously developed and tested concepts have not been innovative enough. The development cooperation can join the process with valuable contributions.

Building bridges between indigenous and scientific knowledge and between traditional institutions for land conflict resolution and judicial institutions of the modern state is a further challenge.

**Harmonization of
financial donors'
interests?**

Bilateral and multilateral institutions still pursue different objectives and use other instruments. Due to the importance of land tenure objectives and land policy measures, intensified coordination, cooperation and harmonization of the institutions involved in international cooperation must be striven for which far exceed recent practices

"Work in progress"

These 'guiding principles' must remain a work in progress. Their results and suggestions will have to be critically analyzed, revised and updated continuously. However, we hope to have enabled the reader to obtain a wide overview and a deep insight into a multifaceted field of interest and work. By including discussion contributions and experience reports from the project and program work, it is our desire to be able to depict the documented working process vividly.

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List of Abbreviations

AfDB	African Development Bank
AsDB	Asian Development Bank
AGEH	"Arbeitsgemeinschaft für Entwicklungshilfe", Association for Development Aid
APEC	Asian Pacific Economic Community
ASDP	Agrarian Structure Development Planning
ASEAN	Association of Southeast Asian Nations
AWZ	"Ausschuß für wirtschaftliche Zusammenarbeit", Committee for economic development
BGB	"Bürgerliches Gesetzbuch", German Civil Code
BML	"Bundesministerium für Ernährung, Landwirtschaft und Forsten", German Federal Ministry of Food, Agriculture and Forestry
BMRBS	"Bundesministerium für Raumordnung, Bauwesen und Städtebau", Federal German Ministry for Regional Planning, Building and Urban Planning
BMU	"Bundesministerium für Umwelt, für Naturschutz und Reaktorsicherheit", German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
BMZ	"Bundesministerium für Wirtschaftliche Zusammenarbeit und Entwicklung", German Federal Ministry for Economic Cooperation and Development
BPN	"Badan Pertanahan Nasional", National Land Agency
CDE	Centre for Development and Environment (Bern, Suisse)
CGIAR	Consultative Group on International Agricultural Research
CILSS	Comité Permanent Interétats de Lutte contre la Sécheresse dans le Sahel
CIRD	Centre for Integrated Rural Development
CIS	Commonwealth of Independent States
CLT	Community Land Trust (Kenya)
DED	"Deutscher Entwicklungsdienst", German Development

	Service
DFG	"Deutsche Forschungsgemeinschaft", German Research Association
DSE	"Deutsche Stiftung für Internationale Entwicklung", German Foundation for International Development
DVV	"Deutscher Verein für Vermessungswesen", German Association for Surveying
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GIS	Geographic Information System
GLD	Guided Land Development
GPS	Global Positioning System
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (GTZ)
IDB	Interamerican Development Bank
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IGAD	Intergovernmental Authority on Development
IIED	International Institute for Environment and Development
IKE	"Institut für Kooperation in Entwicklungsländern", Institute for Co-operation in Developing Countries (ICDC), Marburg
ILRI	International Livestock Research Institute
IRE	"Institut für Rurale Entwicklung, Göttingen", Göttingen Institute of Rural Development
IRRI	International Rice Research Institute
KfW	"Kreditanstalt für Wiederaufbau", German Development Bank

LAG	"Landwirtschaftsanpassungsgesetz", German Agricultural Adaptation Law
LPG	"Landwirtschaftliche Produktionsgenossenschaft", Production Co-operatives in former GDR
LTC	Land Tenure Center, Madison, Wisconsin
LURC	Land Use Rights Certificates
M&E	Monitoring and Evaluation
NAFTA	North American Free Trade Agreement
NARS	National Agriculture Research System
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
OSS	Sahara and Sahel Observatory
PGRN	Projet de Gestion des Ressources Naturelles
PRA	Participatory Rural Appraisal
RRD	Regional Rural Development
SADC	Southern African Development Cooperation
UCT	University of Cape Town, South Africa
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCHS-HABITAT	United Nations Centre for Human Settlements
UNRISD	United Nations Research Institute for Social Development
WBGU	"Wissenschaftlicher Beirat der Bundesregierung Globale Umweltveränderungen", German Scientific Advisory Board for the Government on Global Changes in the Environment
WRI	World Resource Institute

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