



TITLE OF THE PAPER

Putting Land Rights into Value

Examples from Benin, Cambodia, Madagascar, Philippines, and Uganda

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Abstract

One of the main drivers behind the formalization of rural land rights is the assumption that increased tenure security will boost agricultural production, because it incentivizes farmers to make investments. Yet, the results of land formalization programs have partly stayed behind expectations. One reason might be that farmers require additional support systems to put land rights into value. Investments in tenure regularization need to be combined with a vision for enhancing landholders' ability to access services needed for productivity enhancing investments. Tenure regularization programs also need to pay more attention to better securing the actual producers working the land, and not just the owners. This requires more insight into secondary rights and rental arrangements. The hypothesis of this paper is that a more secure access to land alone may not sufficiently trigger increases in productivity and agricultural production. Depending on the country context and the existing tenure security perception of farmers, additional support instruments may be necessary that help farmers putting their newly acquired land rights into value. The paper will discuss country examples supported by the German bilateral technical assistance focusing on formalizing land rights and providing farmers with additional livelihood support measures.

Key Words: Tenure regularization, secondary rights, production, investment, land use

1 Introduction¹

One of the main drivers behind the formalization of rural land rights is the theoretical assumption that farmers become more productive when their land rights are secured. This can, for example, be achieved through the issuance of individual or collective certificates, titles or other forms of documentation. The common narrative is that increased tenure security incentivizes farmers to invest into their land, thereby boosting agricultural productivity and production. Other alleged benefits of enhanced tenure security are income gains, improved gender equality, or more sustainable land use. This assumed theory of change is not wrong. However, not all studies available can clearly demonstrate that more secure land rights will lead to such effects. Rather, the existing preconditions and the type of land tenure reform have a strong bearing on the outcome of such interventions.

Lawry et al.'s review of 20 quantitative and 9 qualitative studies looked at different types of tenure reform, such as the conversion of communal or non-demarcated lands to freehold or the statutory recognition of customary land rights and their subsequent registration. There is evidence that productivity and income of farmers have increased after land tenure reforms. These effects seemed to be much larger outside Africa. The authors explain this by the fact that perceived tenure security in

¹ I wish to thank Henrice Stoebesand for her research assistance, Thea Hilhorst for providing me with lots of background information on Benin, and Daniel Tossou and Jean Aholou for valuable monitoring data in relation to the PFR approach of Benin.

customary lands in Africa is higher than for example in Latin America and Asia, so that land regularization has a smaller effect on African farmers' willingness to invest (Lawry 2014, 9; Lawry 2016). This "Africa effect" may be caused by the relatively high perceived tenure security of individuals and groups that do not increase significantly after formalization. Thus, the recognition of informal or customary tenure may play an important role for Sub-Saharan Africa, where resources for formalization may not be readily available everywhere (Lawry 2014, 10).

Another possible explanation could be that supply side restrictions limit the unfolding of tenure security. For example, anecdotal evidence from Benin and Uganda suggests that microfinance institutions and Banks do not significantly increase the availability of credit based on the existence of land certificates

Little is also known about the effects on those who do not have access to formalized land as most studies focus on beneficiaries of land registration (Lawry 2014, 9). Land formalization is often focusing on certain groups while others are excluded. This may create conflict instead of reducing it. The effect on gender equality based on the studies used is also ambiguous, especially when joint titling of men and women is not implementable (ibid.).

Impacts of land formalization on income and agricultural production depend on several factors, such as the policy environment, the specific features of the land formalization program, and whether owners develop sufficient confidence that titles or certificates will be respected and can be put into value (see Deininger et al. 2009, 8).

Empirical evidence from Benin suggests that despite the existence of land certificates for around 81,000 parcels, agricultural production and increased investments into those areas cannot be shown systematically (Goldstein 2015). The Philippine example of redistributing almost 6.9 million ha through a comprehensive land reform program using a variety of instruments shows only modest poverty reduction and farm productivity increase (World Bank 2009).

The hypothesis of this paper is that the formalization of land rights and a more secure access to land alone do not sufficiently trigger increases in productivity and agricultural production. Depending on the country context and the existing tenure security perception of farmers, additional support instruments may be necessary that help farmers putting their newly acquired land rights into value.

Such instruments may be the issuance of secondary (or user) rights in cases where land ownership and actual land use do not overlap. It is also crucial to provide financial or production-related support to the beneficiaries of land rights.

In 2014, the German Federal Ministry for Economic Cooperation and Development (BMZ) launched its special initiative "ONE WORLD – No Hunger" to respond to the complex issue of food and nutrition security. This initiative provides technical and financial assistance in six areas of

intervention, (1) achieving food and nutrition security, (2) preventing famines and improving resilience, (3) introducing innovations in agriculture and the food sector, (4) bringing about structural change in rural areas, (5) protecting natural resources and restoring soil fertility, and (6) enhancing reliable and fair access to resources and land. Mainly focusing on Africa, this program has provided additional 625 million euros in 2014 and 2015.

In the field of action (6) enhancing reliable and fair access to resources and land, the ministry has launched a global project on “Responsible Land Policy” with an overall budget of 41 million euros including co-financing with the EU. This global project is strategically embedded in a rural development approach in three partner countries in Africa: Benin, Madagascar and Uganda.² Outside of its special initiative, the ministry is investing regional and bilateral funds to address food security and land policy in countries such as the Philippines or Cambodia. The German assistance in the land sector is guided by the UN Committee on World Food Security’s ‘Voluntary Guidelines on the Responsible Governance of Tenure’ (VGGT) and the ‘Principles for Responsible Agricultural Investment’ (PRAI), jointly developed by UNCTAD, FAO, IFAD and the World Bank.

The German Agency for International Cooperation (GIZ) implements the global project and the bilateral projects. The global project “Responsible Land Policy” has three main areas of action. First, it seeks to improve the framework conditions for implementing land policies by introducing more effective procedures for securing land use, land ownership and land property rights. Second, it aims at strengthening the role of civil society for the formulation and implementation of responsible land policy. Third, private investors will be sensitized to respect and follow international guidelines and national land policies.

Although country contexts differ, several common parameters guide the implementation for each country. First, both primary and secondary rights are targeted in the implementation. In customary systems, chiefs or elders enjoy primary rights which allow them to allocate land to users or to revert it to the community. Secondary right holders use the land assigned to them. In formalization programs, secondary users are often not sufficiently considered and risk losing their land-use rights completely when official documents are only issued for primary rights holders. Their user rights will then remain informal with little change compared to before the intervention.

Second, additional services are provided where possible and available. Each country project has its own way of providing additional resources based on identified needs. What is important is to acknowledge that farmers need additional support to maximize their potential.

² There are two other countries supported by the global program (Laos, Peru) that are not discussed in this paper.

Third, working together with civil society and the private sector is an important element to achieve inclusive and sustainable land tenure and to improve the livelihood of farmers. The private sector can be crucial as investor providing capital and technology to farmers. Farmer associations and NGOs can play an important role as representatives of farmers and the civil society to gain acceptance for land formalization programs.

This paper will discuss individual country approaches and draw some lessons learned on land formalization and land governance projects implemented by GIZ.

2 Rural Land Regularization in Benin

Rural land tenure systems in Benin are dominated by customary systems managed by traditional authorities. Customary authorities are in place throughout the country varying from more paramount chief structures to more village-based systems controlled by the head of the family having established the village by clearing forest. They assign access to land and trees to family members, including women, migrants and pastoralists and will also decide on whether any land will be sold. The conditions for user rights differ according to the position of the land user in the traditional system: men belonging to the “founding family” can plant trees and use the land as long as they wish. Girls and boys will be assigned land by their fathers and married women may be assigned land by their husbands, on a more short-term basis and possibly with restrictions on what can be planted and use of products. Generally, migrants will also have temporary use rights to lands that include restrictions on land use.

Benin’s land tenure regime has been defined by a post-colonial land law passed in 1965. It promoted individual land ownership, introducing a land title (*titre foncier*) as the only legal instrument to register land ownership. With Benin’s rapid urbanization in the southern part of the country, land titles were registered for urban lands. Yet, the remaining rural lands in the center and the north remained unregistered as they are largely subject to traditional tenure regimes.

Benin embarked on a comprehensive legal reform at the beginning of the 1990s towards recognition of customary tenure, including collective rights and common lands, as an incentive for more sustainable land management. The country introduced the Rural Land Use Plan or *Plan Foncier Rural* (PFR) as a village cadaster system and main legal instrument for regularizing rural land tenure in 1993.

The results informed new legislation focusing on land tenure in rural areas, given the specificities like customary systems and group rights. Following broad consultation, the Rural Land Act No. 2007-003 was enacted in 2007 enabling the registration of rural land rights using the PFR process and the subsequent issuance of a land certificate (*Certificat Foncier Rural*, CFR). This rural land code introduced three innovations: (i) the plots acquired or established based on customary tenure systems

are now considered private land and no longer viewed as State land, (ii) it legalized the Plan Foncier Rural (PFR) and the land certificate for identifying and confirming customary tenure both collectively (PFR) and – if so desired – at the household or individual level with the help of the CFR supervised by local government and other relevant authorities; (iii) creation of the Village Land Management Boards (*Section Villageoise de Gestion Foncière*, SVGF) and the Communal Land Management Commission (*Commission communale de gestion foncière*, CoGeF). The rural land code thus introduces decentralized decision making with (elected) local government (commune) becoming a central actor in the adjudication and documentation of rights. This devolution assigned the decision-making power to the municipalities and cities. In urban areas the existing land titling system remained in place.

The Ministry of Agriculture was responsible for implementing the new rural land code 2007-003 (and PFR) but lacked resources and capacity to lead this reform process. Implementation of PFR accelerated when a land tenure security component was included in the first Millennium Challenge Account (MCA) compact for a 5-year program (2006-2011) and a total budget of about USD 40 million.

The MCA support to the land sector was used to bring 41 pilot PFR in line with the new legislation and develop new PFRs in 40 communes across the country. MCA introduced the use of consultants (*prestataires de service*) for making land tenure right inventories (*diagnostique foncière*), setting up the respective boards and commissions, developing PFR with villages and local governments, and demarcation of the plots. MCA completed 294 new PFR in 40 communes and demarcated about 75,000 plots, which were all eligible for a CFR.

MCA also facilitated the development of a new unified legal and institutional framework that would cover both rural and urban land. A subsequent *Code Foncier et Domanial* (CFD) became law in 2013 (“loi 2013-01 du 14 août 2013 la mise en place du Code foncier et domanial) – also repealing the rural land law of 2007. The CFD foresees a transition period of 5 years within which the new structures will be put in place. Fourteen (14) *décrets d'application* to guide implementation were prepared in 2014 and 2015.

The main innovation of the CFD was the establishment of the “Land Property Certificate” (*Certificat de Propriété Foncière*, CPF). This new title is irrevocable and will replace both the existing rural land certificate (*Certificat Foncier Rural*) as well as the existing land title (*titre foncier*) of the 1965 land law. CFRs not yet issued should be transformed into CPFs although the already issued and retrieved CFRs remain valid. The conversion procedure, however, remains unclear. No CPFs have been issued until today.

An institutional reform is under way with the creation of a National Land Administration Agency (the *Agence Nationale du Domaine et du Foncier* - ANDF) and its deconcentrated services the *Bureaux*

Communaux du Domaine et du Foncier (BCDF) attached to the Ministry of Economy and Finance. This new agency was created by the new land law and brings all functions related to land administration together in one institution. With the establishment of these new services, the Beninese government has signified considerable interest and commitment to further strengthen the land tenure reform.

Yet, decision-makers remain cautious about a nationwide roll-out of the PFR approach. The current PFR approach requires a high level of accuracy and detail causing longer production time and higher costs. A revised process (the *Manuel de Procedure*) has been developed by several stakeholders but was not yet approved by the ANDF as the oversight agency. The capacity for managing and maintaining the registry database and the geodata connected to it only exist at some of the assisted communes. A national geodata infrastructure is not yet in place.

Until to date, 399 villages in 49 communes were covered with PFR supported mainly by MCC and KfW until 2014. With technical assistance financed by the Netherlands, support was extended to the 40 MCA communes between 2013 and 2015 to update their data collection and accelerate the delivery of CFRs to farmers, which was seen as a shortcoming. A total of 81,393 parcels were covered by both projects. This produced around 74,444 CFR. However, only 10,147 were delivered to farmers (Table 1).

Table 1 Status of Rural Land Certificates (CFR) as of January 2015

	With support of MCA	With support of KfW	Total
No of Communes	40	9	49
No of Villages with PFR	294	105	399
Parcels surveyed	72,399	8,994	81,393
Surface in ha	397,403	272,429	669,832
No of CFR produced	70,866	3,578	74,444
No of CFR retrieved by farmer	9,957	190	10,147

Source: Project Monitoring System; ITCA 2015

Aside from the institutional challenges accelerating the production of a rural land cadaster, the evidence for its impact is also mixed. Evidence from a recent impact evaluation of the MCA program suggests that certain positive results can be observed (Goldstein 2015). For instance, the study showed that land conflicts were reduced and the individual perceptions of tenure security have increased. Farmers with land certificates had a 40% higher probability to invest in perennial crops (also women),

such as planting cashew trees. An increase of agricultural productivity of land registration beneficiaries, however, could not yet be detected. We also do not know yet enough about the impacts on women empowerment and how the approach supports it.

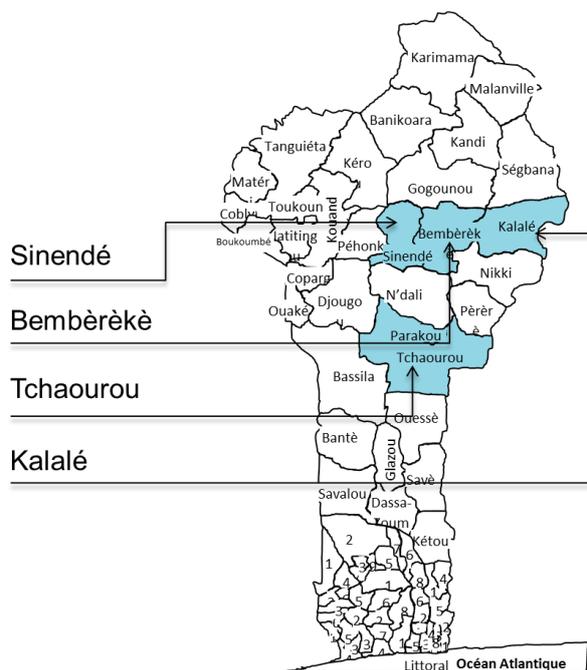
Anecdotal evidence suggests that farmers have not been able to put the land certificates into value. The low retrieval rates of those certificates may point to a lack of trust, acceptance or affordability. The fee structure applied to the certificate was not uniform. Some municipalities charged around 3.2 USD (2.000 CFA) for up to 2 ha. Some charged 8 USD (5.000 CFA) for 5 ha and up. One municipality applied a lump sum of 8 USD regardless of the property's size (data from ITCA 2015). Based on anecdotal evidence, farmers are in many instances unable to afford the applied fees and restrain from retrieving their certificate. A reform of the fee structure has therefore been proposed but not yet adopted.

The average parcel surface registered in Benin under the MCA program differs from 76 ha per parcel in the northern regions (Alibori, Borgou) to 19 ha in the central regions, while the urbanizing South showed an average size of 5 ha (GIZ 2011, 24). The southern regions where mostly registering individually used and owned land, while in the Center and more so in the North customary systems prevailed. In many cases, parcels were registered under the name of local chiefs. The amount of registered female owners remained neglectable (between 2 and 5%) with parcel sizes below average. A certain level of inequality has thus been created that could be cushioned by the issuance of lease agreements for secondary rights holder. In the KfW-supported regions, the issuance of lease contracts has started in 2015.

The planned intervention in Benin under the global project "Responsible Land Policy" will target four communes in the Borgou region that have been supported with PFR establishment under the MCA program. The project concept foresees to improve the current PFR approach as it showed some shortcoming in the past. For instance, the plan should cover the entire village territory and not just the farm land. The revised PFR also requires zoning of residential areas for housing (and future *lotissement*) and public land (belonging to central or local government). This may include the fertile *bas-fonds* (wetlands) with the formal status depending on the hydrological situation. However, there may be disagreement locally on whether a particular *bas-fond* is either private or public (when no investment took place in water management/irrigation).

A crucial step will be to apply leasehold contracts (*contrat d'exploitation*) in order to strengthen secondary rights. Such leasehold contracts can be applied for many everyday land transactions in an environment where no formal land registration exists. They can also be used within existing PFR areas as some parcels are registered to an individual even though several households reside on that parcel. Leaseholds can be also applied to land under public control, such as wetlands often used for rice paddies.

Figure 1 Planned intervention region in the Borgou, Benin



To address the issue of support services to farmers both with primary and secondary rights, the project will cooperate with other BMZ funded programs in the region of Borgou. Three other projects operating in the regions are investing into soil conservation measures and value chain promotion which can make a direct contribution to farmers with secured land rights. In selected villages it is planned, to cooperate with private investors and link them up to small farmers. Some value chains, such as cashew, face growing demand but have limited supply. The link between tenure security and planting of cash crops such as cashew as shown in Goldstein (2015) might be a promising avenue to set incentives for farmers how to put their primary and secondary rights into value. Civil society organizations and farmers associations are important players in rural development in Benin. To integrate them into land tenure formalization programs is crucial in order to gain widespread acceptance and support among farmers and the private sector. The role of private partners may be crucial to link farmers to markets and introduce new technologies.

3 Customary Tenure and Mailo-Land in Uganda

The Uganda land tenure system can be categorized in four different types: regular private property titles, leaseholds, Mailo-Land and traditional land. 70% of the land surface is managed under customary rules (Ravnborg et al. 2013: 5). The Ugandan law has recognized traditional rights of families, clans and individuals. As the traditional lands are not formally documented, conflicts between land holders are common. Anecdotal evidence suggests, that up to 90% of criminal cases in

district courts relate to land disputes (personal interview with district court in Soroti). It is estimated that around 5% of parcels in Uganda are registered at the moment.

Despite increased efforts of the Ugandan Government to improve land tenure security, the traditional customary system and the statutory system of the state are not in harmony with each other (Obaikol 2014: 11). As to gender equality, it is estimated that around 7% of women enjoy ownership rights under the customary system, while 93% access land through a male family member (Asiimwe 2014: 173).

Central Uganda is characterized by the existence of Mailo-Land titles. ‘Mailo’, derived from the English word “mile”, is a feudal land tenure system originating from an agreement between the Buganda King and the British Government in 1900. The land was initially owned by the Buganda King, who had allocated the administration of large parts of it to local chiefs as trustees of the Baganda people. The British had usurped the land, but returned it later to the King and the local chiefs. The King and his chiefs considered this land as their private property, because they were often registered with cadastral evidence. However, only a few of them farmed this land themselves. Farming was mostly done by settlers who increasingly occupied the land over time, especially after the end of the war in the 1980s. However, the settlers used the land without any recognized or formalized tenure agreements. Settlement patterns often overlap with the existing cadaster maps created during the colonial period (Figure 2). Many tenants (red rectangles) are not aware on which parcel they reside or who the actual land owner is. The old cadaster (blue rectangles) can still be used in some areas and border stones (green marks) are partly available.³

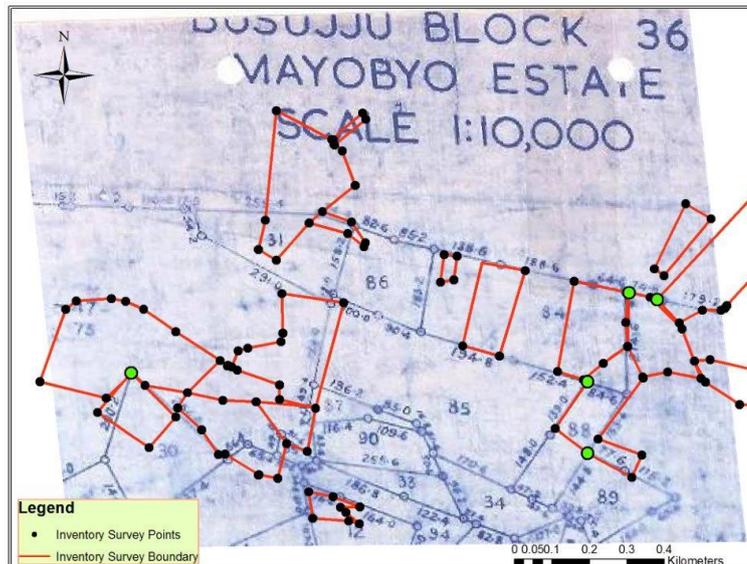
The Government’s attitude towards the dual layer land tenure (underlying freehold ownership of the families/clans, and unregistered informal tenure of the land users) on Mailo-Land remains problematic in view of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (VGGT). Since the enactment of the Land Act in 1998 there is an ongoing conflict and deadlock between the Government and the Buganda landowners. But the Uganda National Land Policy (NLP), adopted in 2013, gives a clear policy statement that “the Government shall resolve and disentangle the multiple, overlapping and conflicting interests and rights on Mailo tenure and native freehold tenure”. In addition to the conflicts between the Government and the Buganda Kingdom, the dual layer land tenure has led to a number of violent conflicts between occupants and land lords and amongst occupants themselves.

Uganda has started to upgrade its land administration institutions. The Ministry of Lands, Housing and Urban Development (MLHUD) is the leading agency in the sector. At the district level, the district administration with the district land office (DLO) and at sub-county level, the area land

³ Information in this and the following paragraph partly stems from the Description of Action submitted by GIZ to the EU delegation in Uganda.

committees (ALC) are main implementing partners of GIZ. New Ministry Zonal Offices (MZO) are being installed in several regions with donor assistance funded by the World Bank. Their future task will be to oversee land tenure formalization and to administer land titles and the cadaster.

Figure 2 Dual-Layer Land Tenure in Mailo-Land



Source: Map courtesy of Kirumira 2012, p. 57.

The proposed intervention focuses on the potential of existing laws to create a social environment in which tenure security facilitates productivity-oriented investments by small-scale farmers. Poverty eradication in rural areas is essential for Uganda's food-security, but so is social security. Improving rural income and employment is therefore paramount for overall social security. In reality, many of the Mailo-Lands have been subdivided over the generations. The settlers on the land can in theory pay a ground rent to the owners to formalize their status as tenants. This is often, however, not practiced, as the state-determined standard ground rent of around 1.4USD is seen by most landlords as too low and therefore not accepted. This leaves tenants without any legal security despite the fact that the Ugandan Government has committed itself against any kind of forced eviction of tenants on mailo grounds.

The project aims therefore at strengthening the secondary rights by Mailo-Land tenants. It will focus on systematically inventorying actual land use in two districts of Central Uganda in order to create a database and on-hand evidence on actual land use by small-scale farmers on private Mailo-Land parcels. This documentation of all legal and physical facts collected in the field and confirmed by the community (conveniently dubbed "land inventory protocols - LIP") shall be handed out to any farmer, who wants to retrieve it, against a small fee. As proven by former studies, this document is considered

by credit institutions as very supportive, because it enables to better assess the credit worthiness of the farmer and hence allows granting better credit conditions.

Some of the data contained in the land inventory protocol will be the pre-condition for tenants to formally apply for the issuance of a Certificate of Occupancy (CO) for their piece of land. The respective sub-county authority may then issue this document, provided, that the landlord gives his consent and the occupant pays a nominal yearly ground rent. This would formalize the secondary rights of tenants. Mailo-Land owner associations and farmers associations are integrated into the process to ensure an integrative and participatory approach.

For traditional lands, the NLP foresees the issuance of certificates of title of customary ownership (CCO). This certificates transfers rights to customary owners similar to freehold. The exact specification and technical description of such a certificate are not yet described though.

The project will also extend support to the Teso region in Northeastern Uganda in introducing traditional land formalization based on GLTN's "continuum of land rights". The continuum approach is an inclusive, pro-poor and gender-responsive approach that incorporates documented and undocumented tenure rights, formal as well as informal rights, individuals or group rights, and many other forms. At one end one finds individual land owners that hold formal rights to a parcel delineated on a map and registered in a records office. With this right comes another bundle of rights, such as sale, transfer or use (within the existing legal framework). At the informal end are informal rights. Groups or individuals may have traditional rights to use the land. But that land might not exist in a map, it may be contested by others and may be just inherited or passed on by word of mouth.

The Teso region is characterized by land conflicts between families and clans and within clans. The awareness on the legal framework and the provisions of the Land Act is low among the rural population. Yet, also here, land tenure is under transition. The government has started with policy and administrative interventions to promote freehold tenure but also other forms of formalization. Resource demands for mining and oil discoveries are putting pressure on land. There is also a growing interest in land investments by local and foreign investors (Ravnborg 2013: 16).

Based on anecdotal evidence, traditional leadership in the Teso region is taking a rather reserved approach to land formalization of any form. It is therefore crucial to raise awareness among the population on the current legal options available for increased tenure security. Simple land inventory protocols to gather more information about parcels and describing current patterns of land use will be used as an entry point. The role of civil society and representatives of the traditional leadership play a key role in any planned intervention.

The issuance of CCOs is currently tested in Uganda. As the CCO can be issued to family or clan heads representing a collective interest the problem of guaranteeing secondary rights is comparable to

the Benin case. Part of the project's approach will be to ensure that such secondary rights can be guaranteed as much as possible based on the current legal framework.

Additional support services to farmers in Mailo-Land will focus on credit availability, financial literacy and farm business management. Mailo-Land tenants are often growing coffee for the local and international market. Other cash crops are also common. For the Teso region, the provision of services to farmers was not yet determined as the design of a rural development program is still being planned.

4 Securing Forest Tenure in Madagascar

Deforestation and soil degradation represent the most pressing environmental problems in Madagascar, putting livelihoods and productive resources in rural areas increasingly at risk. 65% of the population is directly or indirectly involved in agriculture, which provides both subsistence and market access. In recent years, Madagascar became a target for numerous medium- to large-scale agricultural investments, covering nearly 3 million ha of arable land reserves (Burnod et al. 2011). According to the Landmatrix, however, only land deals for 9,000 ha are documented (<http://www.landmatrix.org/en/get-the-detail/by-investor-country/madagascar>). Approximately 70% of Madagascar's land surface (59 Million ha) is used for agriculture and pasturage; only 20% of land is still covered by forest.

In an attempt to protect its unique ecosystems and natural forests, Madagascar's government has adopted policies to decentralize natural resource management via the GELOSE- policy in 1996 (*Gestion Locale Sécurisée*), and the subsequent GCF- policy in 2001 (*Gestion Contractualisée des Forêts de l'Etat*). These policies include the transfer of natural resource use and management rights to local communities via the “*Transfer de gestion des ressources naturelles (TGRN)*”. The hope was that a decentralized approach to resource management will contribute to environmental sustainability. Approximately 1,300 TGRNs have been issued to date, covering approx. 1 million ha. However, the implementation of TGRN is weak, and incentives for sustainable land-use largely absent (see GIZ 2014).

Most of Madagascar's rural poor depend on subsistence farming to survive, cultivating staples such as rice, corn, and cassava. Their mode of agricultural production often involves shifting cultivation, which not only provides them with food, but also reasserts land tenure. Due to declining soil fertility and climate change-induced droughts, many rural poor are forced to expand their agricultural production into forest areas. Often, the exploitation of natural resources is their only viable means to acquire economic security. At the same time, commercial logging and corruption are rampant, accelerating environmental degradation and deforestation. As a consequence, the competition for arable land is increasing, while land insecurity is widespread.

Being part of African Forest Landscape Restoration Initiative (AFR100), Madagascar has committed to rehabilitate 4 million ha of its degraded forestland and to create new arborous landscapes until 2030. To achieve this goal, incentives for farmers to invest in sustainable resource management will be of crucial importance. The proposed intervention of the global project on “Responsible Land Policy” will focus on the Region of Boeny. It seeks to break the vicious cycle of deepening poverty and shrinking forest areas by enhancing the valorization of forest resources through improved land-use rights. It rests upon the assumption that insecure land tenure, unstable land- and resource use rights as well as weak administrative capacities are significant causes of soil degradation and deforestation.

The intervention in Boeny has three main goals. First, it seeks to improve institutional conditions and bureaucratic processes for the formalization of land-use and property rights. All too often, land registration procedures are protracted, highly cost-intensive, and not transparent, which will require some improvements. Second, and in close cooperation with local communities, the project seeks to develop viable mechanisms that incentivize the sustainable valorization of forest landscapes. Land-use-rights need to be put into value through tangible investments and knowledge transfer. Third, the proposed intervention seeks to integrate civil society actors in the formulation and implementation of responsible land and forest- management policies, as they play a significant role in conflict mediation and the representation of marginalized groups.

The intervention seeks to simplify the administrative and technical processes that lead to the issuing of a land-use certificate (*certificat foncier*, CF) to individual farmers. In a first step, it supports the issuing of land inventory protocols (LIP) to current land-users. Special consideration is given to marginalized groups, i.e. unemployed youth and landless farmers, and women, as these groups have particular difficulties to secure their land-use rights long-term. They often lack information on their statutory rights, or encounter discrimination when trying to assert them. The LIP will be accompanied by informational campaigns that raise awareness on land-use rights and responsible resource management. In a second step, the intervention seeks to identify viable organizational and technological mechanisms (‘good practices’) to secure the rural poor’s access to land and forest resources. The intervention will also provide participative conflict resolution mechanisms to resolve land disputes. Data will be collected through tablets and GPS and filed in an open-source system to make the registration procedures more efficient and transparent. The intervention will train local professionals in data collection and storage.

The land inventory is crucial for the identification of land areas that are suitable for forest landscape restoration (FLR). In a subsequent step, the intervention will involve local communities to develop a catalogue of technological, organizational and financial strategies to valorize forest resources. This includes the provision of non-monetary or monetary incentives such as agricultural inputs and access to credits.

Lastly, the intervention seeks to strengthen and support civil society actors in their function as watchdogs and agents for change. Civil society actors will receive financial and organizational support to provide legal consultation, conflict monitoring, and dispute settlement. This requires trainings in mediation, the issuing of land certificates, and the application of international guidelines such as the VGGTs. An important role of civil society actors is to monitor the application of responsible land governance principles, i.e. through multi-stakeholder fora with private investors and state actors, or through public campaigns.

5 Social Land Concessions in Cambodia

Landlessness is a primary cause of poverty and food insecurity in rural Cambodia. In recognition of this problem, the Royal Government of Cambodia launched the “Land Allocation for Social and Economic Development Project” (LASED) in 2008. The World Bank provided financial support and the German Development Cooperation contributed technical assistance. LASED was a pilot project to test and further develop the approach of distribution of state-owned land to landless and land-poor households in Cambodia using the instrument of Social Land Concessions (SLC). As defined in Cambodia’s Land Law of 2001, SLCs permit the transfer of state private land to individuals or groups with a social need for land, for example due to lack of residential land, the need for resettlement, or simply for small-scale or subsistence agriculture. After five years of continuous occupation or use, the SLC recipient has the right to request a title to the land. However, there are certain user criteria in place that need to be met by the occupant. Farmers are required to use the land productively so they can eventually receive a permanent land title.

The process of land distribution under this scheme is quite complicated, time consuming and expensive. With LASED support, 3,148 households received plots (out of 5,953 household applicants), corresponding to 10,273 ha. NGOs supported additional 1,293 households outside of the project but within the legal framework of SLCs (Richter 2016: 8) in a total of 6 Provinces (Battambang, Kampong Speu, Kampong Chhnang, Kampong Thom, Kratie and Kampong Cham). This corresponds to a total of around 14,000 ha and 21,000 persons (Richter 2015: 8).

Several issues occurred during the LASED implementation that created some bottlenecks for a wider application of SLCs. For one, identifying suitable land was problematic. The land should originate from cancelled Economic Land Concessions (ELCs), recovered illegally occupied lands or degraded forest lands. In most cases, land for SLC sites was either degraded forestland or recovered illegally occupied lands. Lands of cancelled ELCs were not made available for the purpose of SLC mostly, because ELCs are managed by three different ministries (agriculture, environment, energy), while SLCs fall under the mandate of the Ministry of Land Management, Urban Planning and Construction (MLMUPC). This was further complicated by the fact that forest lands are under jurisdiction of the forestry administration. Degraded forest land is also often occupied by settlers for agricultural uses

and not vacant, although SLCs should be issued on vacant lands only. Second, administrative procedures, such as mapping, classification of lands and registration of beneficiaries, were cumbersome. Assessments for example for soil fertility were often not sufficient. Nevertheless, the announcement of the establishment of a new SLC often attracted new settlers quickly, which made the procedure even more complicated, as Richter (2016: 13pp.) has analyzed. Conflicts between existing settlers and incoming beneficiaries occurred and became a constant issue in the process.

Other features of the program included the development of infrastructure such as roads, schools and health facilities, the provision of settling-in support as well as land preparation and extension services. The latter was critical as the new settlers were required to labor the land in order to receive titles eventually. The beneficiaries often belonged to the poorest levels of society. They were not only characterized by malnutrition and low educational attainment but likewise by limited agricultural skills (Richter 2016: 16-20).

It became clear that the beneficiaries would face serious challenges putting their newly acquired user rights into value if no further support would be extended. A new bilateral technical assistance project started therefore in 2014 to further support SLC beneficiaries through the “Improvement of Livelihood and Food Security” project in Kratie, Tbong Khmum and Kampong Thom Provinces. This project partners with MLMUPC and intends to help land recipient households building their livelihood on newly acquired land.

Due to the socio-economic constraints of the target group, the implementation of SLCs requires a long-term engagement and an integrated development approach in order to secure the livelihoods of the land recipients. The project assists the SLC beneficiaries with land preparation for farming, improvement of soil conditions and putting the land to agricultural use. It provides necessary knowledge and skills to help families using their land to eventually improve the resident’s food security. An important element of this strategy is to introduce new diversified farming methods and tools adapted to the existing land use conditions and options. An important element is the support with immediate food assistance, such as rice, and agricultural education to improve food choices and short and medium-term small-scale farming practices (compare GIZ 2015).

This intervention has led to the first issuance of land titles for 250 households in Choam Kroavien, Tbong Khmum Province, in September 2015. Based on the signed user agreements, SLC occupants have the right to receive land titles after five years of productive use of the occupied land. The support to agricultural extension and improving farming practices has put the user rights of SLC beneficiaries into value. This provides a successful example of empowering communities to use land productively to ensure secure land rights and livelihood.

6 Land Use Planning in the Philippines

The achievements of the Philippines in securing land rights are manifold, as are the challenges. The country has a solid legal framework in place covering tenure and land management. Faced with the fastest growing population in Asia, however, the implementation of policies does not favor the poor rural population. Continuing land rights insecurities and widespread settlements on public lands challenge the social stability and ecological and economical sustainability (compare Eleazar 2013, GIZ 2012b).

Conducting and implementing land use planning has long been challenging for Philippine local governments. Although cities and municipalities are provided the power to formulate Comprehensive Land Use Plans and manage their entire territory, around two third of all municipalities and cities in the Philippines have outdated or no land use plans at all according to estimates by the Housing and Land Use Regulatory Board (HLURB) from 2012. Local governments often lack capacities and expertise to formulate plans. In many instances, spatial plans are externally developed but not used by local governments due to missing sense of ownership and community acceptance or lack of knowledge.

The legal and institutional framework does also not support integrated approaches for local governments. Planning and management of land is usually segmented into three different types of land: public (forest, mineral lands) and private lands and the ancestral domain. While planning for private land is covered by the Comprehensive Land Use Plans and a corresponding Zoning Ordinance overseen by HLURB, the Department of Environment and Natural Resources (DENR) requires a forest land use plan for public lands. The National Commission on Indigenous Peoples (NCIP) in turn prescribes a plan for ancestral domains (Ancestral Domain Sustainable Development Protection Plan). Other national agencies with spatial development plans for specific zones add to the complexity of the institutional landscape, such as the Agriculture and Fisheries Modernization Plan by the Department of Agriculture (DA) or the Agrarian Reform Community Development Plans by the Department for Agricultural Reform (DAR). DENR, DAR and NCIP are also involved in the issuance of tenure instruments.

GIZ has supported HLURB in enhancing the Comprehensive Land Use Plan Guidebook to integrate an ecosystems perspective. This emphasizes that landscapes interact and depend on each other and therefore need to be managed from “ridge-to-reef” – from the central forest areas over the upland and lowland to the coastal and marine zones. This three-volume national guideline to all Philippine local governments was approved in 2014 and published in 2016. The guidebook encourages national and local government planners to harmonize their efforts in the implementation of the “ridge-to-reef” concept (more appropriate would be the term “ridge-to-ocean” to accommodate the 15km municipal water zone). It guides local governments by providing new technical concepts in ecosystem

management such as climate change adaptation measures and disaster preparedness, urban management, biodiversity protection or development control and urban sprawl. A typical rural municipality consists of between 40% to 60% public land, such as forests and coastal areas. Mapping the risks and hazards is the prerequisite to draw up proper conclusions where to locate people, infrastructure, agriculture or nature protection areas. Cross cutting themes, such as conflict management, gender, and budgeting and expenditure management form an integral part. A training program will introduce the approach of a new and enhanced comprehensive land use plan to the Philippine municipalities.

A 2012 baseline survey has shown that land use planning may not have immediate effects on livelihood improvement as long term processes are involved. However, the presence of other donor or government funded programs in the same location increases the likelihood of positive impacts of land use planning on a variety of areas, such as disaster preparedness or community participation (see Garcia, Lange 2013). An endline survey is currently undertaken by a research team of the German Evaluation Institute (DEVAL). The results are expected within the year 2017.

The new Philippine administration has emphasized its commitment to “promote rural and value chain development toward increasing agricultural and rural enterprise productivity and rural tourism”, and to “ensure security of land tenure to encourage investments, and address bottlenecks in land management and titling agencies” (0+10 point social economic agenda). This places the link between job creation, livelihood and tenure at the center.

The German bilateral assistance currently supports the peace process in Eastern Mindanao with a strong focus on land use, conflict management and empowerment of indigenous people. Land conflicts are at the core of the Mindanao conflict since its beginning. A peaceful transformation of the region will require solving land conflicts and granting access to land and resources to those without any tenure security. A considerable amount of landless people live in upland areas that are classified as public or forest lands. According to estimates, up to 25 million people live on public lands throughout the country without proper legal status. Many of them claim rights under the Indigenous Peoples Rights Act (IPRA). In ancestral domain areas, Certificates of Ancestral Domain Title (CADT) are issued by NCIP transferring the right of possession and ownership of the land to indigenous people. While indigenous communities therefore have the option of receiving titles, non-IP can apply for various other tenure instruments, such as Community-Based Forestry Management (CBFM) or Certificate of Stewardship Contracts (CSCs) that can strengthen their user rights in the medium-term, for example for 25 years (see GIZ 2012a). CADTs therefore create primary rights holders, while the other tenurial instruments are time bound creating secondary rights.

Both help to stabilize rights of those living on public land, such as forests or coastal areas. This would involve the right to plant and harvest resources from forests or fishing grounds based on sustainable

management standards. Yet, there are differing interpretations of allowable land use practices. While in theory, allowable land use practices are prescribed in various laws, in practice, there are unclear administrative arrangements, mandates and roles that make sustainable land management for public lands challenging. The interpretation of CADTs as private titles under indigenous self-governance contribute to the confusion of who is responsible for land management, especially for monitoring and enforcement, permits to harvest, etc., as many CADTs are issued in strict protection areas. Capacity and budgetary constraints on the side of national agencies and local government add to the problem.

An appraisal of a new BMZ supported project has recently been undertaken that looked at land governance and land management practices in Eastern Mindanao from the view point of an overall management approach. As tenurial questions are quite complex due to the legal situation, land use and land management practices of communities and the state are also not harmonized. There are different interpretations of allowable land uses in certain zones depending on the mandated agency and tenurial instrument or title. An important way forward would be an agreement on zoning definitions and allowable land uses including practical land management arrangements on the ground. One such approach could be co-management agreements between local governments, DENR, NCIP and communities. This will link livelihood and tenure security as one depends on the other. Regardless of the issued land tenure instrument, overall management practices should be in place. The mandated agencies will have to ensure that for example upland farming systems (e.g. agroforestry) are applied to put land rights for those into value who have received tenurial instruments or titles. The new approach of the DENR to implement Sustainable Integrated Area Development (SIAD) may prove useful as it will balance conservation and production in public lands that are now subject to uncontrolled development due to population increase and lack of proper regulation.

The private sector in the Philippines is very active. A main stumbling block for more private investments is the unclear tenure situation and the unpredictable administrative actions in regards to land use regulations in the public lands. If more clarity and predictability of the public administration in its interpretation of land use practices can be achieved, private investors will surely become more interested in forest plantations and agroforestry systems. If managed well, this can lead to an ease on the pressure of protected areas.

7 Conclusions

Securing secondary rights, be it under customary systems or in public lands that cannot be titled, is a common thread in the current German technical assistance. In Benin, secondary rights holders were not included in ongoing land formalization programs. The global project “Responsible Land Policy” will therefore extend support to secondary rights holder to acquire leaseholds and other form of tenure instruments provided for in the law, where land certificates have been issued. In traditional lands in Uganda, the global project will test the implementation of formalization as a new tool for areas

managed under customary systems. For existing tenants on Mailo-Lands, the project seeks to support the formalization of their status. For Madagascar, strengthening secondary land use rights in state-owned forest land may form the basis for large scale forest rehabilitation. This can provide important insights not only for the ambitious goal of Madagascar but also for other countries that plan to restore forest landscapes. The Cambodian case illustrates that holding secondary rights as such may not be sufficient. The social land concessions established for landless farmers will be reverted and the land will fall back to the state if farmers do not ensure proper investment into their land. Helping farmers to maintain their land and receive eventually a proper title by extending investment support is a crucial ingredient to ensure the long-term benefit of land rights. In the Philippines, the land tenure question relates to the use of public land. Such land cannot be titled as it belongs to the state, unless it is claimed by indigenous people, who have a right to ancestral domain titles. While the issuance of tenurial instruments or titles is in itself conflictual, administratively, legally and politically, the question of land management and land use for public lands is also not solved. There is a need to arrive at a common management perspective among national agencies, local governments and the communities and agree on zones as well as allowable and beneficial management practices.

All country projects are embedded in rural development approaches to extend additional services to farmers. If farmers remain in doubt whether their new rights can lead to improved productivity and production, the main goal of land formalization to support the livelihood of farmers may not be achieved. The availability of additional services to farmers strengthens the credibility of land rights programs and can accelerate the wanted effects on gender equality, investment, land use change and production.

Including civil society and the private sector into land rights formalization programs has not yet been tested extensively. It is hoped and assumed that this will increase the inclusive character of such programs. The private sector may play a positive role in contexts where an enabling investment climate exists and investors are willing to cooperate with donor programs.

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