

Issue 1

*Journal of Law and  
Rural Development*

Land Governance



Investing in rural people

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# List of acronyms

CFS	Committee on World Food Security
CSO	civil society organization
CSR	corporate social responsibility
E&S	environmental and social
EBRD	European Bank for Reconstruction and Development
F&G	Framework and Guidelines on Land Policy in Africa
FAO	Food and Agriculture Organization of the United Nations
GDWGL	Global Donor Working Group on Land
GLTN	Global Land Tools Network
HRS	household responsibility system
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILC	International Land Coalition
LPDP	Livestock and Pasture Development Project (Tajikistan)
OECD	Organisation for Economic Co-operation and Development
PUU	pasture users' union
RASC	OECD-FAO Guidance for Responsible Agricultural Supply Chains
SCLMG	State Committee on Land Management and Geodesy (Tajikistan)
SDG	Sustainable Development Goal
SMEs	small and medium-sized enterprises
UNIDROIT	International Institute for the Unification of Private Law
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WHR	warehouse receipt

# President's foreword

IFAD's founding document – the Agreement Establishing the International Fund for Agricultural Development – states that the organization's objective is "to mobilize additional resources to be made available on concessional terms for agricultural development in developing Member States." The resources referred to are financial, and since starting operations in 1978 IFAD has invested about US\$18 billion in projects and programmes aimed at reaching some 460 million poor rural people. But the resources that rural people need to overcome poverty and hunger go beyond money. In recent years, IFAD has become more than just a fund; today it is a global hub of knowledge, encouraging the exchange of information between farmers from different parts of the world who have found solutions to the problems they face every day. Starting with projects that transform the lives of people living in remote rural areas, we then use the knowledge generated through our practical work on the ground to transform thinking around the world. This is the new model of IFAD's work as we move towards the achievement of the Sustainable Development Goals.

I am proud of this transformation of IFAD into a knowledge-based organization, and the *IFAD Journal of Law and Rural Development* is an excellent tool for facilitating the exchange of information and mobilizing intellectual as well as financial resources. Through the journal, IFAD staff can disseminate and discuss the results of their work, and experts from developed and developing countries can share their perspectives and ideas. The real innovation of the journal is focusing on law and legal systems as a key element in rural transformation. The obstacles to rural development are sometimes visible – crop diseases, natural disasters, lack of infrastructure – but there are also invisible barriers, in the form of outdated laws and inadequate institutions. The journal will be a way for IFAD to share its successes and failures in addressing these problems, and to gather insights from academics and practitioners in the legal profession and other areas. It will, I hope, become a vibrant intellectual forum for the free exchange of ideas on these subjects.

It is fitting that the first issue of the journal focuses on legal issues related to land. IFAD was one of the first development institutions to understand the importance of land issues in rural development and the key role of smallholders in achieving food security in developing countries. In rural societies, the poorest people often have weak or unprotected tenure rights. Lack of secure land tenure exacerbates poverty and has contributed to social instability and conflict in many parts of the world. These are problems that are fundamentally legal in nature, but legal systems are notoriously resistant to change, and changing laws can often result in unanticipated consequences. The first issue of the journal showcases some of IFAD's positive experiences with legal reform in the context of its projects and highlights the work of the International Land Coalition, a global alliance of civil society and intergovernmental organizations hosted by IFAD. In addition, this issue includes articles written by experts at other institutions with which IFAD has cooperated on these important issues. I hope that these articles will spark discussion and debate and serve as the basis for the future work of international organizations, governments, non-governmental organizations – and of rural people themselves. I also hope that this first issue of the journal signals a new and lasting way for IFAD to mobilize resources – in this case intellectual ones – in order to fight rural poverty and hunger.



KANAYO F. NWANZE  
President of IFAD

# Introduction

This is the first issue of the *Journal of Law and Rural Development*, published by IFAD. IFAD's mandate to address rural poverty and promote rural development is unique among international organizations. For many years IFAD limited its activities to financing projects and programmes implemented by its Member States, but over the last decade it has begun to transform itself into a knowledge centre and a key participant in the international policy dialogue around rural development issues. The launch of this journal is another step forward in this transformation.

The idea that legal reform can address the causes of rural poverty has recently been subject to criticism and reappraisal, but IFAD's experience has been that changes in the law genuinely can unlock the potential for development, particularly where smallholders and poor rural people are concerned. IFAD believes that the social, political and legal infrastructure is just as important as the physical variety, and that changing ideas and beliefs is just as important as building roads or irrigation canals in helping to improve poor people's lives.

But the purpose of this journal is not to promote IFAD's ideas or its approach to development. The journal is intended to be a forum where the link between law and rural development can be explored and ideas can be discussed without any political, ideological or bureaucratic limitations. International organizations often tend to avoid any type of controversy or criticism, but this attitude is not the best way to encourage the new ideas and viewpoints that these organizations need in order to evolve and work more effectively. This journal will, we hope, be a place where criticism and commendation are equally acceptable, and where ideas can be exchanged without the need for too many disclaimers.

The journal's first issue focuses on legal and development issues related to land. This is the obvious place to start, and it is a subject that we will undoubtedly return to often in the future. There are articles highlighting the lessons learned from some of IFAD's projects and insights from the International Land Coalition, which IFAD hosts. We are pleased to have contributions from our colleagues at IFAD's Rome-based sister agency, the Food and Agriculture Organization, and a piece describing the activities of the European Bank for Reconstruction and Development, another international financial institution with which we have been exploring areas of cooperation. There are also articles by independent scholars and experts, and we hope in the future to benefit even more from these kinds of external insights.

At the end of the issue there are translations of the abstracts of the articles into Arabic, French and Spanish. We encourage translation of the articles into these and other languages, and we will be happy to authorize reproduction of articles on request. Future issues of the journal, which will be published yearly in February, will also include book reviews and the proceedings of symposia and conferences sponsored by IFAD. The topic of the 2018 issue of the journal will be "Renewable Energy and Rural Development: Legal Considerations," and we invite potential contributors to contact us at [legaljournal@ifad.org](mailto:legaljournal@ifad.org).

The former General Counsel of IFAD, Gerard Sanders, originated the idea of this journal and guided it through the early stages of development. Special thanks must also go to the outgoing President of IFAD, Kanayo F. Nwanze, who has championed IFAD's transformation into an institution dedicated to learning and teaching. Without his steady support the launch of the *Journal of Law and Rural Development* would not have been possible.

# An overview of IFAD's support for securing the land and natural resource rights of poor rural people

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## Abstract

IFAD recognizes that securing the land and natural resource rights of its target groups is critical for the outcomes of the projects and programmes it supports, and in general for inclusive rural development and poverty eradication. Over the years, IFAD has supported a range of national, regional and global initiatives and measures aimed at improving the governance of land and natural resources. Key measures include strengthening both statutory and customary tenure systems and supporting the associated decentralized government and community-based institutions and organizations. It has also provided support for the formulation of policies and legislation relating to land and natural resources; for civic education and public consultation on land and natural resource rights; for the strengthening of conflict resolution; and for legal aid services aimed at defending rights. Support for regional and global initiatives includes technical and financial support for the formulation of the Africa Land Policy Framework and Guidelines and the Voluntary Guidelines on the Responsible Governance of Tenure. Although IFAD's support for tenure security measures accounts for a small percentage of its overall investments, it has been found that relatively modest investment can have a significant impact on development outcomes.

## Introduction

This paper presents an overview of the support that IFAD provides for securing land and natural resource rights for poor rural people, focusing in particular on the support provided in promoting good governance and in strengthening legal frameworks. The overview highlights the importance IFAD ascribes to tenure security in the context of recent trends, presents some of the lessons learned from the support that IFAD has provided and sets out implications for the way forward.

## Importance of tenure security for IFAD's target groups

Equitable access to land and tenure security for IFAD's target groups is essential for rural development and poverty eradication. Tenure security influences the extent to which farmers are willing to invest in improvements in production and land management. When people have more secure tenure, they can commit to activities that have a longer time frame. They are more likely to invest in their land and use environmentally sustainable agricultural methods. Tenure security shapes social

relations and contributes to social stability – or, rather, situations of tenure insecurity exacerbate poverty and contribute to social instability and conflict. Tenure security promotes the sharing of benefits from agricultural activities among different individuals and groups, within both households and communities. It also impacts on people's ability to access credit. In general, poor rural people and marginalized groups have less access to land and natural resources and weaker tenure security. Typically, women have weaker rights than men and are often excluded from key decisions regarding access to and use of land and natural resources. Young people often have difficulties in accessing land owing to its scarcity or for cultural reasons.

## Global and regional trends shaping tenure security

Competition for land and natural resources is becoming increasingly challenging for many of IFAD's target groups. Several factors are contributing to the growing pressure on land and natural resources, in particular a rising world population, urbanization, declining soil fertility, environmental degradation, climate change, new opportunities for agricultural commercialization

and an increased demand for land from large-scale domestic and foreign investors. These issues have put new tensions on tenure systems, including those that govern access to water, forests, communal grazing lands and other common property resources, and this is often at the expense of poorer members of the community, women, youths, indigenous peoples, pastoralists and other vulnerable groups. In some places, these factors have led to land fragmentation; in others, they have resulted in a consolidation or concentration of ownership.

In recent years, there has been growing international recognition of the importance of tenure security and good land and natural resource governance. It is seen in the endorsement of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) by the Committee on World Food Security in May 2012,<sup>1</sup> and in the establishment of a Global Donor Working Group on Land (GDWGL) in April 2013. In Africa, the African Union Commission, the United Nations Economic Commission for Africa and the African Development Bank facilitated a multi-stakeholder process of developing the Framework and Guidelines on Land Policy in Africa (F&G), which were endorsed at the Summit of African Heads of State in June 2009. In June 2014, stakeholders in the Asia and Pacific region embarked on a similar process with the aim of developing a framework and a set of guidelines for the region. More recently, a broad but loose coalition of organizations worked hard to successfully advocate for a tenure indicator in the Sustainable Development Goals (SDGs).<sup>2</sup>

At country level, several national governments of developing countries have embarked on a revision of their land policies or the formulation of new policies, although some countries and regions have made more progress than others. In many countries, there is a growing recognition of the need to support and strengthen diverse local or customary tenure systems that recognize and balance “bundles” of often overlapping individual, familial, group and community rights, including those of

indigenous peoples. This includes legally recognizing these diverse tenure systems and integrating their regulation into statutory law. A challenge for many countries, though, is mobilizing sufficient resources to strengthen multidisciplinary land governance services and institutions for registering and protecting local or customary rights.

## IFAD’s recognition of tenure security and support for global and regional frameworks

IFAD recognizes the centrality of land and natural resource governance for inclusive rural development, poverty eradication and food security. The Fund was a founding member of the International Land Coalition (ILC), and it hosts the Secretariat of the ILC.<sup>3</sup> In 2008, IFAD’s Board approved the Fund’s policy on “Improving access to land and tenure security”,<sup>4</sup> and since then IFAD has been developing operational tools to provide guidance for its interventions. IFAD was an early technical and financial supporter of the formulation of the Africa F&G and the VGGT mentioned above, and it continues to support the application of both sets of guidelines through its investments, but also through its representation on the Africa Land Policy Initiative Steering Committees and the VGGT umbrella programme Steering Committee of the Food and Agriculture Organization of the United Nations.

The Fund is collaborating with other donors and development partners in efforts to harmonize and scale up support for land and natural resource governance through the GDWGL. It has also been actively involved in the global initiative aimed at including a tenure indicator in the SDG framework. In partnership with other members of the ILC, the Global Land Tools Network (GLTN)<sup>5</sup> and others, IFAD is supporting joint actions, lesson-sharing and policy dialogue at country and regional levels between IFAD-supported projects and programmes and other implementers to develop and promote a range of tools and approaches for securing land and natural resource rights.

1 Munro-Faure, Paul, David Palmer, Andrew Hilton and Romyana Tonchovska. 2017. “A global standard for tenure: from development to use.” *Journal of Law and Rural Development* 1, 11–17.

2 See Targets 1.4 and 5.a of the SDGs: United Nations Economic and Social Council, *Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators* (E/CN.3/2016/2/Rev.1, 17 December 2015), Annex III.

3 Taylor, Michael with Anni Arial. 2017. “Working towards people-centred land governance: experiences from the International Land Coalition.” *Journal of Law and Rural Development* 1, 19–23.

4 An internal review of this policy in 2013 found that it is fully in line with the VGGT.

5 The GLTN is a programme of UN-Habitat that brings together about 60 partners representing a mix of professional bodies such as the International Federation of Surveyors, university faculties dealing with land governance, non-governmental organizations, community-based organizations and intergovernmental organizations in both the urban and rural sectors. Its Secretariat is housed in UN-Habitat and it is also a member of the ILC.

## IFAD's investment in land and natural resource governance

IFAD's support for land and natural resource governance is typically integrated into broader agriculture and rural development projects and programmes that are mainly implemented by governments (usually ministries dealing with agriculture and rural development). However, significant support is provided through smaller, grant-financed projects that focus on land and natural resource governance, including significant support to civil society organizations (CSOs).

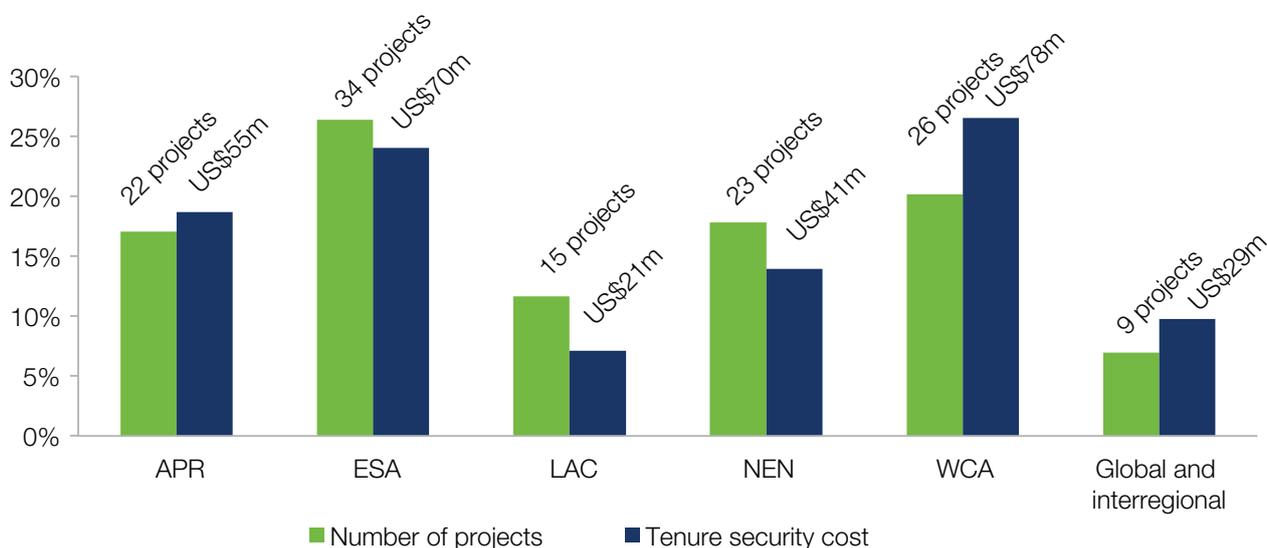
A review carried out by IFAD's Land Tenure Desk<sup>6</sup> at the end of 2015 found that over the previous five years IFAD had committed financial support to tenure security measures in 129 projects and programmes in 59 countries (114 larger government-financed projects and programmes and 15 smaller, grant-funded projects).<sup>7</sup> The total budget commitment to land and natural resource governance and tenure security measures in these projects was about US\$293 million, with IFAD's contribution being about US\$159 million. Of this budget commitment, about US\$148 million was spent during the five years to the end

of 2015, with IFAD contributing about US\$75 million. It is estimated that at least a further US\$126 million will be spent on tenure security measures over the five-year period 2016–2021, with IFAD contributing at least US\$62 million to 85 projects and programmes.<sup>8</sup>

Of the total commitment, about 57 per cent has been committed in 28 countries in sub-Saharan Africa, 21 per cent in 12 countries in the Asia and the Pacific region, 15 per cent in nine countries in the Near East and North Africa region and 8 per cent in 10 countries in Latin America and the Caribbean. Figure 1 shows the distribution of the total budget commitment for tenure security activities and projects across regions.

The total budget commitment in these projects and programmes over the same period (i.e. 2010–2015) was about US\$5.7 billion, of which IFAD's commitment was about US\$2.7 billion. Total investment in all IFAD-supported projects and programmes in this period was about US\$9.7 billion, of which IFAD contributed about US\$4.7 billion. Hence, IFAD's support for tenure security measures represents about 6 per cent of investment in projects in which measures were included and about

**Figure 1** Number of projects and budget commitment for tenure security activities.



APR, Asia and the Pacific; ESA, East and Southern Africa; LAC, Latin America and the Caribbean; NEN, Near East and North Africa; WCA, West and Central Africa.

<sup>6</sup> The Land Tenure and Natural Resource Management Desk is located in the Policy and Technical Advisory Division (PTA) in the Programme Management Department and is part of the Food Security and Food Systems Unit of the PTA.

<sup>7</sup> Most of the grant-funded projects support global or regional programmes or cross-country initiatives such as the ILC, the VGGT, the GLTN and the Africa Land Policy Initiative.

<sup>8</sup> Several of the projects reviewed had ended by the time of the review at the end of 2015 and the projection of future investment is based on ongoing projects or on projects that are still being designed or which are yet to begin. It is expected that more projects still to be designed will include tenure measures. This will be monitored and the information will be regularly updated.

3.3 per cent of IFAD's total investment. The total number of people who benefited from projects and programmes including tenure security measures over the five-year period is estimated to be between 37 and 45 million, with a similar number expected to benefit in the future.<sup>9</sup>

While the investment in tenure security is relatively modest, it would seem that it has had a significant positive impact on overall project/programme outcomes, although more work is needed to measure and demonstrate this impact. Importantly, the overall investment has created an enabling environment for securing the land and natural resource rights of poor rural people. In particular, IFAD's investments have economically and socially empowered poor rural people, and in many ways they have created a demand for greater security of tenure.

A range of measures aimed at improving land and natural resource governance and tenure security have been supported, including measures to ensure equitable access to land; measures to improve capacity-building in community and decentralized land governance institutions; measures to address competing land and natural resource rights in landscape/territorial planning processes; measures to aid accessible and affordable land registration and conflict/dispute resolution procedures; measures promoting advocacy, civic education and community mobilization in policy engagement; and measures to strengthen national government capacity for policy formulation and implementation.

These measures are typically integrated into projects and programmes that support natural resource/watershed management, irrigation, livestock and crop development, forestry, fisheries, value chains, and inclusive business arrangements with large-scale private sector partners. About 50 per cent of the projects have explicitly supported the strengthening of women's land rights, 35 per cent have supported the securing of group rights, 23 per cent have supported pastoralists' rights, 26 per cent have supported improving access to land for young people, and 13 per cent have supported the strengthening of indigenous people's land rights.

In most instances, the tenure security measures being supported are innovative, and they often strategically target challenging areas of land and natural governance. Many have good potential for replication and scaling up in government programmes, although additional support

may be needed to address systemic obstacles in policy, legislative and institutional frameworks or to share good practice, to support policy engagement and to strengthen implementation capacities. In some cases, innovative approaches are needed when projects have identified challenges but are unable to find or adopt solutions.

The integration of tenure security measures into broader projects/programmes creates opportunities to demonstrate the benefits of improved land and natural resource governance for poverty eradication and inclusive development. This is particularly relevant for demonstrating the importance of tenure security for achieving the SDGs. As mentioned above, over the past three years, several development agencies, including IFAD, other members of the ILC and partners of the GLTN, have worked hard to develop an indicator for measuring tenure security and to have this included in the SDGs. While the focus has been on formulating an indicator and methodology for measuring tenure security, part of the work has been on developing a results framework for measuring inputs, outputs, outcomes and results. However, most partners involved recognize that developing methodologies and capacity for measuring the impact of tenure security on the higher-level SDGs is a key challenge and an area that needs further attention from a wider group. A core group of development partners continues to work on this. As part of this, IFAD is in the process of securing additional resources both to support the initiative and to strengthen its own results framework for measuring the impact of tenure security measures.

IFAD's support also creates opportunities to strengthen the engagement in land policy processes of government ministries and agencies that may have an interest in good land and natural resource governance, but may not be directly involved, for example ministries dealing with agriculture, natural resource management and the environment, finance and local government, etc. Finally, IFAD plays a key role in creating space for CSO engagement in land and natural resource governance through its involvement as one of the more active intergovernmental organizations in the ILC, as well as through the financial and technical support it provides to CSOs, in particular farmer organizations.

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<sup>9</sup> Note that, as above, some projects may have ended a few years ago while new ones targeting different beneficiaries have come into effect. In addition, not all project activities are expected to benefit all people equally; it is difficult at this stage to ascertain the extent to which particular groups of people may have benefited from tenure security measures, although this is something that IFAD is working on strengthening (see below).

## Conclusions and way forward

IFAD recognizes that equitable access to land and natural resources and tenure security are key for successful outcomes of its support for rural poverty eradication. Among the important challenges for scaling up land policy implementation are the development of policy and legal frameworks, as well as the building of institutional capacity at community and decentralized government levels, especially for recognizing multiple ownership and user rights in diverse tenure systems. While IFAD's investment in tenure security and governance measures is relatively modest, in general it has had a significant positive impact on project outcomes.

By mobilizing and empowering communities, the projects IFAD supports can stimulate the demand for improved tenure security from beneficiaries and create synergies and linkages between land and natural resource policies and broader rural development policies and strategies. The Fund can play an important role in piloting and scaling up support for good land and natural resource governance through the projects and programmes it funds, by working in partnership with others and supporting enabling policy environments and multi-stakeholder policy engagement. It can assist various government and civil society partners – operating from local to international levels – to collaborate more effectively in policy formulation and implementation. It can strengthen lesson sharing on good practices within and across countries and regions, as well as internationally.

For IFAD, one of the key challenges in contributing to a scaling-up agenda is improving the effectiveness of IFAD's investments on project outcomes and, linked to this, improving its ability to demonstrate this impact. The Land Tenure and Natural Resource Management Desk of the PTA is collaborating with several partners to improve tools for assessing the impact of tenure security measures on project outcomes. It is expected that the lessons learned will not only better inform IFAD's investments, but will also contribute to wider efforts to demonstrate impacts on development outcomes under the SDGs. Beyond this, IFAD will continue to strengthen its collaboration and partnership with others, in particular with other members of the ILC and the GDWGL, to mobilize resources for scaling-up support for land and natural resource governance and tenure security.

# A global standard for tenure: from development to use

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## Abstract

Tenure is a critical factor in rural development, but it is highly localized. Differences in the physical environment, social values, legal frameworks and political powers have long hindered the development of an international consensus of principles and practices. However, such a standard now exists in the international soft law instrument of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. In the past four years, these guidelines have proven to be more than just a theoretical concept. This paper describes the development of the guidelines and how they are being used by governments, civil society organizations, business enterprises and the United Nations to improve tenure governance and improve lives.

## Introduction

A global standard for tenure exists in the form of the international soft law instrument of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security ("Guidelines").<sup>1</sup> Tenure arrangements, however, are highly localized: what works in one society may not exist in another. If tenure is so context specific, could a global standard for tenure practices have any value? Why would there be a need for such a standard? How could a standard become internationally accepted? And could such an international standard be applied on the ground? This paper explores these questions. In the four years of existence of the Guidelines, attention has shifted from their endorsement to their use by governments, civil society organizations, business enterprises and United Nations agencies.

Tenure has long been acknowledged as a critical factor in development, rural or otherwise.<sup>2</sup> Wise policies and laws on tenure and their implementation can support the attainment of food security and poverty eradication, social stability, economic growth and environmental protection, among other aims. In contrast, weak policy and legal frameworks prevent people, particularly the vulnerable and marginalized, from achieving sustainable livelihoods.

Beyond this, there was not necessarily a broad consensus on what constituted wise or weak policies and laws, and their administration. Whether something was viewed as right or wrong depended largely on the perspectives of the individual stakeholders, such as government, civil society, private sector, academia or individual citizens.

The diversity of tenure arrangements further complicates the determination of what is right or wrong. Tenure can take many forms, such as public, private, communal, collective, indigenous, customary and informal. Tenure arrangements are shaped by many factors. Tenure rights in arid and semi-arid areas, where pastoralists have customarily "followed the rain," differ from those of communities in rain forests. Tenure rights also develop in response to a society's political, social and economic systems. And they are dynamic; for example, demographic

1 FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

2 See, for example, IFAD. 2012. *Land Tenure Security and Poverty Reduction*. <https://www.ifad.org/documents/10180/0f715abf-3f59-41f6-ac08-28403ebd271f>.

changes (such as migration, urbanization and growing or decreasing populations) and the expansion of market economies into previously remote areas affect the demand for access to natural resources and can cause the creation of new types of tenure rights.

## The development of a global standard

If tenure arrangements are shaped by local conditions, why would there be a need for a global standard? Looking at tenure from the perspective of its governance in an era of rapidly increasing demand for access to land, fisheries and forests highlights that many tenure problems around the world arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Some problems with governance relate to corruption, which is a widespread phenomenon,<sup>3</sup> but even countries without major problems with corruption need to continually improve the governance of their tenure in response to changing needs, challenges and technologies. The so-called “land grabbing” phenomenon, associated particularly with the high and volatile food and fuel prices of 2007–2008, provided additional interest in a global response. While tenure is a local matter, the need for tenure security exists in every country and community. Improving governance of tenure is a concern around the world.

What makes the Guidelines a global standard? The Guidelines are considered an international soft law instrument as they were endorsed by the Committee on World Food Security (CFS), the United Nations’ forum for reviewing and following up on food security and nutrition policies. Beyond that, the Guidelines have broad social legitimacy because of the inclusive process of their development.

The Guidelines are based on an extensive consultation of 10 regional meetings that brought together representatives from government, civil society, the private sector and academia, as well as four consultations specifically for civil society and one consultation for the private

sector. The consultations were an opportunity to listen to what people around the world wanted to see in the Guidelines, and they were organized by the Food and Agriculture Organization of the United Nations (FAO) in collaboration with IFAD and other partners.

The Guidelines were finalized through intergovernmental negotiations led by CFS, involving governments of countries from all regions of the world, with diverse political, economic, social, cultural and religious views, and with the participation of civil society, the private sector and research institutions. They thus represent an unprecedented consensus on internationally accepted principles and practices for the governance of tenure.

All stakeholders at the negotiations, and their colleagues working in support in their home countries, strongly felt the need for an international standard and were committed to making it a reality in the form of the Guidelines. Tenure is often a highly political and sensitive matter, and throughout the negotiations people held different views on the various issues. Even when stakeholders had different views, they still treated each other with respect and sought to listen to others’ opinions and understand the reasons for the differences. The spirit of mutual respect and trust that characterized the negotiations allowed stakeholders to find ways to reconcile the different positions into something that could be accepted by all. As negotiated text, the Guidelines do not represent the lowest common denominator or text that has been weakened in order to be acceptable to all parties. Instead, the inclusive and participatory process has resulted in the Guidelines including ideas and text proposed by governments, civil society and the private sector. The Guidelines became a consensus document that is owned by all parties involved in its formulation.<sup>4</sup>

The Guidelines were endorsed by CFS on 11 May 2012 and subsequently received extensive recognition, including in the Rio+20 Declaration and by the United Nations General Assembly, the G20 and G8, the Berlin Summits of Agriculture Ministers and the Francophone Assembly of Parliamentarians.

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<sup>3</sup> FAO and Transparency International. 2011. *Corruption in the Land Sector*. <http://www.fao.org/docrep/014/am943e/am943e00.pdf>.

<sup>4</sup> For more information on the preparation of the Guidelines, see the FAO *Land Tenure Journal* 2012-1 (<http://www.fao.org/nr/tenure/land-tenure-journal/index.php/LTJ/issue/view/5>) and Land Tenure Working Paper No. 25 (<http://www.fao.org/3/a-i3935e.pdf>).

Is the effect of the Guidelines weakened because they are voluntary? The Guidelines are not a legally binding document, but this does not mean they are without legal significance as they reflect existing international law in some places, such as the International Labour Organization's Convention No. 169 Concerning Indigenous and Tribal Peoples<sup>5</sup> and the Convention on Biological Diversity. They are also consistent with international human rights jurisprudence, international humanitarian law in conflict situations, the Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations Convention Against Corruption. The Guidelines were developed as a soft law – soft laws have an advantage over binding international agreements in that it is usually easier for countries to reach agreement on them. As soft laws can be more comprehensive and provide more details, they are often better suited for technical matters. Although an instrument may be soft law from an international perspective, when a country enacts all or part of it, that soft law becomes hard law in that country.

## Putting the Guidelines to use

How have countries been able to use this global instrument locally? The real test of the worth of the Guidelines is the extent to which they are implemented by countries. During the four years since their finalization, it has been demonstrated that the Guidelines are no longer simply words in a document. Their principles and processes are inspiring people in countries around the world to take action and change the way in which things are done, including in the management of land, forest and fishery resources. The Guidelines provide a framework that countries can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices. They can be used to improve the policy, legal and organizational frameworks that regulate the range of tenure rights to natural resources.

Recognizing that the Guidelines cover all dimensions of governance of tenure and that changes in tenure policy are among the most politically sensitive on the statute books, countries cannot possibly undertake all needed reforms at the same time. Such changes can come about only through long-term sequential processes. Understanding and recognizing this is one of the challenges both people and countries are facing. Prioritizing and working on the most critical reforms and, over the longer term, addressing the remaining areas is how most jurisdictions are addressing implementation. Continuous improvement is, of course, one of the 10 implementing principles of the Guidelines.

The Guidelines enjoy wide ownership by governments, civil society and the private sector, which allows them to be used as an unbiased framework by all. New conversations that could probably not have taken place before are now taking place between government, civil society and the private sector on how to deal with the pressing problems of tenure. People are gaining new skills to apply the Guidelines in their own situations. Policies are being influenced by the Guidelines and more people are participating more actively in their development. Greater security of tenure is being provided by documenting and registering customary tenure rights and community forests.

The very existence of the Guidelines as a unique international instrument that deals comprehensively with tenure means that they have become a standard, even for organizations that were not represented at the negotiations. For example, on 3 March 2016 the CEDAW adopted a General Recommendation on the rights of rural women that identifies the Guidelines as a standard for gender mainstreaming.<sup>6</sup> The General Recommendation calls on states to integrate and mainstream a gender perspective in all agricultural and rural development policies, strategies, plans and programmes, enabling rural women to act and be visible as stakeholders, decision makers and beneficiaries, in line with the Guidelines (and also the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication,<sup>7</sup> which are based on the Guidelines,

5 International Labour Organization. 1989. *Indigenous and Tribal Peoples Convention, 1989 (No. 169) Convention concerning Indigenous and Tribal Peoples in Independent Countries* (Entry into force: 5 September 1991). [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

6 CEDAW. 2016. *General recommendation No. 34 on the rights of rural women*. [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_7933\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf).

7 FAO. 2015. *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*. <http://www.fao.org/3/a-i4356e.pdf>.

for matters of fisheries tenure). This call is placed within a recognition of the unique situation of rural women, their contribution to poverty reduction, food and nutrition security and the sustainable management of natural resources.

Similarly, the Guidelines have become a standard for corporate responsibility with regard to tenure, even for business enterprises that did not participate in the negotiations. The Coca-Cola Company,<sup>8</sup> PepsiCo,<sup>9</sup> Nestlé,<sup>10</sup> Cargill<sup>11</sup> and Unilever<sup>12</sup> have all committed their support for the Guidelines, including for their supply chains. In particular, the Guidelines have provided these companies with a responsible way of protecting legitimate tenure rights of people and communities where inputs are sourced.

Civil society was active in the consultations and negotiations of the Guidelines, and organizations such as ActionAid, Angoc, the Food First Information and Action Network and Oxfam have mainstreamed the Guidelines within their own programmes in individual countries and globally. Several initiatives of civil society organizations, coupled in some cases with support from FAO, have supported real grass-roots communication to take effect. A particular example of this has been civil society's work in developing a popular manual to facilitate understanding by people, communities and bodies of what the Guidelines mean and how they can be effectively used.<sup>13</sup>

A number of donors have incorporated the Guidelines in their work. The Global Donor Working Group on Land (GDWGL), which comprises 24 organizations, including IFAD and FAO, has introduced an initiative to improve donor coordination and support implementation of the Guidelines.<sup>14</sup> Some countries, such as Germany, Switzerland, the United Kingdom and the United States of America, which are members of the GDWGL, have

mainstreamed the Guidelines within their bilateral programmes. France requires its own public operators to respect the Guidelines and has developed an analytical framework for their use when considering land-based agricultural investments.<sup>15</sup>

FAO and other development partners have supported a number of countries in using the Guidelines to improve tenure arrangements. One area of work has been to raise awareness on how the Guidelines can be used by people within their own situations. Awareness-raising workshops have taken place in countries in Africa (Central African Republic, Gabon, The Gambia, Guinea, Liberia, Madagascar, Malawi, Niger, Nigeria, Republic of the Congo, Senegal, Sierra Leone, South Africa, Uganda), Asia (China, Mongolia, Myanmar, Nepal, Pakistan), Latin America (Colombia, Guatemala, Peru), Europe and Central Asia (Albania, Armenia, Georgia, Kyrgyzstan, Moldova, Tajikistan, The Former Yugoslav Republic of Macedonia), and Near East and North Africa (Sudan).

In a number of countries, raising awareness of the Guidelines led to the establishment of multi-stakeholder platforms on the Guidelines. For example, in Senegal, the national platform that developed is providing an important forum to discuss and inform tenure reform, and it has helped to move forward work on more equitable access to natural resources that started in the 1990s. Through the platform, the Guidelines serve both the National Tenure Reform Commission and civil society and provide a framework for consolidating the various interests on governance of tenure.

This is probably one of the major lessons learned from the experience of implementation so far – that the multi-stakeholder platforms and the transparent processes underpinning them, envisaged in the Guidelines, are critical for the success of the reforms.

8 The Coca-Cola Company. n.d. "The Coca-Cola Company Commitment: Land Rights and Sugar." <http://assets.coca-colacompany.com/6b/65/7f0d386040fcb4872fa136f05c5c/proposal-to-oxfam-on-land-tenure-and-sugar.pdf>.

9 PepsiCo. 18 March 2014. "PepsiCo Land Policy." [http://www.pepsico.com/Assets/Download/PepsiCo\\_Land\\_Policy.pdf](http://www.pepsico.com/Assets/Download/PepsiCo_Land_Policy.pdf).

10 Nestlé. July 2014. "Nestlé Commitment on Land & Land Rights in Agricultural Supply Chains." [http://www.nestle.com/asset-library/documents/library/documents/corporate\\_social\\_responsibility/nestle-commitment-land-rights-agriculture.pdf](http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-commitment-land-rights-agriculture.pdf).

11 Cargill. n.d. "Does Cargill support global standards that respect and strengthen local communities and farmers' rights to land?" <http://www.cargill.com/news/issues/agricultural-development/land-rights/index.jsp>.

12 Unilever. n.d. "Responsible Sourcing Policy: Working in Partnership with our Suppliers." [http://www.unilever.com/Images/slp-unilever-responsible-sourcing-policy-2014\\_tcm244-409819\\_en.pdf](http://www.unilever.com/Images/slp-unilever-responsible-sourcing-policy-2014_tcm244-409819_en.pdf).

13 International Planning Committee for Food Sovereignty. 2016. *People's Manual on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security: A guide for promotion, implementation, monitoring and evaluation*. <http://foodsovereignty.org>.

14 GDWGL. n.d. *Global Donor Platform for Rural Development*. Land governance Programme Map and Database. <https://www.donorplatform.org/land-governance/programme-map>.

15 Foncier and Développement Technical Committee on "Land Tenure and Development." 2014. *Guide to due diligence of agribusiness projects that affect land and property rights*. [http://www.foncier-developpement.fr/wp-content/uploads/Guide-to-due-diligence\\_of-agribusiness-projects.pdf](http://www.foncier-developpement.fr/wp-content/uploads/Guide-to-due-diligence_of-agribusiness-projects.pdf).

Multi-stakeholder platforms have played valuable roles in the process of preparing new policies and laws. In Sierra Leone, the multi-stakeholder, inclusive, process has ensured broad national ownership of a new land policy, which incorporates the Guidelines' principles and draws on their text. Political leadership is provided through the Government's Inter-Ministerial Task Force on the Guidelines, which brings together five ministries (Agriculture, Forestry and Food Security; Lands, Country Planning and the Environment; Fisheries and Marine Resources; Justice; and Local Government and Rural Development) supported by a Steering Committee, a Technical Working Group and a Secretariat. They are tasked with guiding the review of the legal, policy and institutional tenure frameworks, reviewing and validating the recommendations, and developing plans for implementation. A legal and policy review in the context of the Guidelines is also informing changes in the fisheries policy, the fisheries development strategy, the General Registration Act, the Registration of Instruments Act, the Wildlife and Conservation Act, the Forestry Act, the Rubber Bill and the Wetlands Bill.

In Guatemala, the new land governance policy incorporates principles of the Guidelines, with the objective of improving food security and nutrition in rural areas, particularly among indigenous communities, and promoting stability, investments and growth in agriculture. The policy addresses tenure security comprehensively by recognizing and strengthening indigenous communal systems of tenure and management, recognizing and promoting women's rights, and facilitating access to productive assets by small farmers and indigenous communities. It promotes the integration of rural areas into the national economy.

In the Western Balkans, a regional initiative addresses the challenges to increasing female landownership. Although sound legal frameworks protecting women's rights to own property are in place throughout the region, longstanding customs and traditions continue to favour male property ownership. Multi-stakeholder gender teams consisting of land administration specialists, government policy makers, gender officers, local non-governmental organizations and notaries have been established to support the process of improving gender equality and social inclusion in property rights. The teams have been trained on the Guidelines and on the Technical Guide (*Governing Land for Women and Men*) and have used these extensively to help

develop their national action plans. As part of the action plans, gender-disaggregated data were produced by each country, and indicated low levels of female landownership. Governments in the region were surprised to learn that female landownership in some parts of their country was as low as 3 per cent, and not more than 30 per cent in most cases.

The collection and dissemination of gender-disaggregated data demonstrated can be instrumental in promoting and advocating gender issues with policy makers. The Western Balkans is currently testing the methodology for monitoring Sustainable Development Goal (SDG) indicator 5a.2 (FAO is the custodian agency for this indicator): *Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control*. The methodology is based on the Guidelines' principles. The International Union of Notaries is a key partner in this work and is committed to work with the Chamber of Notaries and legal professionals at the national level to develop a Code of Conduct and introduce internal control and monitoring mechanisms, which could contribute to achieving gender equality in land tenure. The key land tenure indicators under the SDGs thus act in some ways as a surrogate for measuring elements of the impact of implementing the Guidelines.

Where policies and laws already recognize tenure rights, some countries have started to record customary and forest tenure rights consistent with the Guidelines. One approach is the use of open source software, such as Open Tenure, which is being used in Guatemala with a cloud-based community server to provide digital records through in-the-field capture of community tenure rights and boundaries, and in Uganda to establish a digital system to record and manage information for certificates of customary ownership. In Nigeria, certificates are captured digitally through Open Tenure and then integrated with a digital cadastral map maintained in SOLA (Solutions for Open Land Administration), an open source application used to support the modernization of deeds registries.

Improving governance of tenure usually requires people and organizations to have an improved level of capacity. A number of technical guides have been produced on aspects such as gender, free, prior and informed consent, agricultural investments, and responsible governance of tenure and the law; and guides on other topics are being

finalized.<sup>16</sup> Learning programmes exist in the form of various e-learning modules,<sup>17</sup> which have been linked with learning assessments and blended learning programmes, involving online courses and face-to-face interaction in workshops.

Trainer-of-trainers initiatives have been launched in Guatemala, Malawi, Myanmar, Nepal, Niger, Senegal and South Africa. The flexible learning activities allow participants to reflect on how the Guidelines can be applied. In South Africa, people from different sectors are working together to explore solutions to common problems. In Senegal, it is considered a priority to ensure that a steering committee has the capacity to draft a plan to support the land reform process. In Guatemala, training paved the way for civil society networks on governance of tenure. Training programmes bring together national and international organizations. National partners have control over the training and follow-up events, adapting programmes to local needs and strengthening their networks on tenure.

Partnerships were essential for the development of the Guidelines, and they remain vital for their implementation. FAO has worked with governments, civil society and other non-state actors. An important partnership in Africa is with the Africa Land Policy Initiative regarding the Framework and Guidelines on Land Policy in Africa (F&G), and capacities are being strengthened in countries in Africa to link the Guidelines and the F&G. In Europe and Central Asia, a similar partnership exists with the United Nations Economic Commission for Europe (UNECE). The UNECE Working Party for Land Administration organizes regional workshops several times a year to share best practices and know-how in land administration and management and to discuss difficult issues, such as informal settlements, land concentration and the need for land consolidation, and prepares programmes for sharing good practices with other regions.

Notaries have a crucial role to play in strengthening access to property by women and vulnerable groups, and FAO is collaborating with the International Union of Notaries to support the Notary Chambers to strengthen the role of notaries in implementing the Guidelines and

to contribute to the achievement of the SDGs. Another area of collaboration complements FAO's strengths with Google's experience in big data, cloud computing and simple mapping tools. A jointly designed and developed software application, Collect Earth, builds on Google Earth and Earth Engine to provide a simple, but powerful, global and national forest carbon and land use monitoring tool.

While this characterization of the use and impact of the Guidelines from an FAO perspective might appear anecdotal, the reality is that many countries and their people, and many implementing and supporting agencies, are benefiting from their guidance. The GDWGL website<sup>18</sup> identifies more than US\$4.5 billion of active investment in Guidelines-specified projects: a multiplier of around 150 times FAO's commitment of resources. This breadth and depth of commitment was well captured in the sessions in and around the CFS in 2016 when the Guidelines implementation review session concluded that, "The contributions received from CFS stakeholders show that the VGGT [the Guidelines] have been used and applied in many countries since they were endorsed by CFS in 2012." The CFS conclusions specifically noted the importance of sharing and learning across countries in South-South examples of good practice: "sharing experiences within and across countries, leading to raising awareness, mutual reinforcement and consolidation of expertise and implementation mechanisms and developing capacities."<sup>19</sup>

## Moving forward

New policies and laws can be important, but development comes when they are implemented effectively and fairly on the ground. Changing tenure arrangements is an institutional reform. Sometimes these changes are part of generational changes. Raising awareness, developing capacity, engaging with other stakeholders, developing policies and laws, and implementing and reforming those laws are ongoing activities. This is recognized in the Guidelines, for example in the principle of continuous improvement.

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<sup>16</sup> See FAO. <http://www.fao.org/nr/tenure/information-resources/en/>.

<sup>17</sup> FAO. E-learning. <http://www.fao.org/nr/tenure/e-learning/en/>.

<sup>18</sup> GDWGL. Above, note 14.

<sup>19</sup> CFS, 43rd Session Report. *Making a Difference in Food Security and Nutrition*. Rome, Italy, 17–21 October 2016.

The Guidelines are a means to an end. They provide a framework that people and organizations can use to improve the governance of tenure of land, fisheries and forests (and other natural resources) for the benefit of all, with a particular emphasis on vulnerable and marginalized people. They seek to improve governance of tenure with the goals of food security and the progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development (Guidelines paragraph 1.1).

As a result, the Guidelines provide a framework that can be used for addressing tenure in the context of the SDGs. Tenure governance is a cross-cutting issue in the SDGs, and the use of the Guidelines can contribute directly to Goal 1 (no poverty) and Goal 5 (gender equality) where there are specific targets (1.4 and 5a respectively), as well as to Goal 2 (zero hunger), Goal 10 (reduced inequalities), Goal 11 (sustainable cities and communities), Goal 13 (climate action), Goal 14 (life below water), Goal 15 (life on land), Goal 16 (peace and justice) and Goal 17 (partnerships for the goals). In addition, the Guidelines contribute indirectly to Goal 3 (good health), Goal 8 (decent work and economic growth), Goal 9 (industry, innovation and infrastructure) and Goal 12 (responsible consumption).

The Guidelines use agreed language and are the agreed vision of what responsible governance of tenure looks like and what can be done to move towards it, from the development of participatory and inclusive processes through to the design, implementation and monitoring of sustainable solutions to improve governance of tenure.

# Working towards people-centred land governance: experiences from the International Land Coalition

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## Abstract

The International Land Coalition (ILC), hosted by IFAD, is a global alliance of civil society and multilateral organizations. ILC members are committed to working for land governance that responds to the needs and protects the rights of the most vulnerable people. This engagement is expressed in 10 commitments that guide the activities of members and provide a focus for broader international frameworks. In this article, we look at the work of ILC members in contributing to the formulation of land policies and legal frameworks, influencing their implementation and engaging in strategic action in specific countries in favour of people-centred land governance.

## Introduction

The International Land Coalition (ILC), whose Secretariat is hosted by IFAD, is a global alliance that brings together 207 civil society and multilateral organizations. Members are committed to working for land governance that responds to the needs, and protects the rights, of people whose livelihoods depend on and derive from land and natural resources. This engagement is expressed through 10 commitments that are considered critical for achieving transformative changes in land governance in favour of the most vulnerable (box 1).

These 10 commitments reflect the key priorities of ILC members for responsible land governance around the world. They showcase the fundamental role that land governance plays in addressing major development challenges in rural areas. In an increasingly unequal world, income, wealth and influence over decisions are controlled by the few, and democratic space for participation is shrinking. In terms of land, this is evidenced in the concentration of ownership and control over land in fewer hands, putting over 500 million family farming households<sup>1</sup> and 370 million indigenous people<sup>2</sup>

### Box 1 ILC Members' 10 commitments for people-centred land governance

1. Secure tenure rights
2. Strong small-scale farming systems
3. Diverse tenure systems
4. Equal land rights for women
5. Secure territorial rights for Indigenous Peoples
6. Locally managed ecosystems
7. Inclusive decision-making
8. Transparent information for accountability
9. Effective actions against land grabbing
10. Protected land rights defenders

1 FAO. *Family Farming Knowledge Platform*. <http://www.fao.org/family-farming/background/en/>.

2 United Nations Permanent Forum on Indigenous Issues. n.d. *Who are indigenous peoples?* [http://www.un.org/esa/socdev/unpfii/documents/5sesion\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfii/documents/5sesion_factsheet1.pdf).

dependent on land resources at risk of being further marginalized. Moreover, human rights defenders on land and environmental issues who oppose such injustices are facing serious threats and abuses, and in many cases their lives are at risk.

The 10 commitments address these challenges by guiding policy, legal and administrative frameworks, and by setting benchmarks for action. By doing so, they also provide a focus for broader international frameworks on which states have achieved wide consensus, such as the Sustainable Development Goals (SDGs), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Framework and Guidelines on Land Policy in Africa (F&G).

The VGGT and the F&G, in particular, can be used by policy makers as reference points when undertaking policy, legal and administrative reforms. Even if they are non-binding, they can be influential in inspiring, assisting and creating momentum for change. Their recommendations may be politically hard to argue against in national contexts because governments have already endorsed them at the highest level and they are the outcome of multi-stakeholder consultations. They are thus also valuable tools for a range of policy makers, development practitioners and civil society actors who aim to contribute to and influence the formulation and the implementation of policy, legal and administrative frameworks.

Members of ILC have been closely involved in the development and implementation of these global frameworks. To move from these more aspirational guidelines to reality, and to address the overall development challenges, ILC members have taken the additional step of defining the 10 commitments for people-centred land governance (see box 1). The objective is thus to give space to people who live on and from the land to become the drivers of their own change – a change that responds to their needs and priorities.

In this article, we showcase examples from Uganda, Rwanda and Nepal to demonstrate how continued advocacy, strategic dialogue and practical action by civil society actors have ensured that people's interests have been considered in the formulation and implementation of land policies and laws. These cases enable us to illustrate some of the successes achieved in working towards people-centred land governance and to demonstrate the importance of collaboration between policy makers and civil society.

## **Advocating for people-centred land governance: examples from ILC members**

### **Civil society contributing to land policy formulation in Uganda (commitments no. 1, Secure tenure rights, and no. 7, Inclusive decision-making)**

It took more than 10 years of multi-stakeholder dialogue to come up with a new land policy in Uganda. The Uganda Land Alliance, an ILC member organization, played a vocal role in the policy formulation process, ensuring that the new text incorporated the views of civil society and was fair in considering the interests of the most vulnerable land users.

The policy process was initially undertaken to address challenges that persisted on the ground, despite the relatively progressive 1995 Constitution and the 1998 Land Act, which together had established a basis for land governance. These challenges included disputes over land boundaries, conflicts between farmers and pastoralists, overlapping tenure systems, difficulties for women in inheriting land and a lack of tenure rights for internally displaced persons. For civil society, the policy process was also an opportunity to engage in a collaborative effort with the government and to participate in a multi-stakeholder dialogue on land governance.

Cooperation between the Government of Uganda and civil society took place in phases and emerged from earlier arrangements built between the parties to raise awareness of the 1998 Land Act. On several occasions, both ILC and IFAD supported civil society contributions. The policy formulation process started in 2001, when the Ministry of Lands, Housing and Urban Development created a National Land Policy Working Group to steer the process forward.

During the first years, civil society contributions included the coordination of studies on land governance, with the objective of informing and proposing recommendations for the policy. The policy process was opened to wider stakeholder consultations in the region in 2007. This created the momentum for civil society to coordinate thematic dialogues, which were conducted in the form of monthly breakfast colloquia. These brought together representatives of the Ministry of Lands, Members of Parliament, donors, the private sector, academia and civil society. However, as the policy process progressed, the civil society organizations (CSOs) involved found that the

inputs generated through the numerous studies, regional consultations and thematic dialogues were not being fully taken into consideration by the drafting team. They thus established a shadow drafting working group and a lobby committee that came up with an alternative national land policy draft. Its recommendations were incorporated into the final draft of the official policy, which was eventually adopted by the government in 2013.

The Ugandan example shows that continued advocacy and dialogue with various parties can make a difference in creating fairer land policies and in conducting more inclusive policy processes that voice the concerns of the grass roots. As a result, the new National Land Policy adopts a broad approach to land governance, seeking to resolve historical injustices, addressing the specific needs of the most vulnerable land users and considering land as a factor of production rather than as a property. The new land policy, with its people-centred approach, will be a reference point for the development of any laws and administrative processes in the future.

The conduct of the overall policy formulation process also enabled some lessons to be drawn. For the government, it highlighted that multi-stakeholder participation pays off by allowing the formulation of stronger policies that are owned and backed by wide sections of society. It thus sets a stronger basis for any legal activities to take place. For civil society, it demonstrated the importance of speaking with a coherent voice and identifying areas of agreement around which evidence-based advocacy can be built. The new policy is also a reference point against which civil society can monitor and evaluate the development and the implementation of laws and practical activities.

### **Civil society influencing land policy implementation in Rwanda (commitments no. 1, Secure tenure rights, no. 2, Strong small-scale farming systems, and no. 4, Equal land rights for women)**

The Government of Rwanda is engaged in a Land Tenure Regularisation Support Programme (LTRP), with the objective of strengthening tenure security, promoting investment in land and contributing to poverty reduction. The programme is built on various policies, laws, orders,

rules and regulations, such as the 1999 Family Law, 2004 Land Policy and 2005 Organic Land Law (which was further amended in 2013). While these policies and laws are pro-poor and also gender sensitive, there have been gaps in their implementation.

When observing and analysing the policy implementation, ILC member organization the Rwanda Initiative for Sustainable Development (RISD) found that the process was compromising the land rights of the rural poor, women and less informed landowners. Together with its civil society partner, LandNet Rwanda, RISD sought corrective action on three aspects of implementation. First, it observed that the LTRP had not been registering parcels of land smaller than one hectare, thus compromising the rights of 75 per cent of Rwandan land users. The second issue was that the land rights of women who were not legally married were not being registered; this was considered unfair to women living in non-registered partnerships. Finally, rural landowners had been paying land lease fees for land parcels smaller than two hectares, even though the law exempted them from doing so. This was mainly due to poor communication on land laws and related procedures.

These observations drove RISD to attempt to influence implementation of the programme towards more people-centred land governance. In fact, land remains a key resource for the livelihoods of most Rwandans and the way in which policies are implemented has a direct impact on peace building and on the country's development. Hence, it was considered important that any decision taken in relation to land management, use or administration should adopt a participatory and consultative approach so that people's views can be heard and interests considered.

As a first step, RISD undertook action-oriented research to achieve a greater understanding of practices and realities in the field. These results enabled it to formulate evidence-based advocacy and awareness-raising programmes that targeted not only the Rwanda Natural Resources Authority (RNRA), the technical implementation agency, but also policy makers, local leaders and the population at large. Some activities were coordinated through media outlets, a number of dialogue workshops were organized and networks were established involving various actors.

The engagement of RISD and its partners resulted in over 3,000 land titles being changed in favour of the most vulnerable land users. In its work, RISD drew on its experience of intervening in the natural resources sector and made use of the credible working relations it had established with government agencies, such as RNRA, over time. The Rwandan example shows the importance for civil society of maintaining strong research capacities and of speaking with a unified voice to influence the development and implementation of policies and laws. RISD's research activities enabled it to collect reliable data from the field that were used for advocacy purposes and as an entry point for dialogue with government agencies. In addition, cooperation and coordination among CSOs ensured the establishment of a wider front in favour of people-centred land governance.

**Civil society strategically engaging in people-centred land governance in Nepal (commitments no. 1, Secure tenure rights, no. 2, Strong small-scale farming systems, no. 3, Diverse tenure systems, no. 4, Equal land rights for women, no. 6, Locally managed ecosystems, and no. 8, Transparent information for accountability)**

ILC is engaged in long-term activities in 20 focus countries, including Nepal, with the objective of mobilizing member organizations to work together in a coordinated manner. In these countries, the members establish a shared vision for people-centred land governance and create linkages with other relevant stakeholders in the land sector. Their common work culminates in the formulation of a National Engagement Strategy (NES), which is a roadmap for the formulation and implementation of land policies and laws.

The Nepalese NES is set in a context where land distribution is largely unequal in nature. Injustices in securing access to, control over and management of land have led to socio-economic vulnerability for a large part of the Nepalese population and especially women, landless people, occupational caste groups (*Dalits*) and indigenous peoples (*Adivasi Janajati*). These groups are often excluded from development opportunities generated by land resources.

To address these injustices, public debate on land reform is ongoing in Nepalese society. However, the question is not properly addressed by the government or political parties. Some 62 legal and regulatory acts concerning land have been adopted by a succession of commissions and enforcement mechanisms, in addition to which there are some 27 pieces of legislation relating to land. As in many other countries, their implementation on the ground remains patchy.

In this context, ILC's engagement is responding to the need to create an active multi-stakeholder platform for dialogue and to promote pro-poor land policies. The NES in Nepal aims to build this platform to:

- develop a framework for assessing the status of land issues and to plan for future activities;
- review the current situation of land reform, and areas needing attention and action;
- share findings, establish multi-stakeholder dialogues and identify key partnerships.

Launched in 2012, the NES brings together six ILC members: Abhiyan, the College of Development Studies, the Consortium for Land Research and Policy Dialogue (COLARP), the Community Self-Reliance Centre (CSRC), MODE Nepal and the National Land Rights Forum (NLRF). They have established a Coordination Committee to implement activities either individually or together. Some notable results have already been achieved. With the assistance of the NLRF and the CSRC, some 762 land-poor families have gained secure access to public land with the objective of improving their livelihoods. Another 521 families have received Joint Land Ownership titles, which have empowered the position of women in local society. The CSRC has, in addition, contributed to a range of policy documents and mobilized 35,000 land-poor people from 44 districts to demand the elaboration of a new constitution that should include provisions for land rights. It has consistently reminded senior political leaders of their longstanding commitments to land reform, and has met the parliamentary committee on agriculture and water resources to advocate for land and agrarian reform. Based on the overall work of the CSRC, the committee of the International Covenant on Economic, Social and Cultural Rights has recommended that the Government of Nepal implement land reform with a specific focus on landless farmworkers, tenant farmers and women farmers.

The experience shows how the collaborative efforts of the NES members have helped to create synergies among an often divided and weak Nepalese civil society and to engage policy makers and development practitioners more strongly in favour of people-centred land governance. Overall, joint strategic activities have involved more than 2,000 policy makers in dialogue on people-centred land governance.

Finally, the advocacy activities have raised the profiles of the ILC member organizations within government institutions. The NLRP now has a seat on the Steering Committee responsible for the formulation of a national land policy, and the government has invited CSRC to share good practices on land and agrarian reforms. Another NES member, COLARP, has facilitated a workshop on the VGGT and coordinated debates on pro-poor land governance. These activities have enabled COLARP to highlight field-level research results and exchange ideas with policy makers and development practitioners at different levels of action.

## Conclusion

These examples from ILC members demonstrate the importance of sustained advocacy and dialogue to ensure that the voices of the most vulnerable people are heard in the development and implementation of land policy, legal and administrative frameworks. The Ugandan experience is an example of best practice in terms of civil society influencing a land policy formulation process to ensure that people's interests and concerns are integrated into the final text. The perseverance of civil society actors also ensured the adoption of a multi-stakeholder process. While this might have been time-consuming, it increased ownership of the land policy, establishing a more solid basis for its implementation on the ground and for the development of related laws and regulations.

When policies and laws have been adopted, civil society can play a monitoring role, as in Rwanda. Policy implementation should follow the principles set out in official texts and should also respect countries' international commitments. In this respect, the international frameworks, as well as ILC's 10 commitments for people-centred land governance, can be used as checklists to analyse government actions. Part of the process is the ability to observe and examine

policy implementation on the ground and to bring up experiences at the national level. This was successfully done in Rwanda, where field research established the basis for information and advocacy campaigns to address injustices in the policy implementation process.

At times, CSOs need to speak with a common voice to generate change in challenging development contexts. The NES process facilitated by ILC aims to bring actors together and sustain dialogue on people-centred land governance. Concrete results have been achieved in Nepal, where ILC members have been advocating in favour of land reform and mobilizing society at large to recognize the rights of the most vulnerable in line with the principles of people-centred land governance. The Nepalese example also showcases the way in which backing can be sought at the international level to generate change nationally.

All in all, coordinated action is key to making a difference in land policy formulation and implementation, and for ensuring effective legal reforms that respect the land rights of the most vulnerable. In this context, ILC as a coalition connects and mobilizes members in favour of people-centred land governance and influences key decision makers. The objective is that civil society actors are engaged in the development and implementation of policies and laws, and considered to be legitimate interlocutors alongside policy makers, development practitioners and corporate actors. The different platforms offered by ILC can also serve as settings for dialogue, mutual learning and joint action. Ultimately, change towards people-centred land governance can be generated when CSOs are strong, knowledgeable and credible players able to act even in the most challenging environments and able to bring forward the visions and the interests of the most vulnerable people.

## Further information

ILC has an extensive resource library containing publications, institutional documents, policy and technical briefs, presentations, newsletters and videos, contributed by a range of members.

More details on the 10 commitments for people-centred land governance and examples of good practice are also available on the ILC website: <http://www.landcoalition.org>

# Mainstreaming support for good land governance into rural development programmes: experiences from IFAD-supported projects in West and Central Africa

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## Abstract

Land is fundamental to the lives of poor rural people. It is a source of food, shelter, income and social identity. Secure access to land reduces vulnerability to hunger and poverty. But for many of the world's poor rural people in developing countries, access is becoming more tenuous than ever. IFAD works with poor rural populations, in particular smallholder family farmers, in developing countries to eliminate poverty, hunger and malnutrition, raise productivity and incomes, and improve the quality of rural women's and men's lives. IFAD investments in smallholder family farmers encompass all the elements that make up the livelihoods of this diverse group of women and men, including productivity, infrastructure, women's empowerment, access to financial services, climate change adaptation, access to markets, public-private partnerships and land tenure security. When insufficient attention is paid to secure access by small-scale producers and to land tenure issues, development projects can become part of the problem. This article looks into how IFAD is mainstreaming support for good land governance into rural development programmes.

## Background

IFAD's goal is to enable poor rural people to improve their food and nutrition security, increase their incomes and strengthen their resilience. IFAD provides loans and grants to developing countries to finance innovative agriculture and rural development programmes and projects. These are managed and implemented by national governments and their partners, and by IFAD. IFAD is one of the largest sources of development financing for agriculture and rural development in many developing countries. Through a programme of loans and grants supporting over 256 projects and programmes in 97 countries, the Fund is helping 78.7 million rural people receive services to move out of poverty. IFAD works with poor rural populations, in particular smallholder family farmers, in developing countries to eliminate poverty, hunger and malnutrition, raise productivity and incomes, and improve the quality of rural women's and men's lives. IFAD has recognized that smallholder family farmers can and do contribute to economic growth. They make vital contributions to

social and economic development, provided suitable investments are made to create the conditions to enable them to do this. Looking at the needs of smallholder farmers holistically, there is a spectrum of interventions that are needed to tap this potential. As a result, IFAD investments in smallholder family farmers encompass all the elements that make up the livelihoods of this diverse group of women and men, including productivity, infrastructure, women's empowerment, access to financial services, climate change adaptation, access to markets, public-private partnerships and land tenure security.<sup>1</sup>

Land is fundamental to the lives of poor rural people. It is a source of food, shelter, income and social identity. Secure access to land reduces vulnerability to hunger and poverty. But for many of the world's poor rural people in developing countries, access is becoming more tenuous than ever. Competition for land has never been greater. Pressure on land is increasing as a result of a rising world population, climate change, declining soil fertility and the need for global food and fuel security.

<sup>1</sup> IFAD. 2014. *Investing in smallholder family farmers... for the future we want*. <https://www.ifad.org/documents/10180/f484c453-e248-483c-871b-b0acb14bf894>.

With governments and businesses now recognizing the potential of growing biofuel crops on land that cannot sustain food crops, even less fertile agricultural land may now have value. Desertification and reduced availability of water compound these issues. There are some 1.3 billion extremely poor people in the world, struggling to survive on less than US\$1.25 a day. About 70 per cent live in the rural areas of developing countries. In rural societies, the poorest people often have weak or unprotected tenure rights. They therefore risk losing the land they depend on to more powerful neighbours, to private companies domestic or foreign – and even to members of their own family. Women are particularly vulnerable because their land rights may be obtained through kinship relationships with men or through marriage. If those links are severed, women can lose their rights.<sup>2</sup>

## Secure access to land in West and Central Africa

Land is one of the most fundamental resources to poor rural people's livelihoods and economic empowerment in West and Central Africa. Land is often held in communal ownership and is controlled by traditional rulers, who administer it on behalf of their community in accordance with customary principles and practices. The paramount chief is regarded as the custodian of the land on behalf of the entire chiefdom, but decisions regarding the land are often the preserve of the landowning families. In areas where shifting cultivation is practised, the land available for farming is shared among family members by the family head at the beginning of each farming season.<sup>3</sup>

The region is characterized by its high diversity, as it reflects many types of ecosystems. A consortium comprising the African Union Commission (AUC), the United Nations' Economic Commission for Africa (ECA) and the Africa Development Bank (AfDB), the AUC–ECA–AfDB Consortium,<sup>4</sup> identified the following key land issues and challenges to West Africa: state sovereignty over

land; drought, desertification and floods; protecting the commons, including pastoral rights; evolution of the land market and security of tenure; decentralization and its effect on efficient land management; land and mining; and gender and land issues. In almost all Central African countries, state sovereignty over land is common, and it is usually associated with non-recognition of custom-based land rights held by local communities. Other top land issues in the region include a lack of a clear land policy, inadequate land laws and legal pluralism; gender issues with special attention to access of women and indigenous people; weak capacity in land policy development and implementation; and excessive centralization of land administration systems and poor land governance. All these issues converged in fuelling some of the major crises and conflicts in the continent.<sup>5</sup>

## Experiences from IFAD-supported projects

In 2015, IFAD undertook a comprehensive stock-take of IFAD tenure activities since 2010. In West and Central Africa, 26 projects that implemented tenure security activities between 2011 and 2015 were identified. Expenditure on these projects over this period was estimated at around US\$644 million, of which US\$34 million or 5.3 per cent was spent on tenure security activities. Forty-three per cent of financing can be attributed to IFAD, 13 per cent to national governments and 44 per cent to other financiers. In relative terms, IFAD is investing more in tenure security measures in West and Central Africa than in other regions. Projects that implement tenure security activities are mainly those that deal with natural resource management, livestock development and irrigation. The activities in West and Central Africa are very diverse, but reflect the need for support on tenure issues in the fields of natural resource governance and agricultural production. Engagement in land issues in West and Central Africa is notably high, and spread across 13 of the 24 countries in the region.

2 IFAD. 2015. *Land tenure security and poverty reduction*. <https://www.ifad.org/documents/10180/0f715abf-3f59-41f6-ac08-28403ebd271f>.

3 IFAD. n.d. *Access to land in West and Central Africa*. <https://www.ifad.org/topic/operations/region/pa/tags/gender/6258271> (accessed 4 November 2016).

4 AUC–ECA–AfDB Consortium. 2011. *Land Policy in Africa: West Africa Regional Perspective*. <http://www.uneca.org/publications/land-policy-africa-west-africa-regional-assessment>.

5 AUC–ECA–AfDB Consortium. 2011. *Land Policy in Africa: Central Africa Regional Perspective*. [http://www.uneca.org/sites/default/files/PublicationFiles/regionalassessment\\_centralafrica.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/regionalassessment_centralafrica.pdf).

## Strengthening decentralized and community-level land administration

The legal-pluralistic environment for dealing with land tenure affects the institutional arrangements for land administration in West Africa. Land administration institutions perform judicial, regulatory, fiscal, cadastral and conflict resolution functions. However, their roles are usually restricted to land under formal tenure arrangements. The large informal sector is mainly outside these institutional arrangements. Decentralization is one of the key governance issues ongoing in West and Central Africa. Decentralized management of land and natural resources is the only way to give back control of resources on their territories to rural communities and break state monopoly on the land. There is a need to recognize the rights and property of the state, local governments and individuals, and an absolute need to promote legitimate institutions to take charge of local land management.<sup>6</sup> Several IFAD-financed projects support the establishment or strengthening of decentralized systems for land administration and management. Accessible, inclusive and effective land administration systems are perceived by these projects as important tools for improving the management of natural resources and resolving competing or conflicting interests of different stakeholders. The recognition and protection of weaker land rights such as secondary use rights of women, pastoralists or migrants are a prime concern in these projects.

### Mali

In Mali, the Agricultural Orientation Law allows for the creation of special land management committees whose purpose is to play a leading role in mediation and resolving land-related conflict. The Fostering Agricultural Productivity Project – Financing from the Adaptation for Smallholder Agriculture Programme (PAPAM/ASAP) supports the set-up of these committees at local level and builds their capacity. The committees are responsible for land-management implementation of the local community and ruling on disputes that arise within their localities.

### Niger

To secure individual and collective investments, the Family Farming Development Programme (ProDAF), which operates in the Maradi, Tahoua and Zinder regions of Niger, is supporting the implementation of the Rural Code and the setting up or strengthening of land commissions at different levels (departmental, municipal and village). These commissions are responsible for (i) the widespread dissemination of existing legislation, (ii) determining the tenure status of project sites (before and after development), (iii) the negotiation of sustainable management methods for the rehabilitated land and (iv) the revitalization and/or strengthening of non-operational or non-existent organizations responsible for land management at the grass-roots level.

## Improving equitable access to and security of tenure of irrigated land

As to land tenure, irrigation schemes raise three broad groups of issues.<sup>7</sup> First, the very creation of irrigation schemes on the part of government or development agencies is likely to entail the suppression of existing land rights, and the reallocation of land-cum-water rights to users who may or may not be the original rights holders. Legislation typically empowers the government to do this. This raises issues as to the extent to which local land rights are recognized by legislation, and rights holders are compensated for loss of their rights. Second is the issue of the land tenure security enjoyed by farmers on irrigated plots (nature and duration of use rights, etc.). In most cases, farmers who cultivate land irrigated as part of publicly funded irrigation schemes do not own the plots they cultivate. Rather, they enjoy conditional land use rights. Conditions typically include putting land into productive use (*"mise en valeur"*) and payment of the water fee. A third issue regards land transactions fostered by the increased land values that irrigation brings about. In most cases, land transactions on irrigated plots are prohibited – whether rentals, sales or other. Yet field studies have documented widespread practices of informal land transactions. Water provision may have a major impact on land prices and result in absentee landowners returning after many years of absence. This renewed influx can lead to increased land fragmentation and boundary disputes.<sup>8</sup>

6 AUC-ECA-AfDB Consortium. 2011. Above, note 4.

7 Cotula, Lorenzo. 2006. *Land and Water Rights in the Sahel: Tenure challenges of improving access to water for agriculture*, IIED Issues Paper no. 139. <http://pubs.iied.org/12526IIED/>.

8 IFAD-Global Land Tools Network (GLTN). 2013. *Recognising and documenting small-scale farmers' land and water rights in irrigation schemes: Learning note*.

## Mauritania

IFAD-supported projects in Mauritania have been facilitating the use of “*ententes foncières*,” or land distribution agreements between landowners and the landless, as a precondition for funding water infrastructure. The approach is based on the three principles of justice, solidarity and efficiency and comprises three steps: (i) land tenure assessment; (ii) negotiations; (iii) written agreement (endorsed by local authorities, prefect, landowners and village chief). To ensure efficient management of land agreements and to guarantee all stakeholders’ interests, community management structures were created to support vulnerable groups and to supervise the implementation of project objectives and land agreements. The agencies set up in this context include (i) the Association of Waalo Users, responsible for the management of hydro-agricultural structures built by the state in the project; (ii) the village development committees, which support villagers’ interests and ensure the application of land agreements in village communities and the sustainable integration of the landless; and (iii) the Committee of Wise Men, an endogenous mechanism for regulating collective and individual conflicts, which participates in the implementation of land transactions. So far 28 villages have signed land distribution agreements, covering an area of 12,000 hectares, enabling secured access to land for those who were landless.

## Sustainable rangeland management

Most livestock keepers in the developing world access land through diverse and context-specific customary systems that tend to balance individual and group rights; these systems generally have a collective element to resource management, including group decision-making to determine access to, and use and management of, resources in common grazing areas, shared rights of way and water rights. Nomadic or semi-nomadic pastoralists generally using marginal land tend to be marginalized in their societies, but they often make a significant contribution to the national economy. Worldwide, pastoralists are under pressure due to population growth, environmental degradation, encroachment of agriculture on their grazing territories, the privatization of former communally owned land and unsound development and trade policies. Government policies usually favour settled farming and crop production, and are implemented at the expense of pastoralist ways of life.<sup>9</sup>

## Chad

The Pastoral Water and Resource Management Project in Sahelian areas in Chad has improved the access of mobile livestock systems to water and pastoral resources, and strengthened the capacity of the groups and institutions involved in managing these natural resources. Mobile pastoralism adapts well to low vegetation growth and to fragile ecosystems. This makes this system a sound response to Chad’s continuously changing agricultural and ecological conditions. Chad has abundant pastoral areas, but its inhabitants do not use them fully because there are too few water points. The project began by appraising pastoral participation and mapping pastoral resources. An infrastructure of water points was then set up to enable mobile pastoral communities to use more of the available pastoral land. In addition, support was provided to protect stock routes. This helped to reduce the vulnerability of pastoral communities and supported the communities’ way of life. Productivity increased through reduced livestock mortality, morbidity and water stress as well as higher live weight and milk production. The project helped to reduce conflicts over water by bringing together mobile herders and agricultural producers in the management of pastoral wells and livestock corridors through the formation of inclusive local institutions involving traditional leaders of both communities.

## Mali

In Mali, population growth (both humans and animals) and climate change (recurring droughts since the 1970s) have triggered the disappearance of socio-professional specialization, and this has been accompanied by increasing heterogeneity in the interests of different natural resource users. The result has been increased pressure on natural resources and much greater competition between users, leading to a marked deterioration in relations and both latent and open conflicts. The most common sources of conflict are animals damaging farmers’ fields and crops, farmers cultivating crops on pasture lands, rights of way (to ensure that routes for driving livestock avoid damaging the crops through which they pass) and cultivation of or grazing animals on fishing areas. In many places, grazing lands have been converted to rice fields, often with the tacit or otherwise backing of the government administration. Similarly, tensions may occur between fishing and farming communities. Tensions relating to access to, or control over, wetlands may escalate in violent clashes.

<sup>9</sup> IFAD-GLTN. 2013. Above, note 8.

The customary rules that used to govern land and water resources are respected less and have often proven to be inadequate to resolve problems. The increased competition for land and water, and the limited ability of customary rules to deal with these issues, has generated numerous conflicts on resource use (often between farmers, herders and fishermen) and ownership (the boundaries of plots are disputed, rights related to traditional transactions – loans or gifts – are contested, inheritance rules are not respected). Furthermore, there is a tendency for family holdings of land to be fragmented to such an extent that the plots are no longer economically viable. Privatization of land and water resources in rural zones seems to be another worrying trend.

IFAD-supported projects have been setting up or reinforcing institutional mechanisms for reconciling competing resource uses at the local level and promoting local stakeholder agreements ("*conventions locales*") between farmers, herders and fishermen. Broadly speaking, these are contractual arrangements negotiated and agreed by all the users of an area of land, with a view to regulating resource access and use. The different users are identified, brought around the negotiating table on an equitable basis, and supported in the design and implementation of the agreement. The agreement may then be formally endorsed by local governments (thus becoming a local by-law) or by government authorities (the "*préfet*"). This is then used to develop consensual land use plans. This approach is making a very positive contribution not only to sustainable land and water management, but also to long-term sustainable development and the prevention of any possible future conflicts.

## Strengthening the land rights of women and young people

Women, in particular widows and household heads, tend to be denied or are assigned weaker land rights and as a result are often among the most vulnerable people in society. Strengthening their rights to land contributes not only to gender equality, but also to poverty reduction, since women are responsible for household subsistence production and welfare. Experience shows that improving women's economic status is essential for overall improvement in their social status and well-being, but for women's economic status to improve, they need secure access to land. Customary land tenure systems prevail in

most areas of West and Central Africa. Under customary law, women tend to have weaker but nonetheless protected rights. These rights tend to be eroded in rapidly changing societies. The main challenge is in managing the transition in a way that strengthens/defends the rights of poor rural women. Some key legal provisions for strengthening women's rights could include the recognition of their "secondary" rights as being equal to men's rights, the co-registration of spousal rights and the recognition of women's inheritance rights. Defending and expanding women's rights requires comprehensive action at different levels: information and capacity building; organizational and empowerment measures; and legal assistance and advocacy. Land tenure issues are inextricably linked to gender relations and thus a gender analysis is critical to design effective, targeted actions. It is often necessary to put complementary measures in place to enable women to influence decisions about their rights to land.<sup>10</sup>

In order to provide vulnerable groups, especially women, with long-term security over individual land rights, schemes have been launched to negotiate and formalize collective (joint) rights to land. Many IFAD-supported projects, for example in The Gambia, Mali and Senegal, have succeeded in persuading the village chief to allocate land for village women to use as market garden plots. This group approach protects women against eviction from land allocated to them as no landowner would dare to overrule the village chief. It also has created an opportunity for women to form groups, improve their skills by working together and increase their income through market sales.

Lack of security of tenure is one of the most contentious issues facing young people in Africa. Lack of tenure security for young people and the implementation of land reforms that fail to take account of this group can trigger conflicts in which young people emerge as rebels or victims.<sup>11</sup> Landlessness and lack of economic opportunities in rural areas are primary causes of the migration of young people to urban areas, which in turn leads to pressure on housing, tenure insecurity and an increase in the number of informal settlements. Many young farmers perceive access to land as the biggest challenge they face when they start farming.

10 IFAD-GLTN, 2013. *Women's access to land: Learning note*. <http://www.glt.net/index.php/resources/publications/publications-list/finish/3-gltt-documents/165-strengthening-women-s-access-to-land-learning-note-eng-2012>.

11 GLTN, 2013. *What land means to youth*. <http://glt.net/home/2016/03/29/what-land-means-to-youth/#>.

Inheritance is still the most common way to obtain land in most developing countries, with land usually passed on from father to son. As a consequence of increasing life expectancy, young people in rural areas often have to wait many years before inheriting their share of the family land. In the meantime, they cultivate family land, very often in return for little or no income. The world population is projected to grow from 6.9 billion in mid-2011 to 9.3 billion in 2050 and to reach 10.1 billion by 2100. This population growth has led to the repeated subdivision of land, resulting in highly fragmented parcels. In areas where land is owned by the community, decisions on use of land are generally taken by the elderly, often ignoring the interests of the young. Women in general face considerable challenges in securing their land rights – for young women it is even more difficult to acquire land. Several solutions to overcome the constraints faced by young people in accessing land have been put forward: the provision of capacity-building courses for young landowners, adapted to their needs; work with youth groups to develop innovative mechanisms to allow young people to access land; the promotion of training, technical support and innovative approaches to expand income-generating activities that require little or no farmland; and the introduction of social security measures to motivate older generations to transfer land to younger ones.<sup>12</sup>

## Sierra Leone

Several IFAD-supported projects and programmes have found innovative ways of overcoming the barriers to land access faced by young people. The Rehabilitation and Community Based Poverty Reduction Project (RCBPRP) aims to increase productivity, the level of production, rural incomes and rural employment through improved access to services, technical skills, land, irrigation and markets on an economically and environmentally sustainable basis. The project is rehabilitating about 9,000 hectares of tree crop plantation (cacao, oil palm and coffee production) that will directly benefit some 6,000 smallholder farmers over five years, and 3,000 hectares of inland valley swamp (rice and vegetable production) that will support about 6,250 smallholder farmers. RCBPRP puts emphasis on assisting young people to engage in agricultural production. The exclusion and exploitation of young people by elders in rural areas is considered one of the major causes of the past civil conflict in Sierra Leone. Schemes are being developed to negotiate long-term (at least 30 years) leases of large areas of land between

landowning families, paramount chiefs, local councils and young people, either individually or organized in groups. The target is to make at least 1,000 hectares of land available to young people for tree crop production and is being achieved largely through tree crop rehabilitation. Land is preferentially offered to young men and women with little or no access to land or who are unemployed. As the young people targeted are living in the area, local and traditional authorities are very favourable to this programme and have confirmed that such land would be available in the area. An agreement is signed between the young people, the landowning family, the paramount chief and the local council.

## Senegal

Under the Agricultural Value Chains Support Project and the Extension Project, IFAD aims to increase rural youth employment, while at the same time reducing food insecurity and limiting urban migration. As part of the projects, plots of land owned by the government are being allocated to young people in rural areas, 50 per cent of whom are women. Moreover, the projects support access to financial services for young people through group loans. This means that young farmers not only gain access to land through governmental land reallocation, but also benefit from improved organizational capacity within their communities. By forming groups that can apply for loans, young people achieve greater bargaining power in their trade dealings with banks and sellers.

## The Gambia

Projects in The Gambia are working with youth and women's *kafos* (traditional village groups) to facilitate their access to productive land. In the rural areas, about 82 per cent of the young workers are engaged in agriculture. However, own-account engagement of young people in the production of rice and vegetables is limited by restricted land access, and young men and women are dependent on elder men for access to land for cultivation. As a result of population growth, land is becoming scarce and, consequently, newcomers, and especially the young, face great difficulties in accessing horticultural land. Previous projects in The Gambia have been successful in facilitating access to land for women and young people through the land-for-labour arrangement. The National Agricultural Land and Water Management Development

<sup>12</sup> MIJARC/IFAD/FAO. 2012. *Summary of the findings of the project implemented by MIJARC in collaboration with FAO and IFAD: "Facilitating access of rural youth to agricultural activities."* <https://www.ifad.org/documents/10180/32c94280-567b-463a-bc71-643667262fd4>.

Project is establishing village vegetable gardens, which are managed by women and youth *kafos*. Through the *kafos*, young people gain access to land that they can cultivate and which provides an income. The projects both rehabilitate existing vegetable gardens to improve production and provide training to *kafos* members in best practices and marketing of vegetables. Youth *kafos* also receive starter kits comprising seeds, fertilizers, chemicals and small tools, as well as equipment for watering and transport and the preparation of produce for markets (carts, watering cans, hoses, sprayers, and tubs and tables). To secure the land, the projects support the community to register it by means of written agreement between the *kafo* and traditional and government authorities. A traditional practice in The Gambia that encourages some young women and men to engage in farming is “*kanyamango*” whereby parents assign a piece of their land to any of their children, male or female, who want to farm; the output can be sold to provide a personal income.

### Securing land and natural resource rights through “inclusive business models”

The current controversy about large-scale land acquisitions by foreign investors has put land rights issues and responsible agricultural investment back on the global development agenda and more visibly than ever before. It has also raised questions regarding the world’s future development trajectory. The controversy has opened up important international space for discussion on how to improve land administration systems and investment in agriculture, so that the land rights and livelihoods of smallholder farmers, pastoralists and other vulnerable groups are strengthened. One approach to increasing sustainable private-sector investment in agriculture is to promote mutually beneficial partnerships between smallholder farmers and private-sector investors – preferably partnerships that do not require large-scale land acquisitions. Such partnerships can take the form of outgrower schemes, contract farming or joint share equity schemes, in which outside investors focus mainly on providing expertise and other support in agro-processing or improved access to markets. The success of such partnerships, and the real benefits to smallholder farmers and rural communities more generally, depends on the level of ownership, voice (governance), risk-sharing and benefit-sharing between partners. Some serious investors in agriculture are increasingly looking towards mutually beneficial and sustainable partnerships as this approach

makes good business sense. And many smallholder farmers are prepared to negotiate provided they are properly consulted, are well informed of the implications and potential risks, and see a real benefit. Any relinquishment of land as part of such deals should preferably be temporary (e.g. through a lease agreement) and on a smaller scale than is currently being seen. Although it is possible to establish mutually beneficial partnerships, sustained support from a range of service providers (government, civil society, private sector) is required, as are effort and time. Particular attention needs to be given to empowering smallholder farmers and rural communities to engage on equal terms with outside investors. There is also a need to monitor the implementation of agreements to ensure that the anticipated benefits are realized.<sup>13</sup>

### Mali

With IFAD’s support, smallholder farmers are partnering with Mali Biocarburant SA in a combination of a joint venture and contract farming. The company encourages small-scale farmers to intercrop their fields with jatropha. Farmers harvest the jatropha nuts and sell them to Mali Biocarburant SA, which then extracts their oil for fuel using mobile presses. This biofuel model integrates jatropha production into the smallholder farming system, without creating competition over land uses for food and fuel production; it does this by promoting intercropping with food crops or growing jatropha on unproductive land. The experience can be seen as a best practice associated with agricultural investment that avoids many of the risks associated with other large-scale land investments. Neither Mali Biocarburant SA nor the Mali Biocarburant Foundation owns land. Indeed, the land rights of the farmers who participate in the scheme are potentially strengthened.

### Sao Tome and Principe

The Participatory Smallholder Agriculture and Artisanal Fisheries Development Programme has set up partnerships between the Sao Tome and Principe Government, IFAD, the Agence Française de Développement and European companies with the aim of developing entire value chains (from production to final markets) within an ethical framework. These partnerships enhance returns on investments in traditional cocoa value chains through the use of organic and Fairtrade certification and by linking to European markets. The smallholders involved in the

<sup>13</sup> IFAD-GLTN. 2013. *Securing land and natural resource rights through inclusive business models: Learning note.*

project benefited from the land distribution process when the old state farms (ex-colonial plantations) were split up and land parcels of various sizes were handed over to ex-plantation workers. The IFAD-supported programme carried out a study of cocoa prices and introduced organic and Fairtrade certification as a means of obtaining higher prices for the producers. It brokered the partnership between local government, the private sector and the smallholder farmers and provided funds to local government to cover initial investments. It also provided technical assistance to farmers and helped strengthen their organizations. The companies have established long-term contracts with the farmers' organizations. The private sector contributes technological expertise to help improve production and meet quality standards, provides extension services, finances the certification process and purchases the product. The private companies involved are KaoKa, GEPA and Cafédirect. Smallholder families participating in the programme have seen their yearly income increase, on average, from a level of 25 per cent below the poverty line to 8 per cent above it. Many producers have invested in home improvements and items such as bicycles, generators, radios, refrigerators and television sets. Some successful producers have used the profit from organic cocoa production to set up small roadside shops, run by women, generating further profits for families.

## Ghana

In Ghana, the Northern Rural Growth Programme (NRGP) is securing livelihoods and the land and natural resource rights of women through partnerships between small-scale farmers and outside investors. The programme has four commodity windows to promote value chain development: industrial crops, women's crops, fruit and vegetables, and animal resources. The inclusion of a specific women's crops window (for shea butter) has enabled women to access land and other production resources. Women are organized into groups and receive training in advocacy and market access. They are linked directly to international companies, thereby avoiding several layers of intermediaries. Their incomes have been tripled by this intervention. Women have also increased their participation in other commodity windows, especially industrial crops. NRGF has advocated for women value-chain actors to be represented on the district value-chain committees. It has also engaged with the regional paramount chiefs to promote behaviour change, which has yielded results in terms of women's access to land.

## Land policy dialogue and review

Policies affect every dimension of the institutional and legal context in which poor rural people pursue their livelihoods; they shape the world they live in and the economic opportunities open to them. This means that supportive policies can go a long way towards providing the conditions in which people can lift themselves out of poverty. Conversely, policies that do not create opportunities, or that exclusively reflect the interests of other economic players, can be an insuperable barrier or an unbridgeable gulf – roadblocks barring the way out of the poverty trap. For IFAD, policy engagement at the country level serves two critical purposes. First, it can help to create an enabling environment for project implementation and for achieving project impact. Second, it can contribute to creating the conditions for large numbers of rural people to move out of poverty, at a scale that no single project can address. IFAD-supported projects can provide a laboratory for learning and accumulating evidence about effective approaches to rural poverty reduction, and proven successful approaches can be scaled up, often at the national level, through policy changes. Several IFAD-supported projects include a focus on land tenure and offer support to policy processes or strengthen the capacity of national stakeholders in policy development.<sup>14</sup>

IFAD has supported a Senegalese think tank, the Initiative Prospective Agricole et Rurale (IPAR), in its efforts to disseminate information on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in order to improve practices in Mali, Mauritania, Senegal and The Gambia. IPAR (i) increased awareness among over 100 parliamentarians from the four countries on the VGGT; (ii) trained more than 200 members of civil society organizations (including women and youth groups) and leaders of farmers' organizations from the four countries to strengthen their participation in policy processes; and (iii) trained over 150 journalists from both the print and electronic media from the four countries, which is allowing them to analyse and report on ongoing land reform processes and agricultural investments in the target countries according to the Guidelines. As encouraged by the VGGT and with the support of IPAR, four multi-stakeholder platforms and frameworks at national level have been set up to collaborate on the implementation of these Guidelines; to monitor and evaluate the implementation in their jurisdictions; and to evaluate the impact on improved governance of tenure

<sup>14</sup> IFAD. 2016. *Country-level policy engagement in IFAD: A review of experience*.

of land, fisheries and forests, and on improving food security and the progressive realization of the right to adequate food in the context of national food security and sustainable development.

## Conclusion

IFAD aims to mainstream support for good land governance into rural development programmes. When insufficient attention is paid to secure access by small-scale producers and to land tenure issues, development projects can become part of the problem. For example, when irrigation is introduced into previously rain-fed farmland or roads are built to link farmers to markets, the new economic potential of the land makes it more attractive, and small-scale producers can lose out to more affluent or powerful settlers. Tenure security is not only important for agricultural production but allows people to diversify their livelihoods by using their land as collateral, renting it out or selling it. Tenure issues affect the everyday choices of poor rural women and men, such as which crops to grow and whether crops are grown for subsistence or commercial purposes. They influence the extent to which farmers are prepared to invest in the long-term well-being of their land or to adopt new technologies and innovations. Lack of secure land tenure exacerbates poverty and has contributed to social instability and conflict in many parts of the world. Land tenure security – for both women and men – is just one step on the road to reducing rural poverty. Measures to increase tenure security must be complemented by pro-poor policies, services and investments. Policies beyond the national level are needed to address such issues as use of irrigation water, migration, pastoralism and conflicts that cut across regional and national boundaries.

# Land investments, accountability and the law: findings from comparative socio-legal research in West Africa

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## Abstract

The recent wave of land deals for agribusiness investments has prompted renewed calls for accountability in the governance of land and investment. Legal frameworks influence opportunities for accountability, and recourse to law has featured prominently in grass-roots responses to land deals. Drawing on comparative socio-legal research in Cameroon, Ghana and Senegal, this article explores how the law enables, or constrains, accountability in land investments. The article develops a conceptual framework for understanding accountability; examines national law in the three countries, in both statute books and practice, and based on common concepts and methods; and articulates recommendations for policy and practice. The findings point to considerable diversity of contexts, calling for granular analyses and tailored responses. But they also point to recurring issues that can affect accountability strategies. Depending on the context, addressing these issues would require law reform and interventions to push the boundaries of existing law. Based on this study, action research teams in the three countries are now implementing legal empowerment interventions to strengthen accountability in the governance of land and investment.

## Topic, rationale and methods

In recent years, a wave of large-scale land deals for agribusiness investments in low- and middle-income countries has triggered lively debates about the future of food, agriculture and control over land and natural

resources. While many recognize that more and better investment could be a force for good, there have also been widespread concerns about land dispossession and ill-thought-through investment models, and recurring demands for greater accountability in investment processes.<sup>1</sup> Much attention has focused on holding

<sup>1</sup> See, for example, GRAIN. 2008. *Seized! The 2008 Landgrab for food and financial security*. <https://www.grain.org/article/entries/93-seized-the-2008-landgrab-for-food-and-financial-security>; Borras Jr, Saturnino, and Jennifer Franco. 2010. "From Threat to Opportunity? Problems with the Idea of a 'Code of Conduct' for Land-Grabbing", *Yale Human Rights and Development Journal* 13, no. 2: 507–23; FIAN. 2010. *Land Grabbing in Kenya and Mozambique*. [http://www.fian.org/fileadmin/media/publications/2010\\_4\\_Landgrabbing\\_Kenya\\_Mozambique\\_e.pdf](http://www.fian.org/fileadmin/media/publications/2010_4_Landgrabbing_Kenya_Mozambique_e.pdf); De Schutter, Olivier. 2011. "The Green Rush: The Global Race for Farmland and the Rights of Land Users", *Harvard International Law Journal* 52, no. 2: 503–559; and Global Witness. 2012. *Dealing with Disclosure: Improving Transparency in Decision-Making over Large-Scale Land Acquisitions, Allocations and Investments* (<https://www.globalwitness.org/en-gb/campaigns/land-deals/dealing-disclosure/>).

land-acquiring companies to account. But governments approve investments and often allocate land, creating the need for greater accountability in public governance too.<sup>2</sup>

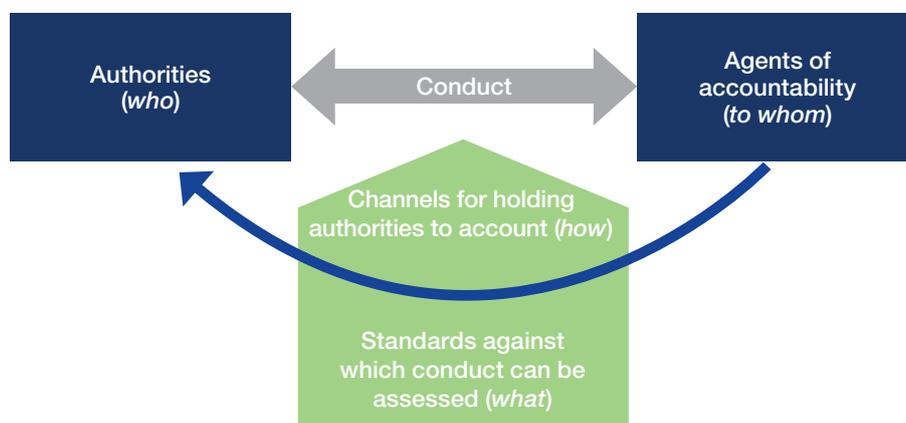
There is no universally agreed definition of accountability, partly because of the wide-ranging contexts this notion has been applied to. In the public sphere, accountability is meant to improve governance through procedural means of social, political and/or legal oversight.<sup>3</sup> It typically involves a relationship between a decision-making “authority” (e.g. a government agency or customary institution) and those working to hold that authority to account for its conduct, that is, the accountability “agents” (e.g. affected landholders, concerned citizens, organized groups). Authorities must typically act in accordance with “standards” established by, for example, international law, national legislation or community-based systems. “Channels” enable the accountability agents to scrutinize and influence the conduct of authorities in light of the standards (figure 1).

Recent developments have created new opportunities to improve accountability in the governance of land and investment. At the international level, recent guidance provides clearer pointers for responsible governance of

land and investment. Key examples include the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which call for protection of all socially legitimate tenure rights and feature accountability among the “principles of implementation” (VGGT paragraph 3B.9); and, in Africa, the African Union’s Framework and Guidelines on Land Policy. Many private sector-oriented guides and standards have also been developed, partly in order to operationalize guidance contained in the VGGT.<sup>4</sup> The “global-to-local” challenge ahead is to translate this guidance into real change on the ground.

At the grass roots, land investments have triggered diverse accountability strategies “from below.” Partly reflecting social differentiation based on gender, generation, status, wealth, income and livelihoods, these grass-roots reactions encompass demands for inclusion in agribusiness ventures as farm workers or outgrowers; advocacy for better terms, for example of consultation or compensation; and resistance aimed at terminating the deals and pursuing alternative development pathways.<sup>5</sup> Alliances between geographically dispersed actors have escalated these responses from the local to the global level.<sup>6</sup>

**Figure 1** The core elements of accountability.



2 See, for example, Wily, Liz Alden. 2010. “Whose Land Are You Giving Away, Mr. President?”, paper presented at the World Bank “Land and Poverty” conference. <http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/WilyPaper.pdf>.

3 It is impossible to cite the extensive literature on accountability. For illustrative references, see Bovens, Mark. 2007. “Analysing and Assessing Accountability: A Conceptual Framework,” *European Law Journal* 13, no. 4, 447–68; Fox, Jonathan. 2014. “Social Accountability: What Does the Evidence Really Say?” (World Bank) <http://gpsaknowledge.org/wp-content/uploads/2014/09/Social-Accountability-What-Does-Evidence-Really-Say-GPSA-Working-Paper-1.pdf>.

4 See, for example, New Alliance for Food Security and Nutrition. 2015. *Analytical Framework for Land-Based Investments in African Agriculture*. <https://new-alliance.org/resource/analytical-framework-responsible-land-based-agricultural-investments>; Interlaken Group. 2015. *Respecting Land and Forest Rights: A Guide for Companies*. <http://www.interlakengroup.org/downloads/Guide-bdf36ef9b283d606913f3c0e7adbf153.pdf?vsn=d>.

5 Hall, Ruth, Mark Edelman, Saturnino Borrás Jr., Ian Scoones, Ben White and Wendy Wolford. 2015. “Resistance, Acquiescence or Incorporation? An Introduction to Land Grabbing and Political Reactions ‘from Below’”, *Journal of Peasant Studies* 42 no. 3–4: 467–88.

6 Polack, Emily, Lorenzo Cotula and Muriel Côte. 2013. *Accountability in Africa’s Land Rush: What Role for Legal Empowerment?* (International Institute for Environment and Development/International Development Research Centre), <http://pubs.iied.org/12572IIED.html>.

The law lies at a critical juncture between these global-to-local and local-to-global developments. On the one hand, translating international guidance into “hard” law is seen as an important step towards effecting change on the ground (see, for example, VGGT paragraphs 4.4 and 5.3).<sup>7</sup> On the other hand, legal frameworks influence opportunities for bottom-up accountability strategies, and recourse to law has featured prominently in grass-roots responses to land investments – typically in conjunction with collective action and mobilization.<sup>8</sup>

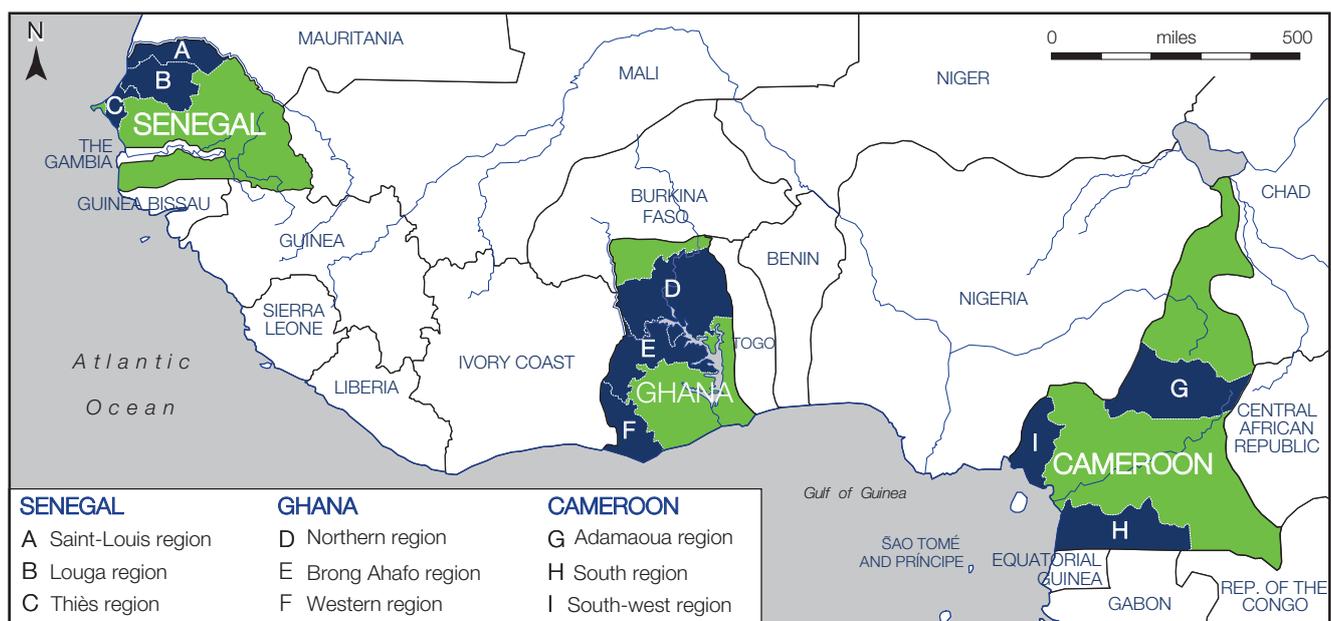
Drawing on comparative socio-legal research we conducted in Cameroon, Ghana and Senegal, this article explores how the law influences opportunities for accountability in land investments. International law is relevant, but the article focuses on national law, which remains the foundation of land governance in most contexts. The research informed the design of grass-roots-level legal empowerment interventions to improve accountability in the three countries, which might also provide insights for accountability strategies in other national contexts.

Cameroon, Ghana and Senegal have all experienced considerable land acquisition for agribusiness investments. The three countries present diverse institutional configurations in land deal-making, with varying roles for central and local government bodies and customary authorities. In addition, colonial legacies mean that

Ghana’s legal system has historically been influenced by the English legal tradition and Senegal’s legislation by the French legal tradition, while Cameroon’s combines, at least on paper, elements from both traditions. The three contexts are not necessarily representative of wider trends. But this diversity of legal and institutional set-ups enables interrogation of land investments, accountability and the law in different national contexts.

In each country, the research involved legal analysis and qualitative field research, based on similar methods. The legal analysis entailed assessing national law in light of international guidance, particularly the VGGT. Field research involved interviews and focus group discussions in selected sites (figure 2). It generated evidence on local perceptions about the governance of land and investment, the role of law within it, and the real-life challenges affecting accountability. Field research also interrogated the notion of “legitimate” tenure rights, which underpins the VGGT. This notion means that assessing legal frameworks in light of the VGGT requires more than just technical legal analysis: it calls for participatory reflection on what rights are perceived to be socially legitimate in any given context, and by whom; on whether adequate processes are in place to mediate potential disputes about what counts as legitimate; and on local perceptions about the adequacy of the legal protections available, in both law and practice.

**Figure 2** The field sites in Ghana, Cameroon and Senegal.



<sup>7</sup> See also Cotula, Lorenzo, Thierry Berger, Rachael Knight, Thomas F. McInerney, Margret Vidar and Peter Deupmann. 2016. *Responsible Governance of Tenure and the Law: A Technical Guide for Lawyers and Other Legal Service Providers* (Food and Agriculture Organization of the United Nations), <http://www.fao.org/3/a-i5449e.pdf>.

<sup>8</sup> Polack *et al.*. Above, note 6.

Research findings point to extremely diverse situations, but also to recurring features. These features create both opportunities and challenges for legal empowerment interventions to strengthen accountability in the governance of land and investment. In subsequent sections we discuss these findings in greater detail, organizing the discussion around the core elements of accountability (authorities, agents, standards and channels). The conclusion distils implications for policy and practice.

### **Authorities: towards clearer and more effective lines of accountability**

Much debate on accountability in land investments emphasizes holding companies to account. A focus on authorities re-centres accountability around the role of those responsible for the governance of land and investment. While providing important pointers for non-state actors (e.g. paragraphs 3.2 and 12.12, concerning business enterprises), the VGGT are mainly addressed at state-based authorities. Reflecting the great diversity of situations, the VGGT leave states with considerable latitude in designing institutional set-ups suitable to their context. For example, the VGGT call on states to place responsibilities “at the level of governance that can most effectively deliver services to people” (paragraph 5.6), though in places they emphasize the benefits of decentralized systems (e.g. paragraphs 16.6 and 19.2).

National law in the three countries presents both differences and commonalities in patterns of authority. In all three countries, the governance of land and investment involves complex constellations of state and non-state authorities at local to national levels. But contrary to the sweeping generalizations sometimes made about the leading role of central governments in land allocation processes, the key sites of land-related decision-making vary considerably in the three countries – ranging from the central government (Cameroon) through local government bodies (Senegal) to customary chiefs (Ghana). While customary authorities feature prominently in all settings, their status under national law varies from explicit constitutional endorsement (Ghana) to lack of any legal recognition (Senegal). These diverse configurations have deep historical roots. In Ghana, for example, the current set-up reflects at least in part the legacy of the protectorate arrangements that, in colonial times, preserved and strengthened the role of customary chiefs in rural areas.<sup>9</sup>

Our findings also show that land deal-making may involve multiple authorities in each context, and that responsibilities over governance of land and investment often overlap. In Senegal, the primary responsibility for allocating much of the national land lies with local government bodies, but the state can compulsorily acquire and re-allocate land for a public interest. In Ghana, much land is managed by customary authorities, but the leases issued by these authorities must be approved by the government (through the Lands Commission), and the President has the power to acquire land for a public purpose on a compulsory basis. In both Ghana and Senegal, the central government can significantly influence investment processes even where it does not directly control land allocation, for instance through driving policy and exerting pressure on land allocators. In Cameroon, where key decisions on large-scale land allocation are made by the central government, local-level advisory committees have a statutory role in land allocation processes – although the Cameroon country study documented limitations in the influence and effectiveness of these committees.

While our research in Cameroon pointed to the difficulties that rural people face in accessing geographically remote centralized systems of governance, experiences with more devolved land governance in Ghana and Senegal provide a cautionary tale about simplistic solutions in terms of “local is beautiful”: local authorities may abuse their prerogatives, vested interests and power imbalances may affect local governance systems too, and geographic proximity alone is by no means an indicator of stronger accountability. In Ghana, for example, the Constitution emphasizes the fiduciary duties of customary authorities as custodians of collective lands, and the Chieftaincy Act of 2008 conditions any disposal of land by customary authorities on the consent of the elders. But the field research raised questions about the effectiveness of these norms, partly due to social, economic and cultural factors.

In all three countries, tenure systems are predominantly based on public or collective landownership. This means that authorities do not simply manage land governance and related administration systems. Rather, they often hold ultimate (in Ghana, “radical”, “allodial”) title to the land, and in any case they make decisions about whether or not to allocate rights to third parties. This situation grants authorities considerably greater powers than is the case in jurisdictions where private landownership prevails. It compounds the public law nature of large-scale land deals, and the case for effective accountability mechanisms.

<sup>9</sup> Amanor, Kojo S. 1999. *Global Restructuring and Land Rights in Ghana* (Nordiska Afrikainstitutet).

Implementing the VGGT principle of accountability requires tailored arrangements that respond to these diverse configurations of authority. There is no one-size-fits-all approach to strengthening accountability in the governance of land and investment. For example, electoral processes can provide one important accountability channel where decision-making power is located with local government bodies. But electoral processes would have few answers where key decisions are made – in law and in practice – by customary authorities. In these latter cases, other accountability channels may be more relevant, such as recourse to higher customary authorities, to customary deliberative bodies or to state institutions.

### Standards: legitimate tenure rights and beyond

The accountability standards define how authorities are expected to behave, and provide a benchmark to review the conduct of authorities. The VGGT call for the legal recognition and effective protection of all “legitimate tenure rights” (see, for example, VGGT section 3A).

The VGGT do not define this concept, but they provide guidance on the process to identify legitimate rights (VGGT paragraphs 3A.1, 4.4 and 9.4). Importantly, the VGGT make it clear that “legitimate tenure rights” encompass not only legal rights, but also rights perceived to be socially legitimate even if not currently protected by law (VGGT paragraphs 4.4, 5.3 and 7.1).

The three country studies point to challenges affecting the interface between legality and legitimacy in tenure relations. In all three countries, customary systems of governance play an important role in shaping attitudes towards what is right or wrong, and provide an important basis for land access in rural areas. Land is traditionally viewed as an integral part of a group’s culture: people are part of the earth and have a close relationship with it. Traditionally, this relationship was not framed in terms of ownership, which assumes a clear separation between the owner and the owned. But it does involve a strong, intimate connection between people and land.

In all three countries, the research has identified at least *some* mismatch between customary practice and national law. In Cameroon, for example, legislation is centred on land registration as the only mechanism for establishing landownership; on state control over all

unregistered lands; and on legal arrangements allowing the government to allocate land to those it deems best able to use it “productively.” In practice, costly and cumbersome procedures place land registration outside the reach of many rural people, and broadly formulated productive land use and public purpose requirements provide authorities with extensive discretionary powers that can undermine the security of legitimate tenure rights.

At the same time, merely recognizing customary rights is not sufficient to secure rights and ensure accountability. In Ghana, national law, including the constitution, recognizes customary land tenure arrangements. But even here gaps can arise between national law and local perceptions of legitimacy. For example, the land claims of “migrants” enjoy diverse but often limited protection under customary tenure, and thus ultimately under national law. Customary systems can also raise difficult questions in terms of gender relations. Particularly complex issues arise where customary systems lose their perceived social legitimacy, where they are eroded by socio-economic change or where customary authorities abuse their powers.

Accountability standards go beyond tenure rights issues. The VGGT contain numerous provisions, e.g. on public participation (e.g. VGGT paragraph 4.10), labour relations (e.g. paragraph 12.4) and taxation (VGGT section 19), establishing accountability standards that cannot be framed exclusively in terms of tenure rights. Limited space prevents a fuller discussion. Suffice it to say that the three countries present similarities and differences, and that in all cases giving full effect to the VGGT would require careful (re)consideration of law design and/or implementation, albeit in different ways and to different extents.

Take the issue of distributing land-based revenues – an issue relevant to taxation and other VGGT provisions (e.g. paragraph 12.4, calling for equitable sharing of benefits from public lands). Legislation in Cameroon and Ghana regulates the distribution of land-based revenues, though some relevant laws lack detail or are poorly implemented. In contrast, national law in Senegal does not identify benefit-sharing arrangements for relations between local government bodies and commercial operators. While authorities may need some flexibility to structure a deal in the ways most appropriate to the circumstances, the lack of clear or enforceable pointers deprives accountability agents of effective standards.

## Agents: ensuring legal capacity to take part in the governance process

Action underpins the notion of accountability “agent” (as reflected in the French verb *agir* – “to act”), which is broadly defined here to identify those working to hold authorities to account. Depending on the case, an accountability agent can be an individual, an organized group or an institution. Drawing on the VGGT, our research considered three groups of potential accountability agents: legitimate tenure rights holders affected by the conduct of the authorities; other groups that, while not holding tenure rights, are also affected, such as farm workers; and public-interest advocates that, while not directly affected by the conduct in question, are concerned about it as a matter of public interest (see, for example, VGGT paragraphs 1.2.4, 2.3, 5.7, 5.8, 6.5, 12.2, 15.4 and 26.5).

The country studies documented how diverse groups of legitimate tenure rights holders and affected people have activated both legal and extra-legal levers to pursue accountability, and how national and international public-interest advocates have supported these grass-roots efforts. The research also documented how national law influences opportunities and constraints for people to become accountability agents.

There is significant variation among countries. For example, in Cameroon communities must establish a legal entity in order to register land or bring lawsuits, while in Ghana customary landowning families and groups (“stools” in the south of the country, “skins” in the north) can sue and be sued. However, there are some recurring issues too. With regard to legal redress, for example, rules on legal standing (e.g. allowing people to initiate judicial proceedings only if they can prove they have a sufficient direct interest in the issue) may be necessary to structure legal and political processes. But if not properly thought through, they can unduly restrict the range of possible accountability agents, making it more difficult for public-interest advocates to take legal action. Depending on their design and implementation, administrative controls over non-governmental organizations can also affect the ability of accountability agents to act, but this research did not generate new evidence on this issue.

## Channels: tackling barriers and bottlenecks

The channels available to the accountability agents vary depending on the authority whose conduct is at stake. These channels cannot be assessed in isolation but must be considered in light of the overall “package” they are part of. In addition, the channels that link authorities and accountability agents can be understood only in light of the unique system of governance in which those channels operate. National law in all three countries provides multiple channels for agents to hold authorities to account. These include administrative, judicial and quasi-judicial arrangements for consultation and recourse. However, the operation of these channels is often impaired by both legal and socio-economic factors.

For example, national law in the three countries requires some form of local consultation for key public decisions on land and investment (see VGGT paragraphs 3B.6, 4.4, 7.3, 8.6, 9.9, 12.7–10, 16.2 and 16.8, among others). These mechanisms may involve public hearings in the context of environmental impact assessment studies (under environmental legislation in Cameroon, Ghana and Senegal), of land allocation processes (e.g. in Cameroon, with regard to the advisory land committees discussed above; and in Ghana, under the Lands Commission Act of 2008) and of development planning (e.g. under Ghana’s National Development Planning (Systems) Act of 1994).

Yet the field research suggests that poorly implemented consultations, inadequate official records and a sense of power imbalances often make consulted people feel misunderstood, or even that they have been used to legitimize decisions already taken. Some people also referred to significant political and social pressures affecting consultation exercises. These problems may be caused by socio-economic factors, but the research also identified factors rooted in the law. For example, legislation outlining consultation processes may lack necessary detail, leading to inadequate application. And even if correctly implemented, a single “public hearing” is likely to be inadequate to enable diverse local voices to be heard on complex development choices that can irreversibly transform territory and livelihoods.

Similar considerations can be developed with regard to channels for holding authorities to account *after* decisions are made. Limited trust in the legal system led several research participants to resort to political, rather than legal, avenues. But the research did document the use of formal dispute settlement processes, including a court case brought by a group of 99 farmers in Senegal. The research also pointed to the real difficulties rural people face when using court systems. Socio-economic barriers aside, legal factors are at play.

In Cameroon, for example, while disputes with private parties can be taken to ordinary courts, petitions to seek the judicial review of government decisions to allocate land need to be taken to the administrative courts. The latter can involve particularly protracted proceedings, and the administrative court system is not as decentralized as that of ordinary courts. Perhaps for these reasons, the legal cases documented by the Cameroon study mainly involved more circumscribed lawsuits before ordinary courts, brought against companies and concerning crop damage or asset loss. In Ghana, in contrast, the court system does not distinguish between ordinary and administrative courts, but a lack of accessibility and backlog of cases are recurring problems; as a result the more accessible Commission on Human Rights and Administrative Justice, which has powers comparable to those of a high court, has taken on a significant (and perhaps originally not fully foreseen) role in land disputes.

## Conclusion and ways forward

As land investments in Cameroon, Ghana and Senegal started attracting public attention, demands for accountability targeting the land-acquiring companies became more frequent. The official endorsement of the VGGT triggered initiatives to develop operational guidance for the private sector. While efforts to promote responsible business conduct are welcome, this research points to more systemic governance issues that even well-meaning action by “responsible” operators ultimately cannot by-pass. Addressing these issues requires strengthening legal frameworks to implement the VGGT and improve the governance of land and investment.

The research findings point to considerable diversity of contexts, qualifying “big-picture” narratives and calling instead for more granular analyses and tailored responses. The diverse configurations of authorities that drive deal-making in Cameroon, Ghana and Senegal are a case in point. No single legal set-up emerges as the obvious

blueprint for best aligning legal frameworks with the pursuit of accountability. All three country contexts present some openings, such as the legal recognition of customary land rights in Ghana and the geographic accessibility of decentralized land governance in Senegal. At the same time, much can be done to strengthen accountability in all three countries, by improving the working of the core elements of accountability in each country setting.

It is often said that laws are good on paper and that the challenge lies in their implementation. But this research has identified issues stemming from the design of laws – for example, where the law undermines socially legitimate tenure rights, or where it establishes barriers preventing people from becoming accountability agents. In these cases, even correct implementation would fall short of international standards. As a result, law reform can play an important role in improving governance. The specifics inevitably vary depending on the context, but in general terms reforms should ensure that the law:

- establishes tailored arrangements to *promote accountability within diverse configurations of state and non-state authorities* at local to national levels, including mechanisms to manage coordination among relevant authorities;
- articulates *clear and enforceable accountability standards*, based on the legal recognition and effective protection of all socially legitimate tenure rights, and on clear parameters enabling scrutiny of public action, including through rethinking productive land use requirements;
- *enables potential accountability agents to take part* in the governance process, including by lifting or reconfiguring legal requirements that can unduly restrict access to justice or to public decision-making (e.g. depending on context, requirements on legal standing or legal personality);
- establishes *properly functioning accountability channels*, including by creating effective mechanisms for people to influence decisions over and above existing consultation or “public hearing” requirements, and by providing effective and accessible legal recourse to challenge adverse decisions.

Ongoing land law reform processes in the three countries can provide openings for initiating or deepening dialogue on these issues. But law reform is often technically difficult and politically fraught, affected by vested interests and power imbalances. Legal change can be a slow process and amending the law does not necessarily translate into real change. Practical interventions to support imaginative

implementation are essential if laws are to make any difference on the ground. So, in addition to the policy work, there is a need for governments and advocates to develop tools, approaches and strategies that can allow both authorities and accountability agents to push the boundaries of *existing* law.

Building on this research, teams of action researchers in the three countries are now implementing tailored legal empowerment interventions to make the most of the opportunities for accountability provided by each legal framework:

- In Senegal, national law vests elected local government bodies with significant powers in the governance of land investments. Yet land investments have exposed the limits of electoral processes alone in meeting local demands for accountability. In this context, the project is piloting locally negotiated “charters” to set ground rules on how local government bodies should manage rural land, including in the context of proposed investments. The project is also training community paralegals to accompany this process from the grass roots.
- In Ghana, customary authorities play a constitutionally sanctioned role in land governance, and have been at the centre of much large-scale land deal-making. Although the constitution emphasizes the fiduciary duties of customary chiefs, accountability is often constrained by social, cultural and economic factors. The project supports consultative land management committees representing diverse local stakeholder groups, including traditionally marginalized actors (e.g. migrants). The idea is that, while the power to conclude any land leases remains with customary chiefs, the consultative committees can improve transparency and open up new spaces for local dialogue.

- In Cameroon, substantial control over land is vested with the central government. Little legal support is available to rural people, who often struggle to use the law for reaching out to the authorities. Yet the law schools are producing graduates eager to gain experience and put their skills to fruitful use. In this context, the project is supporting “junior lawyers”, i.e. new law graduates, to reside with rural people and assist them in legal matters. The junior lawyers are provided with specialized training, are hosted by a grass-roots-based organization and are supported on an ongoing basis by more senior lawyers.

In all three countries, field-level interventions are on a small scale, the issues tackled are difficult, and realistic time horizons for any real change are not in line with the project’s relatively short timeframe. The intention is to test approaches and disseminate lessons, rather than provide definitive solutions. At the time of writing, the main positive effect in the field sites, particularly those in Ghana and Senegal, involved creating new spaces for dialogue, and promoting grass-roots participation in debates about the governance of land and investment. This emergence of engaged local “citizenship” might turn out to be the project’s most important contribution to advancing accountability in the governance of land and investment.

# Legal reform, governance and natural resource management: the Kyrgyz pasture reform

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## Abstract

While pastoralist systems vary substantially across the globe, they share some common attributes, such as the mobility of practitioners, allowing for adaptation to ecologically diverse and difficult conditions encountered over space and time. Often marginalized by society, the rights and interests of pastoralists are not always reflected in policies and legislation, despite the significant contribution of pastoralists to national economies. Herders generally have limited visibility, and their political and legal position is weak; globally shared information about their rights is minimal. Together with governments, IFAD has contributed to issues relevant to pastoral land tenure in several of its projects and programmes. In Kyrgyzstan, the government tackled a considerable legal reform, resulting in the adoption of a new Pasture Law in 2009. The Agricultural Investments and Services Project, which was implemented in partnership with the World Bank and the Swiss Development Cooperation, as well as Livestock and Market Development Programme phases I and II, have been highly instrumental in establishing precedents for future project designs involving pasture land management and policy development.

## Introduction

Around the world, pastoralists are challenged by the uncertain and irregular availability of resources, which has led them to develop complex resource management systems, often regulated by customary norms. On land where pastoralists use and/or access rights, land tenure is often characterized by a juxtaposition of various rights. In many countries, land belongs to the state, but other forms of access, control and ownership of grassland resources, from communal to private, have been adopted. This paper describes how Kyrgyzstan has tackled these issues.

Geographically isolated by its highly mountainous terrain, Kyrgyzstan has a population of 5.5 million, 65 per cent of whom live in rural areas. Only 7 per cent of its total land area is suitable for arable cropping, while nearly half of the country's total area is pasture land, which plays a key role in the country's economy, society's dynamics and cultural schemes.

Agriculture and livestock are the backbone of Kyrgyzstan's economy. They provide substantial employment, represent a leading resource in exports, and play a critical role in household food security as well as in consumer price stability. Outside a few major arable farming valleys, livestock production is the dominant livelihood system. However, despite significant progress in the development of this subsector in recent years, its productivity continues to be constrained by weak performance.

Although the country has been successful in reducing urban poverty, rural areas are still precarious. Poverty is extensive and most severe in rural and mountainous regions; it increases with altitude and is greatest in high mountainous areas. The rural population is heavily dependent on the productivity and conservation of pastures, which are both a source of income and a social safety net for poor households. Growth in rural incomes largely depends on the efficient use of these pasture resources. Pasture lands, estimated at approximately 9.2 million hectares, are an invaluable dimension of Kyrgyzstan's productive natural resources. However, over time their use had become environmentally and socially

unsustainable; pasture conditions deteriorated and their productivity declined. While village and close-in (winter) pastures were severely overused and degraded, the remote summer pastures became underutilized as a result of poor access, often caused by deteriorating infrastructure.

Determined to resolve those issues, the Government of Kyrgyzstan adopted, in 2009, a pivotal piece of legislation for the comprehensive management of pasture land throughout the country, the 2009 Law “On Pastures.” Since its implementation, the law has been a primary focus for the government, as well as a key element of IFAD’s involvement in the country. This article describes the context in which the 2009 Law “On Pastures” was adopted, and explores the process leading to the successful legal implementation of the law through IFAD’s projects and programmes, demonstrating that substantial improvements can be achieved in the livestock sector when the right activities and incentives are combined.

### **Enactment of an innovative governance framework for pasture land**

The efficient management of pasture land is crucial for Kyrgyzstan’s livestock development, a primary income source for rural communities. At Kyrgyzstan’s independence in 1991, the Soviet system of pasture use and management collapsed, resulting in a severe deterioration in the condition of the pastures. Prior to 2009, inconsistencies in the legal framework were compounded by generalized pasture degradation, fragmented pasture management among various administrative layers<sup>1</sup> and lack of confidence in local governments, which created conflicts over pasture access. Seasonal grazing routes were disrupted and communities suffered from a lack of transparency in pasture allocation and inequitable access to pastures. Collection of land tax and other revenues related to pastures was very low, and there was insufficient investment in infrastructure to maintain adequate access to the pastures. In addition, diseases such as brucellosis, echinococcosis and foot-and-mouth disease were widespread, not only affecting farm productivity and profitability, but also posing threats to human health.

Confronted with those many challenges, the Government of Kyrgyzstan elaborated a highly innovative pasture land governance structure. Together with IFAD and other partners, it focused on its effective and sustainable implementation.

### **Policy and legal reform of the legislative pasture land framework in Kyrgyzstan**

Following its independence in 1991, Kyrgyzstan redefined its governance, designing a comprehensive legal framework regulating land pasture management. In 2004, Kyrgyzstan’s Ministry of Agriculture developed the Agrarian Policy Concept of the Kyrgyz Republic to 2010, emphasizing the importance of introducing a more sustainable system of pasture management, strengthening agricultural advisory and information services. Soon after, in order to support the country’s development agenda for the period 2007–2010, a framework for managing the cooperation between the Government of Kyrgyzstan and five development partners was signed in 2007 – the Joint Country Support Strategy.<sup>2</sup>

Extensive legislative efforts culminated in 2009 in the adoption of the Law “On Pasture,” hereinafter the “Pasture Law.” Revising pasture management, which was split among different national and local administrative bodies, the law reconnects the use of summer, spring/autumn and winter pastures. It also provides for more equitable and transparent allocation of pasture rights and offers a mechanism whereby stocking rates can be better aligned with pasture carrying capacity; as a result, revenues for investment in pastures, as well as tax revenues, have increased considerably.

In 2010, the interim government adopted a constitution that implemented important changes with respect to the environment and natural resources. Articles 12 and 48 address the issue of landownership, stating that pastures are state property. The 2010 constitution also provides greater certainty regarding pasture management in recognizing that agriculture and pasture use are both important economic activities and culturally significant.

1 The three administrative layers are (i) the *oblasts* (the regional state administration), which control summer pastures; (ii) the *raions* (state administration), which control spring and autumn pastures; and (iii) the *okrug*s (rural village administration), which control the winter pastures.

2 The Asian Development Bank, the Swiss Development Cooperation, the United Kingdom Department for International Development, the World Bank Group and the United Nations agencies.

Article 12 [...] 5. The land, its resources, airspace, waters, forests, flora and fauna, as well as other natural resources shall be the exclusive property of the Kyrgyz Republic; these shall be used for the purpose of preserving a unified environmental system as the basis of life and activity of the people of Kyrgyzstan and shall enjoy special protection from the State.

Land may also be in private, municipal and other forms of ownership except for pastures which may not be in private property.

Building on the new landscape originating from the 2009 Pasture Law, laws and regulations were drafted and amended intending to promote direct and indirect pasture users' rights and powers regarding their management and use of pasture land.<sup>3</sup> The new policy framework provided by the 2009 Pasture Law allowed for a profound rehabilitation of Kyrgyzstan's pasture system.

## The 2009 Pasture Law – a pivotal piece of legislation

The 2009 Pasture Law is generally seen as a codification of best practices in rangeland and pasture management; it has received considerable attention and interest from other countries in the region. As a result of the Pasture Law, pastures are now recognized as an integrated ecosystem which should not be fragmented in management and in use, but rather treated as a whole.

Article 3(1) of the Pasture Law specifies that all pastures in Kyrgyzstan are publicly owned and their management is the responsibility of rural communities. Specifically, responsibility for pasture management lies with local pasture users. In other words, the Pasture Law transferred authority over pasture management from the *oblast* and *raion* administrations to the lowest administrative level of *aiyl okmotu*. This was then followed by the delegation of authority from *aiyl okmotys* to pasture users' unions (PUUs) and their executive bodies, the pasture committees.

The major features of the Pasture Law are shown in box 1.

### Box 1 Major features of the Pasture Law

**Comprehensive ecosystem.** Pastures are recognized as a single ecosystem. Existing leases are replaced with use rights in order to encourage mobility and pasture rotation, as well as to ensure fair access for all users.

**Decentralization.** Pasture land management is devolved to local government, down to the level of pasture users, in the form of PUUs.

**Community-based pasture management.** PUUs are required to develop community-based pasture management plans, which are intended to serve as a foundation for pasture land management, as well as for its maintenance, improvement and use. Pasture use rights are to be allocated through pasture tickets, which give the holder the right to a number of animal grazing days, as well as access to grazing routes.

**Inclusive decision-making processes.** Other stakeholders besides the herders – such as women and the poor – are also to be represented in the pasture committees, and should participate in decision-making processes. Even though they generally do not hold any livestock, they collect and harvest various resources on the pasture lands. A broad-based representation of all types of pasture users empowers them and provides for more equitable rights.

**Pasture revenue.** Pasture committees are to collect pasture use fees, animal health charges, sustainable pasture use fees and taxes. The revenue collected from pasture use is to be retained by the PUUs and used for pasture improvements.

<sup>3</sup> Those laws and regulations include the following: Regulation "On Implementation Measures of Kyrgyz Republic" (No. 386, dated 19 June 2009), with the appropriate annexes; Regulation "On Procedures of Provision of Pasture Resource Use Rights in Other Purposes not Associated with the Animal Grazing" (No. 515, dated 13 September 2013), with standard regulation and agreement; Tax Code; Administrative Responsibility Code; Law "On Local Self-Government"; Pasture Development Program; Guidelines for development of pasture usage plans, pasture assessment, pasture demarcation, micro projects assessment and monitoring; Agreements between Environment and Forestry Protection Agency and Pasture Department; International agreements with Tajikistan.

Building on Kyrgyzstan's legal reform, IFAD and its partners worked hand in hand with the government in the implementation of the 2009 Pasture Law.

## **IFAD programmes in Kyrgyzstan supporting pasture law reforms**

In Kyrgyzstan, IFAD's country and regional strategy is intended to reduce rural poverty by helping poor rural people improve their livelihoods and living standards. One of the strategy's principal objectives is to improve natural resource management, including land and water management as well as participatory rangeland management.

In the context of Kyrgyzstan's transformative legal reforms, IFAD, together with the World Bank and the Swiss Development Cooperation, implemented the Agricultural Investments and Services Project (AISP) (2008–2014). Support in the implementation of the 2009 Pasture Law has been a major component of the project. The AISP was designed to improve the institutional and infrastructural environment for farmers and herders, with a strong emphasis on the livestock sector. A specific component of the project aimed at fostering integrated, equitable, and socially and environmentally sustainable pasture use and management by devolving responsibility to the local actors, and applying a community-based approach.

Given the success of the AISP, the achievements in pasture management were consolidated in new programmes, namely the Pasture and Livestock Management Improvement Project (2014–2019), financed by the World Bank, and the Livestock and Market Development Project phases I and II (LMDP I and LMDP II) (2014–2019/2020 respectively), financed by IFAD. The programme supports legal and regulatory reforms as well as sustainable pasture management through capacity-building of the PUUs.

## **IFAD's support in Kyrgyzstan's pasture land policy reform**

The AISP participated in raising awareness of decision makers and provided recommendations on legislative reforms, culminating in the development and the adoption of the 2009 Pasture Law. The project team, the Agricultural Projects Implementation Unit, as well as other executive agencies of the project – particularly the Pasture Department of the Ministry of Agriculture and Melioration – played a significant role in explaining the numerous benefits of the reform, and in guiding and moving forward the overall process.

The pasture reform was innovative and involved significant change in the existing national framework. Initially, some local-level governments opposed the creation of pasture committees as the latter were projected to manage pasture revenues. Taxation authorities were also concerned that land and pasture taxes would lessen with the reform. In response, a number of information campaigns and extensive community mobilization were launched, fostering better understanding of the reform while promoting acceptance through the different stakeholders. An extensive follow-up by the project team, which included multiple meetings with government officials and members of parliament, ensured the successful passing of the Pasture Law.

The legislative reform implemented with the assistance of AISP aligned the Tax Code, Budget Law, Customs Code and Administrative Code with the new pasture management arrangements. An awareness- and capacity-building programme was delivered to PUUs by local service providers, outlining the basic principles of the Pasture Law and stressing the importance of sustainable pasture management.

The AISP aimed to establish an adequate legal, regulatory and institutional framework for the devolution of responsibility for pasture use and management at local level. This programme resulted in significant improvements in both animal health and pasture development, while successfully orchestrating a major institutional transformation in pasture management at national level. The project worked closely with national institutions to help ensure that the legislative and institutional reforms, the essential strategies and the technical guidelines required for community-level activities were in place.

LMDP I and II currently continue to assist the government in its legal and regulatory reform, building on the achievements of AISP. Technical experts provide legal advice to the Pasture Department and State Agency for Environmental Protection and Forestry regarding legislative reforms as well as legal training for communities and service providers.

The regulatory and institutional framework set up through the Pasture Law provides a comprehensive framework and prescriptive legislation to further the development of viable PUUs. They are instrumental in enhancing the resilience of pasture communities as well as the sustainable management of natural resources.

## Capacity-building for community-based pasture management

IFAD's programmes and specific components involving community-based pasture management and vulnerability reduction are building on the conducive environment provided by the 2009 Pasture Law. The broad-based representation of all types of pasture users set out in the law allowed access to pasture rights to become more equitable. Within this strengthened framework, PUUs were established, as were community pasture management plans and pasture use plans.

### Pasture users' unions

PUUs were established in each *aiyl aimak's* territory at the initiative of pasture users, and all are registered in the state regional offices of the Ministry of Justice of Kyrgyzstan, gaining the legal status of Body of Territorial Public Self-Government. In accordance with the requirements of the new Pasture Law and the Regulation "On Implementation Measures of Kyrgyz Republic" (No. 386), local self-governments devolved their responsibility for pasture management and use to the PUUs and their executive bodies (*jait* committees) on a contractual basis.

With support from AISP, pasture users, jointly with local self-government, started efficiently managing pastures and using them in an environmentally friendly and socially inclusive and sustainable manner. This successful outcome was achieved following large-scale social mobilization and awareness campaigns, carried out in all villages (*aiyl okrugs*) participating in the project. The Community Development and Investment Agency cooperated in the process, together with the Pasture Department.

One of the important effects of pasture reforms in Kyrgyzstan is considered to be the extensive increase in fees collected for pasture use. Revenues from the collection of pasture use fees increased steadily from 2011 following the adoption of new legislation. From the negligible levels of pasture use fees collected in 2008 (prior to the reform, only land tax on pastures amounted to about KGS8 million annually), amounts reached over KGS66 million in 2011, KGS82 million in 2012 and KGS111 million in 2013.

Since IFAD-financed projects neither envisaged nor financed any activity related to the enforcement of fees collection, the increase in pasture fees collected demonstrates pasture users' willingness to pay (KGS50–100 per head of livestock) as they perceive better quality of pastures and better management of pastures by self-governing PUUs.

## Community pasture management plans and pasture use plans

Community pasture management plans have been set up by most pasture committees. However, they need to be improved to incorporate guidance for the management of animal health and production of winter feed. LMDP I and II offer training and capacity-building initiatives for pasture committees and PUUs' members to enable them carry out efficient planning and to ensure the active participation of the more vulnerable households and women in planning and decision-making. Kyrgyzstan's pasture reform is intended to be poverty and gender sensitive. The 2009 Pasture Law stipulates that all members of the rural population should be included in PUUs, irrespective of whether or not they own or use pasture resources. The Pasture Law envisaged PUUs not as member organizations but rather as territorial unions of self-governance that are open to any resident of an *aiyl aimak*.

### Boundary demarcation

The process of pasture reform unexpectedly resurrected a number of long-lasting conflicts over pasture territories between neighbouring *aiyl okmotys* (rural municipality administrations). This slowed the pace of implementation of the Pasture Law.

Pasture demarcation was a prerequisite for PUUs assuming the responsibility of pasture management. Some conflicts arose due to discrepancies between cadastral boundaries and traditional use of pastures. In many cases, it was possible to resolve conflicts through negotiations between opposing parties. However, some more complex conflicts have not reached consensus and the cases were escalated to *oblast* level or national commission level.

Thus, AISP supported activities to demarcate pasture boundaries between the *aiyl okmotys*, and the establishment and operation of dispute resolution mechanisms to settle disagreements between and among the administrations over boundaries and user rights. Public disclosure and dispute resolution mechanisms were established at local and national levels. Through this process, pasture boundaries between *aiyl okmotys* were demarcated for almost all PUUs (97 per cent) in the country. This proved to be an important legal basis for their operations. Demarcation of pasture boundaries was extremely effective in preventing potential conflicts associated with the use of pasture areas, not only between *aiyl okmotys* but also at *raion* level.

## Conclusion

In Kyrgyzstan, the establishment of an appropriate legal framework was a critical precondition for sustainable community-based pasture management. Prior to 2009, fragmented management by government was unfair and disrupted seasonal grazing, resulting in generalized pasture degradation.

Following its implementation in 2009, the Pasture Law provided a clear legal framework allowing for strong PUUs to assume responsibility for sustainable pasture management and to collect the fees necessary to maintain pasture lands. The legal reform process confirmed the importance of implementing agencies' capacity and the huge commitment required if social mobilization activities are to be inclusive. Rural communities, adequately empowered and supported, have proved to be conscientious and effective managers of common resources.

Not only did the legal reform prove to have a positive impact on the rural population, but investments in pasture management improvement proved to be both economically viable and financially profitable for farmers. Benefits were generated primarily through the establishment of community-based PUUs to manage pastures, and through community-based investment in pasture infrastructure, providing improved access to pastures. This resulted in reduced stocking rates and, consequently, higher livestock productivity in terms of meat and milk yields.

Kyrgyzstan's experience is highly valued in the region and recognized as best practice. Government representatives and pasture users from neighbouring countries have since visited Kyrgyzstan to study the 2009 Pasture Law as well as its policy and legislative reforms.

# Transformation from collective to communal pasture management: review of pasture reforms in Tajikistan

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## Abstract

In Tajikistan, livestock is an important part of the economy, contributing almost a quarter of all agricultural production. However, over the last 20 years, management of pastures in the country has considerably deteriorated and has led to intense, year-round use of traditional spring–autumn pastures. With the growing number of livestock, emergence of commercial livestock farmers and further deterioration of natural pastures, the focus on pasture management reforms resulted in adoption of the Pasture Law in March 2013, which has played an important role in enabling a completely new quality for pasture management and use. The Pasture Law serves as a foundation for the institution of pasture management decentralization reforms occurring on a small scale in selected areas. However, experience has shown that it is imperative to facilitate the reform process with further advancement of the policy and legal framework in pasture management. Through the Livestock and Pasture Development Project, launched in 2013, IFAD has significantly contributed to the improved institutional and legal aspects of the pasture sector, supporting and facilitating the implementation of the Law.

## Introduction

Tajikistan is a mountainous country in Central Asia. Arable land accounts for only 7 per cent of the total territory of the country. Pasture resources in Tajikistan amount to about 3.8 million hectares or almost 29 per cent of the total land area of the country. They are invaluable for the livestock sector even in the conditions of intensive farming concentrated in the valleys and foothills, mainly because they are the main feed resource for the country's meat production. Tajikistan's agro-climatic uniqueness is creating favourable conditions for livestock development in general; however, the sector is facing many challenges, including the lack of technical knowledge of small livestock holders, poor governance arrangements for pasture management, inefficient management of community livestock, shortage of feed during the winter months, environmental degradation, and lack of access to quality fodder seed and infrastructure – all of these being further exacerbated by climate change. The government recognizes that the efficient and sustainable management of the 3.8 million hectares of pasture land is important to foster economic growth and preserve these fragile resources.

## Pastures and livestock

Agricultural land accounts for about 34 per cent of the total land area of the country, of which 82 per cent is pasture land and hay meadows. As a result of the land reform process, which started in 1997, the former collective and state farms have been reorganized and the following major three types of farms emerged: (i) large state farms inherited from the Soviet system (covering approximately 8 per cent of the country's total arable land); (ii) private *dehqan* (peasant) farms, comprising both private and collective farms, the latter managed by former managers on behalf of workers with land share certificates and the former with associated land use titles conferred by 49-year leases that, since 1997, can be bought and sold (covering approximately 59 per cent of the country's total arable land); and (iii) household farms (covering approximately 33 per cent of the country's total arable land). Individual households, despite their small size, are responsible for over 50 per cent of the country's agricultural production, and in some agricultural subsectors their contribution is as high as 80–90 per cent (meat, milk and vegetables).

All landholders have long-term land lease entitlements, and these are often tradable and inheritable. The World Bank and other donors supported the processes of distribution of arable land use certificates to landholders to enable farmers to make their own decisions with respect to what crops to grow.

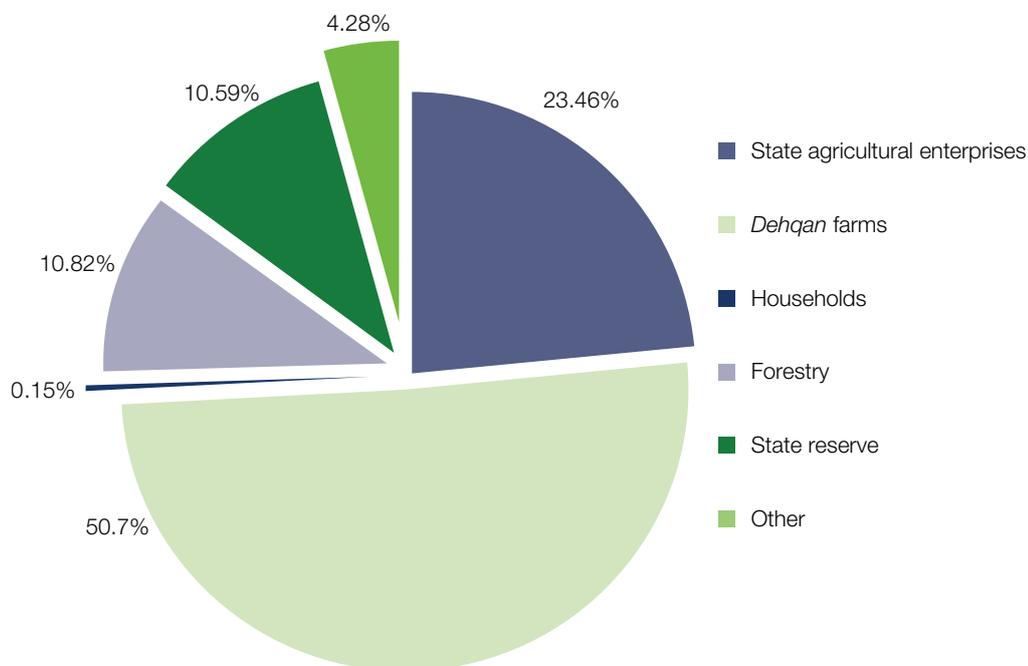
The total area of pasture land of Tajikistan as of 1 January 2016 is 3.8 million hectares. This is the largest and most extensively used category of lands in Tajikistan, but productivity is very low, and is unlikely to improve to any great extent in the foreseeable future. The average productivity of pastures is 0.2–0.3 tons of fodder units per hectare,<sup>1</sup> with edible plants accounting for between 30 per cent and 65 per cent.

The distribution of pasture land by farm types is even more unfavourable than is the case for arable land (see figure 1 for details). As of 1 January 2016, there were 161,000 *dehqan* farms registered in Tajikistan, accounting for 1,858,000 hectares of pasture land<sup>2</sup> or about 50 per cent of the total. More than 96 per cent of country's livestock is owned by households that together own less than 1 per cent of pasture lands.

Pastures are categorized not by their natural characteristics and geographical location, but by the historically formed system of remote pasture grazing. Thus, there are four types of pastures in Tajikistan:

- Winter pastures are located at an altitude of 500–1,200 metres above sea level (masl). The average distance to the nearest village is 2.8–3.4 to 8–10 km. These pastures are used from November through March and the average duration of the season is 120–150 days. The average yield (depending on the agro-climatic conditions and the livestock population it accommodates) varies from 0.1 to 0.2 tons per hectare of dry matter (DM).
- Spring and autumn pastures are located at an altitude of 900–1,500 masl, and at an average distance from villages of 2.2–2.8 to 30 km. They are used in March and April and in September to November. The average yield varies from 0.4 to 0.7 tons/ha DM.
- Summer pastures are located at an altitude of 2,200–3,500 masl. Depending on the area, the summer pastures can be 200–500 km from villages and are the most remote pastures. For this reason, summer pastures are less used (or underused) and in better

**Figure 1** Structure of pasture land by farm types (per cent).



<sup>1</sup> Report on fodder and pasture forage production for the period of 2011–2015, Animal Nutrition Department of the Livestock Institute under the Tajik Academy of Agricultural Science.

<sup>2</sup> Report on the land categories and their use in the Republic of Tajikistan, the State Committee of Land Management and Geodesy of the Government of the Republic of Tajikistan, January 2016.

condition than other types of pastures. One of the main reasons the summer pastures are underutilized is the high cost of sending animals to these pastures: the cost of hiring a shepherd, including living costs and the costs of transportation or delivery of animals, drugs and other items. The summer pastures are used from June to August and the average duration of the season is 80–90 days. The average yield varies from 0.7–0.8 to 1–1.3 tons/ha DM.

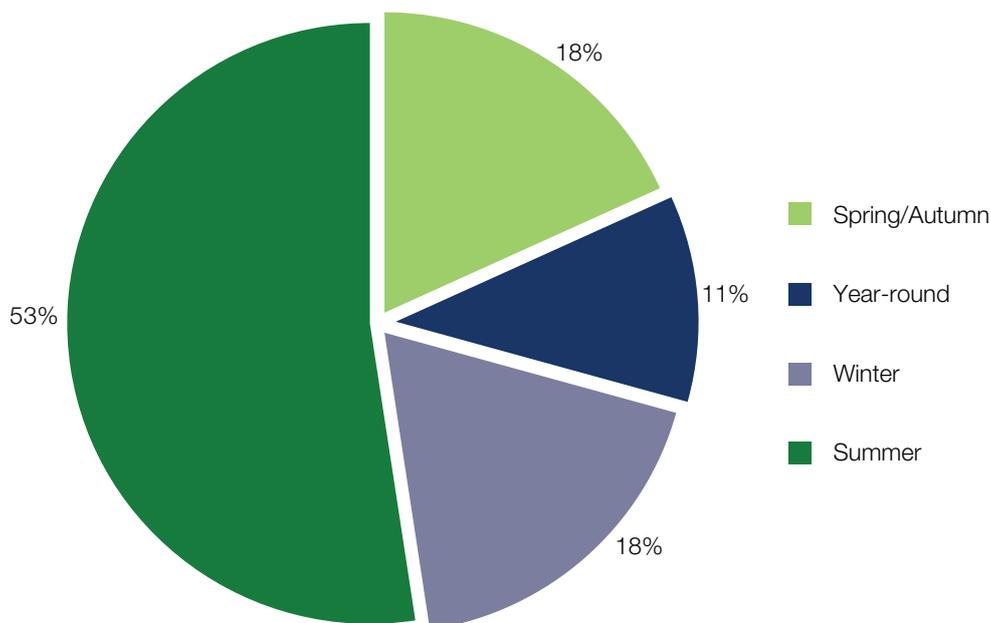
- Year-round pastures are located around villages at the altitude from 500 to 1,000–1,200 masl. The average distance from villages is from 0.5–2 to 3–4 km. These pastures are heavily utilized by the local population for year-round grazing of animals and are severely degraded (85–90 per cent).<sup>3</sup> The average yield is 0.1 tons/ha DM and the average duration of the season is 310–320 days.

Of the total area under pasture, the spring/autumn, winter and year-round pastures account for 1,819,000 hectares, or almost 50 per cent (figure 2).<sup>4</sup>

Livestock is an important part of Tajikistan's economy, particularly in rural areas, where the country's poor population is concentrated. This subsector contributes about 12 per cent of gross domestic product, or almost a quarter of all agricultural production (2015).<sup>5</sup> Livestock numbers, which collapsed during the 1990s following the break-up of the USSR, because animals were slaughtered in large numbers for food and because of an inability to maintain livestock, have now recovered and in most areas surpass those of the Soviet period. For example, in 2015, the number of cattle was 53 per cent higher than in 1990, while the numbers of sheep and goats were 50 per cent higher.<sup>6</sup> As a result, and exacerbated by poor management, pasture condition has significantly deteriorated and annual milk yield per cow in 2014 averaged 1,530 kg, which is almost half of that in 1990.<sup>7</sup>

Another reason for low livestock productivity is the shortage of animal feed and the fact that the area of irrigated lands used for fodder production is insufficient to meet the needs of the current livestock population. Other reasons include poor breeds, poor animal health owing to lack of access to reliable veterinary services and the lack of a feed industry.

**Figure 2** Area of pasture lands by category of their use.



3 ADB. Sustainable pasture, arable and forest management, Sector Assessment, Rural Development Project. 2013.

4 Report on the land categories and their use in the Republic of Tajikistan, the State Committee of Land Management and Geodesy of the Government of the Republic of Tajikistan, January 2016.

5 The agriculture sector of the Republic of Tajikistan, Statistical book, 2015.

6 The agriculture sector of the Republic of Tajikistan, Statistical book, 2015.

7 The agriculture sector of the Republic of Tajikistan, Statistical book, 1990–2014.

Comparison of the actual and optimal<sup>8</sup> livestock density measured by number of livestock units (LU) per hectare of pasture (in Tajikistan 1 LU is equal to one sheep) shows that actual numbers are several times higher than optimal for all except summer pastures (table 1).<sup>9</sup>

For example, in the country as a whole, the actual density of livestock population in year-round pastures exceeds the optimum level by 10.5 times, while actual livestock density in winter pastures is 4.3 times the optimum and in spring and autumn pastures is 3.1 times the optimum density.

For various reasons, use of pastures is far from optimal, and as a result they are susceptible to degradation, with about 30 per cent of pasture land, especially near villages, being neglected fields or showing various degrees of desertification. This is caused by very high stocking rates on the year-round, winter and spring/autumn pastures, and extended periods of their use (220–300 days).

Over the last 20 years, management of pastures in the country has deteriorated considerably. In the past, pastures were well kept and there were identified animal routes and clearly defined rules on the use of pastures; veterinary checkpoints functioned properly; and there were schedules of livestock movements from winter to summer pastures in each province. The only concern for the government was the lack of reserves of rough and concentrated feed to be used in the event of fodder shortage during exceptionally cold winters. Nowadays, pastures are grazed intensively and the use of additional feed is very limited.

Currently, many livestock owners (usually with a small herd) no longer take their livestock to winter or summer pastures. Their herds are allowed to graze continuously within a radius of 3–5 km of the villages because herders cannot afford to buy hay or feed concentrates to allow stall feeding. This situation has led to the intense year-round use of traditional spring–autumn pastures, which are now used even during winter.

Tajikistan is one of the main water reservoirs in the world, so degradation of Tajik pastures has a broad ecological effect on the water supply at the regional level, its biodiversity and climate change. Consequently, further deterioration of pastures may have a severe impact on the entire Central Asia region and beyond.

Soil degradation is widespread in Tajikistan. The Food and Agricultural Organization of the United Nations has published data showing that erosion is causing loss of fertile soil at a rate of up to 150 tons/ha/year, and of soil on pastures at a rate of 30 tons/ha/year. Erosion to this degree falls within the recognized category of “heavy”, and is especially worrying given that a level of 6–11 tons/ha/year is considered critical for long-term sustainability, and the average rate of natural soil formation is 0.5–1.0 tons/ha/year.<sup>10</sup> According to the National Plan on Desertification Control of the Republic of Tajikistan, effectively all of the country’s agricultural lands are affected by erosion (~98 per cent in 2007, compared with 68 per cent in 1973), largely due to the after-effects of heavy landslides and gullies in foothills. This situation has been caused by significant human and livestock population growth in the past 20 years, with an associated increase in demand for meat and grain production.<sup>11</sup> The uncertainty in land use rights over the years since independence has also exacerbated this situation.

The above is confirmed by the satellite observations (using geographical information systems) in five districts (Rudaki, Varzob, Vahdat, Faizobod and Roghun), which show that, of 388,496 hectares of pastures located in these areas 159,248 hectares is degraded (41 per cent).

Pasture management should be regulated by an efficient and enforced legal framework (stocking rates, rotational grazing) and by capable institutions that provide incentives for sustainable land management, including biodiversity conservation and environmental protection, in order to preserve the role of pastures as a source of income for future generations.

## Institutional and legal aspects of pasture sector development

During the Soviet era, pasture land use was regulated by the Land Code of the Tajik Republic, and regular decrees of the Cabinet of Ministers defined its specific implementation, the last of which was Decree No. 93 of 27 March 1980 “On reallocation of pasture lands between the regions and districts for a 10-year period.”

<sup>8</sup> Optimal load (LU/ha pasture) is a commonly used system of pasture management in the former Soviet Union Republics.

<sup>9</sup> ABD. 2013. Above, note 3.

<sup>10</sup> National Plan on Desertification Control of the Republic of Tajikistan, 2000.

<sup>11</sup> ABD. 2013. Above, note 3.

**Table 1** Actual and optimal livestock density (LU/ha)

Regions	Type of pasture							
	Year-round		Winter		Spring–Autumn		Summer	
	Actual	Optimal	Actual	Optimal	Actual	Optimal	Actual	Optimal
<b>Republic</b>	<b>10.5</b>	<b>1.0</b>	<b>7.7</b>	<b>1.8</b>	<b>10.8</b>	<b>3.5</b>	<b>2.5</b>	<b>5.0</b>
GBAO	2.2	2.7	13.3	4.0	203.0	9.5	0.8	3.4
Sughd	114.0	0.7	17.6	1.3	11.7	2.5	2.6	3.6
Khatlon	114.0	0.7	4.4	1.6	10.7	2.5	7.6	4.8
RRS	6.2	0.8	5.4	1.4	11.6	3.5	1.7	5.0

GBAO, Gorno-Badakhshan Autonomous Province; RRS, Region of Republican Subordination.

After independence and before adopting the Pasture Law in 2013, the key pasture management and use provisions were laid down in the constitution and in the following laws of the Republic of Tajikistan – On Soil Protection, On Land Reform and On *Dehqan* Farms – and in the Land and Forestry Codes.

In particular, the Land Code regulates land relations and is targeted at enabling the conditions for rational use and protection of lands, soil fertility, preserving and improving the environment and equal development of all forms of farming. The document defines the terms “primary land user,” “secondary land user,” “land lease” and “consolidation” or “withdrawal” of land/pasture and sets out the rights of land users.

Specifically, according to Article 65 of the Land Code, allocation of agricultural lands (including pastures) to users is executed in line with the inter-farmland tenure system as set out in the Law “On land management”, whereby land can be assigned to:

- legal entities and individuals for agricultural production purposes (including fruit and vegetable growing);
- agricultural scientific research and education institutions, vocational and secondary schools and other agricultural enterprises and organizations for research, educational and extension purposes as well as for farming;
- non-agricultural enterprises, institutions and agencies and religious organizations – for subsidiary farming.

Alternatively, Article 66 of the Land Code determines that land plots for the purpose of creating *dehqan* (peasant) farms shall be allocated to the citizens of the Republic for life-inheritable use, as established by the Law of the Republic of Tajikistan “On *Dehqan* Farms.”

According to Article 71 of the Land Code, land plots for livestock grazing and hay harvesting can be allocated to livestock owners from the state land reserve, the state forest reserve and from settlements, as well as from the lands of agricultural farms and agricultural lands owned by other organizations, at the official request of *jamoat* (subdistrict) administrations in the following order:

- from agricultural lands of farms or organizations owning agricultural lands, upon the decision made by the general meeting of these farms and organizations;
- from the state land reserve – upon the decision made by heads of district (city) governments;
- from the state forest reserve – upon the decision made by heads of district (city) governments in agreement with the forestry authorities.

Land use rights shall be certified by:

- a land use certificate in the case of term-limited, permanent or life-inheritable use of land;
- a lease agreement in the case of rental use of land;
- a land-share certificate in the case of land-share arrangements.

The documents listed in points (a) and (c) are subject to the state registration. Lease agreements are subject to recording in the land register only.

Thus, as can be seen from the above, before the adoption of the Pasture Law, use of pastures was regulated by several legislative acts. However, none of these documents considers pastures as a whole and none defines the specifics of their management, use, improvement or other aspects.

During 1993–2013, pasture management was undertaken by the State Committee on Land Management and Geodesy (SCLMG). The allocation of pastures was carried out by the same committee in coordination with the local authorities. Pastures were defined as lands of agricultural designation and assigned to farmers for long-term use.

Prior to the enactment of the Pasture Law, monitoring and geo-botanical assessments were carried out every five years by the Giprozem Institute (a soil research organization) under the auspices of the SCLMG.

As a result of the growing number of livestock, the emergence of commercial livestock farmers and further deterioration of natural pastures, a focus on pasture management reforms led to the adoption, in March 2013, of the Pasture Law, which plays an important role in enabling a completely new standard for pasture management and use.

The Pasture Law covers almost all aspects of the pasture sector: ownership, formation of the state pasture fund, classification of pastures, responsibilities of authorized government bodies (the government, the SCLMG, the Ministry of Agriculture, governors of districts, cities and *jamoats*, pasture users), the procedures of pasture use and allocation, pasture users' rights and duties, government regulation and support for development of pastures, requirements for the efficient use of pastures and other issues. An important aspect of this law is that it recognizes pasture users' unions (PUUs) as key implementers of decentralized pasture management.

In general, the adopted law is a guide for pasture users, and its influence on rational and efficient management and use of pastures will largely depend on how it is executed locally.

With the purpose of sustainable pasture development, and while waiting for the expected results of the Pasture Law to be achieved, it is necessary to continue working on institutional development and policy. The recommended priority areas are as follows:

- development and implementation of an integrated comprehensive legal framework (sublaws and regulations);
- development of a decentralized institutional structure for pasture management in accordance with the new policy, legal and institutional changes and market economy;
- establishment of a simplified, uniform, "one-window" registration system;

- development of a general national plan – pasture use maps, including demarcation of boundaries and clear marking of different types of pastures within the administrative units – *jamoats*, districts, regions and other areas;
- development of community pasture management plans in order to improve sustainable use of pastures;
- capacity-building of government employees at all levels, including familiarization with the latest changes in the legislation related to the pasture sector;
- capacity-building of farmers and other categories of pasture users through improved access to extension services, information and markets;
- strengthening the role and responsibilities of regional and district departments of agriculture on training, provision of market information and access to improved technologies and research;
- creating enabling conditions for provision of farmers' access to veterinary services and breeding, provision of seeds, fertilizers and fodder, processing of agricultural products and irrigation;
- assistance in the establishment of PUUs at village level, which can be united into pasture users' associations at the levels of *jamoats*, districts and regions, to ensure sustainable pasture management by local communities;
- conferring on pasture users' associations legal authority over the use of pastures, their rehabilitation and infrastructure development;
- organization of regular monitoring of pasture resources;
- organization of regular adaptive research on modern conservation technologies and pasture improvement.

## Livestock and Pasture Development Project in support of pasture reforms

The Pasture Law serves as a foundation for the pasture management decentralization reforms currently taking place on a small scale in selected areas. However, experience has shown that it is imperative to facilitate the reform process with further advancement of the policy and legal framework in pasture management. Evidence from elsewhere in the world indicates that development projects can play an important role in such advancement. The Livestock and Pasture Development Project (LPDP), financed by IFAD and implemented by the Government of Tajikistan, is a good example. It has been in effect since 2013 and its aim is to support the practical implementation of the Pasture Law.

The development goal of the LPDP is to contribute to the reduction of poverty in the Khatlon region. The development objective is to increase the nutritional status and incomes of 22,400 poor households by enhancing livestock productivity in a sustainable manner. The LPDP constitutes an investment of US\$15.8 million, of which the IFAD grant amounts to about US\$14.6 million. As of the end of April 2016, the project has disbursed more than 50 per cent of its funds.

According to IFAD's mid-term evaluation, the LPDP has achieved significant results, the main ones being the establishment of 203 PUUs in five districts of the Khatlon region (registration, opening of bank accounts, etc.) and strengthening their capacity through intensive training and demonstrations of pasture rotational grazing, livestock husbandry, financial management, accounting, etc.; construction and equipping of 24 veterinary clinics; development of 203 pastures use plans; organization of rotational pasture use on more than 87,000 hectares of land; preparation of 410 investment subprojects with the aim of improvement of pastures and livestock development in accordance with the priorities expressed

by the PUUs; implementation of 237 of these subprojects, including 42 infrastructure projects (watering points, access roads, bridges) in the pastures and the provision of 92 tractor units and about 56 trailer units. As a result, the key achievements to date are an increase in the productivity of livestock of 15–20 per cent and the creation of 330 permanent jobs, largely in livestock processing and machinery services in the targeted areas. The magnitude of such outcomes has been confirmed by an independent mid-term assessment.

In addition, the LPDP continues to contribute to the improvement of the institutional and legal aspects of the pasture sector. For example:

- The Pasture Law does not clearly define which state agencies are responsible for pasture management and use. In this regard, the Project, jointly with the Ministry of Agriculture, has drafted a resolution resulting in the issuance of Decree No. 509 of the Government of Tajikistan, dated 1 August 2015: "On determination of

#### **Box 1** Distribution of powers relating to the management and use of pastures

The SCLMG is responsible for pasture management:

- all issues related to land tenure;
- state registration of land plot use rights and other rights associated with them as well as issuance of the documents certifying such rights to land users in line with the established procedures;
- state monitoring of pasture conditions and pasture resources;
- control over effective use of funds intended for improvement of land conditions;
- organization of regular geo-botanical assessments of pastures;
- development of state standards and evaluation procedures for monitoring of pasture conditions and their clearance with the government;
- adoption of record-keeping regulations and state registration of pastures;
- maintenance of the state register for pasture lands and submission of regular reports on the current state of pastures.

The Ministry of Agriculture is responsible for pasture use:

- implementation of government programmes on effective pasture use;
- development of pasture protection and restoration technologies as well as standards/norms for pasture use and their implementation;
- monitoring the compliance of pasture use in accordance with the specific pasture classification/location, grazing periods, composition of species, stocking rates and grazing rotations;
- construction and supervision of pasture support infrastructure (bridges, watering points, animal passes, animal health checkpoints and others);
- implementation of pasture rehabilitation and improvement activities;
- monitoring of pasture use plans implemented by pasture users.

authorized bodies on pasture management and use.” Specifically, the SCLMG is now responsible for pasture management, while the Ministry of Agriculture is the authorized state body for use of pastures (see box 1 for more details).

- There is no competent entity within the Ministry of Agriculture responsible for the pasture sector – in this regard, the LPDP has developed a proposal on establishment of a Pasture Development Fund (for pasture rehabilitation and monitoring) under the Ministry of Agriculture, specifying its purpose and objectives, authority, responsibilities, scope of activities, rights and other provisions, in accordance with the existing legislation.
- The LPDP has prepared a proposal for the Commission on regulation of pasture use, to be established at local level, which links the work of the Commission with the powers and duties of PUUs and local government administrations. The proposal has been forwarded to the Ministry of Agriculture for practical application.
- The Pasture Law allows some responsibilities for pasture use to be transferred to community PUUs. To this end, to assure the sustainability of new institutions, the LPDP has developed a template for a pasture use plan and a sample statute for PUUs. These documents have been used to establish and strengthen 203 “project” PUUs.
- The LPDP has carried out a thorough analysis of the Pasture Law and its compatibility with the existing legislation, resulting in a proposal for amendments and changes to the Pasture Law that are currently under consideration by the government and parliament.

## Lessons learned

Pasture reforms in Tajikistan started as a measure to devolve management responsibilities to local governments and communities because of the inability of central government to promote sustainable resource management practices and ensure effective management.

The work undertaken by the LPDP to date is essentially the first time the national Pasture Law has been implemented in practice, and the results show that the majority of PUUs are progressing well and that their performance is assessed as positive by the beneficiaries, as confirmed by the independent mid-term survey.<sup>12</sup>

Only two years after full-scale implementation of pasture reform, the LPDP appears to be generating a wide range of improvements in income, nutrition and food security, quality of life, and control over physical and natural assets. The key benefits highlighted by the beneficiaries themselves are (i) better management of their resources; (ii) improved animal health and productivity; and (iii) improved coordination and collaboration in solving the problems of the community. PUUs that have implemented rotational grazing for one season report an increase in milk production, from 4–5 l/day to 6–8 l/day, as well as increases in the fat content of milk. Some PUUs have reported pregnancy rates in cows of 90 per cent after just one year of implementation and that almost all households have experienced one twin birth in goats. Given previous low profit margins achieved by the small-scale livestock farmers targeted by the Project, each additional litre of milk or additional animal born, and even a small reduction in animal mortality, will result in a significant increase in income, and profit, for the farmer.

In communities that were awarded land use rights, reported total savings vary from around US\$1.25 to US\$1.50 per hectare (typically totalling US\$500–750 for communities with about 500 hectares of pasture land). The only cost such communities now incur is land tax of TJS5–8 (~US\$1) per hectare, payable to the government. The LPDP also closely monitors each PUU’s finances to ensure that they are paying the required taxes on land. This should boost government revenues from the livestock sector. Agricultural machinery has also reduced the cost of services from TJS100/ha plus 40 litres of fuel and 1 litre of oil to TJS70–80/ha plus 30 litres of fuel and 1 litre of oil. Assuming fuel at US\$1 per litre, and oil at US\$5 per litre the total cost per hectare for plough services was previously US\$60 and is now US\$47, a drop of around 20 per cent.

There is huge potential to scale up the practice of rotational grazing. The only costs are those of providing a short training and awareness-raising exercise, and development of a rotational grazing plan, and the benefits become evident within one grazing season. Benefits can be achieved through implementation of a rotational grazing system alone, but are greatest when combined with establishment of PUUs, securing access to land, and improving winter fodder availability. Evidence of this potential for scale-up comes from the enthusiasm for the scheme among PUUs: some PUUs that have not yet received training, but only an explanation from project facilitators, have immediately seen the potential and implemented the system themselves, with good results.

<sup>12</sup> Mid-term survey for the Livestock and Pasture Development Project, 2015.

**Box 2** Supply of drinking water for livestock, Momirak village, Muminobod district, Khatlon region

The population of Momirak is 1,539, mainly engaged in livestock husbandry and agriculture.

The Momirak PUU has 1,510 hectares of pasture land but has suffered for many years from a shortage of livestock drinking water in the pasture areas. Previously there was just one water point in the village, which was unhygienic and susceptible to contamination, often resulting in the spread of livestock diseases.

With the support of the LPDP the villagers agreed to make livestock water a priority, and constructed four livestock water points in the pasture areas about 8 km from the village. These provide drinking water for the village's 5,137 sheep.

As the animals now have an unpolluted source of water, and they no longer have to walk 6–8 km daily, from the pasture back to the village, to drink, their health and overall condition has improved, with increased weight gain and higher milk production. Rotation of pastures has been also implemented. According to Murodoli Kamolov, Chairman of the Momirak PUU:

*Provision of a land certificate and project support has provided a strong sense of ownership by our union. We are now managing our own resources and committed to their sustainable use.*

Spontaneous adoption by neighbouring communities is likely to be an important pathway for scaling up, with key drivers being poverty, overgrazing and seeing the visible benefits accruing to communities that have implemented rotational grazing. It is fortunate that the existing practice of grazing the village livestock together in a few consolidated herds provides the basic institutional space, and this can eventually be expanded through the establishment of PUUs and securing of land certificates.

The project is providing beneficiaries with significantly greater control over their economic relations, natural assets and institutions (see box 2). PUUs are a new form of institution in the project area and are wholly owned by their members. Participatory methods were used extensively in the mapping of the community's pasture lands and the establishment of their development priorities, and the PUUs largely run along transparent and democratic principles. Establishment of PUUs enables the communities to apply for land certificates to gain use rights for pasture lands for a period of 49 years, with only taxes to pay to the government for each hectare used. Previously, communities had to rent land from a mix of private farmers, state agencies and other interests, but now these lands are in the process of being transferred/reassigned to the communities. Through the training received from the LPDP, most PUUs seem to have quickly grasped the main principles of rotational grazing and, once implemented, the system is producing results within months.

It is essential that the process of issuing land certificates continues if the project is to achieve its potential impact on the empowerment of the target communities. Tenure has significant implications for development. Where the poor and vulnerable have limited and insecure rights to land and other natural resources, it is difficult for them to overcome hunger and poverty. Equitable and secure rights can support social and economic development and the sustainability of the environment.<sup>13</sup> There will be losers in this process (mainly the *deqhan* farmers, state agencies and other private interests that currently control this land), so close monitoring by the project team is necessary to ensure that obstacles are not placed in the way of the PUUs.

The experience of pasture reforms in Tajikistan, and specifically of the LPDP, which was instrumental in their implementation, has so far been positive overall. The basic institutional set-up has been put in place and is showing signs of being effective in the Tajikistan context, albeit there are glaring capacity needs and land use rights mechanisms are weak. There is therefore much to do to build on the results of the LPDP to achieve the development objectives of the reforms: more productive and more sustainable use of pasture resources.

However, a weak policy and legal framework could hinder LPDP implementation and put the achievement of its development objectives at risk. It is evident that, unless the government puts a stronger focus on pasture management policy and legislation, the project will continue to experience bottlenecks in strengthening and

13 FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

empowering PUUs. The LPDP will need to continue to engage in political dialogue on pasture reforms and support advancement of these reforms through technical, legal and financial aid. Over the coming years, the focus of the Project Management Unit will shift from a bottom-up one, in which the emphasis is on issues at local level, to a top-down approach that addresses the national policy, regulatory and institutional framework for pasture management.

## Conclusions and recommendations

The pasture reforms implemented in Tajikistan with the support of the LPDP have succeeded in engaging the users of pastures in a system that gives them a greater say and provides direct benefits. It is important to add to these incentives a more detailed technical understanding of how to manage the pasture resources, and more importantly the long-term costs of improper management. This requires effective capacity-building, which should encompass more rapid dissemination of research findings and technical advances to the PUUs; development of training differentiated to meet the different needs of PUUs, with information presented in a relevant manner; a system of efficiently renewing knowledge when there is turnover; and development of horizontal learning through exchanges and taking advantage of information and communication technology.

Engagement of state stakeholders at local and national levels should be strengthened. Government policy, so far reflected only in legislation for the management of pastures, assigns local government bodies a crucial role in advancement of the reforms and ensuring sustainable and productive use of pasture resources. Local government bodies need to be at the forefront of the new system of pasture management, and the LPDP should support them with capacity-building, information dissemination and technical assistance on policy elaboration.

There need to be much better mechanisms for measuring progress and feedback on the management of pastures. Baselines and expected results should be communicated and understood. These results should then feed into the three groups of activities described above (policy formulation, institutional development and improving standards of management).

In all of these activities, it is important to maintain as much transparency as is possible to build trust in the reforms and demonstrate the impact that they are having.

Policy initiatives in support of smallholders in the livestock sector need to be linked to social targets, such as increased access to pastures, economic factors, such as improved animal productivity and profitability (in addition to increased numbers of livestock), and environmental targets, such as improved areas of pasture and increased areas under sustainable use. IFAD and the Government of Tajikistan have agreed to scale up the LPDP in a second phase, which is in essence a geographical expansion, but with integration of the urgent issue of climate change adaptation in both phases. Moreover, in the second phase, the LPDP will pay more attention to policy issues and engagement of the central level's stakeholders based on the lessons learned from the first phase.

# Evolution and consequences of China's rural land institutional reform

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## Abstract

This paper documents the evolution of China's land institutions and policy efforts and outlines the remaining challenges. The core of China's land reforms is the coexistence of collective ownership and land use rights (or contract rights), which are vested in households through the household responsibility system (HRS). In the early reform period the HRS led to significantly increased agricultural productivity and reduced poverty. Later, the focus of land reforms was on stabilizing land tenure and fostering land rental-market development. Recently, to improve agricultural productivity and farmers' income, efforts have focused on land consolidation through policy support, development of a land transfer platform and institutional reform (*San-quant-fen-zhi*, separating three rights of land: village collective ownership rights, household contract rights and land operational rights). This land institutional reform has been introduced with two goals: equity (about 230 million rural households hold contract rights, similar to "landlords"), and efficiency (transferring land to more efficient farmers through the rental market). However, despite increasing transfer of land among farmers and gradually rising farm size, land consolidation still faces several challenges. The paper concludes with several policy implications.

## Introduction

One of the most important factors promoting development of a rural economy is land reform. Land institution is fundamental for sustainable agricultural growth and rural development. Land institution and its governance are crucial elements in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land.<sup>1</sup> In the meantime, many conflicts resulting from tenure insecurity are related to governance and national policies.

China's land reform is an interesting case to look at, as it is quite different from land reforms in many other countries. Following the establishment of the People's Republic of China in 1949, the government instituted a total land reform initiative in the 1950s: land was taken from the landowning classes and redistributed to farmers. Although unpopular with some, the redistribution increased agricultural production, created social equality and reduced rural poverty. Unfortunately, the collectivization movement that took place from the late 1950s resulted in

nearly two decades of stagnation in agricultural production and farmers' income. As a result, and using the lessons learned from land collectivization, China initiated a new land reform scheme in 1978, implemented through the household responsibility system (HRS). Farmland owned collectively by villages was allocated to individual households under HRS. Registered village households have use rights over their contracted land (so-called contract rights). Recently, to facilitate land transfer and consolidation and to stabilize land tenure (the village collective ownership and the household contract rights), a further land institution change has been introduced that separates land operational rights from land contract rights.

This paper documents the evolution and consequences of China's land institution and policy efforts since the institution of HRS and outlines the remaining challenges. Understanding China's land institutional change and its impact will not only provide evidence for continuing rural land reform in China, but also have important implications for many other developing countries that are seeking inclusive and sustainable use of agricultural

1 FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

land. The rest of this paper is organized as follows. The next section introduces China's rural land reforms in the past three and half decades with focus on the evolution, impacts, challenges and policy efforts. This is followed by a discussion of institutional innovation, land rental markets, and small-scale farming transformation and land consolidation. The last section concludes with several policy discussions and implications.

## Evolution and consequences of China's rural land reforms

### Evolution of land reforms

Economic reform began with the HRS in rural areas and the HRS is often believed to be at the heart of China's rural economic reforms.<sup>2</sup> The HRS was implemented over the period 1978–1984. Its role was to dismantle collective production and distribute collectively owned (or village owned) land to all households in the village based on the total number of people and number of labourers in the household. Under the household production system, average farm size was about 0.67 hectares, although it varied among regions. Although landownership rights remained with the collective (or the village), the control and income rights (the contract rights) were awarded to individual households for a period of 15 years.<sup>3</sup>

However, land tenure stability was not without problems during the first term of the contracted period, from the early 1980s to the late 1990s. Although local leaders were supposed to have given farmers land for 15 years in the early 1980s, in many areas collective ownership of land had been less secure.<sup>4</sup> Specifically, village leaders and local governments often used their ownership rights to reallocate village land among households. A nationwide representative survey found that, up until 1996, less than 4 per cent of villages experienced a major reallocation of land (e.g. a village-wide land adjustment or land

adjustment within a large group of households). This proportion increased to 11.5 per cent during the period 1997–1999. Over the same periods, the frequency of small adjustments (e.g. adjustments involving only a few households) was about three times higher.<sup>5</sup>

Land was reallocated for a variety of reasons, particularly concerns about equity as a result of changes in household size and land acquisition by government and village collectives, but also to prevent corruption.<sup>6</sup> Regardless of the reason, observers and policy makers during the 1980s and 1990s were concerned that such reallocations could result in insecure tenure for households or agricultural producers and have negative effects on investment and production.

To secure land contract rights for farmers, China has implemented a number of legal and policy initiatives. The second land contract period was extended to 30 years, from the late 1990s to the late 2020s. China also enacted the Land Management Law in 1998 and the Rural Land Contracting Law (RLCL) in 2003. The RLCL seeks to increase land tenure security and explicitly prohibits reallocation for almost any reason. The legislation also allows family members to inherit land during the contract period. In recent years, China has frequently announced that land contract rights will not be changed in the foreseeable future, which implies that the right of family members to inherit land will continue. In the meantime, China has also been seeking mechanisms that will permit those who continue in farming to gain access to additional cultivated land through land institutional change, which is also expected to increase farmers' income by enabling economies of scale. In an attempt to accelerate this process, the RLCL further clarified the rights for transfer and exchange of contracted land. The most recent effort to secure land contract rights involved registering and certifying farmland for each rural household. According to Central Document No. 1 of 2013, China aims to complete registration and certification of all farmland within five years (i.e. by the end of 2017).

2 Lardy, Nicholas R., *Agriculture in China's Modern Economic Development* (Cambridge: Cambridge University Press, 1983).

3 Lin, Justin Y. "Rural Reforms and Agricultural Growth in China," *American Economic Review* 82, no. 1 (1992): 34–51; Brandt, Loren, Jikun Huang, Guo Li and Scott Rozelle, "Land Rights in Rural China: Facts, Fictions and Issues," *The China Journal* 47, no. 1 (2002): 67–97.

4 Liu, Shouying, Michael R. Carter and Yang, Yao, "Dimensions and Diversity of Property Rights in Rural China: Dilemma on the Road to Further Reform," *World Development* 26, no. 10 (1998): 1789–806; Kung, James Kai-sing, "Common Property Rights and Land Reallocations in Rural China: Evidence from a Village Survey," *World Development* 28, no. 4 (2000), 701–9; Yao, Yang, "The Development of the Land Lease Market in Rural China," *Land Economics* 76, no. 2 (2000): 252–66; Brandt et al., above, note 3.

5 Ji, Xianqing, Jikun Huang and Liangliang Gao, "Can the Current Chinese Farmland Policy Effectively Restrain the Land Adjust: An Empirical Analysis Based on the Village Level Data," *Journal of Agrotechnical Economics* 10 (2014): 4–11.

6 Kung, James Kai-sing, above, note 4; Yanjie, Zhang, Xiaobing Wang, Thomas Glauben and Bernhard Brümmer, "The Impact of Land Reallocation on Technical Efficiency: Evidence from China," *Agricultural Economics* 42, no. 4 (2011): 495–507; Huang, Jikun, and Scott Rozelle, "The Role of Agriculture in China's Development: Performance, Determinants of Successes and Future Challenges" in *Emerging Economies: Food and Energy Security, and Technology and Innovation*, eds. Parthasarathi Shome and Pooja Sharma (Springer Press, 2015).

To further facilitate land transfer and consolidation, China has tried to legally separate land operational rights from the current contract rights.<sup>7</sup> Although land transfer among farmers has taken place since the late 1980s and has also been encouraged by the government, there is no legal document that defines the rights of farmers who hold the land contract and the rights of those who operate the rented land after the land transfer. The plan to legally separate operational rights from contract rights was first announced in Central Document No. 1 of 2015.

## Impacts of land reforms

The effects of the HRS on agricultural productivity, the equitable distribution of land to farmers and rural poverty alleviation in the early reform period are obvious and have been well documented. Most studies show that the HRS accounted for about 40–50 per cent of the total increase in output during the period 1978–1984.<sup>8</sup> Researchers have also documented empirical impacts that go beyond increased output. According to McMillan et al.,<sup>9</sup> the early reforms in China increased total factor productivity (TFP) substantially, accounting for 90 per cent of the total rise (23 per cent) between 1978 and 1984. Similarly, Jin et al.<sup>10</sup> report that land reform was a major contributor to a rise in TFP that exceeds 7 per cent annually. The significant positive impacts of the HRS on agriculture and the equitable distribution of land are also considered to be the principal reasons for the massive reduction in rural poverty that took place in the early reform period.

The literature also shows that legal and policy efforts to secure land tenure in China have been successful, and facilitated farm investment and land transfer. For example, although a number of studies show that the high frequency of land reallocation acted as a disincentive to farmers to invest in the land,<sup>11</sup> Ji et al.<sup>12</sup> found that the percentage of villages that experienced a large land reallocation fell from more than 10 per cent in the late 1990s to only about 1 per cent in the early 2000s. Stabilizing land tenure by prohibiting land adjustment is expected to have a positive impact on farmers' incentive to invest in farmland. Several other studies have also found that the proportion of land in China that is rented is increasing.<sup>13</sup>

However, several challenges remain. Expansion of farm size does not necessarily lead to significant land consolidation in many villages. The equity of land allocation in terms of soil quality and distance from village residence under the HRS results in small-scale farms with at least three or four plots that are geographically dispersed.<sup>14</sup> There is increasing concern about low productivity and land fragmentation.<sup>15</sup> Despite the fact that increasing numbers of rural households are migrating to urban areas, there is no exit mechanism.

7 Huang, Jikun, and Jiping Ding, "Institutional Innovation and Policy Support to Facilitate Small-Scale Farming Transformation in China," *Agricultural Economics* 47 (2016) supplement 227–37.

8 Fan, Shenggen, "Effects of Technological Change and Institutional Reform on Production Growth in Chinese Agriculture," *American Journal of Agricultural Economics* 73 (1991): 266–75; Lin, Justin Y., above, note 3; Huang, Jikun, and Scott Rozelle, "Technological Change: The Re-Discovery of the Engine of Productivity Growth in China's Rural Economy," *Journal of Development Economics* 49 (1996): 337–69.

9 McMillan, John, John Whalley and Lijiang Zhu, "The Impact of China's Economic Reforms on Agricultural Productivity Growth," *Journal of Political Economy* 97, no. 4 (1989): 78–807.

10 Jin, Songqing, Jikun Huang, Ruifa Hu and Scott Rozelle, "The Creation and Spread of Technology and Total Factor Productivity in China's Agriculture," *American Journal of Agricultural Economics* 84, no. 4 (2002): 916–39.

11 Li, Guo, Scott Rozelle and Loren Brandt, "Tenure, Land Rights, and Farmer Investment Incentives in China," *Agricultural Economics* 19, no. 1–2 (1998): 63–71; Jacoby, Hanna G., Guo Li and Scott Rozelle, "Hazards of Expropriation: Tenure Insecurity and Investment in Rural China," *American Economic Review* 92, no. 5 (2002): 1420–47.

12 Ji, Xianqing et al. Above, note 5.

13 Deininger, Klaus, and Songqing Jin, "The Potential of Land Rental Markets in the Process of Economic Development: Evidence from China," *Journal of Development Economics* 78 (October 2005): 241–70; Gao, Liangliang, Jikun Huang and Scott Rozelle, "Cultivated Land Rental Market and Investment in China," *Agricultural Economics* 43, no. 4 (2012): 391–403; Huang, Jikun and Jiping Ding, above, note 7

14 Tan, Shuhao, Nico Heerink and Futian Qu, "Land Fragmentation and its Driving Forces in China," *Land Use Policy* 23, no. 3 (2006): 272–285.

15 Fleisher, M. Belton, and Yunhua Liu, "Economies of Scale, Plot Size, Human Capital, and Productivity in Chinese Agriculture," *Quarterly Review of Economics and Finance* 32, no. 3 (1992), 112–23; Wan, Guang H. and Eniang Cheng, "Effects of Land Fragmentation and Returns to Scale in the Chinese Farming Sector," *Applied Economics* 3, no. 2 (2001): 183–94; Jia, Lili, and Martin Petrick, "How Does Land Fragmentation Affect Off-farm Labor Supply: Panel Data Evidence from China," *Agricultural Economics* 45, no. 3 (2014): 369–80.

## Institutional innovation, land rental markets and small-scale farming transformation<sup>16</sup>

As farmland is owned by villages, and the sale of farmland is prohibited, the development of a rental market in land is critical to the increase of farm size and land consolidation. The development of a land rental market and institutional change related to land in China provides an interesting example of how to reform land institutions to facilitate small-farm transformation and play important roles in land transfer as well as in equity and efficiency.

In China, with an average farm size of less than 1 hectare and nearly 40 per cent of the world's small farms, average farm size followed a similar falling trend until the mid-2000s.<sup>17</sup> The rate of transfer of cultivated land was only moderate before the mid-2000s but has accelerated since the late 2000s. By the end of 2013, nearly 53 million (or 23 per cent) rural households rented out their cultivated land, land that accounted for 26 per cent of total cultivated land under the HRS.<sup>18</sup> Expansion of the land rental market has halted the falling trend in average farm size since the early 2000s. By 2013, average farm size in China as a whole reached 0.78 hectares, 37 per cent higher than in 2003.<sup>19</sup> In north and north-east China, average farm size nearly doubled over the same period. The most striking finding is the recent rapid emergence of medium-sized and large farms in many regions of China.

There are many reasons behind the changes in the size and composition of farms in recent years. Huang and Ding<sup>20</sup> show that a major driving force, in addition to farm mechanization, policy support for land consolidation,<sup>21</sup> and the rapid rises in wage and off-farm employment since the mid-2000s, is the land transfer service, an institutional

innovation to reduce the transaction costs of land transfer incurred by farmers. This finding confirms the early observation that the high transaction cost of land transfer is a major barrier to expansion of the rental market and farm size.<sup>22</sup>

Land transfer service centres are a land transfer platform. With the remit of separating land operational rights and the contract rights, and to facilitate land operational right transfers, various cultivated land transfer service centres have been created by local governments since the late 2000s. Most of these land transfer service centres/platforms have been established at township level. In some cases, larger networking platforms pooling rental information across townships have also been set up at county or provincial level.<sup>23</sup> The principal functions of these land transfer service-centres are (1) conducting land rental market surveys and collecting information on people willing to rent out their land; (2) facilitating land operational right transfers by providing clients with information on location, area, major characteristics and suggested prices for each piece of land to be rented out; (3) preparing formal land contracts when land transfer transactions are completed and keeping land transfer contract file records; and (4) being responsible for land transfer contract dispute mediation.<sup>24</sup>

## Discussion and concluding remarks

In China, farmland tenure is complicated and unique. After nearly four decades of reform, the land tenure system consists of three rights: village collective ownership rights, individual household contract rights and land operational rights. Given the unequal land distribution and its social consequences in more than 2,000 years of feudal society in China, the country's leaders believe that private

16 The discussions in this section are mainly from a recent study by Huang, Jikun, and Jiping Ding. Above, note 7.

17 Huang, Jikun, and Jiping Ding. Above, note 7.

18 MOA (the Ministry of Agriculture of China), "The Status of Transferring Rural Household Responsibility Land in 2013," *Rural Business and Management* 5 (2014): 42.

19 Huang, Jikun, and Jiping Ding. Above, note 7.

20 Huang, Jikun, and Jiping Ding. Above, note 7.

21 The policy supports for land consolidation include subsidies in purchasing machineries and agricultural infrastructure investment and providing subsidized loans for large-scale farms, including land cooperatives.

22 Carter, Michael R., and Yang Yao, "Local versus Global Separability in Agricultural Household Models: The Factor Price Equalization Effect on Land Transfer Rights," *American Journal of Agricultural Economics* 84, no. 3 (2002): 702–15; Jin, Songqing, and Klaus Deininger, "Land Rental Markets in the Process of Rural Structural Transformation: Productivity and Equity Impacts from China," *Journal of Comparative Economics* 37, no. 4 (2009): 629–46; Brandt et al., above, note 3.

23 There are two reasons why a land transfer service centre might be established in a township rather than a village. First, on the supply side, establishing a land transfer service centre requires some necessary conditions, such as office space, service facilities, scale of service, staff and an operational budget. The township is the lowest level in the government hierarchy and has the ability to offer a land transfer service. Currently, few villages in China have the capacity to provide these facilities. Second, on the demand side, farmers prefer a formal land contract that is drawn up at the township government office and witnessed by government officials, who are also responsible for land transfer contract dispute mediation.

24 Huang, Jikun, and Jiping Ding. Above, note 7.

landownership does not necessarily enrich farmers. The recent financial crisis only confirms this opinion. Despite the fact that millions of migrants in China were laid off in off-farm sectors between October 2008 and April 2009, there was no civil unrest as many migrants returned home and took up on-farm work.<sup>25</sup> This is because households in the rural villages own the land contract rights, which include almost all rights of landownership. Farmland expansion and consolidation can occur through the land rental market.

China's land reform is also unique among land reforms in countries in Asia and the rest of world. Prompted by the pre-existing diversity and dimensions of land institutions, political pressure for land reform differs both between countries and also over time within a particular country. In contrast to the slow agrarian reforms that have taken place over more than 60 years in India<sup>26</sup> and the Philippines<sup>27</sup> or the radical privatization of land in the former Soviet Union,<sup>28</sup> China's rural land reform has been gradually and decisively implemented, with its own characteristics, over the past four decades. The core of land reforms in China is the coexistence of collective ownership overseen by local village committees and the vesting of land contract rights in households. Since implementation of the HRS, reform has focused on ensuring land tenure security and policies aimed at facilitating the land transfer and expansion of farm size. The only country that has followed suit with a land reform similar to that of China is Vietnam.<sup>29</sup>

Institutional arrangements for transferring land through land transfer platforms and separating land operational rights from the contract rights during land transfer are also innovative. The local land transfer platforms significantly reduce land transaction costs. This, together with the separation of the land operational rights from the contract rights, has stimulated land transfer and farm size expansion. Even if they do not own the land they cultivate, households with contract rights can easily increase the size of their farm by renting land from other households or can move out of farming to work off-farm by renting out

the operational rights of their contracted land. In recent years, the above institutional changes have assisted many small-scale farms to scale up their farming operations and at the same time helped other small-scale farms to rent out land and move to off-farm employment.

However, despite the increase in the transfer of land among farmers and gradually rising farm size, land consolidation still faces challenges. Expansion of farm size without a significant reduction in the number of land plots can reduce land productivity. The good news is that several local land institution reform pilots have emerged to deal with land fragmentation. These include, but are not limited to, the recent developments of land cooperatives and land shareholding as well as land reallocation to consolidate land in some villages. However, the impacts of these innovations and whether they can be scaled up or transferred to other regions are issues that need further study.

The experiences and lessons from China's land reforms have policy implications for many developing countries. First, getting land institutions right by allocating land equally to all village households in the initial stage and then securing and stabilizing land contract rights thereafter is critical to the incentivization of farmers, productivity growth and inclusive rural development. In developing countries, the poorest in rural areas often tend to be landless farmers, indicating that there is also a link between access to land resources and poverty alleviation.

Second, there are often market failures in farmland transformation and therefore institutional and policy intervention are needed. With rising rural populations, average farm size is expected to continue falling in many developing countries. China's recent experience shows that land rental markets can play an important role in consolidating farm operational units. Services of this type may also play roles in other countries, helping landless farmers to access land, assisting some small-scale farmers shift to off-farm employment and enlarging small farms whose owners want to continue in farming.

25 Huang, Jikun, Huayong Zhi, Zhurong Huang, Scott Rozelle and John, Giles, "The Impact of the Global Financial Crisis on Off-farm Employment and Earnings in Rural China," *World Development* 39, no. 5 (2011): 797–807.

26 Banerjee, Abhijit, and Lakshmi Iyer, "History, Institutions, and Economic Performance: The Legacy of Colonial Land Tenure Systems in India," *American Economic Review* 95, no. 4 (2005): 1190–213.

27 Elvinia, Jose, "Is Land Reform a Failure in the Philippines? An Assessment on CARP," in *Limits of Good Governance in developing countries*, eds. H. Kimura, Javier A.B. Suharko and A. Tangsupvattana (Gadjah Mada University Press, 2011), 333–62.

28 Lerman, Zvi, Csaba Csaki and Gershon Feder. *Agriculture in Transition: Land Policies and Evolving Farm Structures in Post-Soviet Countries* (Oxford: Lexington Books, 2004).

29 Do, Quy-Toan, and Iyer Lakshmi, "Land rights and economic development: Evidence from Vietnam," *Economic Development and Cultural Change* 56, no. 3 (2008): 531–79.

Third, in countries where the sale of farmland is restricted, land institutional reform, in the form of the separation of land operational rights from the ownership rights and/or contract rights, also has important implications for achieving the goals of equity and efficiency. On the one hand, China now has about 260 million rural households that hold contract rights. They are “landlords” as their contract rights will remain unchanged in the long term and can be inherited by family members. On the other hand, land can be consolidated and allocated to those farmers who decide to stay in farming and are confident of earning a profit from farming even after they pay rent for land at the market price.

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# Guidance on responsible agricultural supply chains

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## Abstract

Following the introduction of a host of new standards for responsible agriculture practices by international organizations, attention is turning to approaches to implementing those standards. A major challenge to realizing international standards in the agri-food industry is the lengthening of supply chains globally. To facilitate business efforts to manage risk throughout supply chains, the Organisation for Economic Co-operation and Development and the Food and Agriculture Organization of the United Nations developed the OECD-FAO Guidance for Responsible Agricultural Supply Chains (RASC) through a multi-stakeholder process. Issued in May 2016, the RASC provides a framework for businesses of all sizes to ensure that international standards are applied throughout their enterprises. The approach reflects current thinking on responsible business practices, notably by treating audit and certification schemes as one of many options for risk management rather than as comprehensive solutions. Despite the RASC's utility, it provides insufficient guidance on working with small and medium-sized enterprises as well as smallholders. To advance implementation of the RASC framework, efforts to raise industry awareness, pilot studies, particularly involving smallholder farmers, and the development of more specific good practice guides will be important next steps.

## Introduction

Agricultural supply chains touch on a wide range of legal, regulatory and development considerations. Although national and international regulations have covered aspects of these supply chains, such as food safety or trade, for many years, in response to a variety of global policy and developmental concerns, many elements of agriculture are coming under regulation – generally in the form of voluntary instruments – at the international level for the first time. Significant examples include the Voluntary Guidelines for the Governance of Tenure of Land, Fisheries, and Forestry (VGGT)<sup>1</sup> and the Principles for Responsible Investment in Agriculture and Food Systems.<sup>2</sup> Taken together, these developments provide normative clarity to actors in the agricultural sector that was previously unavailable.

Despite the increased clarity these initiatives offer, they are substantially oriented to the obligations of states. Actors with a commercial focus are not entirely clear how these norms and standards apply to their activities and how they could be implemented. With the development and release of the Organisation for Economic Co-operation and Development (OECD)–Food and Agriculture Organization of the United Nations (FAO) Guidance for Responsible Agricultural Supply Chains (RASC)<sup>3</sup> in May 2016, greater definition of the ways in which business and other commercial actors can apply these standards is now available. A key achievement of the RASC is that it complements other normative guidance developed in the agricultural sector by enabling an integrated approach to operationalizing multiple responsible agricultural instruments through a supply-chain management framework.

1 FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

2 FAO. 2014. *Principles for Responsible Investment in Agriculture and Food Systems*. [http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS\\_Principles\\_Oct\\_2014\\_EN.pdf](http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf).

3 OECD-FAO. 2016. *OECD-FAO Guidance on Responsible Agricultural Supply Chains*. <http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>.

In this article, I provide an overview of the RASC and relate it to other recent normative developments in the agricultural sector. I describe the process through which it was developed and examine the main normative provisions and modalities for achieving its regulatory effect. I then contrast and identify complementarities with another similar guide, the International Finance Corporation's (IFC) *Good Practice Handbook on Assessing and Managing Environmental and Social Risks in an Agro-Commodity Supply Chain* (the IFC Handbook).<sup>4</sup> In the final section I relate some of the limitations of the RASC and offer suggestions for subsequent action. Overall, I conclude that the RASC is an important source of guidance for private enterprise in the agricultural and food sectors that complements existing business responsibility standards, including the IFC Handbook.

## Why responsible agriculture and why now?

While the fact of the emergence of new instruments and guidance on responsible agriculture is clear, less obvious are the reasons for so much activity. Rather than one reason, there are many explanations for these developments. These include the anticipation of significant global demand for food and expected increase in investment in the sector, general support for human rights standards and re-regulation following deregulation. Together these trends go some way to explaining the trend towards responsible agriculture.

As background for its adoption, the introduction to the RASC references the often cited projected confluence of events, which include rising population, higher incomes and changing diets, that is likely to increase demand for food. In anticipation of these trends, global investment in agriculture is expected to grow. Much of this growth is projected to occur in developing countries. At the same time, the lack of available arable land in many regions of the world – as a result of land degradation, urbanization and biofuel cultivation – coupled with the relative abundance of arable land in Latin America and sub-Saharan Africa, estimated to have 90 per cent of the world's

supply, has raised investor interest in land. These regions are likely to account for the vast majority of the expansion of land under cultivation in the future. Abuses occurring in some transactions, particularly large-scale acquisitions, have galvanized civil society and states into action. This issue clearly spurred demand for the VGGT. Concerns about other aspects of agricultural investment have led to the development of other instruments as well.

Another important motivation for the RASC and other responsible business conduct standards is the continued advancement of international human rights standards. As the social and political recognition of human rights has grown, so too has the number of new instruments designed to extend the reach of human rights. This trend is underscored by the fact that after nearly 40 years of debate in the United Nations about the activities of transnational corporations, in 2011, the United Nations Human Rights Council endorsed the Guiding Principles on 6 July 2011.<sup>5</sup> A central feature of the responsible agricultural instruments is that a human rights-based approach to development be integrated into the agricultural sector.

Efforts to define responsible agricultural practices are part of the broader phenomenon of re-regulation following waves of deregulation in the sector. After a period of heightened regulation of agriculture in the mid-twentieth century, including price supports and tariffs, the past three decades have been marked by liberalization and decreasing levels of regulation over agriculture.<sup>6</sup> Following these changes, agricultural trade has grown substantially. Against the backdrop of the increasing globalization of agricultural trade and investment, the need for new regulatory approaches has become apparent. As in other settings, this re-regulation or new regulation no longer applies command and control models but instead relies on self-regulatory and voluntary approaches.<sup>7</sup>

Leaving aside the public policy and development rationales for these standards, the business case for companies to invest in environmental and social (E&S) risk management in agro-commodity supply chains has largely centred on managing customer expectations and corporate reputation in the form of value protection,

4 International Finance Corporation (IFC). 2013. *Good Practice Handbook: Assessing and Managing Environmental and Social Risks in an Agro-Commodity Supply Chain* (hereinafter "IFC Handbook"). [http://www.ifc.org/wps/wcm/connect/138bd80041bb99d6846e840caa2aa08/IFC\\_Handbook\\_AgroSupplyChains.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/138bd80041bb99d6846e840caa2aa08/IFC_Handbook_AgroSupplyChains.pdf?MOD=AJPERES).

5 United Nations General Assembly resolution A/HRC/RES/17/4. <https://business-humanrights.org/sites/default/files/media/documents/un-human-rights-council-resolution-re-human-rights-transnational-corps-eng-6-jul-2011.pdf>.

6 Winders, Bill, "US Agricultural Policy and the globalization of world agriculture", in *Handbook on the Globalization of Agriculture*, eds. Guy M. Robinson and Doris A. Carson (Edward Elgar, 2015), 157.

7 Baldwin, Robert, Martin Cave and Martin Lodge (eds.), *Oxford Handbook of Regulation* (Oxford University Press, 2010).

quality assurance and defensive risk management.<sup>8</sup> The challenge for states and other stakeholders who want to see these standards upheld is to find ways of encouraging their adoption and adherence. Of course, the positive business case for adopting sustainability practices will itself drive a certain portion of companies to address E&S risks to enhance financial performance. Guidance such as the RASC can strengthen both risk management and sustainability-driven practices.

## Background to the RASC

The Guidance was developed through a partnership between the OECD and the FAO from 2014 to 2016. The process was guided by a multi-stakeholder steering committee, including representatives of civil society and business. It was approved by the OECD Investment Committee, the OECD Committee for Agriculture and the Cabinet of the FAO Director-General.

In this regard, the process of developing the Guidance differed somewhat from that used to develop other recent responsible agricultural standards, many of which were developed and endorsed by the Committee on World Food Security (CFS). The RASC document is distinctive in comparison with many of the other responsible agriculture instruments developed in recent years in that it does not prescribe new norms. This difference may not be substantively significant because the purpose of the Guidance is to facilitate adherence to existing standards as opposed to developing new standards. It defines process more than substance. The utility of the RASC is thus to facilitate the translation of these norms and standards into business operations so that they can be put into practice.

Among the normative standards from which it draws, the RASC emphasizes the OECD Guidelines for Multinational Enterprises,<sup>9</sup> Principles for Responsible Investment in Agriculture and Food Systems (the CFS RAI Principles), and the VGGT. (For reasons not discussed in the document, the RASC does not refer to the Voluntary Guidelines on Securing Sustainable Small-Scale Fisheries endorsed by the CFS in 2014.) The RASC seeks to help enterprises observe these existing standards throughout their entire supply chains, from downstream raw material providers through upstream processing, transportation and distribution to retailing. It is intended to cover firms

of all sizes – including smallholder farmers – and relates both to firms that are purchasers as well as to suppliers. As described further below, this range of firms complicates the challenge of creating a single framework for responsible agriculture risk management and sustainability.

## Regulatory model

Ensuring responsible business conduct throughout the supply chain has been a major focus of corporate social responsibility (CSR) initiatives for the past 20 years. During this time, audit and certification systems have been the most prevalent and influential approach to supply chain management. The RASC comes at a time when the field of CSR has increasingly moved away from an audit-oriented model of supply chain due diligence. Rather than undertaking costly (or requiring suppliers to) and obtaining certification against particular codes or social standards, increasing numbers of companies are applying risk-based approaches to due diligence. To illustrate, in its annual report, the grocery company Tesco PLC explained the shift in its due diligence approach.<sup>10</sup>

*Historically, our Ethical Trading programme was based on audits by independent companies, with compliance-based corrective action plans followed up by the same audit companies. Over time, we realised we could be even more effective by changing this model, particularly when the most important human rights challenges often occur in the lower tiers of long, global supply chains. As a result we have been developing our own capability to identify human rights risk through a due diligence process that looks end-to-end in the supply chain and seeks to address systemic challenges, such as modern slavery, wherever they occur. Rather than relying only on an audit model, we will be looking to focus our resource on collaborating with supplier partners, civil society, union and worker representation groups, and government bodies. We will also be looking to develop new grievance mechanisms.*

While audits may have a place in this model, they are only one of a range of tools available to address human rights risks. Indeed, while not rejecting audit and certification, the RASC devotes little attention to these approaches and conceives of them as one component of the mix of tools available.

<sup>8</sup> IFC Handbook. Above, note 4.

<sup>9</sup> OECD. 2011. *OECD Guidelines for Multinational Enterprises*. <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>10</sup> Tesco PLC. 2016. *2016 Strategic Report* 21. <https://www.tescopl.com/media/264195/strategic-report-2016.pdf> (accessed 20 November 2016).

As the Tesco quote suggests, part of the reason for the turn away from auditing is growing recognition that the scope of certification is too narrow and often caused by systemic governance and societal problems. Individual suppliers may pass audits, but if basic regulatory structures are deficient the audits will not suffice. Following disasters such as the Rana Plaza factory collapse in Bangladesh, global companies are increasingly accepting the need to address these broader concerns, which are frequently developmental in nature.

The trend among larger agro-businesses away from vertical integration towards more flexible contractual arrangements is central to the more hands-on due diligence that this new CSR model entails. Rather than purchasing solely on the spot market, as seen in other industries, agribusinesses are developing cooperative approaches to working with suppliers. In these types of relational contracting arrangements, purchasers will build long-term relationships with suppliers, which facilitates more collaborative approaches. Overall, these trends are mirrored in the field of CSR, where the need for companies to engage with their suppliers proactively to encourage and support more responsible business practices is becoming more common.

In light of these trends, the use of audit and certification systems is likely to be reserved for arm's length procurement practices. Overall, the trend away from vertical integration and towards looser forms of vertical coordination may affect the manner but not the basic principles upon which the RASC may be applied.

## Main elements of RASC

Overall, the Guidance provides a risk management framework. It has a straightforward structure comprising four parts: two main sections and two annexes. Section 1 contains a model enterprise policy outlining standards that enterprises should observe to build responsible agricultural supply chains. These policies derive from the instruments and standards cited earlier. Section 2 includes a framework for a five-stage risk-based due diligence process that firms "should follow to identify, assess, mitigate and account for how they address the adverse impacts of their activities." The two annexes serve as resource material for

employing the system defined in Sections 1 and 2. Annex A describes the major risks that enterprises face in the sector and measures to mitigate those risks and Annex B provides guidance for applying standards of free, prior and informed consent when engaging with indigenous peoples.

To understand the specific ways in which the RASC interacts with recent responsible agriculture guidance, consider its provisions on land. First, the model policy provides a baseline.<sup>11</sup> It advocates "respecting legitimate tenure rights" potentially affected by company activities and refers to the VGGT definition of tenure. This definition encompasses all manner of tenure, whether formal or informal, and encompasses natural resources.<sup>12</sup> It also states a commitment to transparency. It calls on businesses to avoid or minimize the displacement of legitimate tenure holders whether economically or physically, with the caveat that environmental, social and financial considerations must be balanced and particular attention given to poor and marginalized people. It calls on businesses to confirm the understanding that state expropriation is limited to situations in which there is a clear public purpose and that prompt, adequate and effective compensation should be provided. Enterprises should "seek to ensure" that any negative effects on tenure arising from their operations will result in prompt, adequate and effective compensation.

In Annex A, providing guidance on the risks of adverse impacts, land tenure is identified as a significant concern. Citing studies of large-scale agribusiness investments by the World Bank and the United Nations Conference on Trade and Development, the RASC notes that disputes over land, particularly involving claims of informal rights violations and a lack of transparency in transactions, are the most common source of grievances. Similarly, IFC and the Multilateral Investment Guarantee Agency (MIGA) Compliance Advisor Ombudsman report that over half of cases submitted to it concern land, among which 22 per cent relate to land acquisition, 33 per cent to compensation and 32 per cent to resettlement.<sup>13</sup> The RASC notes that 70 per cent of landownership units in developing countries are informal. This means that businesses may not simply rely on state legal frameworks to ensure that rights are not violated. To mitigate this risk, the RASC counsels firms to be proactive.

<sup>11</sup> OECD-FAO. 2016. RASC, p. 26.

<sup>12</sup> It is the same definition applied in the CSF RAI Principles. Accordingly, through the VGGT, tenure is now established as a concept in international law.

<sup>13</sup> Compliance Advisor Ombudsman. 2015. *Advisory Series CAO Cases: Land*. [http://www.cao-ombudsman.org/howwework/advisor/documents/CAO\\_AdvisorySeries\\_LANDr4.pdf](http://www.cao-ombudsman.org/howwework/advisor/documents/CAO_AdvisorySeries_LANDr4.pdf).

Among the risks the RASC highlights are the following:

- The prevalence of informal title in developing countries is high, and companies need to ensure that they do not limit their land-related due diligence assessments to formal title but ensure that any consultation process includes all rights holders.
- In some countries, national rules to ensure engagement with rights holders in good faith and a culturally appropriate manner or to identify modalities for the transfer of land or natural resources and means of obtaining redress are lacking.
- Businesses need to ensure that operations do not lead to the resettlement of local communities without meaningful compensation. The risk of unlawful expropriation is greater in developing countries, where the definition of public purpose may be broad, land use plans are weak and corruption levels in land management and land speculation may be significant.

Much of this analysis is based on a model of greenfield investment, but the RASC also considers risks associated with acquisitions of existing assets or enterprises. In such cases, it suggests the need to redress prior land transactions that may be inconsistent with its standards.

The risk mitigation efforts suggested in the RASC include the need to identify rights holders, something clear from the discussion. The Guidance also considers the need to establish committees of relevant stakeholders to advise on impact assessments, management, monitoring and contingency plans. Such committees should include “adequate representation of indigenous peoples, local communities and marginalized groups.”<sup>14</sup> To avoid physical or economic displacement, enterprises are encouraged to consider feasible alternatives. Where the impact is likely to be negative, they should work with government to ensure fair, prompt and appropriate compensation by:

- holding good faith, effective, meaningful consultation on the compensation offered;
- giving preference to land compensation similar in quality, size and value, including associated assets such as water;
- monitoring and implementation of compensation arrangements.

Enterprises should “play an active role” in these processes where government capacity is limited. As the foregoing illustrates, while providing useful guidance on specific practices, the risk management model is based on the recognition that different firms will apply them differently.

## Development and capacity

A key challenge in developing guidance for the active agricultural supply chain is the heterogeneity of firms involved. Large agribusiness enterprises with extensive global supply chains are first to come to mind but the scope of RASC includes small and medium-sized enterprises (SMEs) as well. This is important to ensure consistency in the standards and monitoring systems.

While this is a desirable approach, its breadth complicates matters. In fact, the RASC equivocates on the degree to, and manner in which, it applies to SMEs. On the one hand, to accommodate the diverse capabilities of different firms, the RASC recognizes that the risk management systems implemented by SMEs will not be as sophisticated as those of larger firms. The approach to due diligence adopted by firms should be proportionate to the context, the location of operations, the nature of the firm’s products or services and the severity of actual or potential adverse impacts.

The RASC thus recognizes that smallholders and SMEs may lack the capacity to carry out due diligence as described in the guidance, but it encourages them to “remain involved in the due diligence efforts of their customers in order to improve their capacity and be able to carry out proper due diligence in the future.”<sup>15</sup> This language illustrates that the regulatory model RASC embodies differs from certification schemes in important respects. It does not adopt a one size fits all model, which all suppliers must apply. Instead, it recognizes the development process involved in raising standards. Consistent with this approach, the system does not require larger firms to force SMEs or smallholder suppliers to apply the same due diligence practices.

<sup>14</sup> OECD-FAO. 2016. RASC, p. 63.

<sup>15</sup> Ibid., p. 20.

Even if they do not require suppliers to undertake certification, larger firms that apply strong due diligence in their operations will, of course, have to examine the practices of their suppliers. Consider, for example, a confectionery company that sources raw cocoa from cooperatives in a developing country. As part of the buyer's responsible business policies it prohibits forced labour, which is consistent with the RASC model policy. How is the company to monitor this prohibition?

Obviously the practices of the suppliers will need to be reviewed in this process. If instances or a suspicion of forced labour arise in the due diligence, under any responsible business standard, the confectionery company will either cease to do business or demand changes by the supplier. The net result is that the supplier will have to apply tighter due diligence itself. Indeed, the suggestion that suppliers must "remain involved in the due diligence efforts of their customers" is a bit euphemistic for what is likely to occur.

To this point, on the same page in the RASC, there is a section about addressing adverse impacts. Citing the OECD Guidelines for Multinational Enterprises, it references the well-established international standard that companies should "avoid causing or contributing to adverse impact ... through their own activities, and address such impacts when they occur."<sup>16</sup> They should likewise "seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products, or services by a business relationship." To accomplish this goal, the RASC calls on enterprises to "encourage, where practicable, business partners, including suppliers and subcontractors, to apply the responsible business conduct principles compatible with the OECD Guidelines."<sup>17</sup>

Because of these provisions, it is unclear the degree to which SMEs and smallholders can avoid having to apply the same substantive criteria as large firms. While one could argue that the due diligence practices small firms must apply can be less onerous, what that means in practice is probably very little.

In contrast to the VGGT and CFS RAI Principles, the RASC devotes little discussion to smallholder farmers. Indeed, at least one of the civil society commentators to the draft RASC made this observation during the consultation process.<sup>18</sup> The CFS RAI Principles refer to "responsible investment" as including "priority investments in, by, and with small holders, including those that are small scale producers, processors, pastoralists, artisans, fishers, communities closely depending on forests, indigenous peoples, and agricultural workers."<sup>19</sup> Given the variety of efforts under way to encourage integration of smallholders into agribusiness supply chains, the failure of the RASC to address smallholders in greater detail is disappointing. Although the RASC applies to firms and agricultural producers of all sizes, the sophisticated risk management framework it includes is oriented to larger firms with global supply chains.

The obvious concern is that the desire to uphold stronger standards will discourage investment that can further development, which in turn can support efforts to apply and enforce higher standards. Some of the hesitation about applying heightened standards to SMEs or smallholders can be addressed through the type of cooperative supplier arrangements discussed earlier. While these arrangements may not completely overcome the risk of suppliers being cut off by buyer firms, they do help illustrate a way forward. Much will depend on the details of the collaboration, including the types of assistance buyers are able and willing to provide.

## Comparison with the IFC Handbook

The approach outlined in the RASC differs from that in the IFC Handbook in some important respects. These include their approach to audit and certification, a differing emphasis on avoidance of risk versus positive benefits, and their normative scope. Despite these differences, the two documents are mutually supportive.

As described earlier, the RASC largely avoids questions about the role of certification. In contrast, the IFC Handbook makes a case for the use of certification standards in responsible supply chain management. They have particular utility in the context of open market purchase transactions as opposed to vertically integrated

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Smaller, Karin, and Julie Denkens, 2015. *IISD Commentary to the OECD-FAO Guidance on Responsible Agricultural Supply Chains*. <https://www.iisd.org/sites/default/files/publications/fao-oecd-guidance-responsible-agricultural-supply-chains-commentary.pdf>.

<sup>19</sup> Committee on World Food Security, n.d. *Principles for Responsible Investment in Agriculture and Food Systems*. [http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS\\_Principles\\_Oct\\_2014\\_EN.pdf](http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf).

or vertical cooperative arrangements. At the same time, the RASC recognizes that certification is not a panacea, as “instances where consumers are willing to pay more for sustainability certification have historically been limited to niche markets.”<sup>20</sup> Both views have merit. The role of certification and audit is likely to remain in flux but it seems increasingly clear that it will play a supporting rather than lead part.

Another point of contrast with the IFC Handbook is the RASC’s emphasis on the positive business case for responsible supply chain practices. The RASC is a risk management tool in the first instance. Its approach is consistent with enterprise risk management practices, yet it does not fully encompass the CSR emphasis on win–win solutions whereby ethical conduct may be to the economic advantage of companies.

In addition to risk management, the IFC Handbook emphasizes the potential utility of E&S measures in terms of preventing legal challenges or liability stemming from E&S harms, which could translate to lower insurance rates and lower costs of capital. Other business considerations referenced in the guide include strengthening the supply base through improved relationships and cooperation with suppliers (something vertical coordination and relational contracting practices facilitate), enhancing efficiency and productivity through reductions in workplace conflict, or facilitating adherence to soft law standards. These observations are useful and can help explain how firms can be encouraged to apply the standards.

One limitation of the IFC Handbook is that it includes only a subset of responsible agricultural practices. The selected norms are based on two of the IFC Environmental and Social Safeguards: Performance Standard 2 (covering hazardous/harmful child labour, forced labour and significant safety risks relating to workers) and Performance Standard 6 (relating to significant conversion of habitats for managing E&S risks). To illustrate, two obvious issues lacking in the IFC Handbook are involuntary displacement and gender. The IFC Handbook suggests that companies can include a wider set of issues in their risk assessments and that the approaches contained in the Handbook can be applied. This does seem right. It contains detailed guidance on managing supply chains using two toolkits that can be applied in a variety of settings. The model policy in the RASC includes a wider set of issues but provides fewer details on the risk

management approaches firms can take. It also specifically reflects and draws upon many of the responsible agricultural instruments developed in recent years. Overall, as suggested in the RASC, as an optimal approach the two documents can – and probably should – be used together.

## Next steps

Notwithstanding the merits of the RASC framework, attention now needs to turn to implementation. Some steps that could be taken to facilitate its use by companies include pilot projects, particularly involving smallholder farmers and SMEs. Learning how the RASC can be applied to this segment of the agri-food value chain could be important to its ultimate effectiveness. Further, there is currently a lack of knowledge on good practices in responsible supply chain management in the sector, and the RASC offers an incentive and basis for gathering information on experience and good practices. Research and evaluation practices can help identify strengths and weaknesses in the framework and improve its application. Finally, raising awareness and sharing knowledge among stakeholders, particularly the private sector, can help encourage its application.

## Conclusion

There is an inherent limitation in the utility of supply chain responsibility systems, such as the RASC, that quite clearly target larger multinational firms. This limitation is that reputation rather than regulation is the main driver of adherence. Although in many countries law and regulation already require many of the measures the RASC calls for, these generally apply to the activity undertaken within a particular jurisdiction. The problem is that, in many countries, those rules are either not enforced or not enforced effectively and, when they are, apply only to domestic production. Unless purchasers are engaged in production directly in the jurisdiction by operating their own production facilities or farms, there is little aside from reputational risks to drive their adherence.

One important caveat to this point is that a growing number of relevant concerns are becoming matters of binding regulation, which increasingly have extraterritorial effect. Examples include rules and regulations relating to anti-slavery, anti-trafficking, conflict minerals, anti-corruption, and food safety and traceability. Similarly,

<sup>20</sup> IFC Handbook. Above, note 4.

the application of responsible agricultural standards by international financial institutions will drive firms entering transactions with them to apply these standards. Likewise, the growing recognition that sustainable business practices can generate positive economic returns offers additional incentives for companies to apply these standards. The combination of risk avoidance, positive incentives such as increased efficiency and productivity, and the increasing rigour of home state regulatory standards is likely to encourage corporate adherence to these standards.

The instruments and guidance on responsible agriculture that have been developed in recent years are important contributions that can potentially transform the sector. It is likely that projected increases in agricultural investment will outpace domestic efforts to implement law and regulation, which are needed to ensure that this investment is consistent with these international standards. The risk management approach offered by the RASC provides a way to encourage enterprises to adhere to these standards and promote their application by business partners. The challenge now is for firms to start using these tools and share insights that lead to their continued improvement. If done well, we can achieve goals of food security and social responsibility that can generate substantial benefits for many.

# Legal transition to affordable agricultural finance

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## Abstract

The problem of access to affordable high-quality food caused by deteriorating food security and accompanying price increases requires the private and public sectors to collaborate in an attempt to come up with efficient and sustainable ways of increasing both the quality and quantity of food production. Farmers' ability to access finance, whether to fund a next production cycle or to invest in better agro-technology, seems to be at the very centre of this problem. This article briefly presents policy dialogue and investment activities undertaken by the European Bank for Reconstruction and Development in an attempt to leverage private-sector activities by supporting development of enabling financial and legal frameworks. The article examines instruments aimed at facilitation of access to finance in the pre-harvest (crops receipts) and post-harvest (grain warehouse receipts) phases and studies recently implemented reforms in Ukraine and Serbia.

## Legal Transition Programme

Last year, the European Bank for Reconstruction and Development (EBRD) celebrated 25 years of operations since it was set up in 1991 to support the development of market economies in central and eastern Europe, gradually expanding to Central Asia, Turkey and the south and eastern Mediterranean. During these 25 years, EBRD countries of operation have undertaken demanding legal reforms in order to introduce legal systems facilitative to modern market economy-based businesses. Among others, effective tools such as centralized collateral registries, increased accuracy of land registries and firm contractual rules for various types of financial instruments have been introduced to increase the legal certainty of financial activities.

In order to contribute to the improvement of investment climate in the Bank's countries of operation, the Bank created the Legal Transition Programme with the aim of specializing in the provision of technical assistance and legal advice in order to help create an investor-friendly, transparent and predictable legal environment. Over the years, the programme has supported EBRD operational initiatives by conducting legal reforms in areas such

as energy efficiency, access to finance, the knowledge economy, local capital market development and more, as well as by addressing cross-cutting problems in the business environment of these countries through institutional reforms and capacity-building measures.

## Pre- and post-harvest finance legal development programme

As part of the Legal Transition Programme, the Bank's policy dialogue efforts in agriculture were stepped up in the last decade, during which period food prices increased and the food security issue became more significant, highlighting the problems that EBRD agricultural producing countries had to face and making more evident the need to assist countries in agricultural financing.

Small and medium-sized farmers in EBRD's countries of operation often face difficulty obtaining financing because of their inability to provide creditors with acceptable collateral. Most common types of collateral, such as land and/or machinery, are usually mortgaged in favour of long-term financing providers or procured on leasing and as such are not available for short-term finance. In a pre-harvest stage of production, this makes it difficult

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for farmers to secure affordable financing, exposing them to expensive and usually non-competitive financing schemes or forcing them to make hard choices as to what investment they can afford. Insufficient liquidity leads to underinvestment in the agriculture sector, resulting in lower productivity and profit (e.g. high-quality inputs to increase agricultural productivity). Post harvest, only a robust system of public warehouses for harvested crops would allow farmers to use the stored crops as collateral. However, both pre-harvest and post-harvest agricultural financing can efficiently operate only in a specifically tailored, properly regulated and facilitative legal environment.

Recognizing the potential for specific financial instruments to facilitate agricultural small and medium-sized enterprises' access to finance and the existing legislative and regulatory gaps preventing their development, the Bank introduced the Pre- and Post-Harvest Finance Legal Development Programme in 2011, building on the Bank's existing agricultural financing initiatives<sup>2</sup> aimed at improving financing conditions for farmers in EBRD countries of operation.

In order to overcome existing shortcomings, the programme consists of supporting the development, implementation and promotion of institutional reforms, both in the post-harvest context as a continuation of the warehouse receipt (WHR) reforms<sup>3</sup> and by promoting an innovative pre-harvest instrument (so called crop receipt) with the aim of facilitating the access to finance along the grain value chain. EBRD support usually consists of providing legal technical assistance for the development of new legal and/or regulatory provisions necessary for the creation or improvement of the pre- or post-harvest financing mechanisms as described above.

## Post-harvest financing (warehouse receipts)

Over the years, the EBRD has supported WHR reforms in Slovakia, Bulgaria, Romania, Poland, Lithuania, Moldova, Kazakhstan and more recently Serbia and Russia. Reforms are often followed or accompanied by investment projects, in particular with partner financial institutions, where the

risk of lending against warehouse receipts would be shared between the EBRD and the partner institutions. These investments provide extremely powerful demonstration effect to the investment community on the strength of the new financial instruments.

WHR financing, in a nutshell, consists of a collateralized commodity transaction in which the stored crop provides security for the loan. The financing cycle begins after the harvest. The harvested crop is stored in a licensed warehouse and the farmer is given a receipt proving that the commodity is physically in the warehouse, and on the basis of which financing will be extended. The system brings several participants together: farmers (depositors), warehouse owners and managers, banks and the government. The role of the government is to build a legal and institutional framework that ensures the performance of the system and minimizes transaction costs.

If properly designed, the system provides benefits for farmers in the form of enhanced access to finance and the ability to delay sale of the crop to take advantage of the seasonality of prices. Financial institutions gain by decreasing their risk exposure, through the utilization of collateral that is easier to enforce and usually recognized by central banks as very good collateral, and therefore lower capital utilization (enabling lower pricing).

In order for a WHR system to function properly, it is usually required to build it on four pillars, namely (a) simple and fast out-of-court enforcement procedures; (b) a receipt system that establishes and guarantees a clear and transferable title and security interest; (c) licensing and regular inspection of warehouses; and (d) a performance guarantee to prevent potential fraudulent actions and mismanagement of warehouses. Such a system usually requires the development of an electronic WHR instrument that is registered centrally and supported by clearly defined rights and obligations of all parties, including the rules and conditions for the issuance and registration of the receipts. Since the system needs to provide for efficient, typically out-of-court, enforcement, it is also essential to introduce an effective bailiff or other type of less formal enforcement system. Proper and adequate licensing and effective inspection of the warehouses require either private or public national inspection bodies to be established,

<sup>2</sup> Private Sector for Food Security Initiative and the Integrated Approach to Reform the Physical and Financial Infrastructure of the Grain value-chain.

<sup>3</sup> The EBRD focus on post-harvest financing goes back to 2000, when a US\$100 million Regional Warehouse Receipts Program aimed to establish in the Bank's countries of operation this type of commodity asset-backed financing standard in most market economies. The amount available for the programme has since been substantially increased following successful implementation.

educated and equipped. Last but not least, in order to increase the perception of reliability of the system from the financiers' perspective, a type of performance guarantee needs to accompany the right embedded in the receipt. This is usually achieved via an indemnity fund that is established by warehouses or the government and funded by fees from all participating warehouses. Participating warehouses must meet certain minimum standards and should be properly inspected on a regular basis, which enables participants to treat all receipts equally, regardless of the warehouse that has issued them.

The key to a successful WHR system is typically twofold. In addition to creation of above-mentioned institutional environment, it also requires a certain minimum level of favourable market conditions in order for the developing system to be able to evolve in a meaningful, market-based and self-sufficient manner. These conditions especially include the willingness of the major warehouse operators to participate in the system (bearing the costs of licensing and indemnity fund participation, etc.); the willingness of banks to use the system and to finance against the receipts once the system becomes operational; the willingness of a central bank to promote WHR as valuable collateral (decreasing provisioning against investment in WHR); and the willingness of potential users (farmers, processors that do not own their storage facilities, etc.) to use the system.

### Pre-harvest financing (crop receipts)

In 2010, the EBRD began promoting a new instrument, referred to as crop receipts. The instrument originated in Brazil, where it is known as the *Cédula de Produto Rural*<sup>4</sup> or "CPR," to encourage the financing of agricultural activities by private sector on a commercial basis. Several reform projects are currently ongoing in the EBRD region, with the first financing based on the newly introduced systems of crop receipts already being offered or about to be introduced.

Like the WHR financing, a crop receipts system is also structured around a specific legal provision (or a specific law), providing a standardized obligation to supply agricultural products or to make payment in the future to the holder of the receipt in return for received pre-harvest finance (monetary or in kind). A crop receipt is usually a negotiable document that can be accompanied by

security rights, such as mortgages, pledges and fiduciary liens (including a specific pledge over future harvest), and is usually registered in a public registry in order to be opposable to third parties. This obligation cannot be altered or evaded under any possible debtor's defence and can be incorporated as a security paper (if allowed by applicable legislation), further increasing its market value. In order to fully benefit from the instrument, a pledge over future harvest should be accompanied by swift enforcement of creditors' rights, including the possibility to issue an injunction in relation to the specific land plot in as little as 24–48 hours.

Therefore, when drafting a CPR-specific law (or appropriate amendments to existing laws), specific attention needs to be paid to various aspects of the property and contract law of the country implementing such reform. These include a clear and unambiguous definition of CPR obligations (to supply agricultural products or to make payment on a certain date or event), the creation of bill of exchange effects of these obligations (e.g. by setting aside effects of force majeure to the CPR obligation), creating tradability of the paper (if appropriate), introducing registration of the receipts to ensure their publicity, providing rights of inspection over future crops for creditors, as well as step-in rights in case of abandoning of production by the debtor, allowing creation of collateral over future agricultural products, resolving potential priority issues between mortgage holder over the land and the pledgee of future products over that land, and so on.

The major advantage of a well-functioning crop receipt system is the reduction of risks for potential lenders. The receipt and the accompanying pledge provide the financier with priority over the agricultural produce of a particular land plot until the obligation is finally settled and the out-of-court enforcement guarantees rapid execution, avoiding long and uncertain court proceedings. Crop receipts may further provide alternative liquid collateral where the underlying land has already been mortgaged and allow lenders to hedge their price risk.

Since 2010, the EBRD has promoted crop receipts reforms in Serbia, Ukraine and Russia and upon successful finalization of reforms investment projects are likely to follow, promoting the newly introduced instruments and demonstrating their potential to the local and international financial and agricultural community.

<sup>4</sup> The *Cédula de Produto Rural* is a Brazilian legal instrument created by Law no. 8.929, of 22 August 1994 ("Law 8.929/94"). Its purpose is to prefinance rural producers' crops/production, upon the promise to deliver either rural products or monies (depending on the type of CPR issued). In accordance with Brazilian law, only rural producers and/or their associations or cooperatives are entitled to issue CPRs, which makes the CPRs the milestone for private agribusiness financing in Brazil and the initial step for financing the whole agricultural production chain.

## Case study – Serbia crop receipt reform

One of the first countries to implement crop receipts reform was Serbia.<sup>5</sup> The FAO and EBRD conducted a feasibility study in 2011 on the need to introduce a pre-harvest financing instrument in Serbia. The study demonstrated a strong demand for the introduction of a new financing tool as Serbian farmers lacked viable options for obtaining short-term pre-harvest financing. Furthermore, the WHR system, which had previously been set up in Serbia, was helping farmers by providing enhanced access to credit in the post-harvest period. However, that system was of no or limited use in the pre-harvest period. It was concluded that allowing farmers to offer additional (valuable) collateral in the pre-harvest phase could improve access to existing scarce and rather expensive pre-harvest financing that was available on the market at that time. The study also concluded that existing legislation did not specifically provide for secured pre-harvest financing instruments.

Building on the results of the study, FAO and EBRD provided technical assistance to the Working Group established by the Serbian Ministry of Agriculture to develop a draft law on pre-harvest financing. After a series of drafting sessions and consultations with all major local and international stakeholders (banks, farmers, processors, traders and insurance companies) the final draft of the law was approved and the Serbian Parliament adopted a law on financing of agricultural production on 25 November 2014. The law increased the legal certainty, predictability and transparency of pre-harvest finance by supporting creditors' monitoring rights over production, creating a public register of outstanding crop receipts and facilitating the enforcement process by cutting down waiting time for initiation of enforcement proceedings, taking into account the specifics of the agricultural production.

Following the enactment of the law, the implementation of a functioning pre-harvest financing system required further efforts, in particular to set up a functioning register and to promote its use by commercial banks and input suppliers. The role of commercial banks and their understanding of the new instrument will be a critical condition for the success of the latter, and promotional activities are currently ongoing. The first crop receipt was successfully registered in a newly introduced electronic register in spring 2015. It will be interesting to monitor the development of the introduced systems and the effect they will have on agricultural access to finance in the coming period.

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<sup>5</sup> The process of implementation of crop receipts laws in Serbia took place in parallel with that in Ukraine, where the EBRD, together with the FAO, provided technical assistance to the Ukrainian government on the introduction of a pre-harvest financing legal framework in 2011. The Law of Ukraine on Agrarian Receipts, No. 5479-VI, was approved in 2012 and entered into force on 18 March 2013. After two years of joint effort by various international financial institutions (International Finance Corporation, United States Agency for International Development, etc.) to build the necessary technical infrastructure (register, by-laws, IT support) the financing based on the newly introduced system finally took off as a pilot project in Poltava region. In September 2015, the use of agrarian receipts was extended to another three regions – Kharkov, Cherkasy and Vinnitsa – with the intention of eventual national roll-out. The first crop receipts were issued in the pilot Poltava region in February to March 2015 and valued about UAH14 million (US\$635,000).

# Project effectiveness in rural development: can contract farming arrangements help?

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## Abstract

This paper is a very brief analysis of some of the main issues to be considered when assessing if and when contract farming is the right answer to rural development. When and how can a choice to implement a contract farming scheme be made and what are the minimum legal requirements and most appropriate enabling environment for said schemes to flourish? The author's journey has been a long one: four years in the close study of international experiences, partnering with the World Bank Group, the Food and Agriculture Organization of the United Nations and the International Institute for the Unification of Private Law to discover the work of others and learn from a plethora of case studies shared among the international community. Specifically, considerations of land security and tenure and their relevant impact are looked at more closely. Finally, the author introduces the latest work in the form of a legal guide on contract farming, which includes a rigorous assessment of contract negotiation and drafting, performance, breach and termination of contract farming arrangements, inviting the reader to delve deeper into a fascinating world that may hopefully contribute to alleviating poverty.

## Introduction

When working towards rural development, and specifically when striving to enhance project effectiveness, a contract farming scheme may be a viable choice to make. It is certainly not a one-size-fits-all solution for attaining inclusiveness of smallholders in modern supply chains, but it can certainly be the answer where certain minimum prerequisites are present.

Jia and Bijman offer a relatively in-depth chronology<sup>1</sup> detailing interest in contract farming by various development agencies as far back as the 1980s, the aim being to avoid government-related market and price controls. In the 1990s, however, the growing role of the private sector in agriculture was probably what led to contract farming schemes being explored in greater

detail. In the twenty-first century we are going back to exploring these mechanisms as donors because of the rise in integrated supply chains, our interest in more stringent food safety standards and, most importantly, our concern with rural development as an effective tool for poverty reduction.

For the purposes of this paper, the definition of contract farming arrangements shall be the one provided in the UNIDROIT/FAO/IFAD *Legal Guide on Contract Farming*.<sup>2</sup>

When analysing contract farming arrangements a further assumption we must make, beyond its definition, is the importance of the legal framework we are operating under. Whether the country has clear contract farming provisions in its agrarian law or its contract law or has a specific contract farming act (as is the case of Mozambique and

<sup>1</sup> See Jia and Bijman in *Contract Farming for Inclusive Market Access* (FAO, Rome, 2013).

<sup>2</sup> See paragraph 3, Introduction, of the UNIDROIT/FAO/IFAD *Legal Guide on Contract Farming* (<http://www.unidroit.org/english/guides/2015contractfarming/cf-guide-2015-e.pdf>): "... contract farming generally refers to a particular form of supply chain governance adopted by firms to secure access to agricultural products, raw materials and supplies meeting desired quality, quantity, location and timing specifications. Contracting is an intermediate mode of coordination, whereby the conditions of exchange are specifically set among transaction partners by some form of legally enforceable, binding agreement. The specifications can be more or less detailed, covering provisions regarding production technology, price discovery, risk sharing and other product and transaction attributes." International Institute for the Unification of Private Law (UNIDROIT), Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD) (Rome, 2015).

Tanzania),<sup>3</sup> access to information on what the parties' rights are, access to bodies that will uphold those rights and, finally, access to dispute resolution mechanisms provided under the applicable governing law will all be very important factors to take into account when determining the feasibility of a contract farming scheme.

## Why contract farming?

In a globalized reality, agribusinesses are a growing concern and contract farming can offer both on-farm and off-farm benefits. On-farm, contract farming results in intensified labour. Off-farm – where transaction costs are mitigated by contract farming arrangements – processors, retailers, etc., are incentivized to invest in assets (such as inputs, credits, etc.). Contract farming is also the choice for smallholders because it allows them to access credit, technology and, above all, to comply with quality standards – which they may not otherwise have done; this in turn will allow them to participate in higher-value markets. Furthermore, contract farming strengthens vertical coordination, which can reduce food safety risks and improve compliance with statutory requirements of tracking and trading produce, leading to enhanced value chains.

Contract farming schemes are the best choice where transaction costs are high, such as in rural economies, and particularly in developing countries and where inputs are scarce, where there are information asymmetries and, most of all, where farming units are small scale – such as the case of family farming (where land is owned in small plots and labour is mostly family labour). Here, the correct use of inputs is fundamental – be they chemicals or seeds – because these inputs make the investment a difficult one and one where recouping is also highly risky. Arrangements may be hybrid in nature and adapted to each circumstance as deemed best, depending on the combination of opportunism and delays experienced. So, why should we chose a contract farming arrangement?

In contrast to simple contracts, contract farming arrangements are preferred for individual commodities where specific standards are required and where crops necessitate specific inputs (agrochemicals, etc.), as well as where investments in physical and human assets are

needed. This is especially true because quality needs must be measured and safeguarded at different stages of production and a contract farming scheme can ensure this. By means of the provision of inputs and the continued management of the production process, the contractor is ensuring that the produce is of the quality and standard required. Where necessary, the contractor can intervene at any given point to realign any process gone astray. The producer, on the other hand, is provided with the necessary inputs, which may not have been available otherwise, and the technical know-how to produce the required product. Where transaction costs are high, and where smallholders would otherwise be unable to access expensive inputs or credit, contract farming schemes can make the difference. Hence, project effectiveness may be enhanced if all the variables described above are present.

Needless to say, the overall success of contract farming schemes requires that certain basic preconditions are met, these being the identification of a market that can be supplied long term; the presence of a suitable physical and social environment, including roads, water and electricity; land availability and tenure; the availability of inputs; and social considerations, which mainly include understanding local practices and ensuring that they do not conflict with farmer obligations under the contract. Finally, the success of contract farming schemes will also depend on the presence of an enabling environment and government support for such schemes. As enablers of development, governments should focus on providing extension services bringing together agribusinesses and farmers. This is where developmental agencies can step in to help, through donor funding.

Impact evaluations of contract farming schemes must obviously target longer-term dynamics, which include considerations of price fluctuations, costs, productivity and farmers' socio-economic characteristics. These are not easily measurable across schemes because donor-funded evaluations are usually country or region specific. The author has recently contributed to the establishment of indicators for contract farming in *Enabling the Business of Agriculture*,<sup>4</sup> a World Bank Group product, which

3 See *Contract Farming Status and Prospects for Tanzania* (2006, Study Commissioned by the Ministry of Agriculture Food and Cooperatives). <http://tinyurl.com/hogdh5>.

4 See World Bank Group. 2016. *Enabling the Business of Agriculture 2016. Comparing Regulatory Good Practices* (International Bank for Reconstruction and Development/The World Bank). <http://eba.worldbank.org/>.

“examines and monitors regulations that impact how markets function in the agriculture and agribusiness sectors. The ultimate aim is to promote smart regulations that ensure safety and quality control as well as efficient regulatory processes that support thriving agribusinesses.”

Some more general insights on the benefits and challenges of agribusiness partnerships, which include contract farming schemes to a large extent, can be found in Chapter 8 of the recently published book *Public–Private Partnerships for Agribusiness Development*. However, although the book offers a review of international experiences, evidence is still poor on value for money concepts and measuring additionalities as the evaluation of impact for developing organizations focuses on project impact and reaching developmental objectives, sometimes to the exclusion of the value for money analyses and beyond.<sup>5</sup>

## How does land fit into the equation?

In most arrangements, access to land and title to land are some of the most necessary components for successful production. This is because an agricultural production activity is necessarily linked to the land on which it is carried out or to installations under the control of a producer. In principle, contracts should start with identifying the parties to a contract and a description of the produce, including the land it originates from. In some cases, reference to acreage, specific geographic location and/or livestock present becomes a determining factor. Control is fundamental to ensure that production is carried out and managed under the conditions set out in the contract. This control could derive from ownership of the land and/or installations, the right to its use and any rights deriving under domestic law, or rights deriving from the lease of the land, whether from a public or private entity. Where a producer has rights over the land and secure tenure, the possibilities for engaging in a contract farming scheme become all the more tangible, as do access to capital, insurance and other facilities that increase the producer’s overall capacity or, in the case of poor

smallholders, enable them to overcome poverty. Some buyers may require the producer to provide assurances with respect to the legitimacy of ownership, and that no other party may assert any right over the production, land rights or security rights, or make any other claim.

Where land is leased, the minimum requirements will be for the landowner to be informed of the activities carried out on the land and compliance with any pertinent law, and in many cases the landowner may have to authorize said activities. In certain circumstances, depending on the contract type and applicable law, the landowner may have a claim over the produce itself – if, for example, the leasee is late with rental payments. Claim rights over land may also be made by other creditors, such as banking institutions, or where the producer has granted a pledge over the land.

Contract farming mechanisms see a diversity of arrangements involving landownership and tenure. The treatment of agricultural production contracts by national legal systems as well as domestic regulation may include special statutory provisions, provisions under contract law, or specific stand-alone legislation. Sometimes, national systems adopt special provisions in land law which may address the relationship between operators in a contract farming scheme. The latter provisions may include contract farming-type arrangements. National legal and regulatory frameworks may provide specific instructions related to agricultural production mechanisms in many different ways: in civil codes, contract legislation,<sup>6</sup> agrarian codes,<sup>7</sup> contract farming acts,<sup>8</sup> etc. Countries may also adopt soft law instruments, such as the Code of Conduct for Fresh Horticultural Produce Sales in Kenya.<sup>9</sup>

Some farmers may own or have customary rights over the land they farm within communal landowning systems; alternatively, farmers may not own the land but lease it from a landowner. In many developing countries individuals or communities live on land to which they hold no formal title under any traditional or customary form of tenure. In this case, entering into an arrangement of the contract farming type may not be an option, hence

5 Rankin, Nogales, Santacoloma, Mhlanga and Rizzo. *Public–Private Partnerships for Agribusiness Development: A review of international experiences* (FAO, Rome 2016).

6 Such as the Indian Contract Act (<http://www.chddistrictcourts.gov.in/THE%20INDIAN%20CONTRACT%20ACT.pdf>) and the Uniform Commercial Code of the USA ([http://www.legalucc.com/free\\_study\\_material/Ucc-Workbook.pdf](http://www.legalucc.com/free_study_material/Ucc-Workbook.pdf)).

7 See Code Rural, France. 2010. [http://www.lemee-sarl.fr/elm/rural\\_nouveau.pdf](http://www.lemee-sarl.fr/elm/rural_nouveau.pdf).

8 Spanish Law 2/2000. <http://app.vlex.com/#vid/452046329>.

9 Kariuki, Isaac Maina. 2014. “Codes of Conduct and Marketing Strategies in Kenya’s Horticultural Sector”, *European Journal of Business and Management*, Vol. 6, No. 33.

the ever-growing importance of working towards land tenure rights and the encouragement by the international community for countries to establish and maintain land registers, review/implement land laws and facilitate disputes over land.

In contract farming schemes, the concept of free, prior and informed consent<sup>10</sup> (FPIC) is crucial to ensure that consent is given to any project that may affect the lands, territories and resources of individuals and communities, especially if these are customarily owned, occupied or used. Over the years donors have recognized the ever-growing importance of FPIC and are requiring stricter and stricter adherence to international standards. This paper will not focus on the basic principles of FPIC but recognizes its importance and its impact on the relationships in a contract farming arrangement.

Under contract farming arrangements, farmers should have unrestricted access to land on which to plant their crops, enter into a contract farming agreement with the buyer and be totally in control of the results including outputs. Similarly, where the farmer is contracted to sell produce from a specific plot of land, the buyer must have relevant information on the exact land location and ownership, and ideally the farmer should have ownership over that land.

The land on which the production takes place may be one of the product's most important attributes, especially when denomination of origin is relevant or when the land has to be certified as organic. It is quite common for contractors to seek assurances from producers that they are legitimate holders of the land, meaning that they have full title over their production, in order to discard other parties' rights over the produce, the land or other claims that may arise. In contrast, in the case of public land, public land management authorities can impose restrictions on the use of the land and may decide which commodity may be grown.<sup>11</sup>

Some legal systems require the producer to be a landowner and to declare it has full title over the produce and that no other party can assert rights over production. If the producer does not have title to the land, then the landowner is required to sign the contract to avoid subsequent claims regarding what the producer was entitled to do on the land. In addition, contract duration is an important element. If a lease ends during a contract, the producer may not be able to perform its obligations under the contract. These are some of the main considerations that will need to be made at the initial analysis of the viability of a contract farming scheme.

Often, under public-private partnerships, in which development agencies may participate as financiers, the state is the landowner and contract farming mechanisms use a particular format. In this case, the contractor would manage the land and be responsible for any processing facilities while the remainder of the land would be allocated to the producers. The producers could work the land individually or as cooperatives. In some instances, a portion of the land could be directly managed by the contractor, who would also provide processing facilities used by farmers under the scheme. Such schemes have been used under FAO- and IFAD-financed projects and programmes and have reaped many successes.<sup>12</sup>

Lack of ownership does not necessarily mean that a contract farming scheme cannot be successful. The case of contract tree-growing in Thailand is such an example.<sup>13</sup> Tree farming is practised by individuals living inside forest reserves who do not have land titles but who make decisions on the use of the land based on the expectation that they will be granted land rights in the future. They have planted crops which they hope will allow them to make land registration claims. As "squatters", under the current rule of law, they will not be evicted but should receive land titles as part of the recent Land Reform Project in the country.

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10 "FPIC is an operational principle empowering local communities to give or withhold their consent to proposed investment and development programmes that may affect their rights, access to lands, territories and resources, and livelihoods", IFAD, *How to do : Seeking free, prior and informed consent in IFAD investment projects*. <https://www.ifad.org/documents/10180/beec86e1-270d-45a1-8786-4b749c9db733>.

11 For a review of international experiences highlighting the fundamental importance of good legislative and regulatory frameworks, see Chapter 7 in Rankin, Nogales, Santacoloma, Mhlanga and Rizzo.

12 See FAO. 2013. *Contract Farming for Inclusive Market Access* (<http://www.fao.org/3/a-i3526e.pdf>); IFAD Vegetable Oil Development Project Evaluation (<https://www.ifad.org/documents/10180/cd48b4c8-5e25-4108-bd8b-bbf09335ce33>); and the IFAD Project, *Projet d'Appui aux Filières Agricoles* (<https://www.ifad.org/documents/10180/312b495f-a287-423e-a5be-f2d5e3cbef64>).

13 A. Boulay, *Contract Farming for Inclusive Market Access* (FAO, Rome, 2013). <http://www.fao.org/3/a-i3526e.pdf>.

## Ensuring success – the legal requirements

Clearly, contract farming arrangements can take many different forms of commercial practice, ranging from more informal models (spot market transactions) to semi-formal models involving intermediary participation (farmer groups, buying agents), to multipartite models (multilateral financial institutions, governments and input suppliers), through centralized models (where the buyer is central to the operation and provides technical assistance, inputs, land, etc.) or nucleus estate models (where the buyer operates a centralized production and contracts with outgrowers).

Whichever the case may be, there are defining elements that will determine the success of a scheme. One of the main elements is the capacity of parties to contract by entering into commercially sound and fair relationships. The commitments they make should be clear and their engagement to comply should be sound. Essentially, their relationship will be a successful one if based on collaboration and trust. Trust being the key element. Through trust, fair relationships will flourish and the innate imbalance of economic power between producers and contractors may be mitigated.

Often buyers will be larger processors or agribusinesses that can spread their risk of loss while leaving the producer, especially the smaller and poorer farmer, with less opportunity to contract with other parties should the contract fail or not be renewed.

Hence, the cornerstone of a successful relationship will be the agreement entered into by producers and buyers. The agreement should ensure clear and fair allocation of risks, liabilities and economic returns and should include exhaustive conditions regarding performance of the contract as well as possible non-performance. Having a good understanding of the terms of a contract and the applicable legal provisions, depending on a country's national regulatory system, will increase the parties' security and awareness regarding their rights and remedies throughout the life of the contract.

## The UNIDROIT/FAO/IFAD *Legal Guide on Contract Farming*

As laid out above, and given the importance of a good legal and regulatory environment within which to establish effective contract farming schemes, two United Nations agencies – FAO and IFAD – and an international organization – UNIDROIT – teamed up to produce the first ever *Legal Guide on Contract Farming* (the Guide).<sup>14</sup> The Guide provides advice on all steps of contract negotiation, drafting and conclusion, including specific guidance on how to address performance, breach of contract or termination. It was developed for lawyers, policy makers and all parties to a contract with a good grasp of contract farming arrangements. Its main intention is to encourage governments to promote fair and balanced relationships in contract farming and to assist lawmakers in designing and implementing sound and enabling legal environments.

The Guide also aims to provide practical guidance to international organizations and bilateral cooperation agencies, international non-governmental organizations and farmer organizations that engage in national strategies and capacity-building programmes in support of contract farming schemes.

Finally, the Guide promotes amicable dispute resolution mechanisms and therefore may also prove useful to professional organizations, judges, arbitrators and mediators engaged in enforcing the schemes.

In compiling the Guide, the contributing organizations sought to align it to the Principles for Responsible Investments in Agriculture and Food Systems (RAI Principles), which were approved in October 2014 by the Committee on World Food Security (CSF).<sup>15</sup> Like the CSF RAI Principles, the Guide aims to provide a framework that may be used when developing domestic policies, regulatory frameworks, corporate social responsibility programmes, individual agreements and contracts in responsible and inclusive ways.

14 UNIDROIT FAO IFAD. 2015. *Legal Guide on Contract Farming* <http://www.unidroit.org/english/guides/2015contractfarming/cf-guide-2015-e.pdf>.

15 Committee on World Food Security. 2014. *Principles for Responsible Investment in Agriculture and Food Systems* .<http://www.fao.org/3/a-ml291e.pdf>.

The Guide is structured in seven chapters covering (i) the legal framework applicable to agricultural production contracts; (ii) contract formation; (iii) obligations of the parties; (iv) excuses for non-performance; (v) remedies for breach; (vi) duration, renewal and termination of the contract; and (vii) dispute resolution mechanisms. In these seven chapters, the Guide covers in more detail the topics briefly examined in this paper, giving the reader options for a variety of schemes and approaches depending on the legal, social, physical and environmental conditions they are faced with.

## **Conclusion**

Contract farming arrangements may certainly help in the achievement of developmental objectives where all the prerequisites exist for such arrangements to be successful. As stressed, the arrangement is not a one-size-fits all solution and should be tailored accordingly. Ensuring that the best contractual arrangements are made is another major influencing aspect to successful outcomes, and the Guide is certainly a starting point. It is not only a means to enhance effectiveness for developmental projects but is also a stepping stone towards the creation of practical tools that can be accessed by all interested parties, no matter what level of contract farming is at stake. IFAD has taken the lead in the formulation, through FAO as an implementing agency and UNIDROIT as a project party, of implementation tools consisting of policy briefs, contract templates, training materials, etc., which distil the Guide and make it digestible to all audiences. It is hoped that smallholder farmers may benefit from the new tools being developed and that the imbalance of power, mentioned briefly in this paper, may be evened out. These tools will be made available publicly in 2017 on the websites of UNIDROIT, FAO and IFAD.

# Translated abstracts: Arabic

## نظرة عامة على الدعم المقدم من الصندوق لضمان حقوق السكان الريفيين الفقراء في الأراضي والموارد الطبيعية

هارولد ليفرسبيج

### ملخص

يعترف الصندوق بأن ضمان حقوق الفئات المستهدفة في الأراضي والموارد الطبيعية حاسم لتحقيق نتائج المشروعات والبرامج التي يدعمها، وحاسم بصفة عامة للتنمية الريفية الشمولية والقضاء على الفقر. ودعم الصندوق على مر السنوات مجموعة من المبادرات والتدابير الوطنية والإقليمية والعالمية الهادفة إلى تحسين حوكمة الأراضي والموارد الطبيعية. وتشمل التدابير الرئيسية تعزيز نظم الحيازة القانونية والعرفية، وما يرتبط بها من مؤسسات ومنظمات حكومية ومجتمعية لا مركزية. وقدم الصندوق أيضاً دعمه لصياغة سياسات وتشريعات بشأن الأراضي والموارد الطبيعية؛ وللتوعية المدنية والتشاور العام حول الحقوق في الأراضي والموارد الطبيعية؛ ولتعزيز حسم النزاع وخدمات المعونة القانونية الهادفة إلى الدفاع عن الحقوق. ويشمل دعم المبادرات الإقليمية والعالمية: الدعم التقني والمالي من أجل صياغة «إطار العمل والمبادئ التوجيهية لسياسات الأراضي في أفريقيا» و «الخطوط التوجيهية الطوعية بشأن الحوكمة المسؤولة للحيازة». وعلى الرغم من أن دعم الصندوق لتدابير أمن الحيازة يشكل نسبة ضئيلة من استثماراته العامة، إلا أنه تبيّن أن الاستثمارات المتواضعة نسبياً يمكن أن تعود بأثر كبير على النتائج الإنمائية.

## معياري عالمي للحيازة: من التنمية إلى الاستخدام

بول مونرو- فور، وديفيد بالمر، وأندرو هيلتون، وروميانا تونشوفسكي

### ملخص

تشكل الحيازة عاملاً أساسياً في التنمية الريفية، ولكنها مرتبطة إلى حد بعيد بالسياق المحلي. وطالما عرقلت الفروق في البيئات المادية والقيم الاجتماعية والأطر القانونية والسلطات السياسية بلوغ توافق دولي حول المبادئ والممارسات. ومع ذلك، يوجد حالياً ذلك المعيار في الصك القانوني الدولي غير الملزم المتعلق بالخطوط الطوعية بشأن الحوكمة المسؤولة لحيازة الأراضي ومصائد الأسماك في سياق الأمن الغذائي الوطني. وخلال السنوات الأربع الأخيرة، أثبتت تلك الخطوط التوجيهية أنها أكثر من مجرد مفهوم نظري. وتتناول هذه الورقة بالوصف عملية وضع الخطوط التوجيهية وكيفية استخدامها من جانب الحكومات ومنظمات المجتمع المدني ومؤسسات الأعمال والأمم المتحدة لتحسين حوكمة الحيازة وللارتقاء بالحياة.

## نحو حوكمة للأراضي محورها البشر: تجارب من الائتلاف الدولي المعني بالأراضي

مايكل تايلور بالاشتراك مع آني إيريل

### ملخص

الائتلاف الدولي المعني بالأراضي الذي يستضيفه الصندوق تحالف عالمي من المجتمع المدني والمنظمات المتعددة الأطراف. ويلتزم أعضاء الائتلاف بالعمل من أجل حوكمة للأراضي تلبي احتياجات أشد فئات الأشخاص هشاشة وتحمي حقوقهم. ويتجسد هذا الالتزام في ١٠ التزامات توجه أنشطة الأعضاء وتشكل أيضاً محور تركيز الأطر الدولية الأوسع. وفي هذا المقال، نتناول عمل أعضاء الائتلاف الدولي المعني بالأراضي في المساهمة في صياغة سياسات وأطر قانونية للأراضي، والتأثير في تنفيذ السياسات، والمشاركة في العمل الاستراتيجي في بلدان محددة من أجل حوكمة للأراضي محورها الإنسان.

## تعميم دعم الحوكمة السليمة للأراضي في برامج التنمية الريفية: تجارب من المشروعات التي يدعمها الصندوق في أفريقيا الغربية والوسطى

ستيفن جونكهير

### ملخص

الأرض هي الأساس الذي تقوم عليه حياة السكان الريفيين الفقراء. وهي مصدر الغذاء والمأوى والدخل والهوية الاجتماعية. ويقف تأمين فرص الوصول إلى الأراضي من التعرض للجوع والفقير. غير أن فرص حصول كثير من السكان الريفيين الفقراء إلى الأراضي في البلدان النامية في العالم باتت أكثر هشاشة عن ذي قبل. ويعمل الصندوق مع السكان الريفيين الفقراء، وبخاصة مع المزارعين الأسريين أصحاب الحيازات الصغيرة، في البلدان النامية للقضاء على الفقر والجوع وسوء التغذية، وزيادة الإنتاجية والدخل، وتحسين نوعية حياة النساء والرجال الريفيين. وتشمل استثمارات الصندوق في المزارعين الأسريين أصحاب الحيازات الصغيرة جميع العناصر التي تشكل قوام حياة هذه المجموعة المتنوعة من النساء والرجال، بما في ذلك عناصر الإنتاجية، والبنى الأساسية، وتمكين المرأة، والوصول إلى الخدمات المالية، والتكيف مع تغير المناخ والوصول إلى الأسواق، والشراكات بين القطاعين العام والخاص، وأمن حيازة الأراضي. وعندما لا يوجه اهتمام كافٍ لضمان سبل وصول صغار المنتجين، ولقضايا حيازة الأراضي، يمكن لمشروعات التنمية أن تغدو جزءاً من المشكلة. ويتناول هذا المقال الطريقة التي يعتم بها الصندوق دعم حوكمة الأراضي السليمة في برامج التنمية الريفية.

### الاستثمارات في الأراضي، والمساءلة، والقانون: استنتاجات من بحث اجتماعي – قانوني مقارن في غرب أفريقيا

لورنزو كوتولولا، وجيدر جوكوبوسكيت، ومامادو فول، ومارك كاكرا با أمبي، وبيير إتيين كنفاك، وصموئيل نجويفو، وتيوديل

نكوبنشوا، وإريك بيبوه، وأدريان دي جيوفاني

### ملخص

عزّزت الموجة الأخيرة من صفقات أراضي الاستثمار في الأعمال الزراعية الدعوات المتجددة من أجل المساءلة في حوكمة الأراضي والاستثمار. وتؤثر الأثر القانونية على فرص المساءلة، وبرز اللجوء إلى القانون في استجابات القواعد الشعبية لصفقات الأراضي. واستناداً إلى بحث اجتماعي وقانوني مقارن في الكامرون وغانا والسنغال، يستكشف هذا المقال دور القانون في تحقيق المساءلة أو تقييدها في استثمارات الأراضي. ويبلور المقال إطاراً مفاهيمياً لفهم المساءلة؛ ويتناول القانون الوطني في ثلاثة بلدان، سواء في سجلات القوانين أو في الممارسات، بالاستناد إلى المفاهيم والأساليب المشتركة؛ وي طرح المقال توصيات على صعيد السياسة العامة والممارسة. وتشير الاستنتاجات إلى تنوع كبير في السياقات، ويتطلب هذا التنوع تحليلات دقيقة واستجابات مناسبة. وتشير الاستنتاجات أيضاً إلى قضايا متكررة يمكن أن تؤثر على استراتيجيات المساءلة. وتبعاً للسياق، تتطلب معالجة هذه القضايا إصلاحات في القوانين، وتدخّلات للدفع بحدود القانون القائم. وانطلاقاً من هذه الدراسة، تكف ثلاثة من فرق البحوث العملية في البلدان الثلاثة على تنفيذ تدخّلات للتمكين القانوني من أجل تعزيز المساءلة في حوكمة الأراضي والاستثمار.

### الإصلاح القانوني، والحوكمة، وإدارة الموارد الطبيعية – إصلاح المراعي في قبرغيزستان

فريتس جيبسن، وأنطونيو روتا، وهارولد ليفرسج، وماري لارا أوبير شارتيه

### ملخص

بينما تتفاوت نظم الرعي تفاوتاً كبيراً في كل أنحاء المعمورة، يجمع بينها بعض الصفات المشتركة، مثل تنقل ممارسيها الذي يميّز الرعاة مما يتيح لهم التكيف مع الظروف المتنوعة والصعبة إيكولوجياً التي يواجهونها عبر المكان والزمان. ولا تجسد السياسات والتشريعات في كثير من الأحيان حقوق ومصالح الرعاة المهمّشين في كثير من الأحيان داخل مجتمعاتهم بالرغم من إسهامهم الكبير في الاقتصادات الوطنية. وعلى وجه العموم، يتميّز المرربون بمحدودية الظهور ولضعف أوضاعهم السياسية والقانونية، وهناك النذر اليسير من المعلومات المشتركة عالمياً عن حقوقهم. وساهم الصندوق، بالاشتراك مع الحكومات، في معالجة القضايا ذات الصلة بحيازة الأراضي الرعوية في عديد من مشروعاته وبرامجه.

وفي فيرغيزستان، أجرت الحكومة إصلاحاً قانونياً كبيراً أسفر عن اعتماد قانون جديد للمراعي في عام ٢٠٠٢. وساهم مشروع الاستثمارات والخدمات الزراعية المنفذ بالشراكة مع البنك الدولي والوكالة السويسرية للتعاون الإنمائي، فضلاً عن برنامج تنمية الثروة الحيوانية والأسواق بمرحلتيه الأولى والثانية، بدور كبير في إرساء سابقة في تصميم المشروعات المقبلة التي تنطوي على الإدارة ووضع السياسات في مجال أراضي الرعي.

## التحول من الإدارة الجماعية للمراعي المجتمعية: استعراض إصلاحات المراعي في طاجيكستان

أنارا جوماباييفا و سادي كاريموف

### ملخص

تمثل الثروة الحيوانية في طاجيكستان جزءاً هاماً من الاقتصاد، إذ تساهم بنحو ربع جميع الإنتاج الزراعي. غير أن إدارة المراعي خلال السنوات العشرين الأخيرة في البلد شهدت تدهوراً كبيراً وأدت إلى استخدام المراعي التقليدية التي تنمو في فصلي الربيع والخريف استخداماً مكثفاً على مدار السنة. وفي ظل ازدياد عدد رؤوس الماشية وظهور مربّي الماشية التجاريين وازدياد تدهور المراعي الطبيعية، أسفر التركيز على إصلاحات إدارة المراعي عن اعتماد قانون المراعي في مارس/آذار ٢٠١٢، وكان له دور هام في التمكين من نوعية جديدة تماماً في إدارة المراعي واستخدامها.

ويشكل قانون المراعي أساساً لإرساء إصلاحات تطبيق اللامركزية في إدارة المراعي على نطاق صغير في مجموعة مختارة من المناطق. غير أن التجربة كشفت عن أن من اللازم تبسيط عملية الإصلاح من خلال مواصلة تطوير الإطار السياساتي والقانوني في إدارة المراعي. ومن خلال مشروع تنمية الثروة الحيوانية والمراعي المنفذ الذي استهل عام ٢٠١٢، ساهم الصندوق بدور كبير في تحسين الجوانب المؤسسية والقانونية لقطاع المراعي، وهو ما أدى إلى دعم وتيسير تنفيذ القانون.

## تطور الإصلاح المؤسسي للأراضي الريفية وعواقبه في الصين

سيابونغ وانغ، وجيكون هوانغ

### ملخص

توثق هذه الورقة تطور مؤسسات الأراضي في الصين وجهودها في مجال السياسات وتحديث المتبقية. وجوهر إصلاحات الأراضي في الصين هو التعايش بين الملكية الجماعية وحقوق استخدام الأراضي (أو الحقوق المكفولة بعقود) الممنوحة للأسر من خلال نظام المسؤولية الأسرية. وفي أوائل فترة الإصلاح أدى نظام المسؤولية الأسرية إلى زيادة كبيرة في الإنتاجية الزراعية والحد من الفقر. وبعد ذلك، أدى تركيز إصلاحات الأراضي على تحقيق الاستقرار في حيازة الأراضي وتعزيز تنمية أسواق استئجار الأراضي. وخلال الأونة الأخيرة، وفي إطار تحسين الإنتاجية الزراعية ودخل المزارعين، بُذلت جهود لتجميع حيازات الأراضي من خلال الدعم السياساتي ومنصة نقل الأراضي والإصلاح المؤسسي (الفصل بين ثلاثة حقوق للأراضي: حقوق الملكية الجماعية القروية، وحقوق العقود الأسرية، وحقوق تشغيل الأراضي). وأدخل هذا الإصلاح المؤسسي للأراضي لتحقيق هدفين وهما: المساواة (حوالي ٠.٣٢ مليون أسرة ريفية تحوز حقوق مكفولة بعقود، مشابهة للمؤجرين)، وتحقيق الكفاءة (نقل الأراضي إلى المزارعين الأكثر كفاءة من خلال سوق التأجير). ومع ذلك، بالرغم من زيادة تحويل الأراضي بين المزارعين وزيادة مساحة المزارع تدريجياً، ما زال جميع الأراضي يواجه تحديات عديدة. وتُختتم الورقة بالعديد من الآثار على صعيد السياسات.

## توجيهات بشأن سلاسل الإمدادات الزراعية المسؤولة

توماس ف. ماك أنبرني

## ملخص

في أعقاب قيام المنظمات الدولية بإدخال مجموعة من المعايير الجديدة بشأن الممارسات الزراعية المسؤولة، تتجه الأنظار إلى نُهج تنفيذ تلك المعايير. ومن التحديات الرئيسية التي ينطوي عليها أعمال المعايير الدولية في صناعة الأغذية الزراعية تعزيز سلاسل الإمداد على الصعيد العالمي. وتيسيراً لجهود الأعمال في إدارة المخاطر في سلاسل الإمداد برمتها، وضعت منظمة التعاون والتنمية في الميدان الاقتصادي ومنظمة الأغذية والزراعة التوجيهات المتعلقة بسلاسل الإمدادات الزراعية المسؤولة من خلال عملية شارك فيها العديد من أصحاب المصلحة. وصدرت وثيقة توجيهات سلاسل الإمدادات الزراعية المسؤولة في مايو/أيار ٢٠١٢، وتشكّل هذه الوثيقة إطاراً للأعمال بكافة أحجامها من أجل ضمان تطبيق المعايير الدولية في مشروعاتها. ويُعبّر النهج عن التفكير الراهن بشأن ممارسات الأعمال المسؤولة، لا سيما عن طريق التعامل مع نُظم المراجعة وإصدار الشهادات باعتبارها أحد خيارات كثيرة لإدارة المخاطر بدلاً من تقديم حلول شاملة. وبالرغم من فائدة التوجيهات المتعلقة بسلاسل الإمدادات الزراعية المسؤولة، فإنها لا تقدّم ما يكفي من التوجيه بشأن العمل مع المشروعات الصغيرة والمتوسطة وكذلك أصحاب الحيازات الصغيرة. وللضمان قُدماً بتنفيذ إطار توجيهات سلاسل الإمدادات الزراعية المسؤولة، سيكون من المهم في الخطوات المقبلة بذل جهود لتعميق الوعي داخل الصناعة، وإجراء دراسات تجريبية، لا سيما دراسات تشمل المزارعين أصحاب الحيازات الصغيرة، ووضع أدلة بشأن ممارسات سليمة أكثر تحديداً.

## التحول القانوني إلى التمويل الزراعي الميسور

أيفور إستوك

## ملخص

تتطلب مشكلة الحصول على الغذاء عالي الجودة ميسور التكلفة الناشئة عن تدهور الأمن الغذائي وما يصاحب ذلك من زيادة في الأسعار التعاون بين القطاعين الخاص والعام في محاولة للخروج بحلول متممة بالكفاءة والاستدامة لأغراض تحسين جودة إنتاج الأغذية وزيادة كمياتها. وتشكّل قدرة المزارعين على الحصول على التمويل سواء لتمويل دورة الإنتاج التالية أو الاستثمار في التكنولوجيا الزراعية الأفضل، جوهر هذه الإشكالية. ويعرض المقال بليّجاز حوار السياسات وأنشطة الاستثمار من جانب المصرف الأوروبي للإنشاء والتعمير في محاولة حشد أنشطة القطاع الخاص عن طريق دعم وضع أطر مالية وقانونية تمكينية. ويتناول المقال الوسائل الهادفة إلى تيسير الوصول إلى التمويل في مرحلة ما قبل الحصاد (إيصالات المحاصيل) وفي مرحلة ما بعد الحصاد (إيصالات مستودعات الحبوب) ويدرس الإصلاحات المنفذة مؤخراً في أوكرانيا وصربيا.

## فعالية المشروعات في التنمية الريفية: هل يمكن أن تكون ترتيبات الزراعة التعاقدية مفيدة؟

ماري كلير كولايكومو

## ملخص

تقدّم هذه الورقة تحليلاً شديداً للاقتضاب لبعض القضايا الرئيسية التي لا بد من النظر فيها عند تقييم ما إذا كانت الزراعة التعاقدية تمثل الحل المناسب للتنمية الريفية. وما هو الوقت وما هي الطريقة التي يمكن بها اختيار تنفيذ مخطط الزراعة التعاقدية، وما هي المتطلبات القانونية الدنيا والبيئة الأنسب لازدهار المخططات المذكورة؟ لقد قطع المؤلف رحلة طويلة استغرقت أربع سنوات في دراسة دقيقة للتجارب الدولية، وعمل مع مجموعة البنك الدولي ومنظمة الأغذية والزراعة والمعهد الدولي لتوحيد القانون الخاص للوقوف على أعمال الآخرين والتعلم من عدد كبير من دراسات الحالة المشتركة بين الأوساط الدولية.

وتحديداً، تتناول الورقة بصورة دقيقة اعتبارات أمن الأراضي والحيازة والآثار ذات الصلة. وأخيراً، يقدّم المؤلف آخر الأعمال في شكل دليل قانوني بشأن الزراعة التعاقدية، ويتضمن هذا الدليل تقييماً دقيقاً للتفاوض على العقود، وصياغة ترتيبات الزراعة التعاقدية وتنفيذها والإخلال بها وإنهائها، وهي مواضيع تشد القارئ إلى الغوص في أعماق عالم مثير، على أمل أن يساهم ذلك في تخفيف حدة الفقر.

# Translated abstracts: French

## **Vue d'ensemble du soutien apporté par le FIDA à la protection des droits de la population rurale pauvre sur les ressources foncières et naturelles**

Harold Liversage

### Résumé

Le FIDA reconnaît que la protection des droits de ses groupes cibles sur les ressources foncières et naturelles contribue de façon décisive à la réussite des projets et des programmes qu'il soutient et, de façon générale, à un développement rural inclusif et à la réduction de la pauvreté. Au fil des ans, le FIDA a appuyé une série d'initiatives et de mesures nationales, régionales et mondiales visant à améliorer la gouvernance des terres et des ressources naturelles. Parmi les principales mesures, on peut mentionner le renforcement des régimes fonciers légaux et coutumiers et le soutien aux institutions et organisations gouvernementales et communautaires décentralisées. Un appui a également été apporté à la formulation des politiques et de la législation relatives aux ressources foncières et naturelles; à l'instruction civique et aux consultations publiques relatives aux droits sur les ressources foncières et naturelles; au renforcement des dispositifs de règlement des conflits; et à l'aide juridique spécialisée dans la défense des droits. L'appui apporté aux initiatives régionales et mondiales comprend notamment un appui technique et financier à la formulation du "Cadre et des directives de politique foncière en Afrique" et des "Directives volontaires pour une gouvernance responsable des régimes fonciers". Si le soutien apporté par le FIDA aux mesures de sécurité foncière représente un faible pourcentage de l'ensemble de ses investissements, le Fonds a néanmoins constaté que des investissements relativement modestes pouvaient avoir des effets notables sur les résultats en matière de développement.

## **Élaboration et utilisation d'une norme mondiale sur les régimes fonciers**

Paul Munro-Faure, David Palmer, Andrew Hilton et Romyana Tonchovska

### Résumé

Le régime foncier est un facteur critique du développement rural mais ses caractéristiques varient largement d'un lieu à un autre. Les différences de milieux physiques, de valeurs sociales, de cadres juridiques et de pouvoirs politiques ont longtemps empêché de parvenir à un consensus international sur les principes et les pratiques. Néanmoins, une telle norme existe désormais dans l'instrument de droit international indicatif que sont les Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale. Au cours des quatre dernières années, ces directives se sont révélées être davantage qu'un simple concept théorique. Cet article décrit le processus d'élaboration des directives et leur utilisation par les pouvoirs publics, les organisations de la société civile, les entreprises et les Nations Unies en vue d'améliorer la gouvernance des régimes fonciers et les conditions de vie.

## **Vers une gouvernance à dimension humaine: l'expérience de la coalition internationale pour l'accès à la terre**

**Michael Taylor avec Anni Arial**

### **Résumé**

La Coalition internationale pour l'accès à la terre est une alliance mondiale entre organisations de la société civile et organisations multilatérales, hébergée par le FIDA. Les membres de la Coalition s'engagent à œuvrer pour une gouvernance foncière qui réponde aux besoins des personnes les plus vulnérables et protège leurs droits. Cet engagement est inscrit dans dix principes qui guident les activités des membres et servent d'orientation pour des cadres internationaux plus larges. Cet article passe en revue le travail effectué par les membres de la Coalition pour contribuer à la formulation des politiques foncières et des cadres légaux et influencer sur leur mise en œuvre, et mener des actions stratégiques dans certains pays en faveur d'une gouvernance foncière à dimension humaine.

## **Intégrer le soutien à la bonne gouvernance foncière dans les programmes de développement rural: l'expérience des projets appuyés par le FIDA en Afrique de l'Ouest et du Centre**

**Steven Jonckheere**

### **Résumé**

La terre est une ressource essentielle pour la vie des populations rurales pauvres. Elle est source de nourriture, d'habitat, de revenu et d'identité sociale. La sécurité de l'accès à la terre réduit la vulnérabilité à la faim et à la pauvreté. Mais, dans les pays en développement, l'accès à la terre d'une grande partie des ruraux pauvres est plus fragile que jamais. Dans les pays en développement, le FIDA œuvre aux côtés de la population rurale pauvre, en particulier des petits exploitants, afin d'éliminer la pauvreté, la faim et la malnutrition, d'accroître la productivité et les revenus, et d'améliorer les conditions d'existence des femmes et des hommes qui vivent en milieu rural. Les investissements du FIDA en faveur de l'agriculture familiale visent tous les aspects qui concourent aux moyens d'existence de ce groupe diversifié de femmes et d'hommes, notamment la productivité, les infrastructures, l'autonomisation des femmes, l'accès aux services financiers, l'adaptation au changement climatique, l'accès aux marchés, les partenariats public-privé et la sécurité foncière. Faute d'une attention suffisante à l'accès à la terre des petits producteurs et aux questions foncières, les projets de développement peuvent devenir partie intégrante du problème. Cet article examine la façon dont le FIDA intègre l'appui à la bonne gouvernance foncière dans les programmes de développement rural.

## **Les investissements fonciers, la responsabilisation et le droit: résultats d'études sociojuridiques comparatives en Afrique de l'Ouest**

**Lorenzo Cotula, Giedre Jokubauskaite, Mamadou Fall, Mark Kakraba-Ampeh, Pierre-Etienne Kenfack, Samuel Nguiffo, Téodyl Nkuintchua, Eric Yeboah et Adrian Di Giovanni**

### **Résumé**

La récente vague de transactions foncières née des investissements agro-industriels a suscité des appels renouvelés à la responsabilité en matière de gouvernance foncière et d'investissement. Les cadres juridiques influent sur les possibilités de reddition de comptes et les recours juridiques jouent maintenant un rôle central dans la réaction des communautés face aux transactions foncières. S'appuyant sur des études sociojuridiques comparatives menées au Cameroun, au Ghana et au Sénégal, cet article examine la façon dont la loi favorise – ou au contraire entrave – la reddition de comptes en lien avec les investissements fonciers. L'article propose un cadre conceptuel pour comprendre l'obligation de rendre compte; examine la législation des trois pays des points de vue théorique et pratique en employant des méthodes et concepts communs; et formule des recommandations en matière de politiques et de pratiques. Les conclusions soulignent la grande diversité de contextes, appelant à des analyses détaillées et à des réponses adaptées. Mais elles soulignent également certains problèmes récurrents qui peuvent avoir une incidence sur les stratégies de responsabilisation. En fonction du contexte, la réponse à ces problèmes peut nécessiter une réforme de la législation ou un élargissement du cadre juridique existant. Suite à cette étude, des équipes de recherche-action mettent aujourd'hui en œuvre, dans les trois pays, des activités d'autonomisation juridique visant à renforcer la responsabilité en matière de gouvernance foncière et d'investissement.

## **Réforme juridique, gouvernance et gestion des ressources naturelles: la réforme des pâturages au Kirghizistan**

**Frits Jepsen, Antonio Rota, Harold Liversage et Marie-Lara Hubert Chartier**

### **Résumé**

Si les systèmes pastoraux varient considérablement à travers le monde, ils ont en commun certains attributs comme la mobilité des pasteurs, qui leur permet de s'adapter, dans le temps et l'espace, à une grande variété d'environnements naturels et de conditions hostiles. Les éleveurs sont souvent marginalisés par la société et leurs droits et intérêts ne sont pas toujours pris en compte dans les politiques et la législation, et ce, malgré leur importante contribution à l'économie nationale. Fréquemment désavantagés sur les plans politique et juridique, les éleveurs bénéficient d'une visibilité limitée, et les informations disponibles à travers le monde à propos de leurs droits demeurent minimales. En collaboration avec les pouvoirs publics, le FIDA a abordé dans plusieurs de ses projets et programmes la question du statut foncier des éleveurs. Au Kirghizistan, le gouvernement a mené une réforme juridique de grande ampleur qui a abouti, en 2009, à l'adoption d'une nouvelle loi sur les pâturages. Le Projet relatif aux investissements et aux services dans le secteur agricole, mis en œuvre en partenariat avec la Banque mondiale et la Coopération suisse au développement, ainsi que les phases I et II du Programme de développement de l'élevage et des marchés, ont joué un rôle déterminant dans l'établissement de précédents pour que soient prises en compte la gestion des pâturages et l'élaboration de politiques relatives aux pâturages dans les futurs projets.

## De la gestion collective à la gestion communautaire des pâturages: analyse des réformes pastorales au Tadjikistan

Anara Jumabayeva et Sadi Karimov

### Résumé

L'élevage occupe une place importante dans l'économie tadjike, contribuant à près du quart de la production agricole. Néanmoins, ces 20 dernières années, la gestion des pâturages dans le pays s'est considérablement détériorée et a conduit à un intense recours, à longueur d'année, aux pâturages traditionnels de printemps et d'automne. Compte tenu du nombre croissant de têtes de bétail, de l'apparition de l'élevage commercial et de la poursuite de la détérioration des pâturages naturels, l'accent mis sur les réformes de la gestion des pâturages s'est traduit par l'adoption, en mars 2013, de la Loi sur les pâturages, qui a joué un rôle important dans la mise en place d'une approche complètement nouvelle et de qualité pour la gestion et l'utilisation des pâturages. La Loi sur les pâturages a ouvert la voie pour qu'une décentralisation de la gestion des pâturages soit instaurée à petite échelle dans certaines régions. L'expérience a toutefois montré qu'il était impératif de faciliter le processus de réforme en faisant davantage progresser le cadre politique et juridique relatif à la gestion des pâturages. Grâce au Projet de développement de l'élevage et des pâturages, lancé en 2013, le FIDA a contribué de manière significative à l'amélioration des aspects institutionnels et juridiques du secteur des pâturages, en soutenant et en facilitant la mise en œuvre de la loi.

## Évolution et conséquences de la réforme institutionnelle des terres rurales en Chine

Jikun Huang et Xiaobing Wang

### Résumé

Cet article présente l'évolution des institutions foncières chinoises, ainsi que les politiques mises en place et les problèmes qui subsistent dans ce domaine. Le principal enjeu des réformes foncières en Chine est la coexistence de la propriété collective et des droits d'utilisation des terres (ou droits contractuels) confiés aux ménages par le système de responsabilité des ménages. Au début de la période des réformes, ce système a permis d'accroître considérablement la productivité agricole et de réduire la pauvreté. Par la suite, les réformes foncières ont surtout cherché à stabiliser le régime foncier et à favoriser le développement du marché de la location foncière. Afin d'améliorer la productivité agricole et les revenus des agriculteurs, les autorités ont entrepris récemment de remembrer les terres grâce à des politiques incitatives, à la création d'une plateforme de transfert des terres et à une réforme institutionnelle, *San-quant-fen-zhi*, qui a opéré une séparation entre trois droits fonciers: les droits de propriété collective des villages, les droits contractuels des ménages et les droits fonciers opérationnels. Cette réforme institutionnelle du régime foncier vise à la fois un objectif d'équité (octroyer des droits contractuels à quelque 230 millions de ménages ruraux pour en faire des "propriétaires") et un objectif d'efficacité (transférer des terres à des agriculteurs plus efficaces grâce au marché locatif). Néanmoins, malgré l'augmentation des transferts de terres entre agriculteurs et l'accroissement progressif de la taille des exploitations, la question du remembrement des terres n'est pas encore réglée. L'article se termine par l'examen de plusieurs conséquences du point de vue de l'action des pouvoirs publics.

## Directives sur les filières d'approvisionnement agricole responsables

Thomas F. McInerney

### Résumé

Après la mise au point, par les organisations internationales, d'une série de nouvelles normes destinées à favoriser des pratiques agricoles responsables, l'attention se porte désormais sur la façon de mettre en œuvre ces normes. L'un des principaux obstacles à l'adoption de normes internationales dans l'industrie agroalimentaire est l'allongement des filières d'approvisionnement à l'échelle mondiale. Afin de faciliter les efforts déployés par les entreprises pour gérer les risques dans l'ensemble des filières d'approvisionnement, l'Organisation de coopération et de développement économiques et l'Organisation des Nations Unies pour l'alimentation et l'agriculture ont élaboré, à l'aide d'un processus multi-acteurs, le *Guide pour des filières agricoles responsables*. Publié en mai 2016, ce guide fournit aux entreprises de toutes tailles un cadre qui leur permet d'appliquer les normes internationales dans l'ensemble de leur structure. Cette approche expose la réflexion actuelle sur les pratiques commerciales responsables, en considérant notamment les systèmes d'audit et de certification comme l'une des nombreuses options de gestion des risques plutôt que comme une solution exhaustive. Bien qu'utile, le guide fournit des indications insuffisantes sur la coopération avec les petites et moyennes entreprises ainsi qu'avec les petits exploitants. Plusieurs mesures importantes devront être prises pour favoriser la mise en œuvre du cadre proposé dans le guide: sensibiliser les acteurs du secteur, mener des études pilotes impliquant particulièrement les petits exploitants agricoles et élaborer des guides plus spécifiques sur les bonnes pratiques.

## Transition juridique vers une finance agricole abordable

Ivor Istuk

### Résumé

Face au problème de l'accès à des aliments abordables et de qualité, causé par la détérioration de la sécurité alimentaire et l'augmentation des prix qui en découle, les secteurs privé et public doivent collaborer pour imaginer des solutions efficaces et durables en vue d'améliorer la qualité et la quantité des denrées alimentaires produites. Qu'il s'agisse de financer le prochain cycle de production ou d'investir dans l'amélioration des technologies agricoles, la capacité des agriculteurs à accéder aux services financiers semble être au cœur de ce problème. Cet article présente brièvement la concertation sur les politiques et les activités d'investissement menées par la Banque européenne pour la reconstruction et le développement dans le but de tirer parti des activités du secteur privé en soutenant l'élaboration de cadres financiers et juridiques propices. L'article passe en revue les instruments visant à faciliter l'accès aux services financiers lors des phases de pré-récolte (recettes des cultures) et de post-récolte (recettes des entrepôts de céréales) et examine les réformes récemment mises en œuvre en Ukraine et en Serbie.

## **L'agriculture contractuelle, une solution pour accroître l'efficacité des projets de développement rural?**

**Marieclaire Colaiacomo**

### Résumé

Cet article analyse très brièvement quelques-uns des principaux éléments à prendre en compte pour déterminer quand et si l'agriculture contractuelle constitue la bonne solution au problème du développement rural. Quand et comment décider de mettre en œuvre un dispositif d'agriculture contractuelle et quelles sont les exigences légales minimales et l'environnement le plus approprié pour que ces dispositifs puissent se développer? En partenariat avec la Banque mondiale, l'Organisation des Nations Unies pour l'alimentation et l'agriculture et l'Institut international pour l'unification du droit privé, l'auteur a minutieusement étudié pendant quatre ans différentes expériences menées à travers le monde, en s'appuyant sur les travaux d'autres chercheurs et sur une multitude d'études de cas partagées au sein de la communauté internationale. Une attention particulière est accordée à la sécurité foncière, aux régimes fonciers et à leur impact. Enfin, l'auteur présente les derniers travaux réalisés dans ce domaine sous la forme d'un guide juridique sur l'agriculture contractuelle, qui comprend une analyse rigoureuse de la négociation des contrats, ainsi que de la rédaction, de la performance, de la rupture et de la résiliation des accords d'agriculture contractuelle, plongeant le lecteur dans un univers fascinant dont les mécanismes contribueront peut-être à réduire la pauvreté.

# Translated abstracts: Spanish

## **Panorama general del apoyo prestado por el FIDA para garantizar los derechos sobre la tierra y los recursos naturales de la población rural pobre**

Harold Liversage

### Resumen

El FIDA reconoce que garantizar los derechos sobre la tierra y los recursos naturales de sus grupos objetivo es fundamental para los resultados de los proyectos y programas a los que presta apoyo y, en general, para el desarrollo rural inclusivo y la erradicación de la pobreza. En el transcurso de los años, el Fondo ha respaldado una serie de medidas e iniciativas a escala nacional, regional y mundial al objeto de mejorar la gobernanza de la tierra y los recursos naturales. Entre las principales medidas cabe mencionar el fortalecimiento de los sistemas jurídicos y consuetudinarios de tenencia de la tierra y el apoyo a las instituciones y organizaciones conexas, tanto las descentralizadas de ámbito gubernamental como las de base comunitaria. También se ha prestado apoyo para la formulación de políticas y leyes relacionadas con la tierra y los recursos naturales, la educación cívica y las consultas públicas en relación con los derechos sobre la tierra y los recursos naturales, y el fortalecimiento de los servicios de resolución de conflictos y de asistencia letrada gratuita destinados a la defensa de esos derechos. El apoyo a las iniciativas regionales y mundiales comprende el apoyo técnico y financiero para la formulación del Marco y las Directrices relativas a las Políticas sobre la Tierra en África y las Directrices Voluntarias sobre la Gobernanza Responsable de la Tenencia de la Tierra, la Pesca y los Bosques en el Contexto de la Seguridad Alimentaria Nacional. Aunque el apoyo del FIDA a las medidas de seguridad de la tenencia representa un pequeño porcentaje del total de sus inversiones, se ha observado que una inversión relativamente modesta puede repercutir significativamente en los resultados en materia de desarrollo.

## **Una norma mundial en materia de tenencia: de la formulación a la aplicación**

Paul Munro-Faure, David Palmer, Andrew Hilton y Romyana Tonchovska

### Resumen

La tenencia es un factor esencial para el desarrollo rural, pero sus particularidades dependen de forma sustancial de cada lugar. Las diferencias en el entorno físico, los valores sociales, los marcos jurídicos y los poderes políticos han obstaculizado desde hace mucho tiempo la posibilidad de alcanzar un consenso internacional en cuanto a los principios y las prácticas. No obstante, ahora existe una norma al respecto en el instrumento internacional de derecho blando denominado Directrices Voluntarias sobre la Gobernanza Responsable de la Tenencia de la Tierra, la Pesca y los Bosques en el Contexto de la Seguridad Alimentaria Nacional. En los últimos cuatro años, estas directrices han demostrado que no se limitan a un mero enfoque teórico. En este artículo se describe el proceso de elaboración de esas directrices y de qué manera están siendo aplicadas por los gobiernos, las organizaciones de la sociedad civil, las empresas y las Naciones Unidas para mejorar la gobernanza de la tenencia y la vida de las personas.

## **Trabajar en pro de una gobernanza de la tierra centrada en las personas: experiencias de la Coalición Internacional para el Acceso a la Tierra**

**Michael Taylor con Anni Arial**

### **Resumen**

La Coalición Internacional para el Acceso a la Tierra (ILC), albergada por el FIDA, es una alianza mundial de la sociedad civil y varias organizaciones multilaterales. Los miembros de la ILC tienen el compromiso de trabajar en pro de una gobernanza de la tierra que responda a las necesidades y proteja los derechos de las personas más vulnerables. Ese compromiso reviste la forma de 10 compromisos que orientan las actividades de los miembros y que permiten concentrarse en marcos internacionales más amplios. En el presente artículo se estudia la labor de los miembros de la ILC para contribuir a la formulación de políticas y marcos jurídicos relacionados con la tierra, influir en su aplicación y participar en acciones estratégicas en determinados países en favor de la gobernanza de la tierra centrada en las personas.

## **Integración de la ayuda para la buena gobernanza de la tierra en los programas de desarrollo rural: experiencias de proyectos apoyados por el FIDA en África Occidental y Central**

**Steven Jonckheere**

### **Resumen**

La tierra es esencial para la vida de las personas pobres de las zonas rurales. Proporciona alimento, cobijo, ingresos e identidad social. Garantizar el acceso a la tierra reduce la vulnerabilidad al hambre y la pobreza. No obstante, para muchas personas pobres de las zonas rurales de los países en desarrollo de todo el mundo, el acceso a la tierra nunca ha sido más frágil. El FIDA trabaja con las poblaciones rurales pobres de varios países en desarrollo, en especial con pequeños agricultores familiares, para eliminar la pobreza, el hambre y la malnutrición, aumentar los ingresos y la productividad y mejorar la calidad de vida de las mujeres y los hombres del medio rural. Las inversiones del FIDA en los pequeños agricultores familiares comprenden todos los elementos que integran los medios de vida de este grupo diverso de mujeres y hombres, entre ellos la productividad, la infraestructura, el empoderamiento de las mujeres, el acceso a los servicios financieros, la adaptación al cambio climático, el acceso a los mercados, las asociaciones público-privadas y la seguridad de la tenencia de la tierra. Cuando no se presta la suficiente atención al acceso seguro de los pequeños productores a la tierra ni a las cuestiones relativas a esta, los proyectos de desarrollo pueden convertirse en parte del problema. En este artículo se examina el procedimiento que está utilizando el FIDA para incorporar el apoyo a la buena gobernanza de la tierra en los programas de desarrollo rural.

## **Inversiones en tierra, rendición de cuentas y legislación: conclusiones de estudios socio-jurídicos comparativos realizados en África Occidental**

**Lorenzo Cotula, Giedre Jokubauskaite, Mamadou Fall, Mark Kakraba-Ampeh, Pierre-Etienne Kenfack, Samuel Nguiffo, Téodyl Nkuintchua, Eric Yeboah y Adrian Di Giovanni**

### **Resumen**

La reciente profusión de transacciones de tierras relacionadas con inversiones de agronegocios ha suscitado reiterados llamamientos a la obligación de rendir cuentas en las esferas de la gobernanza de la tierra y las inversiones. Los marcos jurídicos influyen en las oportunidades de rendición de cuentas, y una de las principales respuestas comunitarias a las transacciones de tierras ha sido recurrir a la legislación. Basándose en un estudio socio-jurídico comparativo en el Camerún, Ghana y el Senegal, en este artículo se analiza la forma en que la legislación facilita u obstaculiza la rendición de cuentas en las inversiones en tierras. En él se formula un marco conceptual para comprender la rendición de cuentas; se examina la legislación nacional de los tres países, tanto la codificada como la aplicada en la práctica, y con arreglo a conceptos y métodos comunes; y se formulan recomendaciones en materia de política y prácticas. Las conclusiones sugieren que existe una considerable diversidad de contextos, por lo que es necesario recurrir a análisis pormenorizados y respuestas a medida. También se citan problemas frecuentes que pueden influir en las estrategias de rendición de cuentas. En función del contexto, para abordar estos problemas sería necesario modificar la legislación e introducir medidas para extender los límites de la legislación existente. Actualmente, sobre la base de este estudio, los equipos de investigación orientada a la adopción de medidas en los tres países están llevando a cabo intervenciones de empoderamiento jurídico a fin de reforzar la rendición de cuentas en las esferas de la gobernanza de la tierra y las inversiones.

## **Reforma jurídica, gobernanza y gestión de los recursos naturales: la reforma relativa a los pastos en Kirguistán**

**Frits Jepsen, Antonio Rota, Harold Liversage y Marie-Lara Hubert Chartier**

### **Resumen**

Los sistemas de agricultura pastoral, si bien varían considerablemente en todo el mundo, poseen algunos atributos en común, entre ellos la movilidad que caracteriza a los pastores, lo que les permite adaptarse a las condiciones ecológicas tan difíciles y diversas con que se encuentran en el espacio y en el tiempo. Pese a su notable contribución a las economías nacionales, los pastores suelen estar marginados por la sociedad y sus derechos e intereses no siempre se reflejan en las políticas y en la legislación. Los pastores a menudo son poco conocidos y se hallan en una situación política y jurídica de debilidad; la información intercambiada a nivel mundial sobre sus derechos es mínima. Junto con varios gobiernos, el FIDA ha contribuido a cuestiones importantes para la tenencia de la tierra por los pastores en varios de sus proyectos y programas. En Kirguistán, el Gobierno acometió una importante reforma jurídica que dio lugar a la adopción de la nueva Ley de Pastos en 2009. El Proyecto de Inversiones y Servicios Agropecuarios, ejecutado en asociación con el Banco Mundial y la Agencia Suiza para el Desarrollo y la Cooperación, así como las fases I y II del Programa de Desarrollo de la Ganadería y el Mercado, han sido determinantes para establecer precedentes con miras al diseño de futuros proyectos que engloben la gestión de las tierras de pastoreo y la elaboración de políticas al respecto.

## **Paso de la gestión colectiva a la gestión comunal de los pastos: examen de las reformas relativas a los pastos en Tayikistán**

**Anara Jumabayeva y Sadi Karimov**

### **Resumen**

En Tayikistán, el ganado es una parte importante de la economía, al representar cerca de una cuarta parte de toda la producción agropecuaria. No obstante, durante los últimos 20 años, la gestión de los pastos en el país se ha deteriorado considerablemente y ha acarreado un uso intensivo durante todo el año de los pastos tradicionales de primavera y otoño. La atención prestada a las reformas de la gestión de los pastos, habida cuenta del creciente número de cabezas de ganado, la aparición de ganaderos comerciales y el deterioro adicional de los pastos naturales, dio lugar a la adopción de la Ley de Pastos en marzo de 2013, que ha jugado un papel importante para posibilitar que la gestión y el uso de los pastos sean de una calidad nunca vista. La Ley de Pastos constituye el fundamento para iniciar las reformas de descentralización de la gestión de los pastizales que está teniendo lugar a pequeña escala en determinadas zonas. Sin embargo, la experiencia ha demostrado que es absolutamente necesario facilitar el proceso de reformas mediante la promoción del marco normativo y jurídico relativo a la gestión de los pastizales. Gracias al Proyecto de Desarrollo Ganadero y de Pastizales, que se inició en 2013, el FIDA ha contribuido de manera notable a mejorar los aspectos institucionales y jurídicos del sector de los pastos, al respaldar y facilitar la aplicación de esa ley.

## **Evolución y consecuencias de la reforma institucional de las tierras rurales de China**

**Jikun Huang y Xiaobing Wang**

### **Resumen**

En este artículo se documenta la evolución de las instituciones agrarias y las iniciativas normativas y se describen sucintamente los retos pendientes de China. El núcleo de las reformas de la tenencia de la tierra en China es la coexistencia de los derechos de propiedad colectiva y los derechos de servidumbre de la tierra (o derechos contractuales) que se conceden a los hogares por medio del sistema de responsabilidad familiar. En el período inicial de las reformas, el sistema de responsabilidad familiar se tradujo en un aumento considerable de la productividad agrícola y en una disminución de la pobreza. Posteriormente, las reformas de la tenencia de la tierra se centraron en estabilizar la tenencia de la tierra y fomentar el desarrollo de un mercado de arriendo de tierras. Recientemente, para aumentar la productividad agrícola y los ingresos de los agricultores, los esfuerzos desplegados se han concentrado en la consolidación agraria mediante el apoyo a las políticas, el desarrollo de una plataforma de transferencia de tierras y una reforma institucional (*San-quant-fen-zhi*, por el que se procede a la separación de tres tipos de derechos sobre la tierra: los derechos de propiedad colectiva de las aldeas, los derechos contractuales de los hogares y los derechos operacionales sobre la tierra). Esta reforma institucional de la tenencia de la tierra se ha adoptado con dos objetivos: la igualdad (alrededor de 230 millones de hogares rurales son titulares de derechos contractuales, lo que los asemeja a los “propietarios”) y la eficiencia (transferir tierras a agricultores más eficientes por conducto de un mercado de arriendo). No obstante, a pesar de la creciente transferencia de tierras entre agricultores y el tamaño cada vez mayor de las explotaciones, la consolidación de tierras sigue viéndose afectada por varios problemas. El estudio concluye con la descripción de varias consecuencias en materia de políticas.

## Directrices para las cadenas de suministro agrícolas responsables

Thomas F. McInerney

### Resumen

Tras la adopción por distintas organizaciones internacionales de un gran número de normas nuevas sobre prácticas agrícolas responsables, se ha comenzado a prestar atención a los enfoques para la aplicación de esas normas. Uno de los principales retos a la hora de hacer efectivas las normas internacionales en el sector agroalimentario es la prolongación de las cadenas de suministro a escala mundial. Con objeto de facilitar los esfuerzos de las empresas para gestionar el riesgo a lo largo de las cadenas de suministro, la Organización de Cooperación y Desarrollo Económicos (OCDE) y la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO) elaboraron el documento titulado *Guidance for Responsible Agricultural Supply Chains* (Directrices para las cadenas de suministro agrícolas responsables) mediante un proceso en el que participaron múltiples partes interesadas. En este documento, publicado en mayo de 2016, se establece un marco para que las empresas de todos los tamaños logren aplicar esas normas internacionales en todos los ámbitos de su actividad. El enfoque refleja la filosofía actual en relación con las prácticas empresariales responsables, teniendo en cuenta, sobre todo, que los sistemas de auditoría y certificación se incluyen como una de las numerosas opciones para gestionar el riesgo, y no como soluciones integrales. Pese a su utilidad, las pautas que figuran en el documento sobre el trabajo con las pequeñas y medianas empresas o con los pequeños agricultores son insuficientes. A fin de lograr avances en la aplicación del marco de las Directrices para las cadenas de suministro agrícolas responsables, serán importantes las futuras iniciativas dirigidas a aumentar la sensibilización del sector, los estudios piloto (sobre todo aquellos que comporten la participación de pequeños agricultores) y la elaboración de pautas de buenas prácticas más específicas.

## Transición jurídica a una financiación agrícola asequible

Ivor Istuk

### Resumen

El problema del acceso a alimentos asequibles de buena calidad causado por el deterioro de la seguridad alimentaria y el aumento de los precios conexo hace necesaria la colaboración de los sectores privado y público para intentar encontrar soluciones eficientes y sostenibles que permitan mejorar la calidad y aumentar la cantidad de los alimentos producidos. La capacidad de los agricultores para acceder a la financiación, ya sea para financiar un nuevo ciclo de producción o para invertir en mejor tecnología agraria, parece constituir el eje central de este problema. En este artículo se presentan brevemente el diálogo sobre políticas y las actividades en materia de inversión que ha acometido el Banco Europeo de Reconstrucción y Desarrollo en su esfuerzo por aprovechar las actividades del sector privado mediante el apoyo al establecimiento de marcos financieros y jurídicos propicios. En el artículo se examinan los instrumentos concebidos para facilitar el acceso a la financiación en el período anterior a la cosecha (certificados de venta de cultivos a término) y en el período posterior (recibos de silos) y se estudian las reformas puestas en marcha recientemente en Ucrania y Serbia.

## **Eficacia de los proyectos en relación con el desarrollo rural: ¿pueden ser útiles las modalidades de agricultura por contrato?**

**Marieclaire Colaiacomo**

### **Resumen**

Este artículo consiste en un análisis muy breve de algunas de las principales cuestiones que se deben examinar al evaluar si la agricultura por contrato es la respuesta adecuada al desarrollo rural. ¿Cuándo y cómo se puede tomar la decisión de implantar un sistema de agricultura por contrato, y cuáles son los requisitos jurídicos mínimos y el entorno favorable más adecuado para que prosperen esos sistemas? El autor ha pasado más de cuatro años estudiando de cerca experiencias internacionales, en asociación con el Grupo del Banco Mundial, la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO) y el Instituto Internacional para la Unificación del Derecho Privado (UNIDROIT), con la finalidad de conocer el trabajo de otros y extraer enseñanzas de un sinfín de estudios monográficos divulgados entre la comunidad internacional. En concreto, se analizan con más detenimiento distintas consideraciones sobre la seguridad de la tierra y la tenencia y el impacto que estas cuestiones tienen. Para concluir, el autor presenta el último trabajo en forma de guía jurídica sobre la agricultura por contrato, que contiene una rigurosa evaluación de la negociación y la redacción de contratos, así como de la ejecución, el incumplimiento y la rescisión de los contratos correspondientes a distintas modalidades de agricultura por contrato, e invita al lector a profundizar en un mundo fascinante que esperamos que pueda contribuir a mitigar la pobreza.

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