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Land access and rural development:

new challenges, new opportunities

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¹This Reader is not intended to exhaustively cover the issue of the challenges facing ACP Small island economies, but to provide some background information and selected information resources, focusing on the implications for rural development. The Reader and most of the resources are available on <http://brusselsbriefings.net>

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Introduction

Land is an asset of enormous importance for billions of rural dwellers in the developing world, and especially in ACP countries. The nature of property rights and their degree of security vary greatly, depending on competition for land, the degree of market penetration and the broader institutional and political context. The picture is hugely diverse and complex within and between countries and regions. Although there are specificities according to countries and regions, some general trends and common challenges can be identified and the pressure on land is set to increase over future decades, given the impacts of continued population growth, urbanization, globalization of markets and activities, international investment flows, trade negotiations and climate change.²

It is worth to note that land is not just an economic asset, and market commodity, but has strong political, social, cultural, and spiritual dimensions. Because land is a key

asset for most rural and urban populations, there are strong links between democracy and equitable access to land. Land tenure closely binds together issues of wealth, power and meaning. Control over land forms a significant part of the identity and maintenance of rural society. The interrelated social, institutional and political factors involved in land make it an asset different from all others. Land is never just a commodity. It combines being a factor of production, with its role as family or community property, a capital asset and a source of identity. This mixture of qualities is not necessarily a constraint, as can be seen from the active market in land use rights that exists in many smallholder farming systems operating under customary land regulation.³

As far as Africa is concerned at one time land seemed an almost inexhaustible asset, but population growth and market development are creating mounting competition for land resources, especially close to

towns and cities, and in productive, high value areas. Customary land management is under pressure, and the coverage of formal land institutions is generally very limited. As a result, land tenure and shelter are insecure for many ordinary Africans in both urban and rural areas. Property rights are weak or unclear, which provides a major obstacle for promoting investment. In much of West Africa, for example, most land holdings are unregistered. Land competition can trigger and exacerbate wider conflicts. Despite being central to peaceful development, economic growth and sustainable resource use, land issues have often been ignored. Donor governments have been reluctant to get involved in land related programmes, in part because of the perceived political risks. At the same time, despite their central contribution to economic growth, land and agricultural development have failed to receive adequate attention in the Poverty Reduction Strategy processes.⁴



1. Some background concepts

1.1 Land tenure

Land tenure can be defined broadly as the “system of access to and control over land and related resources”. It defines the rules and rights which govern the appropriation, cultivation and use of natural resources on a given space or piece of land. Strictly speaking, it is not land itself that is owned, but rights and duties over it.⁵

In other words, land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Land tenure is an institution, rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.⁶

Therefore land tenure refers to the arrangements (rules, institutions and processes) through which people gain legitimate access to land, they use land and participate in the benefits deriving from it, and they hold, manage and transact it. These arrangements involve diverse sets of land rights – from outright ownership to a range of other land holding and use rights (leasehold, usufruct, servitudes, grazing rights, etc), which may coexist over the same plot of land. Land rights may be held by individuals or groups (e.g. private property) or by the state (ownership, trusteeship, etc). They may be based

on national legislation, on customary law or on combinations of both.⁷

Land tenure is an important part of social, political and economic structures. It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation. Land tenure thus constitutes a web of intersecting interests.⁸

1.2 Land access

Access to land is broadly defined as the processes by which people, individually or collectively, are able to use land, whether on a temporary or permanent basis. These processes include participation in both formal and informal markets, land access through kinship and social networks, including the transmission of land rights through inheritance and within families, and land allocation by the state and other authorities (e.g. customary institutions) with control over land.⁹

Land access is therefore broader than land rights in a legalistic sense. Land rights do determine access, not only rights of full ownership but also a much wider range of entitlements (e.g. various types of use rights). But access to land is also shaped by social relations, including control over markets, capital and technology, by relations of power, authority and social

identity, and by relations of reciprocity, kinship and friendship. These factors may entail a disconnection between having a legal right to use land and being able to claim and enjoy that right in practice.¹⁰

Access to land for the rural poor is often based on custom. Customary rights to land in indigenous societies, for example, are usually created following their traditions and through the ways in which community leaders assign land use rights to the community members. These rights of access may have their origin in the use of the land over a long period. They are often rights developed by ancestral occupation and by the use of land by ancestral societies. In such cases, it is through the act of original clearance of the land and settlement by ancestors that rights are claimed.¹¹

As a resource becomes scarcer and more valuable, those with weak rights to this resource will tend to lose out, especially the poor, those in peri-urban areas, indigenous people, women and those in areas of conflict. Addressing the land access and tenure security needs of these groups is crucial for social justice, political stability and peace and for promoting rural development, as it helps create conditions that encourage local and foreign investment. Women's rights are particularly vulnerable accentuated by the rising incidence of HIV/AIDS.¹²

People also use a wide range of strategies to gain access to land. These include:

- Purchase, often using capital accumulated while working as

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migrants in urban areas.

- Adverse possession or prescription (the acquisition of rights through possession for a prescribed period of time). In some countries, this may be the only method for small farmers to gain formal
- access to vacant or abandoned land and to bring it into productive use.
- Leasing, or gaining access to land by paying rent to the owner.
- Sharecropping, or gaining access to land in return for paying the owner a percentage of the production.
- Inheritance, or gaining access to land as an heir.
- Squatting illegally on land.

In addition to such individual strategies, access to land can be provided systematically through land reform interventions by national governments, often as a result of policies to correct historic injustices and to distribute land more equitably. Such land reforms usually occur in situations where much of the land is owned by a relatively small number of land owners and the land is idle or under-utilized (although it should be noted that determining whether land is under-utilized depends on the criteria selected for the assessment).¹³

While there is broad consensus that land reform plays an important role in rural development where land concentration is high, great

controversy surrounds the choice of mechanisms to transfer land from large land owners to the landless and land poor.¹⁴

1.3 Land administration

Land administration is the way in which the rules of land tenure are applied and made operational. Land administration, whether formal or informal, comprises an extensive range of systems and processes to administer:

- land rights: the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries.
- land-use; regulation: land-use planning and enforcement and the adjudication of land use conflicts.
- land valuation and taxation: the gathering of revenues through forms of land valuation and taxation, and the adjudication of land valuation and taxation disputes.

Information on land, people, and their rights is fundamental to effective land administration since rights to land do not exist in a physical form and they have to be represented in some way. In a formal legal setting, information on

rights, whether held by individuals, families, communities, the state, or commercial and other organizations, is often recorded in some form of land registration and cadastre system. In a customary tenure environment, information may be held, unwritten, within a community through collective memory and the use of witnesses. In a number of communities, those holding informal rights may have “informal proofs” of rights, i.e., documents accepted by the community but not by the formal state administration.

An enforcement or protection component is essential to effective land administration since rights to land are valuable when claims to them can be enforced. Such a component allows a person’s recognized rights to be protected against the acts of others. A stable land tenure regime is one in which the results of protective actions are relatively easy to forecast. In a formal legal setting, rights may be enforced through the system of courts, tribunals, etc. In a customary tenure environment, rights may be enforced through customary leaders. In both cases, people may be induced to recognize the rights of others through informal mechanisms such as community pressures. People who know their rights, and know what to do if those rights are infringed, are more able to protect their rights than those who are less knowledgeable.

Land administration is implemented through sets of procedures to manage information on rights and their protection, such as:

- Procedures for land rights include defining how rights can



be transferred from one party to another through sale, lease, loan, gift and inheritance.

- Procedures for land use regulation include defining the way in which land use controls are to be planned and enforced.
- Procedures for land valuation and taxation include defining methodologies for valuing and taxing land.

Efficient procedures allow transactions to be completed quickly, inexpensively, and transparently.

However, in many parts of the world, formal land administration procedures are time-consuming, bureaucratically cumbersome and expensive, and are frequently non-transparent, inaccessible to much of the rural population, and are handled in languages and forms that people do not understand. In such cases, high transaction costs may result in transfers and other dealings taking place off-the-record or informally.

Finally, land administration requires actors to implement the procedures. In customary tenure regimes, the customary leaders may play the principal role in land administration, for example in allocating rights and resolving disputes. In a more formal setting, land administration agencies may include land registries, land surveying, urban and rural planning, and land valuation and taxation, as well as the court systems. Where customary tenure has been recognized by the State, functional linkages are being developed

between government and customary land administration bodies.¹⁵

1.4 Land policy

A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts.

Land policy is contained in texts issued by governments, and is further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land use planning. To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups. There are frequent contradictions between formal and informal tenure rules and institutions, which lead to conflicts and

inefficiencies. One aim of reformed land policies should thus be to find ways of combining these different systems so as to ensure legitimacy, equity and economic efficiency.¹⁶

1.5 Tenure security

Security of tenure is the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Without security of tenure, households are significantly impaired in their ability to secure sufficient food and to enjoy sustainable rural livelihoods. Security of tenure cannot be measured directly and, to a large extent, it is what people perceive it to be. The attributes of security of tenure may change from context to context.¹⁷ Security of land rights refers to the extent to which land users can be confident that they will not be arbitrarily deprived of their land rights and/or benefits deriving from these. This confidence includes both objective elements (nature, content, clarity, duration and enforceability of rights) and subjective elements (the land users' perception of the security of their rights). On the other hand, land use is characterized by the arrangements, activities and inputs people undertake in a certain land cover type to produce, change or maintain it). Land use concerns the products and/or benefits obtained from use of the land as well as the land management actions (activities) carried out by humans to produce those products and benefits.¹⁸

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Land rights are not limited to private ownership in the strict sense, but can be a very diverse balance between individual rights and duties, and collective regulations, at different levels (different levels of family organization, communities, local governments or state), private or family ownership being one possible case. The rights and duties that individuals or a family hold are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions which may be those of rural communities and/or of the state. No system of land tenure can work without a body with the power and authority to define and enforce the rules, and provide arbitration in case of conflict. Thus, a land tenure system is made up of rules, authorities, institutions and rights. Land administration itself (maps, deeds, registers, and so on) is only one part of a land tenure system.¹⁹

1.6 Land acquisition

Large-scale acquisitions of farmland in Africa, Latin America, Central

Asia and Southeast Asia have made headlines in a flurry of media reports across the world. Lands that only a short time ago seemed of little outside interest are now being sought by international investors to the tune of hundreds of thousands of hectares. And while a failed attempt to lease 1.3 million ha in Madagascar has attracted much media attention, deals reported in the international press constitute the tip of the iceberg. This is rightly a hot issue because land is so central to identity, livelihoods and food security.²⁰

Foreign acquisitions of farmland in Africa and elsewhere have become the focus of concern. Many observers consider them a new form of colonialism that threatens food security of the poor. However, investments could be good news if the objectives of land purchasers are reconciled with the investment needs of developing countries. The risks attached to international investments have led to calls for a binding code of conduct. While its enforcement is likely to be problematic, it might nevertheless offer a framework to which national regulations could

refer, especially if parties realize that compliance with common standards is in their mutual self interest. More importantly, international investments in agriculture other than land acquisition should be evaluated and promoted.²¹

Investors in land often look for land with a high growing potential, which means land with lots of rainfall or land that can be irrigated. In multimillion dollar investments involving irrigation, investors typically want to secure water rights as part of the deal. Motivated by potential revenues from water fees and the prospect of improved agricultural productivity, many African governments are signing away water rights for decades to large investors. But they are doing so with little regard for how this will impact the millions of other users — from fishermen to pastoralists — whose livelihoods depend on customary access to water. Water managers must seriously consider the extent to which water rights should be linked to land in this way before setting a long-term precedent that could compromise sustainable and equitable supply to all users in the future.²²



2. Land access, land tenure and rural poverty: which impacts?

Rural poverty is strongly associated with poor access to land, either in the form of landlessness or because of insecure and contested land rights. Economic analysis has long recognized the importance of secure property rights for growth, and therefore for the poverty reduction which growth can bring. Increased land access for the poor can also bring direct benefits of poverty alleviation, not least by contributing directly to increased household food security. In countries where agriculture is a main economic activity, access to land is a fundamental means whereby the poor can ensure household food supplies and generate income.²³

2.1 Land tenure and poverty reduction

According to several studies increased land access for the poor can bring direct benefits to poverty alleviation, not least by contributing directly to increased household food security. In societies which remain predominantly rural, where agriculture is a main economic activity, access to land is a fundamental means whereby by the poor can ensure household food supplies and generate income. In addition, land is a capital asset offering opportunities for social and economic empowerment and thereby a springboard from which to escape from poverty. Secure rights to land are a basis for shelter, for access to services and for civic and political participation; they and can also provide a source financial security furnishing collateral to raise credit, as a transferable asset which

can be sold, rented out, mortgaged, loaned or bequeathed. Moreover secure access to land creates incentives for the user to invest labour and other resources in it so as to maintain its value and sustain its productivity, and allow the user access to social and economic development opportunities. Some authors summarize the poverty reducing effects of land access as including household income gains; of food security benefits from making food more easily and cheaply available; the safety net and investment effects, where land assets provide a buffer against external shocks and frees up resources for investment e.g. in children's education; and the dynamic income distribution effects of more equitable land distribution across society²¹.

Research has documented a positive relationship between equitably distributed land and economic growth²². While history provides examples of countries that have developed with very unequal land distributions (see for instance the industrial revolution that took place in Great Britain in the 18th and 19th centuries), research shows that, over the period 1960-2000, countries with a more egalitarian distribution of land tended to be characterized by higher levels of economic growth²³. More egalitarian land distributions are also associated with greater social peace and cohesion. Where land rights are highly concentrated, inequalities may spawn a sense of injustice, entailing risks of land occupations and even violent clashes over land. The experience of several East Asian countries (South Korea, Taiwan)

shows how a reform resulting in more equitable land distribution is fundamental in creating the basis for sustained economic development.²⁴

Land tenure and poverty: evidence from sub-Saharan Africa

The empirical evidence of poverty trends and tendencies in relation to land tenure insecurity is strikingly clear in Africa. Some authors have estimated that more than 45% of sub-Saharan Africa's population now lives in poverty. An examination of poverty statistics in East and Southern Africa indicates that the majority of rural people in these regions exist below the national poverty line. The authors also note that, although at least fifteen African countries have focused on developing strategic plans for poverty reduction, most of these plans provide only scant attention to the role of land access and land distribution in rural poverty. The severe land inequalities in many African countries between small and large-scale farming sectors, is noted as an important element in an effective rural poverty reduction strategy.

Land in Africa is a critical constraint on poverty reduction because most rural households rely on land for the reproduction of future generations, since the industrial and service sectors do not currently provide alternative opportunities for survival. Apart from its value for agricultural purposes, to realize subsistence production and cash income, land also provides for basic household needs, such as energy, through fuelwood, medicines, housing materials and nutrition. Unequal control over land is therefore

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a critical factor in formulating poverty reduction policy and in the political process of democratic transition in Africa. There is a general lack of attention in both literature and policy to quantifying land distribution patterns and their affects on poverty reduction within Africa's small-scale farming sector. Using household survey data from five countries - Ethiopia, Kenya, Rwanda, Mozambique and Zambia - some authors note that, in countries where 70-80% of the rural population derives the bulk of its income from agriculture, poverty reduction typically depends on agricultural productivity growth. They also note that growth alone is not sufficient for poverty reduction since the initial distribution of assets affects the poverty-reducing effects of the growth²⁵.

2.2 Land tenure and food security

Some authors have noted that the food security and famine literature presents solid evidence of qualitative and quantitative links between land tenure and food security. They argue that a reduction in, or outright loss of, access to land in an agrarian society leads directly to a reduction in income and access to food. The most apparent qualitative link that they suggest is that increased security of tenure in productive resources enables more efficient and profitable agricultural production and hence greater access to food via both own production and trade. Secondary links that they mention include access to common property resources for livestock production and non-agricultural livelihoods,

fuelwood and other forest products and wild foods²⁶.

According to this framework present decisions regarding consumption and investment are a critical determinant of the composition of the household's endowment of resources in the subsequent cycle, rather than simply representing a point along a linear relationship. Investment in land or capital assets clearly enhances the ability to generate income in the next period. Consumption is a (sometimes overlooked) form of investment as well, representing investment in the health of the household's endowment of labour. This is where the notions of sufficiency and sustainability enter the system. A household whose members have secure access to sufficient food is one that can afford to consume enough food for activity and health without drawing unsustainably on its reserves of wealth, thereby maintaining its endowment of both labour and non-labour resources over the longer term.

Tenure institutions directly affect food access at the household level in a primarily agrarian society by governing access to resources and indirectly affecting food security at the regional or national level through overall food availability, and hence food prices. But the linkages between land tenure and food security go well beyond simple, direct production. It has been argued that: access to resources is an essential determinant of access to food; food security is a function of food availability, access, and utilization; and access to food encompasses the three

important dimensions of sufficiency, sustainability and vulnerability. Based on these arguments, the authors suggest ways in which land tenure and food security are linked, to comprise a dynamic system in which decisions about production, marketing, consumption, and investment generate, and are in turn driven by structural changes over time in the distribution of resources within and among households²⁷.

2.3 Access to land and agricultural development

The relationship between access to land and poverty reduction cannot be seen in isolation from broader agricultural and economic policy. Equally, these issues are intimately connected with rural development policies and environmental outcomes. The distribution of land rights and opportunities for access to land will have implications for the distribution of wealth, rates of economic growth and the incidence of poverty, and the shape and direction of agricultural development will affect the incomes and returns from different types of farming activity, the value of land and demands for access to land resources. The incentives and tenure structures that largely determine how land is used will profoundly affect environmental impacts and sustainability.

Discussions on access to land should be placed in the context of the debate on agricultural modernization that is taking place in many parts of the world. Broadly speaking, two



models of agricultural development are competing in the market for policy ideas. On the one hand, a commonly held view calls for the promotion of agribusiness as a way to attract private capital and increase agricultural productivity. On the other, family farming remains the backbone of rural livelihoods in many parts of the developing world, and has been shown to be dynamic, responsive to change, and an important source of investment in agriculture, such as West Africa. Elsewhere, as in Latin America, capital-intensive and family farming-centred models co-exist, although research, development and extension support tend to be heavily concentrated on the commercial sector. Whereas social justice and equity concerns demand that agrarian strategy support the struggles of poor people for access to land as a means of subsistence and livelihood, some critics argue that smallholder farming is inefficient and that the rural poor would be better off leaving the land and finding employment in the “modern” economy – whether in commercial farms or in the non-farm sector. In practice, family farming competes with commercial demands for land

and, given the context of increasingly globalized markets, sustaining rural livelihoods for smallholder farmers will depend on their continued modernization, with support from policy and resources to strengthen capacity and access to markets²⁸.

2.4 Land tenure, productivity growth and innovation

Increasing the security of poor people’s tenure of land, in rental markets through tenancy reforms, or through customary tenure can, under certain conditions, increase productivity, and make land more accessible to the poorest than land titling and the privatisation of land. In most countries, there is a need for the direct involvement of state institutions, in addition to non-state and private sector actors, to promote the interests of the poor in all of these areas²⁹. In many cases, secure access to land is seen as promoting better resource management decisions, preventing or minimising local conflict over land, and, most importantly, contributing

to increased productivity³⁰.

But, rural livelihoods are dependent on diverse income sources. Not owning agricultural land does not automatically represent a situation of disadvantage for rural households and in some cases, lack of credit, knowledge and labour can affect productivity more than tenure. However, for the extremely poor and food insecure rural households land access and tenure security are among the main factors influencing their options and prospects, representing a stable basis of food security and income in a context of limited, seasonal and unremunerative rural labour markets.

The increasing incidence of drought, crop failure and livestock deaths, water scarcity, deforestation and land degradation causes the loss of millions of hectares of agricultural land due to severe degradation. Land access and tenure security influences decisions on the nature of crops grown—whether for subsistence or commercial purposes and the extent to which farmers are prepared to invest in improvements in production, sustainable management, and adoption of new technologies and promising innovations³¹.

3. Innovation and change in land rights management

Great progress has been made in testing out new approaches to securing land rights. Twenty years ago, much emphasis was placed on formal land titling programmes, which have proved slow, expensive, and difficult to keep up-to-date, and hard for poor farmers to access. Evidence shows that titling is neither necessary nor sufficient to generate tenure security. Indeed, programmes to title and register land may generate conflicts rather than resolving them. Pilot cases from Ethiopia, Mozambique, and Benin show how rights can be registered at much lower cost and in simpler ways. In many places, titling and registration of land may be much less important than working to strengthen local institutions with responsibility for managing land rights and related disputes. The recent shift towards decentralizing government has been valuable as a means to get land rights management much closer to the field. This better understanding of the diverse options available to government allows approaches to be tailored to different settings, and for upgrading of rights and systems over time. Ways of securing rights work best when these are based on tenure systems already known to the community concerned. The costs and techniques of land administration also need to match the value of land. New technologies, such as Global Positioning Systems, computerization of records, and Geographic Information Systems can help. But technology is no substitute for a locally legitimate process to adjudicate disputed claims. The local knowledge of neighbors is essential to clarify rights and boundaries.

New approaches to land bring a need for new skills, such as simple, low cost survey, and innovation with registration methods. Key lessons for equitable and accessible rights management are - make it simple, use local knowledge, and refine it over time. Learning lessons from elsewhere provides ideas and experience from which to build. These mechanisms for shared learning need strengthening. Technical capacity in different skills should be built in-country, through training and networks³².

3.1 Titling and registration programmes

Across Africa, for instance, land legislation is based on European legal concepts that have little relevance to land relations on the ground, where land is usually held by clans or families and used through complex systems of multiple rights. On the other hand, local - "customary", but continually evolving - land tenure systems are commonly applied even where inconsistent with legislation, as they are more accessible to rural people. As a result, several legal systems - statutory, customary and combinations of both - coexist over the same territory, resulting in overlapping rights, contradictory rules and competing authorities ('legal pluralism'). This situation creates confusion and fosters tenure insecurity, which discourage agricultural investment and enable elites to grab common lands³³.

Efforts to improve land tenure

security have traditionally emphasized large-scale individual titling and registration programmes. Individual titles, a long-standing argument runs, would increase the willingness and ability of landholders to invest, by removing disincentives (as landholders would not invest in the land unless they can be reasonably confident that they will not be deprived of it) and by improving access to credit (as titles can be used as collateral). On the basis of these arguments, titling and registration programmes have been implemented over the past decades in many parts of Africa, Asia and Latin America.

In Africa, registration programmes have proved slow, expensive, difficult to keep up-to-date and hard for poor people to access. As a result, very little rural land has been registered, and formal tenure covers only between 2 and 10% of the land. Where titling and registration have been implemented, greater agricultural investment has not necessarily materialized. High monetary, transaction and other costs discouraged registration of land transfers, thus making land registers outdated and undermining their ability to secure land rights. Registration may not be enough to improve farmers' access to credit where high transaction and other costs hinder credit supply in rural areas and where an unpredictable and fluctuating environment makes farmers risk-averse and hence reluctant to apply for loans. And, although one of the aims pursued by registration programmes is to reduce land disputes, ill-conceived programmes can in fact exacerbate



disputes, at least in the short term. Also, many registration programmes had negative distributive effects, as those with more contacts, information and resources were able to register land in their names, to the detriment of poorer claimants (for example, in Kenya's long-standing registration programme). Where there are significant costs to registration, in both cash and time, smallholders are particularly vulnerable to losing their rights over land. Moreover, registration tends to penalize holders of secondary land rights, such as women and herders, as these rights often do not appear in the land register and are thus effectively expropriated. This highlights the need for more inclusive processes of tenure regularization, focused on existing land rights, instead of the adjudication of individual ownership. Several countries have made explicit efforts to capture all land rights in records – for instance protecting customary land rights and providing for their registration (e.g. Uganda, Mozambique, Tanzania, Niger and Namibia). Use or lease rights over state-owned land may also be registered or are otherwise protected (Ethiopia, Mozambique and Vietnam). In Mozambique, customary use rights are protected regardless of whether they have been registered or not. And, as for the right holder, several recent titling programmes have issued titles not only to individuals but also to families (through joint titling for couples; e.g. Nicaragua, Brazil) and to groups or communities (e.g. South Africa, Mozambique and the Philippines)³⁴.

3.2 Land redistribution programmes

Land redistribution programmes aim to change the distribution of land within society, reducing land concentration and promoting more equitable access to and efficient use of land.

In general, redistributive land reforms have been motivated by three related but distinct objectives:

- To achieve more equitable access to land, so as to reduce poverty and landlessness in rural areas;
- To improve social justice by shifting the balance between different groups in the ownership and control of land, and by restoring alienated land rights;
- To promote rural development by raising agricultural productivity and creating a class of productive smallholder farmers.

In much of Africa, land concentration is limited compared to other regions such as Latin America.

Important exceptions exist, especially in Southern Africa, where the colonial settler economy and apartheid resulted in an extremely inequitable land distribution, mainly along racial lines. In South Africa and Namibia, land redistribution programmes have been implemented since the 1990s, and land policy has had to grapple with reconciling objectives of social justice with

economic development. In South Africa, the aim of more equitable access to land is entrenched in the Constitution. However, despite the government's efforts, the wider policy and trade environment still tends to favour a predominantly white commercial farm sector, which still generates important export revenue. Through the LRAD (Land Reform for Agricultural Development) grant-aided land acquisition programme, the South African government has sought to promote the emergence of new small scale black commercial farmers, while maintaining opportunities for poorer groups through a sliding scale of grants and own contributions which can be made in the form of labour.

Different mechanisms can be used to redistribute land, ranging from market-based negotiation to compulsory acquisition. In market-based redistribution programmes the state, or reform beneficiaries with financial support from the state, purchase land from right holders at a negotiated price ("willing seller, willing buyer"). Market-based models vary widely, for instance with regard to the identity of the buyer (the state, as in Namibia; or beneficiaries, as in South Africa), and the institutions and processes used. Compulsory acquisition models also diverge widely, depending on the amount and timing of compensation and the nature of the expropriation process.

Strong capacities are needed to implement land acquisition programmes effectively. Whether land is first acquired by the state and subsequently transferred to

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beneficiaries, as in the Namibian model, or acquired directly by beneficiary groups, land valuation and other skills are needed to negotiate a fair market price with the “willing seller”. Land redistribution must not be seen in isolation from broader support to the agricultural sector. Newly established farmers will need a mix of technical support, as well as help in accessing credit, markets and inputs³⁵.

3.3 Securing the commons

Conserving Africa’s common property resources is vital for a wide range of natural resources users. Maintaining access to the commons is especially important for the livelihoods of poor people. Strengthening group resource management, legal recognition of joint ownership and developing management agreements between different users provide essential ingredients for securing the commons. Common property resources (CPRs) – such as grazing, woodlands, ponds and fisheries – are still vital for many peoples across the continent. Yet there are growing pressures on these resources, and trends towards privatisation and enclosure. In many cases the breakdown or absence of access rules has led to a free-for-all, leading to unsustainable levels of use and degradation. CPRs are of special significance to pastoral herders who need assured rights to access grazing and water when away from their home area. Mobility and flexibility are key to the survival of such livestock keeping people, who continue to provide a major part of

the meat and milk produced in much of Africa. Finding ways to maintain and strengthen such mobility matters not only at national but also sub-regional level, given the extensive patterns of movement found in West and East Africa. Sometimes there are calls for the pastoral herders to “modernise” and settle down – yet this would be death to livelihood systems which have proved productive and sustainable, despite harsh and riskprone environments. Instead, ways should be found to reduce risks of conflict between herders, neighbouring crop farmers, and other land users. This may involve locally agreed rules for rights of passage for animals along agreed pathways, access to water and compensation for crop damage, etc.³⁶

Group management and ownership of community rights are possible options, though not always successful as in the case of group ranches in Kenya. More successful examples exist, and include Conventions locales for resource management in the West African Sahel, hillside enclosures in Ethiopia, and community land registration in Mozambique. Some see the disappearance of the commons as an inevitable part of economic progress. But access to the commons is especially important for poorer communities, who rely on such for their daily livelihoods, as well as when coping with stress. Management of the commons works well when two factors come together: the establishment of secure legal rights for local communities over the common resources on which they depend; and support to enable those communities to manage these resources in an equitable and

sustainable manner³⁷.

3.4 Women’s rights are particularly vulnerable

Throughout the world, women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security, despite enjoying very limited rights to land. In many countries, the role of women in agricultural production has increased in recent years as a result of men’s migration to urban areas and absorption in nonagricultural sectors. However, in many parts of the world, women have little or no access to resources such as land, credit and extension services. Moreover, women tend to remain concentrated in the informal sector of the economy. In plantations, they often provide labour without employment contracts, on a temporary or seasonal basis or as wives or daughters of male farm workers.

However, in many areas, women are increasingly keen to assert their claims over land. All over Africa, one can find examples of women negotiating rights to land and associated resources. For instance, women may enter sharecropping arrangements, as documented for Ghana and Côte d’Ivoire. In addition, there are growing numbers of reports of women buying land either individually or collectively. In many parts of the world, NGOs support women’s groups by helping

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them obtain land on a collective basis³⁸. Customary practices for managing land are outmoded and not working in many areas. Customary practices regarding land are particularly adverse for women, who rarely have full rights in land but must negotiate as secondary claimants through male relatives – their father, brother, husband or son. Succession and inheritance rights remain problematic, since women usually cannot inherit the matrimonial home, on the death of

their spouse. Women's rights are often affirmed in the Constitution in unequivocal terms, but in most cases, customary law tends to be more important than what the constitution says. New legislation needs to strengthen women's formal rights to land, through spousal co-ownership, and a bar on sales of family land if no agreement by both husband and wife. But law is not enough. High level political statements in support of women's rights need accompanying by a

range of supporting measures, such as ensuring women are represented on land committees, informing local government staff of new legislation regarding women's rights, legal clinics, and encouraging community leaders to take women's rights seriously. It is especially urgent to provide legal protection for women now, since the rising incidence of HIV/AIDS has put widows and orphaned children even more at risk of dispossession of their house and land by their dead husband's kin³⁹.

4. New challenges and opportunities for agricultural land

4.1 Climate change impacts on land

The linkages between issues of climate change and variability and questions of land tenure are multiple, complex and indirect. The direct impacts of climate change on human land use systems and land occupation could potentially have a range of impacts on land access and tenure, with both direct and indirect negative repercussions on human livelihoods, welfare and prosperity. However, the effects of climate change and variability are felt through changes in natural ecosystems, land capability and land use systems. Increasingly, these changes will place diminishing supplies of land under greater pressure, for both productive use and human settlement. Yet despite the wide publicity given to climate change, there is still very limited understanding of the relationships between the impacts of climate change, social and policy responses, and land tenure.

As a result land issues and policies are key considerations for adaptation planning, which will need to strengthen land tenure and management arrangements in at risk environments, and secure supplies and access arrangements for land for resettlement and changing livelihood demands⁴⁰.

Africa

Most studies agree that Africa will be hardest hit by the effects of

temperature rises, decreases in moisture availability and changing rainfall patterns and on crop production because of the high dependence (approximately 70% of Africa's population) on agriculture. 95% of cropland is devoted to rainfed agriculture. Whereas some areas may benefit from increases in rainfall, much larger areas will face severe moisture limitation (80,000km² and 600,000km² respectively according to UNFCCC). Temperature and rainfall predictions indicate a risk of agricultural collapse in North Africa where crop failures, desertification, and water resources stress could be expected to cause climate-induced migration of people from the region and overall trends for drying and reduced food security in southern Africa. In both West and Southern Africa maize yields are likely to fall resulting from the combinations of increased temperature and lower and more variable rainfall, possibly leading to increased famine and malnutrition in the absence of shifts to more drought tolerant crops. Existing model projections vary for the Sahel where there are possibilities of the emergence of a more humid rainfall regime, or of greater rainfall variability with more frequent localized and seasonal flood events⁴¹.

Caribbean and Pacific Island states

Small island sub-regions in the Pacific and Indian Oceans are highly threatened by flooding and submergence due to sea-level rise. The economy of the Caribbean will be affected by sea level rise

combined with damage to coral reefs and associated fisheries due to increased acidification resulting from marine CO₂ absorption⁴².

4.2 The biofuels challenge to poor land access

Recent years have witnessed a rapid and accelerating expansion of bioethanol and biodiesel production. This expansion is driven by government targets for biofuel substitution in energy budgets for transport, driven in turn by concerns about high oil prices, prospects for rural development, export opportunities and means to mitigate climate change. Projections suggest that biofuel production is likely to continue expanding in the coming years. The spread of commercial planting of biofuels crops, whether for export or for internal markets, has significant implications for land use and access in producer countries. The increased demand for biofuels can partly be met by technical improvements in production: more efficient processing and higher yields of feedstocks per unit area. When second generation and third generation biofuels become commercially available, they are likely to accelerate efficient land use, making better use of waste products, marginal land and space-saving technologies. Even for first generation biofuels, more intensive land use, producing higher yields, could meet a proportion of the increased demand for feedstocks.

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Clearly, we cannot rely on yield increases alone to supply the rapidly growing demand for biofuel feedstocks, a direct link between biofuels demand and land demand being envisageable⁴³.

How much land is required to meet projected demand for biofuels feedstocks?

In 2006 an estimated 14 million hectares (ha) of land was used for the production of biofuels and

by-products, approximately 1% of globally available arable land. A number of analysts have since come forward with projections of future land needs for biofuel production. One recent study estimates that demand for maize-based ethanol from the US alone will put 12.8 million hectares (ha) under maize in the US by 2016, thereby bringing 10.8 million ha new agricultural land into production, mainly in Brazil, China, India and the US.

At the global level, according to International Energy Agency's "World Energy Outlook 2006"⁴⁴ projected growth in biofuel production to 2030 will require 35 million ha of land (2.5% of available arable land, approximately equal to the combined area of France and Spain) in the Reference Scenario, and 53 million ha of land (3.8% of available arable land) in the Alternative Policy Scenario⁴⁵.

	2004 (1)		2030 Reference scenario (2)		2030 Alternative reference scenario (3)		2030 Second- generation biofuels case (4)	
	Million ha	% arable	Million ha	% arable	Million ha	% arable	Million ha	% arable
United States and Canada	8,4	1,9	12	5,4	20,4	9,2	22,6	10,2
European Union	2,6	1,2	12,6	11,6	15,7	14,5	17,1	15,7
OECD Pacific	neg.	neg.	0,3	0,7	1,0	2,1	1,0	2,0
Transition economies	neg.	neg.	0,1	0,1	0,2	0,1	0,2	0,1
Developing Asia	neg.	neg.	5,0	1,2	10,2	2,5	11,5	2,8
Latin America	2,7	0,9	3,5	2,4	4,3	2,9	5,0	3,4
Africa and Middle East	neg.	neg.	0,8	0,3	0,9	0,3	1,1	0,4
World	13,8	1,0	34,5	2,5	52,8	3,8	58,5	4,2

Table 1 - Land requirements for biofuels production⁴⁶

Legenda:

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(1) Land used for biofuel production in 2004 and as a percentage of total arable land; (2) Situation in 2030 if current trends remain unchanged;

(3) Situation if countries adopt all of the policies they are currently considering related to energy security and CO₂ emissions;

(4) Situation in which some biomass for biofuels production comes from non-arable land and residues, reducing arable land requirements. neg = negligible; ha = hectares

How much land is actually available to meet these needs?

The Global Agro-ecological Assessment, based on satellite imagery, provides the most comprehensive survey of global agricultural potential. At the global level, 2,541 million ha of land have potential for cultivation: 2,541 million ha in the “very suitable” and “suitable” categories and a further 784 million ha in the “moderately suitable” category. A large proportion of the world’s land surface is not cultivable due to being too dry, too cold, too steep, too nutrient-poor or a combination of these factors.

The proportion of the cultivable land that is actually under cultivation or under other land uses differs widely around the world. In Asia, Europe and North America, almost the total cultivable area is either under cultivation or under forest in which cultivation would have severe environmental consequences. In these regions, expansion of biofuel crops can only come about as a substitution for other crops or through ecologically risky expansion

into forest areas.

In effect 80% of the world’s reserve agricultural land is thus in Africa and South America. Estimates based on satellite imagery from 1995-1996 give a total cultivable land in Africa and South America of 807 and 552 million ha respectively (all three suitability categories minus land under forest), of which 197 and 159 million ha respectively are under cultivation. The underestimation of the actual use, according to the authors, ranges from 10 to 20%, which would increase the “cultivated land” up to about 227 million ha (Africa) and 183 million ha (South America).

Against this background, increasing demand for land for biofuels will result in changes to land access for poor people through two main routes: direct linkages that involve direct land use change to biofuels crop production from other uses, and indirect linkages that involve changes in land use triggered by biofuels expansion elsewhere.

Direct linkages - Direct linkages relate to effects on land access that can be directly ascribed to the spread of cultivation of biofuel crops. Possibly the most straightforward example is where the government takes (“expropriates”, “dis-allocates”, “withdraws” – depending on the country context) land from local users and allocates it to biofuel producers, based on the assumption that biofuel crop production is more economically viable than existing forms of land use. A more complex type of direct linkage relates to the operation of market forces. The spread of biofuels to meet growing internal and international demand

tends to increase the value of land – whether this is expressed in terms of market prices or, where land markets are limited or informal, in terms of opportunity costs and preferential allocation to particular uses. This may result in poorer land users being priced out of land markets (either sale or rental markets). It may also foster changes in land access along gender lines as control over increasingly high-value land may shift from women to men.

Indirect linkages - Indirect linkages between biofuels and land access refer to effects on land access which are produced not directly by the spread of biofuel crop production, but rather by other factors which are in turn caused by the spread of production of biofuels crops. Increases in food prices

linked to the spread of biofuels may change the economic terms of trade between agriculture and other sectors of the economy, and between rural and urban areas. Higher rates of return in agriculture will reinforce trends towards higher land values, particularly in more fertile lands⁴⁷.

Increasing land demand: impacts on small-scale land access

Land use changes associated with cultivation of biofuels can occur through both direct and indirect pathways as described above. Land use change may involve conversion from one crop to another, from pasture to cropland, from unutilised to utilised farmland, or from low intensity management (e.g. shirring cultivation) to high intensity. As the economic opportunities linked to biofuel production improve,

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agricultural producers may shift from food or cash crops to feedstocks.

Another important form of biofuel - induced land use change involves conversion of forest. Large- scale land use changes from forest and conservation areas to biofuels crops are predicted. The spread of biofuels may cause changes in land use that do not impact in any way on land access (a simple change from one crop to another crop under the same communal or individual system of management). Alternatively - the subject of interest in this study - production of biofuels crops may cause impacts on land access. Some cases will involve changes in land tenure (formal or socially legitimised access to land) while other changes will be more subtle, without any highly visible changes to tenurial arrangements, but a range of less visible implications for access to landbased resources.

However, this does not mean that all impacts of biofuels cultivation on land access will be negative. Biofuels may be able to strengthen land access for some poorer land users. Experience shows that higher crop and land values can renew people's interest and investment in land and encourage small-scale farmers to seek more secure individual or communal tenure over their land resources. A central hypothesis is that much of the impact of biofuels on land access will be an outcome of increased land values. Rising values of biofuels crops with knock-on prices for other crops, exacerbated by changing diets in major markets (India and China) and climate change, will in turn lead to rising land values. In the longer

term, growing biofuel production is likely to entrench changes in land tenure. Research has shown that, in the past, the spread of cash crops and the associated increases in land values led to greater individualisation of land rights previously held in common and to the greater commercialization of land rights where these previously operated outside a market logic. Those with better access to financial resources are likely to be better able to gain or secure access to land, while poorer and more marginalised groups may see their access to land eroded. Specific social groups, such as pastoralists, shifting cultivators and women, are especially liable to suffer exclusion from land caused by rising land values, while people who are already landless are likely to see the barriers to land access increase further⁴⁸.

4.3 Food prices crisis and land competition

The food price crisis has increased competition for land and water resources for agriculture, and declining capital for long-term investment due to the credit crunch has resulted in revaluation of natural resources. Farmland prices, for example, have been rising throughout the world. In 2007 alone, farmland prices jumped by 16% in Brazil, by 31% in Poland, and by 15% in the Midwestern United States, according to news reports. Constraints in capital have also led to overexploitation and degradation of natural resources. In many countries, developed water sources are almost

fully utilized, even as agricultural demand for water is expected to increase drastically in the future. The International Water Management Institute points out that at least an additional 2,000 to 3,000 cubic kilometers of water—the equivalent of 33 % of current agricultural water use—will need to be found for irrigated and rainfed cropping by 2030.

The pressures on natural resources, combined with increasing distrust in the functioning of regional and global markets due to the price crisis, have renewed attention to foreign direct investment in agriculture. A number of countries, many with severe natural resource constraints but rich in capital, have begun investing in agriculture overseas to secure domestic supply. The media report that Egypt and the United Arab Emirates, for example, have made such investments in Sudan, Libya in Ukraine, Saudi Arabia in Thailand, and South Korea in Madagascar. China has invested in agriculture in a number of African countries, as well as in the Philippines and in Russia⁴⁹.

As land increasingly become an economic asset, and the market for it has become increasingly globalised, poorer land users have increasingly become vulnerable to losing their land to those with greater economic, political or social ability than themselves to lay claim to, or acquire, the same tracts of land. These factors have contributed to an increasing concentration of landholdings in many countries of Asia, Africa and Latin America in particular. The globalization of land markets, combined with increasing opportunities for profit form

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agricultural production, is provoking increased speculation in agricultural and by multinational companies, including investments banks.

Within the wider context of gradual attrition of land used by the poor, a new set of global trends is currently emerging that vastly increases commercial demand for land. Sharply increasing food prices have prompted food riots in 33 countries in the first few months of 2008 and currently around 45 violent

conflicts are underway worldwide driven by contested land rights claims. Commodity prices continue to increase, fuelling the opening up of new areas for prospecting and mining. Accelerating agrofuels production is demanding large tracts of agricultural and virgin land for industrial-scale production. Carbon-trading mechanisms are likely to place a commercial value on standing forests and rangelands that have previously been marginal to commercial production. The

confluence of these new demands to derive products from land and natural resources is generating a global commercially-driven demand for new land. The Rights and Resources Initiative (RRI) report released in July 2008 estimates that out of the 515 million hectares of land required for the production of agriculture, energy and forestry commodities by 2030, only 250 to 300 million hectares of land are globally available, the remaining 200 million will have to be obtained from forestland.

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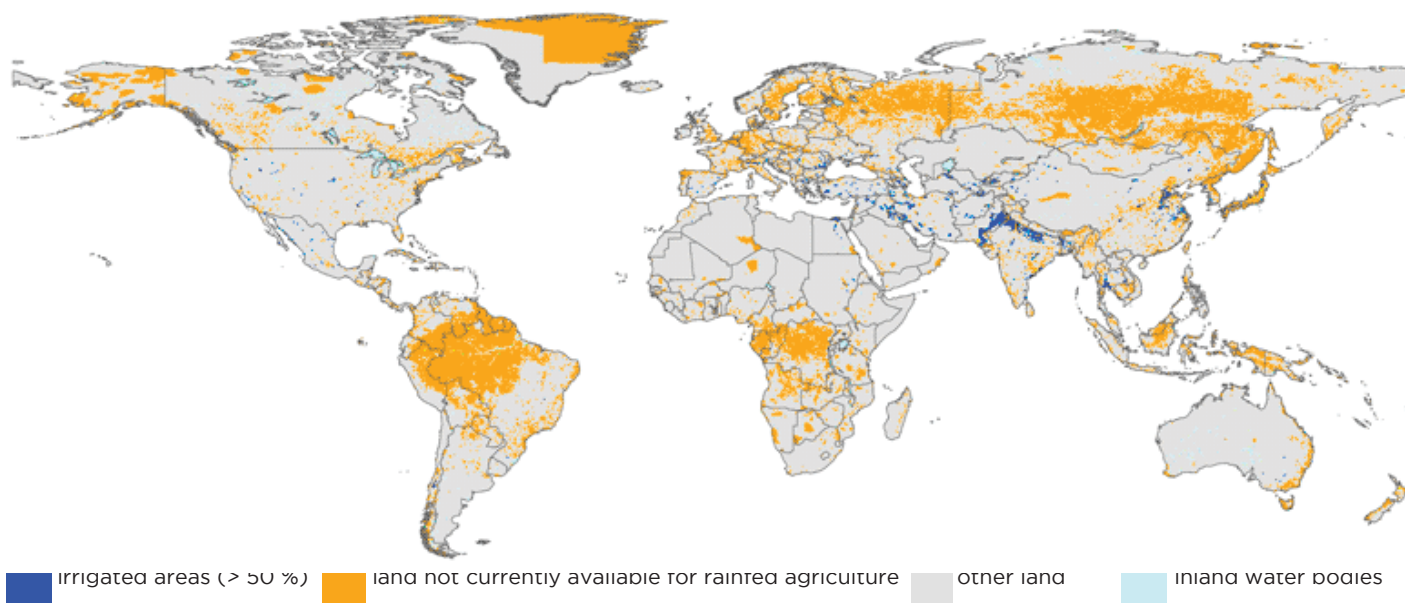
**Table 2- Currently available land area, by region and combined agricultural suitability class
(at intermediate level of inputs)⁵⁰**

Area/Region	Data unit	A not suited for rainfed agriculture	B Marginal agricultural land	C Good agricultural land	D Prime agricultural land	Total
Africa						
Eastern Africa	Area Km ² 1000	12	2.082	3.139	362	5.595
	Share of total %	0.21	37, 21	56, 11	6, 47	100
Middle Africa	Area Km ² 1000	351	757	2 672	280	4.060
	Share of total %	8, 64	18,65	65, 81	6,90	100
Southern Africa	Area Km ² 1000	10	1.877	466	7	2.360
	Share of total %	0, 42	79, 53	19, 75	0, 30	100
Western Africa	Area Km ² 1000	1.473	1.717	2 325	170	5.685
	Share of total %	25, 91	30,20	40,90	2,99	100
Americas						
Caribbean	Area Km ² 1000	1	35	113	7	156
	Share of total %	0, 64	22,44	72,43	4,49	100
Aggregated areas						
Developed	Area Km ² 1000	1.773	22.430	10, 644	2, 604	37.451
	Share of total %	4, 73%	59, 90%	28, 42%	9, 95%	100
Developing	Area Km ² 1000	7 894	30 997	22,181	2,507	63.579
	Share of total %	12, 42%	48, 75%	34, 89%	3, 84%	100%
World	Area Km ² 1000	9 667	53 427	32 825	5, 111	101, 030
	Share of total %	9, 57%	52 88%	32, 49%	5, 06%	100%

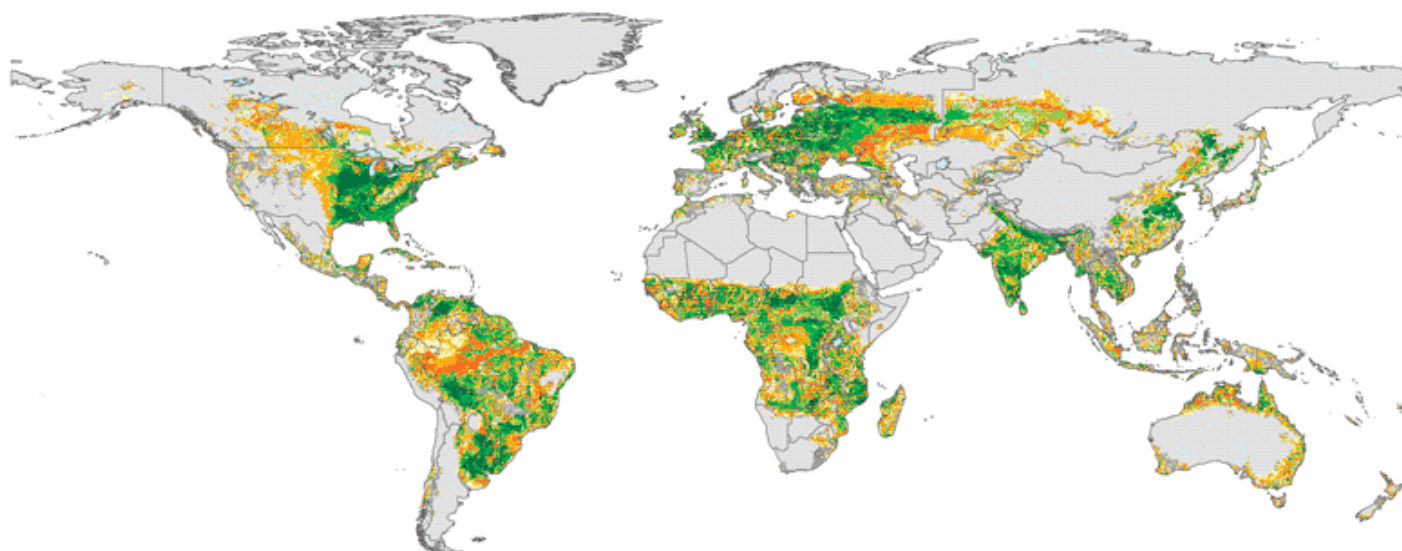
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Irrigated area and land not currently available for rainfed agriculture, total^{S1}



Suitability of global land area for rainfed production of cereals (high level of inputs)^{S2}



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The new global trends are creating unprecedented pressures on land resources and placing new tensions on land tenure systems, leading to what RRI has labeled as potentially the “last great global land grab”. Little data as yet exists as to the magnitude of existing and anticipated impacts of the emerging trends on the tenure security of poor women and men. Nonetheless, it is clear in a context of increased global competition for land, than the poorest, who usually enjoy least tenure security, are least able to compete for land, and thus the most vulnerable to losing access to it. The trends towards trade liberalization make land in regions and countries which have low commercial value by global standards attractive to investors. However, it is also in such areas that local land users often do not have clear tenure rights, such as is the case in many common-property systems, thus making them particularly vulnerable to dispossession⁵³.

4.4 Foreign Direct Investments on land

Land and natural resources are an important sector for foreign investment, in agribusiness, forestry, tourism, mining and petroleum. Countries with such resources may lack the capital and technology to exploit them. Investors with the necessary capital and technology may be the solution. In Africa, foreign direct investment (FDI) flows are heavily concentrated in countries with important petroleum and mineral resources⁵⁴. However,

if appropriate conditions are not in place, natural resource-based investment projects may undermine the ability of local communities to access the resources on which they depend for their survival. This may take the form of expropriation of community lands without adequate compensation. Investors may also be granted exploitation rights that severely affect the ability of local communities to use their resources, and in many cases, investment projects – whether mining operations or large tourism facilities – have led to the diversion and pollution of scarce water supplies. While these issues may emerge in relation to both domestic and foreign investment, the involvement of foreign capital in capital-poor countries may affect more profoundly the balance of bargaining power between local resource users and outside investors⁵⁵.

These problems are compounded by the fact that local users commonly gain access to land through customary norms, and therefore lack registered land titles. Many legal systems accord greater protection to the property rights of foreign investors than to those of their nationals, in the belief that this is important in attracting foreign investment. Many developing countries have provided special guarantees to foreign investment through signing investment treaties, passing domestic legislation and establishing specialized government agencies. However, it is easy to exaggerate the importance of guarantees to property rights in attracting FDI. A 2005 study by UNCTAD⁵⁶ has shown that the determinants of FDI are complex,

and include factors such as scale economies, infrastructure, GDP growth, and wage levels capable of supporting domestic demand for produce. Nevertheless, investor-friendly reforms have in some cases managed to attract foreign investment, for instance in the mining sector. Mali and Tanzania, which did not have a large-scale mining sector before 1990, have subsequently hosted considerable flows of FDI in that sector, following re-design of their mining and investment codes. As a result, Mali is today Africa’s third largest exporter of gold. However, the weak linkages between mining and the local economy have resulted in limited economic benefits, while generous fiscal and other conditions for foreign mining companies have limited revenues accruing to the host state. In addition, adverse environmental and social impacts have been recorded, including water pollution and loss of access to land. In this context, issues of compensation are typically not addressed effectively or equitably⁵⁷.

In recent years, several countries in Asia, Africa, Latin America and the Pacific have adopted policies and laws to grant local resource users greater tenure security, including in their relations with foreign investors. Several countries have opted for the legal recognition of collective land rights rather than individual titling. In its recent Policy Research Report, the World Bank argues that “while the individualisation of land rights is the most efficient arrangement in many circumstances, in a number of cases [...] definition of property rights at the level of the group [...] can help to significantly reduce the danger of encroachment by



outsiders while ensuring sufficient security to individuals”⁵⁸. Indeed, “where the primary source of tenure insecurity is outsider encroachment, the best legal response is to recognise and enforce local group rights, and (where it does not cause undue conflict) to demarcate and record certain lands in the name of that group”⁵⁹.

Another issue concerning investor-community relations concerns compensation for the taking of land and for environmental damage (e.g. water pollution) suffered by

local communities as a result of the investment project. Where customary land rights are not legally recognised, local users may find it difficult to obtain compensation. In recent years, several countries have taken steps to require that loss of customary rights be compensated – either through law reform (e.g. Mali’s Land Act 2000, as amended in 2002) or through judicial decisions (e.g. in Tanzania, the case *Attorney General v. Akonaay and Lohay*, 1994). However, even where the law requires payment of compensation, substantial problems remain. Evidence from

Ghana and Tanzania within the context of mining operations suggests that the land values used by valuation boards are often lower than market values; and the existence of overlapping use rights over the same land raises issues as to who should be compensated – tenant or landowner, which landowner, or all. Customary chiefs and other elites may ally themselves with foreign investors and government agencies, and capture the benefits of compensation to the detriment of community members; and even where compensation is set, payment may be delayed or resisted⁶⁰.

Resources available on-line

En italique les documents disponibles en français

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Glossary⁶¹

Access

The ability to use land and other natural resources (e.g., use rights for grazing, growing subsistence crops, gathering minor forestry products, etc.), to control the resources (e.g., control rights for making decisions on how the resources should be used, and for benefiting financially from the sale of crops, etc.), and to transfer rights to the land to take advantage of other opportunities (e.g., transfer rights for selling the land or using it as collateral for loans, conveying the land through intracommunal reallocations, transmitting the land to heirs through inheritance, etc.)

Adjudication

The process of authoritatively determining the existing rights and claims of people to land. Adjudication should not alter existing rights or create new ones but instead should establish what rights exist, by whom they are exercised, and to what limitation.

Adverse possession

Gaining access to land by acquiring legal rights through possession for a prescribed period of time.

Agrarian structure

The structure of farming units in a society, including the pattern of land distribution among rural landholders. Reforms are often promoted in countries which have an agrarian structure of very large farming units operating with a labour force of landless or land poor peasants and very small family-operated farms. Examples of these are the

“latifundia” and “minifundia” of Latin America.

Alienate

To alienate land is to transfer rights to that land to another person. Alienation can be full (e.g., the sale of ownership of that land) or partial (e.g., the transfer of use rights through a lease).

Allocation

The process of assigning rights to land to a person (individual or corporate) within the rules defined by the land tenure system. Rights can be assigned by the sovereign power (nation state or indigenous) through original grants or through reallocations following expropriation, purchase, or reversion. Rights can also be allocated by private persons to others through sales, leases, inheritance, etc.

Biofuels

Liquid fuels manufactured from biomass. They are used mainly for transport or heating. They can be produced from agricultural products, and forest products, or from the biodegradable portion of industrial and municipal waste. Bioethanol and biodiesel account for more than 90% of global biofuel use. Biofuels are made from biofuel feedstocks, plant or animal materials that may be produced especially or may be by-products or wastes from other industries.

Bioethanol

A distilled liquid produced by fermenting sugars from sugar plants and cereal crops (e.g. sugarcane,

maize, sugarbeet, cassava, wheat, sorghum). A second generation of bioethanol – lignocellulosic – makes use of a range of lignin and cellulose materials such as short-rotation wood coppices and energy grasses. Bioethanol can be used in pure form in specially adapted vehicles, or blended with gasoline.

Biodiesel :

Produced from organic oils, usually from the oily fruits of crops such as rapeseed, sunflower, soya, castor, oil palm, coconut or jatropha, but also from animal fats, tallow and waste cooking oil. A second generation of biodiesel technologies synthesises diesel fuels from wood and straw. Like bioethanol, biodiesel can be used in pure form in specially adapted vehicles or blended with automotive diesel. A third generation of biodiesel technologies will use oils from algae.

Bundle of rights

The analogy that the collection of rights associated with a land parcel can be likened to a bundle of sticks: very often separate “sticks” of the bundle are held by different people; “sticks” can be acquired in different ways and held for different periods.

Cadastre

A parcel-based land information system that includes a geometric description of land parcels, usually represented on a cadastral map. In some jurisdictions it is considered separate from, but linked to, the register of land rights and holders of those rights (land register), while in other jurisdictions the cadastre and land register are fully integrated.



Community-based natural resource management or CBNRM

Resource management, in which the government plays a relatively minor role

Common property

Rights held by members of a community to land and other natural resources (e.g., pastures) that members can use independently of one another. The community controls the use of the common pool resources and can exclude non-members from using it.

Control rights

A right to control the management of the property. It may include rights to make decisions about how the land should be used including what crops should be planted, and to benefit financially from the sale of crops, etc.

Coping strategies

short-term measures applied when a household or community does not have sufficient income or food to meet all its essential needs.

Customary systems

Systems in which tenure rights are ostensibly controlled and allocated according to traditional practice

Customary tenure

The tenure usually associated with indigenous communities and administered in accordance with their customs as opposed to statutory tenure usually introduced

during the colonial periods. However, some countries in Africa are giving legal status to customary tenure. It often includes communal rights to pastures and exclusive private rights to agricultural and residential parcels.

De facto rights

Rights that exist in reality or “on the ground”. They may be different from de jure rights.

De jure rights

Rights that exist because of formal law, which may be different from de facto rights.

Eminent domain

The expression identifying the state’s position as having ultimate, sovereign power over the land. The term is used in some jurisdictions to describe the power held by the state to acquire land by expropriation or compulsory acquisition.

Encroachment

The illegal occupation or use of portion of the land holdings of another.

Environmental security

The capacity of individuals and groups of people to live harmoniously with nature on a sustainable basis, while meeting their basic needs.

Externalities

An externality is an outcome outside the desired outcome resulting from

an intervention. In the context of the introduction of a new land registration system, for example, an externality resulting from a particular approach adopted may be that certain types of informal rights are not capable of registration, and are therefore jeopardised.

Food security

The capacity of households, communities and the state to mobilize sufficient food through production, acquisition and distribution, on a sustainable basis.

Formal property :

Rights that are explicitly acknowledged by the state and which may be protected using legal means.

Freehold

The everyday expression for what is usually regarded as “ownership” providing the holder with use rights, control rights, and transfer rights and otherwise enjoyment of the land parcel to the extent permitted by law. The term derives from a particular type of tenure found under English common law, i.e. the land holder was free from the obligation of providing feudal services.

Indigenous tenure system

Tenure system of local origin, see customary tenure.

Informal property

Rights that lack formal, official recognition and protection. In some cases, informal property rights are

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illegal, i.e., held in direct violation of the law. In other cases, informal property may be “extra-legal”, i.e., not against the law, but not recognized by the law.

Inheritance

The right to transfer property to one's heirs. In many societies, property descends to males, and females have no or little right to inherit. In some societies, tenure rules may provide for females to inherit but, in practice, daughters are expected to give up this right on the basis that they will, upon marriage, gain access to the lands of their husbands. In matrilineal societies, upon the death of the wife, property descends through the line of the matrilineal uncle, and the surviving husband may lose rights previously enjoyed. In patrilineal societies, the widow may lose rights and be evicted.

Land administration

The set of systems and processes for making land tenure rules operational. It includes the administration of land rights, land use regulations, and land valuation and taxation. Land administration may be carried out by agencies of the formal state, or informally through customary leaders.

Land dispute

A disagreement over land rights, boundaries or uses. A land dispute occurs where specific individual or collective interests relating to land are in conflict.

Land information system (LIS)

A system for acquiring, managing, processing, storing and distributing information about land. It is usually parcel-based.

Land policy

A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts. Land policy is contained in texts issued by governments, and is further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land use planning. To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups.

Land policy reform

In its broadest sense, land policy reform can involve deliberate changes to the distribution of land resources or the forms of tenure under which they are held (land tenure reform), the rules regulating land use, and the institutions which administer and manage land and regulate land use. It may include an action on the distribution of rights itself (agrarian reform, regularization, etc.). Source: UE, Commission Staff Working Document, cit.

Land reform

The redistribution of land to the rural poor for equity and agricultural efficiency purposes.

Land registration

The recording of rights to land in some form of public register. It includes information on the rights, their location, and their holders. Registration can be parcel-oriented (sometimes referred to as title registration) or based on the holders or transfer documents (sometimes referred to as deed registration). In title registration, ownership is transferred upon registration rather than on execution of the contract; the state may also provide a guarantee on the validity of the title.

Land rights

Rights held to land and other natural resources. More than one person may hold rights to a parcel of land which gives rise to the concept of a “bundle of rights”.

Land tenure

The relationship, whether legally or

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customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.

Land tenure reform

Changes to the rules of tenure. It can include the legal recognition of customary tenure rights, strengthening the rights of tenants, etc.

Land tenure security

Refers to the degree of reasonable confidence not to be arbitrarily deprived of the land rights enjoyed or of the economic benefits deriving from them. It includes both objective elements (clarity, duration and enforceability of the rights) and subjective elements (landholders' perception of the security of their rights).

Land tenure system

A land tenure system is made up of rules, authorities, institutions and rights. Land administration itself (maps, deeds, registers) is only one part of a land tenure system. No system of land tenure can work without a body with the power and authority to define and enforce the rules, and provide arbitration in case of conflict. Thus, a land tenure system is made up of rules, authorities, institutions and rights. Land administration itself (maps, deeds, registers, and so on) is only

one part of a land tenure system.

Lease

The contractual agreement (which may be formal or informal) for the temporary use of land.

Leasehold

Land belonging to one entity is, by contractual agreement, leased to another entity for a fixed period of time

Livelihood strategies

The ways in which assets or resources are used to generate access to food and other basic needs.

Negotiated land reform

Reforms that use the land market as a vehicle for redistributing land, but in which the state plays an important role in providing funds (e.g., through grants and/or loans) for poor farmers to purchase land.

Open access

Tenure where there is no control on access to resources: specific rights are not assigned to anyone and no-one can be excluded. It may include rangelands, forests, etc, where there is free access to the resources for all.

Ownership

The rights to land that are, in everyday language, associated with the ability to use, control, transfer, or otherwise enjoy a land parcel as long as those activities are allowed by law. In statutory tenure

it is often associated with freehold. However, land law does not tend to define explicitly what is meant by "ownership".

Parcel

A portion of land for which distinct rights exist.

Possession/possessory rights

The rights that accrue, in everyday language, from physically occupying a land parcel. A legal owner does not have to possess the land to be the owner; the person possessing it may have a legal claim or none at all. Legal recognition of possessory rights vary around the world; in some cases, possession can give rise to ownership claims through adverse possession.

Private property

Rights held a private party who may be an individual person, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization.

Regularisation

The process of bringing informal property rights into a formal, legal system of land administration. It usually includes the steps of adjudication, titling and land registration.

Reversion

The process used by some states to recover property from a holder for reasons such as the failure to pay property taxes or to use rural land

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for agricultural purposes within a stipulated time. Such property may be allocated to new parties by the state. It is also used to describe a lessor's interest in the land after the term of a lease has expired.

Sharecropping

A tenure where a land owner allows a person ("share cropper") to use the land in return for a share of the crop produced on the land.

Slash and burn

An example of a sequential system of shifting cultivation where an area of forest is cleared by burning to allow the ash to enrich nutrient-poor soils. Cropping may then take place on the cleared land for two or three cycles, subsequently letting the forest lie fallow for 15-30 years until the cycle is restarted. Societies that use this technique may have traditional

access to large areas of forested land to support them in a sustainable manner.

State property

Rights held by the state, often by assignment to a public agency.

Statutory allocations

A particular form of state land where such land, by virtue of some statutory provision, is allocated for the use of some legally constituted body.

Sustainable livelihoods

Systems of human livelihood that can cope with and recover from stresses and shocks, and maintain or enhance their human capabilities and assets without undermining the natural resource base.

Tenure security

the certainty that a person's rights to land will be protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. The attributes of security of tenure may change from context to context: investments that require a long time before benefits are realized require secure tenure for a commensurately long time.

Title

The evidence of a person's right to land, or "entitlement".

Use right, usufruct

The right to use the land. A holder of a use right may not have the right to sell the property, etc.

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(Endnotes)

1 Most text in this Reader has been directly taken from the original documents or websites. The Reader is not intended to exhaustively cover the issue of Land Access and Rural Development but to provide a brief overview and selected information resources. For additional inputs, kindly contact at CTA Isolina Boto (boto@cta.int) or Camilla La Peccerella (lapeccerella@cta.int). The Reader and most of the resources are available at <http://brusselsbriefings.net/>.

2 FAO, International Conference on Agrarian reform and Rural Development (ICARRD), Porto Alegre March 2006, Issue Paper 1 - Policies and practices for securing and improving access to land. Executive Summary, http://www.icarrd.org/icard_doc_down/Issue_Paper1sum.pdf

3 European Commission, EU Guidelines to support land policy design and reform processes in developing Countries, COM(2004) 686 final, 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0686:FIN:EN:PDF>

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Africa Conference held in London November 8-9, 2004, <http://www.iied.org/pubs/pdfs/12516IIED.pdf>

5 European Commission, EU Guidelines cit.,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0686:FIN:EN:PDF>

6 FAO, Land tenure and rural development, FAO Land tenure studies n. 3, 2002,

<ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

7 IIED and FAO, Fuelling exclusion? The biofuels boom and poor people's access to land, 2008, <http://www.iied.org/pubs/pdfs/12551IIED.pdf>. In broad terms, land tenure rights are often classified according to whether they are "formal" or "informal". Formal property rights may be regarded as those that are explicitly acknowledged by the state and which may be protected using legal means. Informal property rights are those that lack official recognition and protection. In some cases, informal property rights are illegal, i.e., held in direct violation of the law. In many countries, illegal property holdings arise because of inappropriate laws. Property rights may also be illegal because of their use, e.g., the illegal conversion of agricultural land for urban purposes. In other cases, property may be "extra-legal", i.e., not against the law, but not recognised by the law. In some countries, customary property held in rural indigenous communities falls into this category. A distinction often made is between statutory rights or "formally recognized rights" on the one hand and customary rights or "traditional rights" on the other hand. This distinction is now becoming blurred in a number of countries, particularly in Africa, which provide formal legal recognition to customary rights. Formal and informal rights may exist in the same holding. For example, in a country that forbids leasing or sharecropping, a person who holds legally recognized ownership rights to a parcel may illegally lease out the land to someone who is landless. These various forms of tenure can create a complex pattern of rights and other interests. A particularly complex situation arises when statutory rights are granted in a way that does not take into account existing customary rights (e.g., for agriculture and grazing). This clash of de jure rights (existing because of the formal law) and de facto rights (existing in reality) often occurs in already stressed marginal rainfed agriculture and pasture lands. Likewise in conflict and post-conflict areas, encounters between settled and displaced populations lead to great uncertainties as to who has, or should have, the control over which rights. The layers of complexity and potential conflict are likely to be compounded, particularly where, for example, state ownership is

statutorily declared and state grants or leases have been made without consultation with customary owners (who are not considered illegal), and where squatters move illegally onto the land. FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

8 Land tenure is often categorized as:

- Private: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.

- Communal: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.

- Open access: specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all. (An important difference between open access and communal systems is that under a communal system non-members of the community are excluded from using the common areas.)

- State: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralized level of government.

In practice, most forms of holdings may be found within a given society, for example, common grazing rights, private

residential and agricultural holdings, and state ownership of forests. Customary tenure typically includes communal rights to pastures and exclusive private rights to agricultural and residential parcels. In some countries, formally recognized rights to such customary lands are vested in the nation state or the President "in trust" for the citizens.

In practice, multiple rights can be held by several different persons or groups. This has given rise to the concept of "a bundle of rights". Different rights to the same parcel of land, such as the right to sell the land, the right to use the land

through a lease, or the right to travel across the land, may be pictured as "sticks in the bundle". Each right may be

held by a different party. The bundle of rights, for example, may be shared between the owner and a tenant to create a leasing or sharecropping arrangement allowing the tenant or sharecropper the right to use the land on specified terms and conditions. Tenancies may range from formal leaseholds of 999 years to informal seasonal agreements. If the farm is mortgaged, the creditor may hold a right from the "bundle" to recover the unpaid loan through a sale of the mortgaged property in the case of default. A neighbouring farmer may have the right from the "bundle" to drive cattle across the land to obtain water at the river.

At times it may be useful to simplify the representation of property rights by identifying:

- use rights: rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.

- control rights: rights to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of

crops, etc.

- transfer rights: right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.

Very often, the poor in a community have only use rights. A woman, for example, may have the right to use some land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market.

While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

9 IIED and FAO, Better land access for the rural poor. Lessons from experience and challenges ahead, 2006, <http://www.iied.org/pubs/pdfs/12532IIED.pdf>

10 IIED and FAO, Fuelling exclusion?, cit., <http://www.iied.org/pubs/pdfs/12551IIED.pdf>

11 FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

12 IIED and FAO, Better land access for the rural poor. cit., <http://www.iied.org/pubs/pdfs/12532IIED.pdf>

13 In some countries, land restitution has been an important type of land reform. Other land reform interventions include land redistribution programmes which aim at providing the rural poor with access to land and promoting

efficiency and investment in agriculture. These programmes are often, but not always, accompanied by provision of subsidized agricultural services such as extension and credit. In some cases, the state has provided access to idle or

under-utilised public land but most often private land holdings have been the source of land for resettlement purposes. In imposed redistributive land reforms, land is taken from large land holders by the State and transferred to

landless and land-poor farmers. Compensation has been paid to the original owners in some reforms but not in others. In some cases, the reforms have benefitted the tenants who worked the land. Such reforms change the

structure of land ownership by transforming tenants into owners but do not change the operational holdings. In other cases, the reforms have involved the resettlement of beneficiaries on the expropriated lands and the creation of new

farming operations. Some recent land reform initiatives have been designed so that beneficiaries negotiate with land owners to purchase land using funds provided by the State in the form of grants and/or loans. Beneficiaries are

usually required to form a group which identifies suitable land, negotiates the purchase from the seller, formulates a project eligible for state grants and/or credit, and determines how the land will be allocated among the members of

the group and what their corresponding payment obligations will be. FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

14 FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

15 FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

16 European Commission, EU Guidelines to support

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land policy design, cit.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0686:FIN:EN:PDF>

17 For example, a person may have a right to use a parcel of land for a 6 month growing season, and if that person is safe from eviction during the season, the tenure is secure. By extension, tenure security can relate to the length of

tenure, in the context of the time needed to recover the cost of investment. Thus the person with use rights for 6

months will not plant trees, or invest in irrigation works or take measures to prevent soil erosion as the time is too short for that person to benefit from the investment. The tenure is insecure for long-term investments even if it is secure for short-term ones.

FAO, Land tenure and rural development, cit., <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>

18 See FAO, Terminology for integrated resources planning and management, 1999, <ftp://ftp.fao.org/agl/agll/docs/landglos.pdf>

19 IIED and FAO, Fuelling exclusion? cit., <http://www.iied.org/pubs/pdfs/12551IIED.pdf>

20 FAO. 2009. Land grab or development opportunity? <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf>

21 FAO. 2009. From Land Grab to Win-Win. <ftp://ftp.fao.org/docrep/fao/011/ak357e/ak357e00.pdf>

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25 UN Economic Commission for Africa (ECA), Land tenure systems and their impacts on food security and sustainable development in Africa, 2004, http://www.uneca.org/eca_resources/Publications/sdd/Land_Tenure_systems.pdf

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IIED and FAO, Better land access for the rural poor, cit., <http://www.iied.org/pubs/pdfs/12532IIED.pdf>

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resources perspectives, 2007, <http://www.odi.org.uk/resources/specialist/natural-resource-perspectives/111-making-agriculture-work-poor.pdf>

30 A 2005 World Bank analysis of land policies in 73 countries between 1960 and 2000 shows that countries with more equitable initial land distribution achieved growth rates two to three times higher than those where land

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32 IIED, Land in Africa. Market asset or secure livelihood?, cit., <http://www.iied.org/pubs/pdfs/12516IIED.pdf>

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For a better resolution see the map on GeoNetwork website, http://www.fao.org/geonetwork/srv/en/graphover.show?id=14073&fname=Map_5_09.png&access=public

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58 See World Bank, Land policies for growth and poverty reduction, World Bank Policy Research Report 2004, chapter 2 <http://go.worldbank.org/ZRL7FOCU30>

59 In Mozambique, for instance, progressive land and forest legislation provides for the protection of the right of local communities to use and benefit from the land (though ownership remains vested with the state); and for a process to

demarcate and register community lands (though land rights are meant to be protected even when not registered). It

also requires investors to consult local communities in order to obtain land allocations or logging concessions within the boundaries of community lands. In other words, local users and outsiders are expected to negotiate terms and conditions under which local users may benefit from the outside investment. In addition, local communities are meant to benefit from 20% of the forest tax revenue from timber exploitation in their land. This is one of the boldest attempts to secure the property rights of local resource users in relation to foreign investors.

However, shortcomings in the design and implementation of this system have been reported. For instance, the system is centered on a one-off consultation between the investor and the community. This is at odds with the long-

term duration of land allocations and forest concessions. Also, the implementation of these provisions has been

riddled with difficulties. In many cases, consultation processes only involve customary chiefs and local elites. In some cases, the consultation did not take place at all. Even where consultation takes place as required, communities lack the bargaining power and technical skills to negotiate with foreign investors on an equal footing. Ultimately, local communities have no right of veto – and government can still allocate concession rights within community lands, without paying compensation.

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