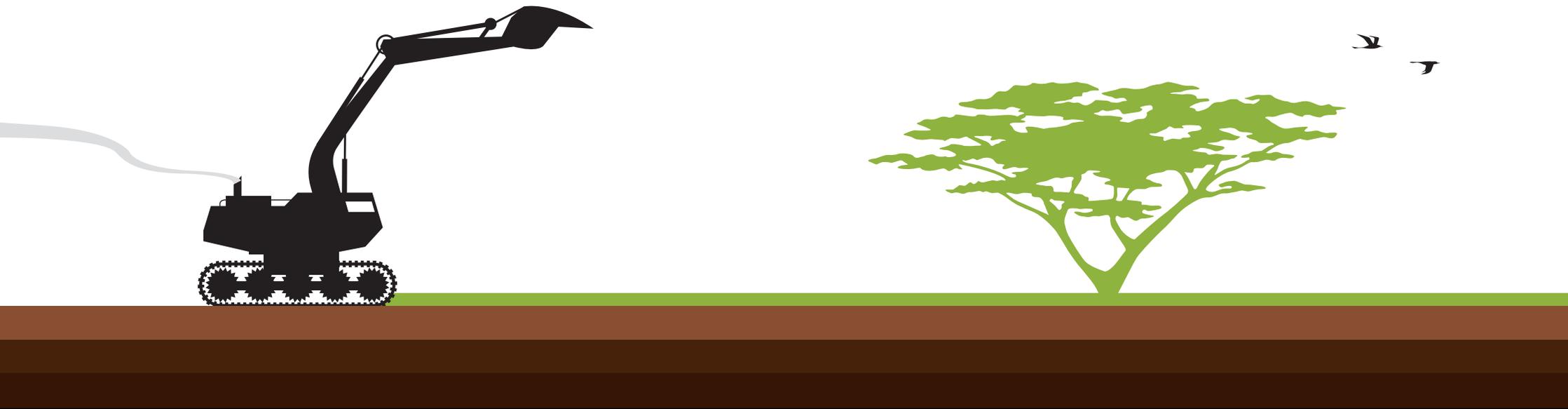


Lay of the land

Improving land governance to stop land grabs

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Abbreviations

AA	ActionAid
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IIED	International Institute for Environment and Development
IFAD	International Fund for Agricultural Development
ILC	International Land Coalition
IMF	International Monetary Fund
NGOs	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
VGs	Voluntary Guidelines on Tenure of Land, Forests and Fisheries
WB	World Bank



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Part 1

Global summary

Land is life

Large-scale land acquisitions by investors, which are often called ‘land grabs’ (see next section for definition), can deprive rural women and communities of their livelihoods and land, increasing their food insecurity. This report argues that the current rise in land grabbing needs to be urgently addressed, and focuses on the actions that developing countries can take to mitigate land grabs through strengthening national land governance so that it is transparent, is accountable and protects communities’ rights.

For most rural communities and women in the developing world, access to land is the difference between being able to sustain a livelihood to support their families and going hungry. Rural women in developing countries are among the poorest and most neglected people worldwide; despite the critical roles they play in promoting food security, women control less than 2 per cent of land globally.¹ Half the world’s food is produced by small-holder farmers, the vast majority of them women – making land indispensable for their livelihoods and for global food security.² But unless women have more secure tenure over land, food insecurity in developing countries will not improve, and women themselves will be the most likely to go hungry.

The importance of land to rural women goes beyond growing food. Having secure access to, and independent control over, land can mean the difference between, on the one hand, enjoying rights such as education and freedom from violence or, on the other, continual subjugation in society. The security of land tenure for impoverished rural communities is a fundamental component of dignified, sustainable development and a crucial step towards reducing poverty and reducing inequality.

This report is divided into two parts. The first looks at the impact of land grabbing on communities and highlights three issues: that women’s rights to land are not being protected in practice; that communities do not have secure land tenure, which is adversely affecting their food security; and that the priorities of foreign investors are outweighing those of local people.

The second part of the report contains 24 country reviews that examine the strengths and weaknesses of each country’s regulatory frameworks, assessing their ability to: provide legislative protection for communities at national and local levels from land grabs; guarantee

gender equality at national and local levels; and regulate investment through the measures in place. We also attempt to report the key challenges, innovative practices and lessons learned, which, although context-specific, may be useful for other countries facing similar land governance challenges.

Land grabs and the impact on communities

What is land grabbing?

Developing countries are witnessing a dramatic increase in large-scale acquisitions of land by foreign companies, investment funds and governments, as well as by domestic investors; these are often characterised as land grabs.³

For example: In Mozambique, there have been 96 large-scale land acquisitions, according to the International Land Coalition’s database, over half of which are for agriculture.⁴ In Senegal, reports estimate that 17 per cent of arable land has been acquired in large-scale land transactions, the majority for biofuel cultivation.⁵ And in Sierra Leone, it is estimated that some 20 per cent of farmland has been acquired by agribusiness investors.⁶

ActionAid joins IIED, ILC, IFAD and others in adopting the following definition of land grabs:

“Large-scale land acquisitions or concessions are defined as land grabs if they are one or more of the following:

- violations of human rights, particularly the equal rights of women
- not based on free, prior and informed consent of the affected land users
- not based on a thorough assessment or are in disregard of social, economic and environmental impacts, including the particular impact on women
- not based on transparent contracts that specify clear and binding commitments about activities, employment and benefit sharing
- not based on effective democratic planning, independent oversight or meaningful participation.”⁷

Land grabs are often either illegal, in that they contravene the law, or irregular, in that they exploit loopholes in the law, inconsistencies between laws and tenure systems, and take



advantage of low levels of government coordination and capacity. Without improved governance structures in place to safeguard the rights of communities, this rush for land acquisitions will displace many more people and increase food insecurity in developing countries.

What facilitates land grabbing?

Land grabs are facilitated by a number of national and international factors, though this report considers these only briefly. The recent rush for large-scale land acquisitions can trace its roots to the food price crisis and price spike of 2007-08, which plunged millions more people into poverty, but made land a profitable investment. The crisis thus propelled some countries without the means of ensuring their own food security through domestic production to buy or lease land in other countries.⁸ Land grabbing has been compounded by speculation on food commodities in international markets, whereby investors look to food and land as new sources of profit and markets. The drive by developed and developing countries to produce more biofuels has also been a key driver of land grabbing (see box 1).

Box 1: Biofuels

Many countries have established biofuel mandates, such as the EU's renewable fuels target requiring that 10 per cent of the EU's transport fuel is supplied by renewables by 2020, with an expectation that 80-90 per cent will be supplied by biofuels like oil palm, sugarcane and jatropha. The EU estimates that 20-30 million hectares of land will be required to meet its target, and that 60 per cent of biofuels will be imported. With global biofuel production projected to rise significantly, biofuel mandates are likely to lead to ever-more land grabs. Research by the International Land Coalition's Land Matrix on land transactions for food, fuel, timber, carbon sequestration, mineral extraction and tourism shows that, of the deals for which the commodity is known, 78 per cent are for agricultural production, of which three-quarters are for biofuels.⁹

The impact of land grabs

A number of NGOs, including ActionAid, have in recent reports analysed examples of land grabs.¹⁰ Irrespective of whether land grabs are foreign or domestic, and of their scale, ActionAid is most concerned about the impact of land grabs on vulnerable communities, particularly women and indigenous communities, who often have insecure tenure rights. Large-scale land acquisitions often involve the long-term transfer of land user rights, and sometimes ownership, from communities to investors, thereby, placing large amounts of land – and water – in the hands of a few at the expense of smallholder farmers. A case in point is the Usigu community in Kenya which has since 2003 been affected by an international agricultural company acquiring 2,300 hectares (with a possible extension to 6,900 hectares) of community land for large-scale rice cultivation. This land was previously owned under customary law and the investment affected 100 families dependent on land for their livelihoods. The construction by the company of a weir for irrigation flooded the land of some smallholder farmers and reduced their access to water.¹¹ Analysis by local ActionAid staff shows that the weir has reduced food production, thereby increasing food insecurity for the community. Some community members work as casual labourers on the rice farm, but their wages are not enough to support their families.¹²

In Guatemala, where most recent land acquisitions have been by domestic companies, African palm is being planted at an average of 8,000 hectares a year and the push for biofuels has led to communities being evicted from their land to make way for these investments. The Q'etchi indigenous community is symbolic of the broader problems facing land-insecure populations in the face of biofuel expansion.¹³ Evictions have displaced food production and augmented tenure insecurity while investment promotion in biofuels is further concentrating land ownership, which is counter to the spirit of the peace accords.¹⁴ Currently, 90 per cent of Guatemala's bioethanol exports are destined for European markets.¹⁵

Land grabs can also involve the loss of community cultural heritage and dignity. In South Africa, one of the communities where ActionAid works was relocated to make way for a mine. This prevented the community from being able to access not only some agricultural land, thus reducing food security, but also to access a community burial ground and other ancestrally important land.¹⁶

Community leaders or government officials are often persuaded to agree to land acquisitions on the basis of their local development potential. However, promises by companies to create employment opportunities or provide schools, health centres and compensation



often do not materialise.¹⁷ In Bagamoyo, Tanzania, for example, an eight-year-old biofuel investment that has affected the community's access to land and water has yet to produce significant gains for the community beyond casual labour, which, as in the case of Usigu in Kenya noted above, does not pay enough to sustain workers' families.¹⁸

In Liberia, which has been named as one of the top five countries promoting land investment deals, studies have found that compensation to those affected by land deals, when provided, is often inadequate, local jobs from the investments have not materialised, and in the rush to get deals signed, the government has often failed to ensure protection for communities during and beyond the acquisitions.¹⁹ In practice, this means that communities are not being protected by the laws in place and are unlikely to see tangible benefits from these investments.

As investors pay close attention to land, with the expectation that prices will continue to go up or that profits can be made by speculating on food, it is common practice to 'flip' or sub-let land investments and to use short-term (five-year) investment exit strategies to get maximum profit from minimum inputs.²⁰ Yet ActionAid's community work in Marafa, Kenya demonstrates that the termination of land investments does not mean that grabbed land returns to the community. In Marafa, community land was gazetted by the national conservation authority and communities lost access to it.²¹

Box 2: Voluntary guidelines

More than 100 member countries of the UN's Committee of Food Security have endorsed the Voluntary Guidelines on governance of land tenure, adopted in May 2012.²² The Guidelines provide guidance, mostly to governments, on how to improve the development and implementation of land rights and tenure governance systems. As the first-ever global land tenure agreement that is anchored in a rights-based approach with a gender focus, the Guidelines have significant potential to protect community rights if adopted and implemented. At the same time, the Guidelines need to be improved, since they are only voluntary, do not oppose as a matter of principle large-scale acquisitions and fail to recognise the principle of free, prior and informed consent of non-indigenous poor communities.²³

Land governance challenges

ActionAid identifies three main land governance challenges associated with land grabbing:

- First, securing women's land rights is crucial
- Second, securing and protecting land rights for land-dependent communities is fundamental to food security
- Finally, effective regulation of land investment through regulatory frameworks can act as a check on land grabbing.

Strengthening national land governance so that it is transparent, accountable and accessible is crucial for protecting communities' rights in the face of continuing land grabs across the world.²⁴

Securing women's land rights

The equal rights of women to access and control resources is fundamental to women's empowerment. And recognising the crucial role of women in relation to land, and legislating to ensure their land tenure security, are crucial in defending their rights in the face of land grabbing. But women's rights to land are rarely protected in practice. Women face several barriers to securing their land rights while national legislation tends not to be implemented or is ignored in practice. This is despite the fact that women are the backbone of the local land economy, with the responsibility for household food security and family care.

In Guatemala, legislation recognises women's right to own land, but women administer only 6.5 per cent of agricultural land due to the traditional patriarchal structure of society.²⁵

In Nepal, women comprise 65 per cent of the agricultural workforce but account for only six per cent of landowners and hold a combined share of only four per cent of arable land.²⁶ In Pakistan, women contribute 60-80 per cent of household food consumption but own only three per cent of the land.²⁷ ActionAid staff in Pakistan report that women's land rights are not recognised in the three communities surveyed for this research. This is in spite of the constitutional and statutory provisions on women's land rights and an anti-discriminatory law to support their implementation.²⁸

In Bangladesh, customary laws actually exclude women from equal access to land.²⁹ Our community surveys indicate that women in the Panchbibi, Joypurhat, FaridpurSadar and Udanayankur SebaSangstha sub-districts own 5-10 per cent of land but each community



has a different approach to women's right to hold land. In the FaridpurSadar sub-district, land inheritance is patrilineal according to customary practice, but also differs according to religion, since Muslim women upon marriage can hold land (albeit as co-owners), whereas Hindu women cannot.³⁰

Governments often avoid tackling discrimination either because officials are socialised into believing that women's right to land is less important than men's or because of the possible political cost of alienating traditional (male) leaders. In the Casamance region of Senegal, however, customary perceptions of women have begun to change. Through ActionAid's work, on the local access to land, women began to build up a body of evidence, made use of legal provisions that land belongs to those who work it, and showed how a failure to change traditional practices could put their community land at risk of expropriation by the government.³¹ Village chiefs and customary leaders were persuaded of the need for a change in attitude on access to land. The programme has not ended the struggle for women's full land rights in the face of increasing land investments in Senegal, but shows that progress is possible.

The Rwandan government has shown that women's land rights can be integrated into national land reform; it has promoted women-focused legislation that has improved women's access to land, especially for widows and female orphans, and removed formal customary provisions that encourage gender discrimination.³²

Securing land rights to promote food security

The world's 500 million smallholder farms support a third of humanity yet the lack of security over land can both undermine food security and facilitate land grabbing.³³ Investors seeking land for development, backed by governments, often argue that farmers have no rights to the land and/or that it is marginal or unused. In Kenya, for example, substantial amounts of land allocated for agricultural production are located on communal land considered 'unoccupied'.³⁴ This is in spite of these lands being the backbone of local food security and subsistence farming.³⁵

Improving tenure security, whether of individuals or communities, not only improves food security generally – since it encourages farmers to develop and invest more in their land – but can also deter land grabbing. ActionAid's research highlights, for example, the difference

between the Marafa community in Kenya and the Ha Giang community in Vietnam. Villagers in Marafa feel that, when confronted by land investors, they are powerless in light of their lack of tenure security and documents to back their claims; by contrast, Ha Giang villagers have land use certificates, or 'Red Books', which they feel protect them from displacement.³⁶

The lack of documentation to prove ownership of land can be extremely problematic, as formal land tenure remains a necessary condition to promote poor farmers' rights. Formal land tenure though is still not enough, implementation is needed. For example, the case of Grand Gedeh community in Liberia, shows that even when private land tenure systems exist, communities' right to food and secure tenure is not guaranteed if regulations are not implemented. Despite 90 per cent of the land being held privately by community members, land ownership being mapped on paper and many farmers' having official land titles that specify the areas owned, a land grab in 2005 "destroyed farmland, coffee farming, polluted local drinking water and rendered people homeless".³⁷ The case highlights the need for various government policies, including legislation, but also the effective implementation of that legislation, to support land rights in practice.

The importance of a strong, effective government role is shown in the case of Vietnam where land is owned by the state, which grants and officiates individuals' or families' land-use rights.³⁸ The government made land a national development priority and its issuance of land use certificates to smallholder farmers has increased tenure security and contributed to increases in farm productivity.³⁹

Including different types of land tenure into national land governance systems can also be crucial, and can also help to remove inconsistencies that facilitate land grabs. Some countries have half a dozen or so different land tenure systems. In Ghana – which has two tenure systems, whereby 80 per cent of land is held under the customary system and 20 per cent is private – the government's Land Administration Project promotes a set of integrated land management systems designed to support sustainable development. In 2004, Land Customary Secretariats were piloted under the project across 37 traditional areas and, despite capacity and financial constraints, they successfully fulfilled their mandate to resolve local land disputes.⁴⁰ It is paramount that traditional land institutions, such as secretariats, effectively integrate different tenure systems rather than simply imposing central governance policies.⁴¹



Effective regulation of land investments

Foreign direct investment in agriculture can either benefit rural communities and promote food security and economic growth, or else can undermine them and deepen hunger – the difference depends on the terms of that investment and whether there is effective regulation and oversight. The majority of countries reviewed for this research have national regulations in place regarding investments in land. The problem is that the regulations protecting the rights of communities are less effectively implemented than those promoting the rights of investors.⁴²

Governments have often promoted extensive tax holidays to encourage private investment and have set up Investment Promotion Authorities. But they have been far less active in drawing up and implementing laws to ensure that prospective investments are transparent, that communities affected are consulted, and that studies are undertaken to assess how to maximise the positive impacts of investments and mitigate their negative impacts. These are all key ways to make agricultural investment work for smallholder farmers.

Many communities — especially women, smallholder farmers, internally displaced people, indigenous peoples, and communities dependent on natural resources for survival — are acutely aware of their lack of power compared to investors.⁴³ In Tanzania, the people in Kisaware are in no doubt that all investors' rights outstrip their own:

"We own the land and use it for different activities but the government can decide to allocate land to investors for public interests because the president has the power to decide... At any time the government can make the decision to transfer my land to another user."⁴⁴

Indeed, an International Monetary Fund (IMF) working paper shows that the highest number of land-related investments is being made in countries with weak governance, often leading to land grabbing.⁴⁵ Similarly, the International Land Coalition's analysis of recent land deals found that investors are targeting countries that not only suffer from weak governance structures but which also have a high incidence of hunger and weak land tenure security.⁴⁶

In many countries, economic growth led by large-scale agriculture can come at the expense of communities' food and land tenure security.⁴⁷ In Malawi, where customary tenure covers 66 per cent of the land, existing systems of land patronage can transfer land from communal

to private ownership often without any benefit to local communities.⁴⁸ Land grabs have been argued to render some Malawian communities trespassers on the land they have farmed for generations.⁴⁹

Lack of transparency is a key feature of poor land governance. Land grabs are almost always characterised by low levels of transparency, with the negotiation process between company, government and local leaders often taking place behind closed doors, lacking effective consultation with those affected and with little or no information provided on the contracts or leases signed.⁵⁰ In the case of Grand Gedeh in Liberia local people were not consulted until the land had been acquired by the company and an iron ore prospecting project was already underway.⁵¹ Access to information, and effective participation of those affected, are vital in prospective land investments to safeguard access to land and to ensure that communities are aware of their rights. ActionAid's experience in Bagamoyo community in Tanzania suggests that most communities do not know their rights and so can more easily lose them.⁵²

Governments can also impose temporary or partial moratoria on land investments to halt investments while an evaluation of impacts and benefits is carried out, to be followed by the development of more effective regulatory frameworks to ensure that future deals benefit, rather than undermine, local communities. In a bold move, the government of Mozambique instituted a moratorium up to October 2011 to halt land concessions over 1,000 hectares; it did so after realising the scale of investment interest, especially for biofuels, and the negative impact it could have on communities' land tenure and food security in the absence of effective regulation.⁵³ When the moratorium ended, land concessions continued – but on a smaller scale, with some measures in place to judge project viability and development impact.⁵⁴ However, the moratorium was not followed by legislation regarding future land concessions, a major omission. In Liberia, a moratorium is also in place but covers only public land sales, not land-based concessions.⁵⁵ In Cambodia, despite a moratorium, land acquisitions have continued to take place although the government claims these were signed prior to the moratorium.⁵⁶

If regulations are in place and implemented, and if they are systematically adhered to, benefits can follow in the form of long-term, sustainable investment while safeguarding women's right to access land and communities' right to food and tenure security.



Lessons and recommendations

Unless more effective government legislation on land tenure security and agricultural investment is developed and enforced, rural communities around the world will continue to be vulnerable to land grabbing and food insecurity. In this context, we make the following recommendations:

Formulation and implementation of national laws

Land grabbing by external investors is more likely to take place in contexts where vulnerable communities do not have secure land tenure and where there is weak or unimplemented land legislation, coupled with discriminatory traditional practices.

Governments should:

- Enshrine into law policies to promote secure land tenure for all, and ensure the implementation of this legislation at national and local level.
- Integrate policies to promote women's land rights and tenure security into national land legislation and agricultural development policies. Addressing women's right to land and tackling gender discrimination in land tenure and use is fundamental to protecting women against land grabbing.
- Incorporate the Voluntary Guidelines on governance of land tenure into national legislation, making provisions sensitive to each country's circumstances but nonetheless upholding the main principles, especially on gender equality.

Securing women's rights to land in customary systems

Customary land management practices guide land governance in many rural communities. Ensuring that national and local land legislation and associated administrative procedures sufficiently recognise and adapt to customary systems – while respecting women's equal right to land – is critical to ensuring land tenure security. The existence of plural systems can lead to a lack of clarity over land rights, and can be a major loophole for land grabbing.

Governments should:

- Integrate into national policy and legislation customary institutions and functions that are accessible and non-discriminatory toward women.
- Integrate where possible, the (often) different local tenure systems in legislation in order to promote land tenure security.

Making investments work for women and promoting smallholder agriculture investment

In order to safeguard the (usually asymmetrical) rights of communities in the context of land investments, governments should:

- Strengthen their monitoring and impact assessments of investments and their capacity to regulate them. Investment requests must be better assessed in light of local food security and livelihood needs and community rights. Thus socio-cultural, environmental impact and economic viability assessments may all need to be undertaken.
- Consider a moratorium on further large-scale land acquisitions until regulatory frameworks to guide and monitor investments and their outcomes for communities are put in place.



Part 2

Country-by-country analysis

This section contains 24 ActionAid country reviews that examine the strengths and weaknesses of each country's regulatory frameworks, assessing their ability to: provide legislative protection for communities at national and local levels from land grabs; guarantee gender equality at national and local levels; and regulate investment through the measures in place.

BANGLADESH



Bangladesh's population is primarily rural (72 per cent), and 85 per cent of the rural population is dependent on land for survival.⁵⁷ Bangladesh's food security remains precarious, despite the important gains in reducing hunger.⁵⁸ Food insecurity is on the rise as a result of domestic land grabbing for urbanisation or industrialisation, unequal land distribution and excessive land acquisition for domestic use, compounded by the impact of climate change.⁵⁹ Numerous climatic factors also affect food production, for example water scarcity, increased occurrences of flooding, frequent and prolonged drought and increased water salinity.⁶⁰ The Ministry of Food and Disaster Management has embarked upon food insecurity mitigation strategies, including agricultural land investments in other countries.⁶¹ Bangladesh's land governance system is hierarchical and a product of its colonial and post-colonial history. Two overall types of tenure system coexist. In Chittagong Hill Tract areas, land is governed using private and customary law, although customary is predominant, particularly for indigenous peoples. In plain land, state-recognised private law exists. In spite of this, the Constitution does not recognise customary tenure.⁶² The formal land administration system is inaccessible to many

Bangladeshis because of corruption and high land transfer costs.⁶³ The ad hoc nature of land reform has not changed land ownership structures.⁶⁴ Women continue to be excluded from access to land by religious and traditional practices.⁶⁵

Legislative protection for communities

Bangladesh, on paper, has a strong legal framework on land. Women's land rights (with certain preconditions) are enshrined in the Constitution. Both legislation and the Constitution make provisions for consent and consultation – important steps for safeguarding land rights and tenure security. However, neither the Constitution nor land legislation recognise alternative tenure systems. Therefore, where the two tenure types coexist, formal tenure supersedes customary, provoking numerous land conflicts from competing claims. This effectively precludes tenure security for Bangladeshi's living and working on land under customary arrangements. Tenure security is only assured to those with legal land records.

If the activities of the constitutional (supreme) court can be taken as a measure of breaches of the Constitution as well as the functioning checks on these breaches, then the supreme court of Bangladesh is very active, with over 80 per cent of cases related to land.⁶⁶ What this means is that the system has checks in place, but these institutions are overwhelmed by the scale of the lack of compliance. Currently, almost a quarter of Bangladesh's land area is disputed and under litigation – 2.5 million land-related cases are currently clogging the judicial system, with another 1.4 million pending hearing.⁶⁷ The need for judicial streamlining to deal with the backlog could result in faster processing times in land dispute resolution, which currently incur heavy costs in terms of time, capacity and resources. Implementation gaps in the various land-related Acts are exacerbated by a combination of growing commercial demand for land. Land governance that already is under significant pressure is further challenged by the impacts of climate change, high local land pressure, and perceived impunity for corrupt government officials.⁶⁸

Policy making on land remains centralised and directed by the Ministry of Land, which receives 0.3 per cent of the total annual budget. Land management, when compared to other expenditures, and using budget as a measure of prioritisation, is not a top government priority. However, it is a significant revenue stream; with the land tax taking an equivalent to 24 per cent of the annual budget.⁶⁹



In terms of registering land, local land administrative bodies regulate registration. These have limited fiscal freedom and are dependent on central government institutions. Due to lack of intra- and inter-ministerial coordination and unclear division of roles, the implementation of policy and laws faces significant challenges. Registration is inaccessible to the majority of Bangladeshis because of the cost and the division of responsibility between ministries. Gaps between land institutions and data collection bodies such as surveying and records, and land registration being under a separate ministry, complicates the registration process. These gaps also open up corruption opportunities between sub - and national levels.

Land rights are undermined in practice by legislative gaps, failure to recognise communal tenure, the primary role of national institutions being to collect revenue, and lack of a pro-poor perception. Policy is currently geared towards securing tenure for landowners, but the majority of impoverished Bangladeshis are land users not land owners in terms of the legislative framework. Land policy has been institutionally decentralised but without decentralisation of adequate resources or capacity building.⁷⁰ At national level, the Land Administration, Land Appeal Board, Land Reform Board and Directorate of Land Records and Surveys are hampered by high staff turnover. The institutional framework could be strengthened by stabilising employment to reduce high staff turnover.

The indigenous peoples of Bangladesh have been negatively affected by unimplemented legislation and local land appropriation. Over 65 per cent of the Santal community, the largest indigenous group on the sub-continent,⁷¹ and 200 families in Chittagong Hill Tracts are reported to have experienced land dispossession.⁷² The 15th amendment of the Bangladeshi Constitution, established in 2011, classified the Chakma, Marma, Tripura, Santals and other groups as 'ethnic minorities' rather than 'indigenous people'. This allows the government to circumvent its legislative obligations on indigenous land rights, which in practice facilitates domestic large-scale land acquisitions.⁷³ ActionAid Bangladesh works with communities in 11 districts that have been directly affected by large-scale land acquisitions. We surveyed three of these Local Rights Programmes and Communities.

Gender equality

Nationally, laws recognise the right of women to own land through purchase, lease and gift, but in practice, women continue to be excluded from access to land and land ownership.⁷⁴ Limited ability to inherit or transfer land arises from religious and societal practices. Additionally, there are local customary laws that deny women's equal entitlement to land.

Our community experience in all three Local Rights Programmes shows that women's rights are not locally acknowledged under customary law. Additionally, terms of inheritance set out in the Inheritance Law do not give women equal entitlement to land inheritance. In terms of political representation, Bangladesh's Cabinet and Parliament comprise six women out of 35 total seats (including the Prime Minister) and 19 women out of 300, respectively. Beside this, there are 45 seats in Parliament reserved for women, as selected by political parties. ActionAid Bangladesh reports that these female appointments do not translate into land and gender being on the political agenda. Only the Prime Minister and the Minister for Women's Affairs are perceived to be active on gender issues.

Measures in place to regulate investment

Bangladesh's land governance system is geared towards protecting landowners and investment, which squeezes communities between two levels: investment protection and formalisation of tenure. The inaccessibility of the formal tenure system and a lack of recognition of customary tenure means that communities are in a vulnerable situation that is worsened by the impact of climate change and increasing pressure on land.⁷⁵ At national level, Bangladesh provides considerable protection for investors, which is recognised in the World Bank's Doing Business review of regulations. However, it does poorly overall (122nd out of 178), and when it comes to registering property.⁷⁶ This means that the investment regime is set up to prioritise investor protection, while reform of the property registration process, which is particularly inaccessible to communities, lags behind. Of the two land grabs that the International Land Coalition lists on its Land Matrix, both were by private unnamed investors and for agricultural purposes.⁷⁷ Demographic pressure and limited land area mean that land acquisition in Bangladesh is often on a domestic and small-scale basis.

The government needs to prioritise detailed land reform. To adequately deal with chronic food security, this reform should cover land use legislation, redistribution measures and the promotion of accountable land management. Making use of climate change adaptation measures to increase land utility and productivity, alongside the recognition of women's rights to land, should be cornerstones of reform.⁷⁸



BRAZIL



Brazil is one of the major food producers in the world, but according to the 2010 Census, 7.5 million inhabitants of rural areas live in extreme poverty. From this total, 6.5 million are family farmers, indigenous groups and traditional communities living in the north and northeast regions.⁷⁹ Brazilian land is governed by private land tenure, with land ownership one of the most concentrated in the world — with ownership largely in the hands of a small rural oligarchy with significant political links.⁸⁰ Brazil's unequal land tenure system is part of its colonial legacy, which has produced a historic pattern of land tenure insecurity for the most marginalised in society. This tenure insecurity continues to be a source of violent clashes and food insecurity.⁸¹ In terms of data on land ownership, the system that controls land is weak, since the INCRA's (National Institute for Colonization and Agrarian Reform) database is self-declaratory and the register's office does not record cases of land acquired by foreigners more than 10 years ago. The government is attempting to address land issues and has acknowledged that land reform should continue to be a policy objective. However, the government needs to prioritise land reform that does not undermine community rights and that promotes women's access to

land. This will require prioritising across different institutions. Half of Brazil's land (436.60 million hectares, or 51.35 per cent) is registered on the INCRA database as rural property.⁸² The government has made land-related investment a development priority.

Legislative protection for communities

Movements such as MST (Brazil's landless workers movement), CONTAG (National Confederation of Family Farmers' Workers) and FETRAF (National Federation of Family Farmers' Workers) continue to call for land reform and keep it on the national agenda.⁸³ For them, reform could end landlessness and extensive rural inequality through legislation that would strengthen and amplify public policies, and provide technical assistance for smallholder farmers and landless peasants. Other historically marginalised groups are descendants of slaves (known as *quilombolas*), and the indigenous peoples and traditional communities who are calling for the right to their ancestral lands.

Brazil's Federal Constitution (1988) recognises indigenous people's rights to land and Article 68 of the Transitory Constitutional Provision guarantees communal rights for *quilombolas*.⁸⁴ Equality between men and women and the social rights of all citizens are enshrined in the Constitution.⁸⁵ Security of tenure is guaranteed through private property, which is a fundamental right, although the government has discretionary power to expropriate land if it does not fulfil its 'social function'.⁸⁶ In line with the International Labour Organization Convention 169, the Constitution upholds the rights of indigenous groups to be consulted.⁸⁷ Provisions for communal land rights with an emphasis on access to the territories are established by Decree 6040/07. Women's rights are promoted through double titling of land in the Agrarian Reform Policy (2004).⁸⁸ This policy strengthens tenure security for settled parcels of land guaranteed by INCRA and by Law 8629/1993.⁸⁹ It can also provide tenure security for collective or community land, not through title but through 'guaranteed possession'.⁹⁰ Beyond private property security, Decree 4887/03 establishes procedures for identifying, delimiting and demarcating land occupied by *quilombolas*.

Land policy or market assisted reform is an institutional priority in Brazil. It is overseen at national level by the Ministry of Agrarian Development (MDA), which oversees agrarian



reform and family farming policies. There are also several specialised agencies: INCRA – for landless, rural workers and smallholder farmers; FUNAI – for indigenous people; and Fundação Palmares – for *quilombola* communities. The federal government is responsible for implementing policy on land, including expropriations, recognition and demarcation. As a measure of land reform implementation, INCRA was created to carry out national land reform planning and delimitation of *quilombola* territories (as recognised by the Fundação Palmares). The FUNAI (National Foundation for Indigenous People) is responsible for the recognition, delimitation and support of indigenous people. Land reform is also supported by the National Policy for Sustainable Development of Traditional Peoples and Communities. Terra Legal likewise is a national programme of regularisation of land ownership in the Amazon. In its first two years, it performed poorly, achieving just over one per cent of its target; it has been criticised for priming land to insert into the market to boost foreign investment. Two different ministries deal with agriculture and land issues, from opposite perspectives. The Ministry of Agriculture (MAPA) holds a bigger budget and deals with agribusiness, while the Ministry of Agrarian Development (MDA) and its executive body for Agrarian Reform, INCRA, deal with agrarian reform and the right to land of traditional and *quilombola* communities. Promotion of Agrarian Reform and recognition of land rights are hindered by this dichotomy. Internal disputes, strikes, budget cuts and bureaucracy have delayed the progress of land reform.

There are several major challenges to land governance in Brazil. First, land in Brazil has always been, and remains, an issue of power. Land ownership confers both economic and political power.⁹¹ Additionally, land speculation has always been a feature of this; more recently it has been a way of laundering money.⁹² Second, land pressure resulting from high demand is affecting the way that policy is being made and implemented. The current international demand for agricultural (soy, meat) and non-agricultural (iron, timber, pulp) commodities means high prices and increased demand for land. These are affecting the way that law is made and implemented. Brazilian legislation has never set limits on land ownership, not even for foreign individuals or companies.⁹³ The Brazilian Federal Constitution, however, states that areas larger than 2,500 hectares should require the approval of Congress. However, implementation is not regulated.⁹⁴ Agribusiness and landlords control almost 75 per cent of the land and pressure the government; a strong group of parliamentarians, known as Frente Parlamentar da Agricultura, represents the interests of landlords in the National Congress.⁹⁵ The media also plays a major role in contrasting the life in rural areas (characterised as uncivilised) with the developed urban areas. Social movements are often portrayed as extremist, anti-development and violent.⁹⁶

The PNRAI is typical of policy challenges on land in Brazil: in response to social pressures and social movement demands, the National Agrarian Reform Plan was established (PNRAI 2003-2006); it had an annual implementing budget and the goal of resettling one million households in four years. However, a legal mandate does not mean that resources are spent effectively. PNRAI was combined with initiatives such as the Land Credit: access to land through purchase and expropriation of lands that do not meet the 'social function'. However, aggregating households that had been supported by PNRAI and Land Credit made it difficult to assess whether targets had been met. Aggregated data was well publicised to rally support for the government.⁹⁷ PNRAI has been phased out under the current administration because it was not working effectively.⁹⁸

Gender equality

There are no legislative or customary barriers to women owning land, although traditionally the heads of families and those in charge of family property are men. In rural areas and poor urban areas, communities view land ownership along patrilineal lines, effectively circumscribing women's access to land rights.⁹⁹ INCRA has begun to use the reform process to start altering this; where parcels of land are being titled, both women and men can be listed as heads of households. However, lack of sex-disaggregated data on land ownership means women's participation is difficult to measure.¹⁰⁰ Brazil has successfully linked social programmes such as the Bolsa Familia cash transfers with increasing women's autonomy and reducing food security in over 11 million households by making 94 per cent of payments to women.¹⁰¹ For the most part, the 1996 land reform benefited men. However, the 2004 market-assisted land reforms have tried to focus on women's tenure insecurity by easing credit access through issuing land documents to women.¹⁰² The groundwork has been set for national sex-disaggregated data on land to be collected.

Women's political participation has increased in spite of the discriminatory and socially entrenched norms. Recently set quotas are that 30 per cent of ministerial and Secretary of State posts must go to women – currently, there are 10 female Cabinet ministers out of 38 positions.¹⁰³ Rules guiding legislative elections stipulate that for every 10 men there must be three women. However, these rules have been difficult to enforce. Even instituting gender political representation has not resulted in changes to the traditional practices for land. Brazil's strength on paper often goes unimplemented outside of the urban centres.¹⁰⁴



Measures in place to regulate investment

Brazilian governments have made the agribusiness model the strategy of choice – involving huge crops and monoculture. Several Brazilian companies and individuals are buying large tracts of farmland for biofuel cultivation on behalf of or in partnership with international clients, including US multinationals.¹⁰⁵ There has been growing external involvement in agriculture for sugarcane and soya, as well as in the production of ethanol and biofuels, through partnerships or mergers with Brazilian companies. Between 2002 and 2008, US\$46.95 billion foreign direct investment flowed into Brazilian agribusiness.¹⁰⁶ A large proportion of foreign investments are not land purchases but agro-industrial investment, for instance in the sugarcane sector where ethanol production projects receive significant subsidies; a 2012 study showed that a biofuel subsidy programme worth US\$38 billion will continue to stimulate expansion.¹⁰⁷ According to studies from NEAD (Center for Agrarian Studies and Rural Development), there were 34,632 properties registered to foreigners in 2008, comprising an area of 4,037,667 hectares. It should also be noted that more than 83 per cent of these properties are classified as large properties.¹⁰⁸

International food prices have remained high and Brazil has attracted new capital to its agricultural sector in order to increase its share of exports.¹⁰⁹ But Brazil is more than just a target for foreign land grabbing. Brazilian investors, with government backing, are buying land in countries across Latin America and Africa to produce food and biofuels.¹¹⁰

‘Mega-project’ investments have a heavy environmental impact and local cost. These projects threaten biodiversity, and often violate the rights of traditional communities, indigenous people and smallholder farmers. Locally, they are the source of conflict and violence.¹¹¹ Such projects include: diverting the São Francisco River for plantation irrigation in a semi-arid region; the Transnordestina highway that will favour the export of raw products through new harbours being built in the north-eastern region; construction of new facilities for the World Cup; the construction of the Suape Harbor in Pernambuco state; and the construction of the Belo Monte hydroelectric plant and plants on the Madeira River dams in the Amazon region. Communities and smallholder farmers need to be integrated into the national economy through a rights-based approach rather than just market-assisted reforms. Opting for agri-business and large-scale infrastructure, without the protective measures in place, and without implementation of laws, will increase land concentration and inequality that particularly afflicts those least able to defend their rights and most at risk from land grabs.



BURUNDI



In Burundi, food and tenure insecurity are inseparable and exacerbated by the country having one of the highest population densities in Africa – between 270 and 400 inhabitants per square kilometre. The consequent pressure on resources and food insecurity is not going to diminish – the FAO estimates that the population will grow from 8.5 million to over 13 million by 2025. Currently, 89 per cent of Burundi's population live in rural areas, and 15-20 per cent of rural inhabitants are classified as severely vulnerable to food insecurity.¹¹² Despite women's increasing role in food production, they do not have land rights. Historically, land has been a source of conflict and contention.¹¹³ In 2008, the ceasefire of the last rebel group brought to an end the protracted conflict which had been fuelled, in part, by competition over natural resources.¹¹⁴ Displacement peaked in 1999, with over 12 per cent of the population classified as 'internally displaced persons' (equivalent to 800,000 people).¹¹⁵ The ensuing and long-lasting land crisis, arising from returning refugees and a pluralistic tenure system, prompted the government into action. In 2011, the Burundian government, with support from donors, promulgated a revised land code – the Code Foncier.¹¹⁶ This was the latest reform attempt in a series of

half-implemented land codes, which up until now have effectively repackaged the 1986 land code, which itself is made up of parts of colonial land law.¹¹⁷ Both customary and private tenure exist in Burundi, and formal law recognises state and private land. The land code recognises customary tenure so long as claims are registered. Unregistered customary land rights are not guaranteed under formal law.¹¹⁸

Legislative protection for communities

The 2011 land code is the national statutory framework governing land in Burundi. It is a reviewed version of the 1986 land code, which in turn was a remodelling of pre-existing colonial land laws. The 2011 land code differs from previous legislation in that it introduces land certificates, decentralises land administration and revokes the land allocation powers of governors.¹¹⁹ As a measure of implementation, the institutional framework has been altered to support the 2008 land policy, the Lettre de Politique Fonciere, which sets out the following priorities for land governance: amending land legislation; modernising, restructuring and decentralising land administration and management services; undertaking an inventory of state land and the recovery of illegal appropriations; and addressing the issue of land scarcity.¹²⁰ The creation of the Unite de Coordination was an acknowledgement that poor coordination between land institutions was a hindrance to more efficient land governance.¹²¹ Significant efforts to ensure that the land code and certification is implemented in a participatory way will be crucial to combating the perception that land laws are manipulated by officials for private gain.¹²² The majority of allocations or domestic land grabs that took place at peak periods of displacement were then legalised through statutory regulations imposed by state officials in a process known as 'spoliation'.¹²³

The land code also recognises the legitimacy of customary land rights if they are formally registered. However, an expensive and complicated registration process makes this form of tenure security inaccessible for the majority of Burundians. Quasi-legal local tenure management systems have evolved to fill this gap. In practice, these administratively useful land innovations provide an extra level of confusion in disputes arising from competing land claims under different types of land administration systems.¹²⁴



Some Burundi land experts argue that these multiple levels of institutions and legal pluralism (differentially applied customs and statutory law) have produced ‘forum shopping’ in dispute resolution.¹²⁵ Given the high number of land conflicts in Burundi, this development is indicative of legislative gaps, especially between customary and statutory systems. These gaps have a direct impact on resolution of land conflicts and on tenure security. In an innovative move, the government established the Commission Nationale Terres et autres Biens (CNTB) in 2006. The CNTB replaced the Commission Nationale de Réhabilitation des Sinistrés and combined dispute resolution with the allocation of state land to landless returnees. Crucially, it made use of both statutory law and customary practice to find mediated solutions that were more likely to be upheld. Having been established in every province, the reach of the CNTB was significant.¹²⁶

Gender equality

Women are not discriminated against in the formal legal system. On paper, there are equal rights provisions for women but a plural tenure system means that in practice women’s rights, especially their right to own and inherit land, are often not respected or recognised.¹²⁷ Within this legal context, women’s land rights are squeezed between local patrilineal customs and the national impact of displacement. Land registration can reduce conflicts between families and should take into account women’s fragile access to land in the customary system, where women cannot inherit.¹²⁸

Despite women’s increasing role in food production, they do not have land rights. At local level, numerous attempts have been made to support women’s access to land through legal land clinics. The absence of an implementable national land code was listed as a reason for failures to uphold women’s rights. Although a land code is now in place, limited engagement with customary systems, beyond dispute resolution, is unlikely to change these patrilineal practices. One example is the CNTB prioritisation of land disputes involving the wives or widows of former soldiers.¹²⁹ The reforms have not been publicised at local level, thereby undermining their reach.¹³⁰ Going forward, it will be crucial to ensure that land registration and legal documents adequately address women’s rights to access land and tenure security within the context of local discriminatory practices.

Burundi has measures in place to ensure the political participation of women, with a 30 per cent of quota for the National Assembly, Senate and Cabinet appointments.¹³¹ Impressively, these quotas have been implemented – one of the few examples in the region. In the Lower House, women hold 32 out of 105 seats; in the Senate they hold 19 out of 41. This is the result of stipulations in party lists, which have made the quotas work.¹³² However,

representation is not the same as participation and work is needed to support women’s participation beyond quotas.

Measures in place to regulate investment

Burundi’s economy is dependent on agriculture, which accounted for 35 per cent of GDP in 2011.¹³³ Protections for property ownership are granted under the Constitution and there is no limit on land ownership. However, Burundi’s population density and complex land situation have precluded significant investment in the agricultural sector.¹³⁴ Reforming Burundi’s investment climate has garnered financial support from the World Bank’s investment arm, the International Financial Corporation, and the governments of Netherlands, Norway and Ireland. Following the 2011 elections, the second vice-president has been leading high-level engagement on these reforms.¹³⁵ In spite of an overall ranking of 169th, Burundi’s policies for investor protection have clearly been noticed; the World Bank Doing Business Index ranks Burundi 46th on investor protection, with property registration lagging behind at 109th – reflecting the complexity of land and property rights and the tenure insecurity of local communities and women.¹³⁶

Since 2009 a new investment code revamped the 2003 business regulatory framework. Its aim is to support private sector investment. To qualify for incentives, however, the investor must meet special requirements concerning the size of the investment, the number of jobs created and the location of the business. Companies licensed for export only, which operate in the Free Economic Zone (FEZ) and take advantage of FEZ tax incentives, are required to purchase goods in Burundi. However, there are no regulatory requirements to encourage skills or technology transfer.¹³⁷ The code streamlines four previous licensing regimes and gives guarantees to foreign investors on expropriation, transfer of capital, and use of international arbitration.

As part of the national reconstruction and reconciliation process, the government must prioritise implementation of existing land legislation to allow for the protection of communities’ and women’s land rights. Investment requirements must be balanced with tenure security especially considering Burundi’s land scarcity and the competition for resources that communities require to survive.



CAMBODIA



Cambodia has a wealth of natural resources and agricultural potential. The Khmer Rouge regime (1975-79) dismantled the land governance system by abolishing private property and forced the ruralisation of its urban population.¹³⁸ Currently, 80 per cent of the population live rurally.¹³⁹ In spite of title registration policies meant to increase tenure security, the majority of poor Cambodians do not have land titles but are dependent on land for survival.¹⁴⁰ Approximately 65-70 per cent of the labour force is engaged in subsistence agriculture and two thirds of rural households face seasonal food shortages.¹⁴¹ There are multiple forms of tenure in Cambodia: state public property, state private property, private property, indigenous people's communal land and Pagoda (collective land).¹⁴² In practice, private property can be individually or communally owned or undivided and co-owned.¹⁴³ Land is subject to increasing competition between land users and private companies. This is a result of demographic pressures combined with high food prices and tenure insecurity. Where land claims overlap with companies, poor Cambodians tend to lose out, especially where this land is held privately by the state.¹⁴⁴ Land conflicts are a high-profile issue in Cambodia; however, in practice conflicts are highly concentrated in resource-rich and urban areas.

Legislative protection for communities

Private property was reintroduced in 1989 following the disastrous impact of the Khmer Rouge's land policies involving destruction of records and ruralisation of urban areas. From 1992, Cambodians could apply for land certificates – but this resulted in only 14 per cent of applications being processed. The Land Law (2001) was an acknowledgement that the pre-existing land governance system was not fit for purpose, and that tenure insecurity, landlessness and weak land governance were hindering national development.¹⁴⁵ The same law wiped the land title slate clean by not recognising titles predating 1979.¹⁴⁶ Currently, a contentious draft law is before Parliament that could undermine development gains made so far in Cambodia. According to LICADHO (Cambodian League for the Promotion and Defense of Human Rights), the draft law poses a threat to property ownership rights – particularly for smallholder farmers.¹⁴⁷

The current legal framework was established to promote agricultural investment and land titling so that Cambodians who could prove land occupancy for five years prior to 2001 could get land titles. The 2001 law established the division of land into state public and state private land, which operate alongside private land ownership. It recognised the right of indigenous communities to collectively own land with guarantees equal to private ownership. Finally, it acknowledged traditional authorities' autonomy to manage community land.¹⁴⁸ However, communities must be registered as legal entities before collective title can be applied for.¹⁴⁹ The process of titling also discriminates against Cambodians who cannot afford to register land.¹⁵⁰ This means that many Cambodians' legitimate land rights are not legally recognised and are disrespected in practice.¹⁵¹ The UN Special Rapporteur on Rights of Indigenous Peoples reported in 2010 that indigenous land rights were undermined by inconsistencies between the Land Law and the sub-decree on communal land registration.¹⁵² Enforcement is a challenge and there are allegations that indigenous groups are denied ownership en masse.¹⁵³

On paper, communities are protected from 'involuntary resettlement'. However, these guarantees are only for legal landholders.¹⁵⁴ The Economic Land Concession (ELC) regulations



require public consultation with the residents likely to be affected but low enforcement means even the minimum requirements are not met and ELCs have been allocated in excess of the ceiling.¹⁵⁵ Only Cambodian citizens or legal entities have the right to own land. Foreign investors may secure control through concessions, long-term leases or renewable short-term leases. Sub-decree 146 established ELCs, which are long-term leases that transfer private state land to private investor control.¹⁵⁶ The 2001 law established control measures over investment concessions, such as a concession size ceiling (10,000 hectares), the number and size of concessions under control of one entity, a maximum concession time (99 years), and legal compliance with the threat of cancellation if breached.

The land institutional framework in Cambodia is complex, with roles and responsibilities split across three ministries. The Ministry of Land Management and Urban Planning and Construction (LMUPC) is in charge of setting land management policies, cadastral affairs, land registration and the management of state public land. The Ministry of Agriculture, Forestry and Fisheries (MAFF) is the lead ministry for concessions on state private land, and the Ministry of Environment (ME) has been involved in allocating ELCs. Roles and responsibilities split in this way result in competing land claims that often create competition between state actors, undermining the ability of the state to act as an arbitrator in land disputes.¹⁵⁷ The Council for Land Policy, created to guide the implementation of policy, suffers from a lack of coordination and an inability to monitor. Poorly defined roles and low coordination are matched at provincial level so there are significant loopholes in the institutional regulatory framework.¹⁵⁸ Lack of transparency in the process to acquire concessions continues to hold back both agricultural development and community tenure security. The lack of national data on land holding or landlessness hinders an integrated rural development policy.¹⁵⁹

Gender equality

The Constitution guarantees Cambodian women full political rights, but traditionally women have played a very small role in public life. Cambodian women have equal rights to land and property. But in spite of constitutional and legislative guarantees, women face high levels of tenure insecurity.¹⁶⁰ Gendered tenure insecurity manifests itself in three ways: poverty and landlessness undercut women's land rights; traditional practices and cultural norms mean women's land rights are marginalised in the family unit; and women are not aware of their rights. Land titling has been set up to be responsive to women's specific land needs

and supports women-headed households. The government reports that in implementing its Land Titling Programme it has issued land titles; three quarters of the land titles were issued in rural areas, and distributed 1.6 million parcels between 2002 and 2009 – 20 per cent to women.¹⁶¹ According to the Social Institutions and Gender Index women hold 26 of 123 seats in the national Parliament. The government has proactively increased women's political participation including appointing women as deputy governors in all but one of 24 provinces.¹⁶² However, beyond titling, women are not included in land or agricultural policy.

Measures in place to regulate investment

Cambodia has primed itself for investment through incentives schemes. Transparency levels and lack of recourse for communities, however, have undermined the country's international reputation and in 2011 the World Bank suspended loans to Cambodia. However, this has not deterred investor interest. Cambodia is a biofuel target country, in part because of its booming sugar industry. Sugarcane plantations have re-expanded in partial response to the European Union's Everything But Arms (EBA) initiative that grants duty-free access to certain products from developing countries.¹⁶³ Thousands of Cambodians have allegedly been evicted to make way for expanding sugarcane plantations.¹⁶⁴

ELCs are brokered between companies and the MAFF and the ME. Under the Law on Expropriation (2009/10), MAFF has discretionary power to define 'public interest' projects.¹⁶⁵ These projects are guaranteed nationally from expropriation, and international protection via bilateral investment treaties. Preconditions for these include: companies must have their land use plan accepted by the Provincial State Land Management Committee, and environmental and social assessments must be carried out, which the government investment agencies facilitate. This facilitation is in stark contrast to the practical and financial burdens of registering communal indigenous land.¹⁶⁶ To further streamline investment, the government amended its Law on Investment to reduce investment approval times known as the 'time tax'.¹⁶⁷ To date, the Cambodia Special Economic Zones Board has approved 21 Special Economic Zones to boost development driven by foreign direct investment.¹⁶⁸ There are two policies of ELC:

1. the 'cow skin map' for land that does not overlap with people
2. the 'leopard skin map' for land that does overlap with people, which requires the company to resolve any negative impacts on affected people.¹⁶⁹



Gaps and corruption in the concession-making process continue to challenge land governance. These gaps have been listed as being at heart of a land moratorium in May 2012.¹⁷⁰ However, a month later it emerged that concessions that had been approved in principle had gone through in spite of the moratorium. Cambodia needs to make the most of the moratorium opportunity and the political will to put it in place, to coordinate land governance and focus land policy towards supporting smallholder farmers and women. Making titling accessible, cheaper and respected is crucial for Cambodia to overcome the legacy of the Khmer Rouge.



DEMOCRATIC REPUBLIC OF CONGO



The Democratic Republic of Congo (DRC) has been at the centre of a protracted civil conflict, resulting in an ongoing humanitarian crisis. The conflict's legacy has meant the government has struggled to define its policy on land in the face of investor interests.¹⁷¹ In spite of an abundance of natural resources, the DRC continues to be hamstrung by enormous reconstruction needs, poor economic growth, and fiscally constrained, weak institutions. As the third largest country in Africa, and with ample rainfall, the DRC is an attractive country for large-scale land acquisitions by governments and foreign investors alike.¹⁷² The DRC's land-dependent population is particularly vulnerable to displacement by land-related conflicts arising from attempts to control lucrative natural resources and international investment.¹⁷³ Seventy per cent of the population lack adequate access to food and are dependent on land for survival.^{174,175} The 1973 General Property Law, which was amended in the 1990s, ended the pre-existing system of land ownership, in which there was a distinction between national and 'native' lands, effectively nationalising land.¹⁷⁶ However, in practice, land legislation is weak and the ability of the state to enforce it is limited, which means that, in practice, customary norms

govern land. These, in most instances, are prejudiced against women's equal land ownership. This means that in the eyes of the law, communities have land-user rights but not land-ownership rights. In the DRC, customary, informal and statutory tenure systems overlap, resulting in competing claims.¹⁷⁷

Legislative protection for communities

Two laws de facto govern land in the DRC: the Bakajika Law (1967) and the Land Tenure Law (1973). The Bakajika Law placed full ownership land rights in the hands of the state, thus abolishing private ownership and rendering vast numbers 'landless'.¹⁷⁸ Under the Land Tenure Law, customary user rights were established and provisions for private ownership through private concessions were instituted.¹⁷⁹ The DRC's land legislation provides more on-paper safeguards for communities than does the Constitution (ratified in 2006 and modified in January 2011), although to date there is no national land ownership policy and land legislation suffers from poor coordination.¹⁸⁰ The Constitution states that ultimate control of the country's natural resources rests with the government.¹⁸¹ When combined with provisions set up under the legal regime of expropriation, this means that tenure security is limited for both communities and companies. The Land Law makes provisions for expropriation where 'legitimate' reasons exist, even in long-term concessions.¹⁸² Under Law No. 70-021 (1973), explicit provisions for community land rights were established through a Land Grants system. These grants are temporary but can be acquired on a long-term lease basis. The Forest Code (Law 011/2002) makes explicit provisions for community consent and consultation over local land and forestry areas.¹⁸³

The DRC land code establishes a national institutional land management framework. The Ministry of Land is the top authority on land, with roles divided between it and four other ministries. State property is managed by central government through these ministries. Responsibility for land allocation of land varies depending on the size and location of the land requested. The process of granting a concession goes through at least one of these institutions, as applicable: the Parliament, the President of the Republic, the Minister of Land Affairs, the Governor of the Province or the Registrar of Titles estate.¹⁸⁴ The government is currently drafting a new land reform policy.¹⁸⁵



As a measure of prioritisation of land issues, the government allocated 3.4 per cent of the 2012 national budget.¹⁸⁶ As part of the Land Law, numerous administrative institutions were created to administer the laws; however, their level of activity and capacity has been criticised by land-rights watchers. Coordination at provincial level remains ineffective, while the other bodies lack the resources and capacity to play their roles fully, even where these are legally defined.¹⁸⁷ The institutional framework includes: cadastral services at provincial level, a government agency known as the Congolese Institute for Nature Conservation (ICCN), the National Service of Fertilizers and Related Inputs (SENAFIC), the National Agricultural Statistics Service (NSH); the National Livestock Development (WAVE); Service National Fisheries Development (SENADEP) and the National Aquaculture (SENAQUA), the National Service of Cooperatives and Producers' Organizations (SNCOOP), the National Service of Appropriate Technology in Rural Areas (SENATEC), and the National Rural Water Service (SNHR).¹⁸⁸ However, these lack capacity to address the complexity of land and environmental issues. The lack of a joined-up approach on land hinders protection of communities from large-scale land acquisitions. Legislation and regulation are open to misinterpretation and pervasive corruption results in influence peddling. Ineffective allocation of resources, high levels of bureaucracy and limited communication or availability of information further complicate land governance. Opportunistic government officials often invest in land in their constituencies and issue registration certificates to themselves.¹⁸⁹

Similarly, the Environment and Natural Resources Conservation Parliamentary Committee is meant to deal with land and environmental issues. However, committee members lack the necessary expertise on land or the environment, which means effectively that Parliament lacks the capacity to be a competent check on large-scale land acquisition leases and concessions.¹⁹⁰

Judicial land tribunals, at local level, are meant to provide land dispute resolution services. However, they have little local legitimacy due to endemic corruption; local populations see them as inaccessible (geographically far away and expensive) tools for those who can pay for favourable decisions. Alternative mediatory customary courts exist but cannot deal with the scale of the problem.¹⁹¹

Historically, legislation has been used as a punitive measure to undermine elites or undercut companies that directly opposed the government or whose countries of origin did so (1967 Bakajika Law and 1971 Law 71-09). This practice was widely used in licensing

processes and nationalisation of natural resources. On the flip side, land tenure information is either unavailable or near impossible to verify for the DRC, due to a lack of land certificates. This means land is easily acquired but also easily lost. Communities feel the brunt of this 'high risk, high return' investment strategy because of limited resources to contest, combined with low awareness of their rights relative to the influence that companies hold over decision makers.¹⁹²

Gender equality

Women's right to own, inherit and bequeath land are recognised by the Constitution, but promotion of women's land rights clashes with customary laws that deny equal entitlements. Increasing women's political representation has not resulted in gains for women's rights to land, which are undermined by cultural, social, educational and economic barriers to changing the status quo. Six out of 36 ministers are female but, while they are active on gender issues (in keeping with their portfolios), they are not active on women's land rights. In practice, women must obtain permission from their husbands or a male family member to purchase or lease land, with men additionally having rights to their wives' property. The internal displacement and migration of women, often as a result of conflict or from necessity, also contributes to the insecurity of their land tenure.¹⁹³

Measures in place to regulate investment

Because the DRC is an export-led economy dependent on natural resources, land is a highly political and valuable asset. Foreign direct investment is worth 7 per cent of GDP and agriculture income is worth 4.6 per cent of GDP.¹⁹⁴ Historically, the state has continued to alter property rights to disempower local elites and build new systems of patronage, which in turn has concentrated and commercialised land control – further exacerbating dispossession rates and food insecurity.¹⁹⁵ Land competition is fierce and land disputes are often ethnically charged.¹⁹⁶ Within this political economy of unsustainable and insecure land distribution, large-scale land acquisitions are particularly damaging for local communities and the land governance system itself, which, rather than being strengthened to play a more active regulatory role, is bypassed.¹⁹⁷ There is little information available publicly on land ownership in the DRC. This means that investment trends in land are difficult to verify. The International Land Coalition has listed six large-scale land acquisitions since 2001.¹⁹⁸ The impact of these acquisitions will be felt most keenly by those least able to defend their rights.¹⁹⁹ Sustainable

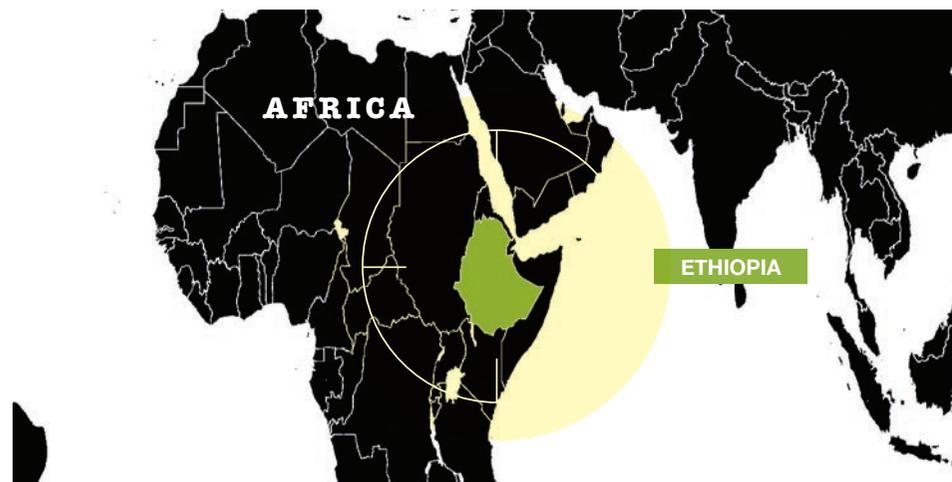


investment in land could be a boon for the DRC's political economy. But lack of legislative implementation, in spite of an extensive, albeit weak, institutional framework means that regulatory functions, registration of property, and investor protection have been scored by the World Bank as some of the worst in the world.²⁰⁰

In the face of policy geared towards the national interest, pursued on a deal-by-deal basis rather than systematically, land rights need to be secured for women in practice and for smallholders and communities. This requires that the new law and proposed land reform is not only harmonised with existing legislation but that mechanisms for implementation and monitoring need to be created if landlessness is to be tackled and food security increased. Smallholders and women need to be acknowledged as integral parts of a land and agricultural policy.



ETHIOPIA



The population of Ethiopia is predominantly rural, with 83 per cent of people living in rural areas. Around 85 per cent of the rural population are smallholder subsistence farmers and reliant on agriculture as their sole source of livelihood.²⁰¹ Since the 1970s, Ethiopia has overcome numerous famines and although there have been improvements in food security, the Ethiopian government classified seven million of its population as chronically food insecure in 2011.²⁰² Ethiopia has also undergone significant political transformations that have affected the way land is managed, governed and used. The mixed tenure system, with both communal and state ownership of land, is the result of numerous attempts at land reform; land is held by the state and can be leased or rented.²⁰³ As result of land policy decentralisation, regional governments are the primary land governance institutions.²⁰⁴ A landmark certification process began in 2003, aimed at supporting security of formal land tenure. Although this process was successful in establishing formal tenure in four regions, low levels of legal awareness, an absence of communal certification and several institutional challenges mean that certification to increase tenure and food security has some way to go, according to the

World Bank.²⁰⁵ Ethiopia's agricultural output and food security potential could be strengthened by integrating tenure security for rural Ethiopians into work the government is undertaking on climate change resilience and adaptation. In March 2012, the Ministry of Agriculture temporarily suspended land allocations to ensure that investors were using land in line with the terms under which they had been granted access.²⁰⁶

Legislative protection for communities

Land in Ethiopia is governed by a federal and decentralised state structure. The federal land framework is governed by: the Civil Code, the Urban Land Law (1993, amended in 2002) and the Rural Land Law (1997, amended in 2005). According to the Ethiopian Investment Agency (the body in charge of promoting foreign direct investment), the federal government sets the legislation and policy agenda and delegates significant regional autonomy on implementation, which takes the form of state directives and regional laws.²⁰⁷ This means that legislation and implementation varies state by state, although in practice day-to-day decision making on land tends to take place at local level.²⁰⁸ The Constitution provides guarantees for peasants to obtain land without payment and for pastoralists to access grazing lands. Both groups are constitutionally protected from eviction.²⁰⁹

The Constitution is the supreme law and all federal laws, and therefore regional directives, on land are subject to it. Regional constitutions are contextual versions of the federal Constitution and guide land allocation and administration in a decentralised way. However, institutional roles and responsibilities in many instances are blurred and operate on an ad hoc rather than predictable and systematic basis.²¹⁰

A World Bank study on increasing tenure security in Ethiopia found that increased tenure security and transferability of land rights can enhance rural development.²¹¹ The 2003 Ethiopian certification process was established as a pilot to increase tenure security through certification for individuals in four regions of Ethiopia. Billed by organisations such as the World Bank as one of the world's cheapest, fastest and most effective certification processes, the certification process had in its first five years registered more than 20 million parcels of rural land.²¹² In many countries in east Africa, perceptions of, and actual, tenure insecurity



have undermined local food production and increasing tenure security has been seen as a way to combat this.

Gender equality

The Constitution gives men and women equal property and land ownership rights before the law.²¹³ Crucial for women's development potential is the Constitution's provisions in Article 35, paragraphs, 6 and 7:

- “6. Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects and particularly in the case of projects affecting interests of women.
7. Women have the right to acquire, administer control, use property. In particular they have equal rights with men with respect to use, transfer, administration and control of land.”²¹⁴

According to USAID, the land certification process has in some instances transformed local customary practices that had hitherto prohibited women from owning land.²¹⁵ The certification process supported implementation of the New Family Code, which set up provisions for joint ownership and control of land between spouses.²¹⁶ Despite this, in practice, often a woman's only chance of accessing land is through marriage.²¹⁷

Measures in place to regulate investment

Ethiopia has one of the highest growth rates of non-oil African economies yet continues to be one of the continent's poorest countries. The backbone of the economy is agriculture, making Ethiopia dependent on a climate that is increasingly being affected by climate change. According to data from the Ethiopian Investment Agency, foreign agricultural investment began to increase in 2006, jumping from US\$508 million in 2005 to US\$1.9 billion in 2006. The total stock of foreign agricultural investment from July 1992 through to September 2009 was US\$7.1 billion, with over 87 per cent of that investment having taken place since 2006.²¹⁸

Traditionally, Ethiopia has had a small private sector – a trend that the government has been keen to reverse as investment in land is viewed as a way to boost agricultural productivity and increase economic development. However, high growth rates are not producing adequate gains for communities and smallholder farmers at micro level.²¹⁹ This is because growth has been concentrated in certain sectors and these yielded limited gains for smallholder farmers. Service sector growth has produced only limited gains for rural smallholder farmers because services have been concentrated in urban areas. Lack of these services in rural

areas, such as credit, mean that smallholder farmers are not gaining directly from service-led growth. Growth driven by industrial production, for example light manufacturing, also has a limited impact on smallholder farmers, who cannot benefit from any access to jobs as most industry is urban. In the instances where agribusiness is located near smallholdings, communities may benefit from employment, but the government acknowledges that these gains are not enough. The adoption of the Private Public Partnerships policy by the Agricultural Transformation Agency, to connect smallholder farmers with commercial supply chains, is a clear indication that investment of itself is not producing adequate local gains, particularly in a context of water scarcity and decreasing rainfall.²²⁰

Private investors can get land user rights because land is public property so cannot be sold or exchanged.²²¹ However, investors have the right to use urban and rural land on lease or rental basis. According to the Ethiopian Investment Agency, “Rural Land is rented mainly for agriculture with low rental prices. On the other hand urban land is allocated on the basis of lease for industrial investments and other purposes.”²²² The Ethiopian government is continuing to attract investment and investors aren't just after securing land. In a country so vulnerable to drought, securing water is also allegedly driving the location of many investments.²²³

While these investments on the face of it may seem like the best solution to boosting food production, and land certification has been shown to increase small-scale productivity, implementation of existing safeguards needs to be a priority to avoid communities being displaced to make way for future investment. This is important, considering that the titling programme is in its pilot phase and only covers four regions. When the Ministry of Agriculture halted land investments, it was because land was not necessarily being used as specified in agreements. This signalled that there were oversight problems and investments might not be delivering the expected benefits. Investment in land and agribusiness is in its infancy, but interest in this sector is growing. The Ethiopian government should take this opportunity to ensure that regulatory mechanisms are implemented to ensure that incoming investments live up to their development potential at both national and local level.



GHANA



Ghana is a regional success case for economic and political reform, when compared to its west African neighbours. It has extensive natural resources and an economy built on positive gains made in the agriculture sector. Agriculture accounts for roughly one quarter of GDP and employs more than half of the workforce, mainly smallholder farmers.²²⁴ Ghana has a mixed legal system, combining both English Common Law and Customary Law that both apply to its land tenure system; 80 per cent of land is held and managed under the customary system and 20 per cent under the statutory system.²²⁵ Ghana has a substantial urban population of 51 per cent.²²⁶ The tenure system has not seen much in the way of major upheavals since independence.

Legislative protection for communities

The Ghanaian Constitution recognises the role of traditional leaders in managing customary lands but does not explicitly give recognition to customary rights held by individuals. Beyond a general statement on gender equality, there is no specific mention of women's land rights. The Constitution, ratified in 1992, does not have provisions for community consultations.

However, ActionAid Ghana is advocating that new Bills under discussion, as part of the Land Administration Project, include provisions for consultations that specify the levels at which these and other forms of participation should take place. In addition, there is also a draft regulation to guide large-scale land acquisitions, which pays explicit attention to consultation and participation in the acquisition process.²²⁷

The strengths and gaps of the Constitution are reflected in Ghana's land legislation. The 1986 Land Title Registration Law recognises customary land rights and provides for title registration as a means of protecting land tenure security. However, the specifics of how customary tenure registration works in practice are too ambiguous to ensure that prompt and fair compensation is paid to registered customary 'owners' if the land is seized.²²⁸ Lack of attention to women's land rights continues to be a gap and provisions for consultation and consent do not exist but may form part of the new legislation before Parliament. Due to these gaps, implementation of the legislative framework (Land Title Registration Law, PNDC Law 158 1986, Conveyance Decree 1973, and Land Registry Act 122, 1962) remains patchy.²²⁹ The Land Title Registry, Office of Administration of Stools Land and the Lands Commission were set up to implement legislation but suffer from low levels of inter-institutional coordination.²³⁰

The Parliamentary Committee on land and natural resources has been active on community interests. There is a good working relationship between civil society and the committee, including exchange of information and expertise – particularly around land grabbing – although this needs to be more systemic.²³¹ Land Customary Secretariats (LCSs) are an integrated part of the Ghanaian Land Administration Project (LAP).²³² In 2004, LCSs were piloted under the LAP across 37 traditional areas. These secretariats acknowledge the value and importance of traditional institutions.²³³ They are thus equipped with knowledge of local customs as they attempt to integrate otherwise parallel tenure systems in Ghana. By 2012, LCSs had begun to be demand driven; however, to achieve incremental and sustained increases in local land management services, LCSs need to take a more systemic approach, with the establishment of phased budget allocation, capacity building and expanded roles over time.²³⁴

Effective implementation is hampered by weak political will and state capacity to enforce, the combination of tenure systems, and the limited community awareness of land rights. While an institutional framework exists, land management and governance oversight suffer



from coordination issues and over-emphasis on urban areas. The institutions within the formal legal system are rigid in their roles and responsibilities. This means that the dynamic customary system for land management is unmatched by government land institutions.²³⁵ There are gaps in the Constitution and legislation on community consultation or consent, and the Constitution places significant decision-making power in the hands of traditional local leaders, who have been known to sell large tracts without consultation and involving forced evictions.²³⁶ Sidestepping the government through direct negotiations between traditional leaders and companies is indicative of weak government regulative and oversight capacity. In these instances, the government merely rubber-stamps deals through land registration procedures after negotiations have concluded.

Gender equality

Gender-disaggregated data collection on land, a practical measure of the government's gender mainstreaming in land policy, does not yet take place. The National Land Policy (1999) is gender neutral.²³⁷ A Ministry of Lands and Forestry project to implement that policy, with support from the then-German Development Cooperation (GTZ), commissioned a review to provide recommendations for integration of gender issues into the land administration project.²³⁸ These are yet to be integrated into policy making.²³⁹ In spite of being a member of the ECOWAS Affirmative Action Protocol, only eight per cent of elected officials are women, but the drafting of an Affirmative Action Bill may begin to change political representation for women. Thirteen out of 73 Cabinet ministers are women, and while a Ministry of Women and Children's Affairs is leading Ghana in implementing gender mainstreamed development and gender-responsive budgeting, its focus is on women's participation in local governance, economic empowerment and social welfare issues, and not land per se. Ministries generally do not have gender policies; the Ministry of Food and Agriculture has not implemented the Gender and Agricultural Development Strategy (dating back to 1997). In recognition of this fact, and as part of its existing gender advocacy strategy, ActionAid Ghana has commissioned a gender survey of policies on women's access and tenure security.²⁴⁰

Although national laws set out equal rights, in practice women's rights are curtailed by customary law. Given that nearly 80 per cent of Ghana is under customary land tenure systems title and governed by customary practices, a significant number of women are not able to enact their rights.²⁴¹ This inhibits their ability to increase productivity and enhance livelihoods. Women's customary land ownership rights are affected by: marital residence, land scarcity, production relations and gender bias in terms of size of plot as well as a local gendered division of labour.²⁴² It has been reported that the spread of jatropha cultivation in Ghana is pushing small farmers, and particularly women farmers, off their land to make way for biofuel production.²⁴³

Measures in place to regulate investment

Ghana's investment regime, strengthened over time by sound long-term macroeconomic management that supports a competitive business environment, has been characterised by considerable poverty reduction.²⁴⁴ Land is not of itself a political issue, but compulsory acquisition and issues of compensation, often not paid, mean that the investment regime favours international investors over communities, paving the way for national development at the expense of local small-scale development. The customary system and the state system overlap in matters of registration and holding of public records. Ghana is listed as being relatively easy to register property and investor protection as indexed by the World Bank's Doing Business Index.²⁴⁵ However, oversight of registration and lack of transparency lead to many incidents of missing or purposely destroyed deeds or double-deed registration.²⁴⁶

According to the International Land Coalition Land Matrix, seven large-scale land acquisitions have taken place. All seven investments were for agriculture: one for forestry, two for maize and four for jatropha.²⁴⁷ Two companies involved were Norwegian, four were companies from the UK, Netherlands, Canada and Israel and the seventh was a Ghanaian company.²⁴⁸ According to reports by land-grab watchers, and highlighting the extent of land grabbing beyond that listed by the International Land Coalition, by 2010 37 per cent of Ghanaian farmland – an area the size of Denmark – was owned by foreign biofuel companies.²⁴⁹ Ghana had joined a list of other countries at the forefront of biofuel investments due to its soil and conditions, which allow for the effective production of jatropha and cassava.²⁵⁰

The government, in its LAP and title registration programme, acknowledges the challenges of implementing land legislation.²⁵¹ Lack of implementation means that communities are unprotected from an increasing rate of land grabs.²⁵² Implementation of regulatory frameworks and monitoring by civil society needs to take place so that communities and women do not suffer the brunt of expanding land investments. Registration of land tenure should prioritise those most vulnerable to land grabbing and take into account and integrate non-discriminatory customary practices. LCSs should be systematically introduced across the country and be permanent rather than demand-driven.



GUATEMALA



In Guatemala, poverty and inequality are deeply entrenched and land is fiercely disputed. Rural poverty is widespread, with 47 per cent of the population classified as rural, poor and land-dependent for survival. Land is often people's only possible source of livelihood.²⁵³ Land distribution and ownership have been shaped by a strong political landed oligarchy and the historic exclusion of indigenous Guatemalans from land ownership.²⁵⁴ Land-related violence, one of the principal causes and sustaining factors of Guatemala's 36-year internal conflict, which ended in 1996, can still be seen today.²⁵⁵ This highly unequal national land ownership structure has facilitated large-scale land acquisitions. Categories of tenure are: private, homestead, communal land, indigenous community land, municipal land and cooperative (collectively owned agrarian land). Regulatory frameworks – particularly in relation to legislation and investment – are crucial for supporting the rights of communities in overcoming past injustices and the concentration of land ownership. Women's land rights are particularly undermined as a result of gender and land inequality.

Legislative protection for communities

Guatemala's Constitution, established in 1985, explicitly recognises communal land ownership and community rights (Article 67).²⁵⁶ Although women are not explicitly mentioned, they are mentioned in land legislation. The Constitution provides for tenure security guarantees for private property; this also covers disposal and inheritance, so long as they are in accordance with the law. The Civil Code of 1973 provides loose principles on possession, use, transfer and ownership of land.²⁵⁷ There are guidelines on how to register land. A national fund for land has been set up under the framework of the peace accords to provide access to credit and to allow rural communities to buy land. However, these measures have not, in practice, reduced the concentration of land ownership, nor have the associated market-led reforms increased access or altered patterns of land ownership that exclude most of the population.²⁵⁸

Although the Constitution makes no provisions for consultation and consent, it recognises international treaties, including International Labour Organization Convention 169, which mandates consultations with indigenous groups regarding development that will affect their ancestral lands, and calls for consent in specific instances.²⁵⁹ The only body associated with this is the Constitutional Court, which dealt with just one land-related case in San Marcos on expropriation of land by a mining company. This landmark case has set jurisprudence.²⁶⁰ The Constitution guarantees equal property rights to women and men. The law builds on this foundation and extends it, explicitly recognising women's rights to land, but they both lack measures for ensuring consultation. The Constitution (at Article 67) provides the framework for the Ley del Registro de Información Catastral, which confers cadastral recognition by fixing or delimiting boundaries of community land property. This is later registered in the General Register of Property.²⁶¹ Local representatives of key land institutions exist at municipal and departmental levels, providing some decentralisation or at least flows of information to and from local level. However, these do not cover the entire country. These representatives tend to be concentrated in areas with existing or planned agrarian development.²⁶²

In spite of the historical role that land has played in conflicts in Guatemala, there is no specialised ministry that deals with land, nor have successive governments instituted a clear, integrated agrarian policy or land law.²⁶³ Parliament barely plays a role; the Parliamentary Agricultural Committee rarely discusses land issues and has not been able to address the Congress Plenary on the Rural Development Initiative. Low parliamentary legislative involvement on producing an integrated rural development strategy has been a problem for over a decade.²⁶⁴



Property rights are sacrosanct in Guatemala but this protection is limited to formally titled lands.²⁶⁵ The institutions that are meant to provide the framework for implementation tend in practice to lean more towards increasing local market access, over upholding community land rights.²⁶⁶ There are other institutions that deal with land, particularly the judiciary. For example, there was an initiative to set up agrarian tribunals and approve an agrarian code, but weak political will means much-needed initiatives like this have not emerged from the planning stage.²⁶⁷

Land distribution in Guatemala is heavily skewed considering that it is so dependent on agriculture. This means that the majority of Guatemalans are either landless or cannot cover their basic food needs. There is a substantial secondary land market – with sub-letters, share-croppers and out-growers entirely dependent on large-scale landholders for their subsistence and livelihood. This increases their vulnerability to the changes in patterns of ownership that characterise recent large-scale land acquisitions in Guatemala.²⁶⁸

Gender equality

Implementation of any legislation that supports women and their access to land is particularly limited. Weak political will, rather than lack of capacity, holds back implementation at all levels of government. This is matched on the ground, as most Guatemalans have little awareness of their rights.

Government collection of sex-disaggregated data on land can be used as a measure of the day-to-day mainstreaming of gender land issues. While collecting this data is an important step, this data exists only for parcels of land granted to women from the Land Fund between 1998 and 2007.²⁶⁹ Legislation recognises women's right to own land and there are no provisions under customary tenure that prevent women from owning land. However, socio-economic structures and widespread land inequality, which is even more polarised when looked at along gender lines, effectively deny women this right at local level.²⁷⁰ Women administer only 6.5 per cent of agricultural land in Guatemala, due to the patriarchal structure of traditional Guatemalan society.²⁷¹ Political participation is an important foundation for women's greater representation in decision making. At national level, twelve per cent of Congress members are women and three per cent of mayors are women. This is due to a specific affirmative policy although these positions have not achieved legislative or political gains for women – much of that has been achieved by external women's pressure groups. It is estimated that 58 per cent of Guatemalan women are landless and work as hired labour on farms, which means they are doubly vulnerable to having their land rights not upheld.²⁷²

Measures in place to regulate investment

Guatemala's land inequity is mirrored in the types of companies involved in large-scale land acquisitions; eight out of 10 recent acquisitions were by Guatemalan companies, associated with the biggest national plantations. According to the International Land Coalition database, two were for jatropha, seven for palm oil and one for sugarcane, all raw materials for biofuels and/or edible oils.²⁷³ The focus on biofuel investment has been the overriding concern for the government, as Guatemala takes advantage of the current biofuel rush.²⁷⁴ However, this push for biofuels has led to communities being evicted from their land to make way for these investments. The Q'etchi indigenous community has become symbolic of the broader problems facing land-insecure populations in the face of biofuel expansion.²⁷⁵ The evictions have displaced food production and augmented tenure insecurity. Investment promotion in biofuels is further concentrating land ownership, which is counter to the spirit of the peace accords.²⁷⁶ Currently, 90 per cent of bioethanol exports are destined for European markets.²⁷⁷

The government of Guatemala has been keen to create an enabling environment for investment in agro-industry.²⁷⁸ Guatemala's physical attributes make it a focus country for investors: proximity to the consumer markets of Mexico and the US, and the only country of the DR-CAFTA (Dominican Republic-Central America Free Trade Agreement) with seaport infrastructure on both Pacific and Atlantic coasts.²⁷⁹ The government has created Free Economic Zones. Under CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts and intellectual property. US investors enjoy, in almost all circumstances, equal rights to domestic investors, and partnerships with national companies are supported.²⁸⁰

In 2000, the Implementation Act of the Land Fund Act and Civil Code were established, and dozens of communities believed they were on the brink of getting secure land tenure.²⁸¹ However, the expansion of agri-business and the looming attractiveness of massive profits from biofuel cultivation began to exert pressure on the government.²⁸²

Safeguarding community land rights would ensure that the national interest was pursued in a sustainable way. Guatemala must institute a clear, integrated agrarian policy or land law.²⁸³ This must be established with local level training on the law, the law must be publicised and mechanisms for monitoring progress on implementation must be created both by the government for official oversight and by civil society.



HAITI



Haiti is one of the poorest countries in the world. High levels of tenure insecurity and food insecurity, in one of the most densely populated countries, were exacerbated by the 2010 earthquake that left half a million Haitians displaced.²⁸⁴ Nearly half of Haiti's population is rural (48 per cent), and tenure insecurity is rife because of the outdated legislative and institutional framework.²⁸⁵ Haiti's principle activity is agriculture, but land holdings average less than 1.7 hectares and are of poor quality, and nearly two thirds of its 1.5 million rural parcels are untitled.²⁸⁶ Increasing land tenure security in a way that engages with hunger alleviation is essential for earthquake reconstruction efforts. Haiti's mixed tenure system has been largely unchanged since the mid-19th century. However, long-term trends such as increasing population pressure, fragmentation of peasant land holding and concentration of ownership predate 2010.²⁸⁷ In practice, the formal and informal systems constitute a form of legal pluralism rather than two discrete systems and reconstruction efforts have been held back by the confusing land system.²⁸⁸ Two years after the earthquake, with an extensive number of landless Haitians still living in camps, land reform has finally been prioritised. The Prime Minister, Laurent

Lamonte, launched Haiti's latest land reform in September 2012. It seeks to identify ownership, increase tenure security, reduce land disputes and lay the foundations for an environmentally sustainable solution to Haiti's 'land disorder'.²⁸⁹

Legislative protection for communities

Haiti's dual system of tenure arose from the post-independence state acquiring colonial estates and asserted ownership over unclaimed lands. At the same time, emancipated slaves established informal cultivation where the state had a weak presence.²⁹⁰ Customary tenure exists across the country, with formal legal private tenure in certain areas, especially urban.²⁹¹ An overhaul of Haiti's land governance system has finally become a reconstruction and development priority for both government and donors. Although land reform has been announced, its ability to deliver tenure security for Haitians, many still living in temporary camps, remains to be seen. The land reform impetus is not new and was set out in Haiti's national Constitution of 1987.²⁹² Article 248 of the Constitution established the National Institute of Agrarian Reform, which was mandated to reform land ownership structures to "benefit those who actually work the land".²⁹³ Haiti's land reform record is none too promising and the lack of resettlement is proving to be a politically volatile issue – protests erupted in Port au Prince in June 2012 in response to an unfulfilled election campaign promise to resettle half a million homeless people and transform national housing and tenure insecurity.²⁹⁴

The Constitution prohibits against unlawful expropriation and protects citizens through provisions for due process and compensation. However, the Constitution is not upheld in practice and progressive expropriation provisions are undermined by 10 preceding laws that gave the executive discretionary power in cases of the 'public interest', even over privately held land. The ability of the state to expropriate is not matched by its dispute resolution capacity; this often results in land disputes flaring up into violence when decisions lack local legitimacy.²⁹⁵

Land reform has been a resurgent and pressing political issue in the country, where there is a disconnect between how laws were written and how they are implemented.²⁹⁶ At present, only about five per cent of people have proof of land ownership.²⁹⁷ This lack of reform and limited formal titling has meant that land tenure continues to be insecure,²⁹⁸ which has been a significant impediment to pre-reconstruction and post-earthquake development, as



people can only be moved out of temporary camps and into homes if land has been allocated and homes have been built.

The current land institutional framework is characterised by a dual system of formal and informal structures with limited government capacity to effectively implement or deal with disputes. The structure of land governance follows a federal pattern, with the ministry and the Inter-ministerial Country Planning's Vulnerability Reduction Unit (Comité Interministériel d'Aménagement du Territoire (CIAT) under the Prime Minister's office.²⁹⁹ At commune level, mayors have authority to give titles within their jurisdiction. Overlapping land claims result from an incomplete national map of land boundaries and use (cadastre) and multiple institutions with allocation powers.³⁰⁰ This undermines the role of mayors in dispute resolution. Public notaries are mandated to deal with land registration; however, corruption and limited oversight and quality control mean that land registration, where accessible, does not equate to tenure security. The formal system relies on notaries and land surveys that are inaccessible to most Haitians.³⁰¹

The earthquake and the ensuing humanitarian crisis has made land governance even more challenging. Multiple donors are undertaking land reform pilot projects across Haiti. The lack of an up-to-date and national cadastre has undermined identification of properties and owners, so identification of individuals pre- and post-earthquake has been deficient. Limited numbers of Haitians can afford to access the formal system, which means that the number of properties identified under the formal system represents only a fraction of land users. Inheritance law, which splits property between all legal heirs, results in agricultural fragmentation, and this has a knock-on effect on productivity levels and local food security.³⁰²

Gender equality

There are no legal restrictions on women's rights to access, own or manage land. But inequality and high levels of poverty, as well as lack of access to education, opportunities and alternative livelihoods, mean that Haitian women, within the context of the current humanitarian crisis and its impact on land security, are the most vulnerable group in society.³⁰³ Even within the realm of dispute resolution, social inequalities permeate the judiciary, where women often receive different treatment from men.³⁰⁴ Women's land ownership is undermined by the financial and economic constraints they face – few women earn enough to be able to purchase land.³⁰⁵ Under the law, women who are married have a right to equal division of property upon separation and an equal right to inherit; but many women who live in unregistered unions have no right to access this land.³⁰⁶ According to the Committee on

the Elimination of Discrimination Against Women (CEDAW), only 10 per cent of rural women own the farms they work on. Women are additionally in a disadvantaged position in the labour market, generally have low levels of literacy, and have limited political representation as there are low numbers of women in public administration.³⁰⁷ Women wishing to stand for political office face considerable social and patriarchal obstacles. In 2012, women's representation in the Lower House was just four out of 95 seats, and in the 30-seat Senate there is only one woman.³⁰⁸

Measures in place to regulate investment

Agriculture is the main employer of 38 per cent of the population formally and responsible for 25 per cent of GDP in 2010, equal to investment which also worth 25 per cent of GDP.³⁰⁹ Haiti has had significant interest from investors because of its arable land endowments and low production costs. Investors are attracted by the incentives put in place by both the government and its preferential access to US markets.³¹⁰ The Investment Code allows agribusiness investors a zero tax rate for up to 15 years, with a five-year digressive rate thereafter.³¹¹ Special Economic Zones have been set up to further attract investment.³¹² One such allocation, Caracol Industrial Park, has been criticised by social movements because of the principle investor's human rights track record and delays in a thorough Environmental Impact Assessment (EIA), in spite of the area's ecological diversity.³¹³ The lack of an EIA meant the United States Treasury Department abstained from voting on a US\$55m construction grant.³¹⁴ President Martelly has described Haiti as "Open for business" in spite of the pending humanitarian crisis in the camps for displaced people. The administration in 2011 launched a campaign aimed at drawing foreign investment into Haiti for sustainable development. According to the World Bank's Doing Business Index, Haiti has an overall ranking of 174, and investor protection is ranked very low, as is registration of property.³¹⁵

Land reform has been cited as a powerful instrument for reconstruction. However, transition measures to secure tenure should be prioritised to avoid land reform being rushed and to support the alleviation of poverty.³¹⁶ This window of opportunity could be used to fundamentally alter the historical inequalities that persist in the distribution of land and the tenure system, and structured in a way to better protect the land rights of women and communities. Land tenure security aligned with hunger alleviation is essential for earthquake reconstruction efforts.



KENYA



Kenya is in the midst of a transition to a new national legal framework. The Kenyan government has been credited with developing a strong national legislative foundation to address land issues. Despite the bold constitutional aspirations for land governance transformation, these efforts are yet to translate into tangible outcomes; the Community Land Laws are still in architectural stage. Kenya's rural to urban population ratio is 78 to 22 per cent and almost 80 per cent of the population relies on agriculture for their livelihoods and identity.³¹⁷ Nearly half of Kenya's 40 million people are classified as poor, or unable to meet daily nutritional requirements.³¹⁸ With chronic poverty, hunger, and the majority of Kenyans being land-dependent, land is a politically charged issue.³¹⁹ The violence that flared up after the election in 2007 was rooted in unsolved land grievances.³²⁰ The Constitution, adopted in 2010, recognises three tenure forms: private land, public land and community land.³²¹

The lack of national land policy, coupled with ineffective regulation, meant that Kenya's land issues were effectively hindering development at both local and national level.³²² Since the

land policy and the 2010 Constitution was adopted, a change of thinking on land issues has begun, which has helped to create an enabling environment for policy and legislation change.

Legislative protection for communities

On paper, Kenya's legislative position is strong. This is in no small part down to its new Constitution. The constitutional reform process itself showed how a new Constitution could overhaul an archaic land governance system. The constitutional review was the centrepiece nested within a radical reform agenda. Whether Kenya can take advantage of this moment and create effective institutions to implement remains to be seen. Currently, the government is developing supportive legislation for effective implementation. The Land Act 2012, Land Commission 2012 and the Land Registration Act were enacted in May 2012.³²³ The government is on schedule for enacting further supporting legislation.³²⁴ Several important milestones are on the horizon: the Community Land Law is currently being formulated and replaces the Trust Land Act.³²⁵ In doing so, it is expected to provide a route map for implementing recognition of communal land rights. Combined with the 2010 Constitution, the Land Act 2012 and Land Policy 2009 all support the recognition of communal land rights.

The Constitution, the 2009 Land Policy and the Land Act 2012 all recognise women's land rights – explicit and private ownership, joint ownership and co-ownership. The Land Act is also clear on succession and property ownership. Beyond co-ownership, the Land Act 2012 provides for consent of the spouse for land transactions.³²⁶ Security of tenure is well provided for in general principles guiding legislation on land (Article 60). Additional legislation on compulsory acquisition and draft guidelines on evictions and resettlement are expected to further consolidate tenure rights. If implemented effectively, this bill will form an important safeguard for communities from evictions. The preamble of the Kenyan Constitution recognises the right to participation – wider than simply providing for consultation. But how these develop in practice will need to be monitored.³²⁷

The institutional framework is just beginning to take shape. The National Land Commission is mandated to deal with all land matters. At sub-national level, National Land Commissioners will be joined by County Land Management Boards to be created once county governments



have been established. Community Land Boards will manage community lands. The structure puts in place checks on the power of the Ministry's Cabinet Secretary. In spite of on-paper provisions, women and minority groups are likely to have to fight to ensure these boards are representative. Once up and running, the Environment and Land Court is meant to arbitrate on all cases relating to land. The effectiveness of these new institutions will depend largely on sustained political will and civic engagement. The pre-existing Ministry for Lands receives 0.3 per cent of the total national budget (2011/12). Its management of the reform process has been billed as a strength, but its ability to implement has been brought into question by inefficiencies related to its own pilot projects and its inability to regulate large-scale land acquisitions.³²⁸ Kenya's Parliamentary Committee on Land and Natural Resources has been active in its investigatory and legislative capacity, investigating irregular public land allocations and alleged corruption in the Ministry of Water and Irrigation. However, this committee was keen to push on with enactment of the land laws to meet the constitutional deadline, rather than ensuring high-quality civic awareness on land matters and a high level of community participation. Like the ministry, the oversight or advisory capacity role of this parliamentary committee on land deals has, in practice, fallen short of expectations.

Under previous laws, political interests were the greatest impediment. Although the process of creating the new Constitution may have brought Kenyans together on contentious land issues, the redistributive agenda is not without its risks.³²⁹ This process inevitably will benefit some at the cost of others, given Kenya's concentrated land ownership and the past land injustices and conflicts arising from centralised decision making on land and subsequent state land allocations.³³⁰ Careful management of implementation will be crucial if land conflicts are to be minimised.

Land Boards, local dispute resolution mechanisms, have been relatively effective in dealing with land disputes but failed to adequately take into account women's rights. These Land Boards have been ineffective at dealing with the new wave of land grabs. This is because the state has managed to use institutions to suppress communal land rights, in favour of investment.³³¹

Gender equality

Women's land rights are explicitly recognised in the Constitution (2010) and the Land Act (2012). In addition, provisions exist for joint and co-ownership and succession rights, under

the new Land Act 2012.³³² The Constitution of Kenya is quite clear and renders other laws (customary) null and void if they are inconsistent with the country's constitutional law. Nevertheless, local practice is different and there needs to be greater awareness of land rights in order to promote women's land interests at community level.³³³ At national level, gender representation is on the rise:

- in the National Assembly, 10 per cent of seats are held by women (22 out of 222)
- in local government, women constitute 15.8 per cent (393 out of 2,234)
- women make up 33.7 per cent (1,640 out of 4,865) of senior management in local government
- women in the judiciary account for 34.5 per cent (119 out of 345)
- women make up 15 per cent (6 out of 40) of government ministers.³³⁴

While representation, does not guarantee better policies to deal with women's exclusion, a handful of influential women MPs have spoken out on land issues. Their contribution has either been general or in pursuit of additional information. As yet, women's political activity on land issues remains piecemeal and not structured, as greater attention is focused on representation in leadership and gender-based violence. These are, however, important issues, which, by seeking to change the way that society views and treats women, will also impact on the underlying structures that bar women from owning land at local level. In recognition of these steps forward, the Social Institutions and Gender Index that measures the social inclusion of women, ranked Kenya 46th (out of 86) in 2012, up from 57th in 2009.³³⁵

Measures in place to regulate investment

The World Bank put Kenya's net foreign direct investment at US\$184 million. This was a significant and sharp increase year on year from 2009 (US\$70 million) and 2008 (US\$51 million).³³⁶ This was the result of Kenya looking relatively attractive to investors because of specific government policies to attract investors with incentives. Agriculture was a top performer, contributing 6.3 per cent to GDP in 2010.³³⁷ Motivated by Vision 2030 and the Agriculture Sector Development Strategy 2010-2030, the Kenyan government is hungry for agricultural investments. Substantial amounts of land allocated for agricultural production are located on communal land considered 'unoccupied'. This is in spite of these lands being the backbones of local food security and subsistence farming. The government development aspirations should be in harmony with the commitment in Article 60 of the 2010 Constitution that secures land rights.³³⁸ The World Bank's Doing Business Index ranks Kenya overall



109th. Listing it as much stronger on investor protection than registration of property is clearly a problem that both limits the expansion of investment and hinders local community development.³³⁹

Kenya is one of the most densely populated countries in Africa. The number of people affected by a single large-scale land acquisition will be significant.³⁴⁰ According to International Land Coalition data, Kenya has been subject to eight large-scale land acquisitions since 2000 – seven out of eight were agriculture related – five for jatropha, one for sugarcane and another for maize. The investors were mainly European – two Swiss companies, one Belgian, another German company in partnership with a US firm, one Canadian company, a Japanese company, and one national group.³⁴¹

Community land, hitherto held in trust by the government ‘in public interest’ is often occupied and used by marginal communities.³⁴² This has meant that large-scale land acquisitions have had disastrous impacts on these communities due to concentration of population, use of land (subsistence) and poverty levels.³⁴³ The communities that ActionAid works with which have been affected by large-scale land acquisitions are in Siaya, Kwale, Mombasa, Kilifi, Tana River, Taita Taveta, and Isiolo counties.³⁴⁴

Kenya’s institutional framework is beginning to take shape with sufficient political will at the top and it is also demand driven with Kenyans wanting a change in the way that land is managed and acquired. Kenya needs to make the implementation and monitoring of its new legislation and Constitution a development priority, a crucial conflict mitigation strategy, and a way to reduce incidence of land grabbing by securing communities’ land. Dealing with disputes before they arise will involve increasing Kenyans’ access to justice through measures such as decongesting the judicial system, providing support for dispute resolution mechanisms and building capacity of local Land Boards.



LIBERIA



Liberia has come a long way from the war-torn 1980s, emerging finally from a protracted civil war in 2003. Control of resources such as land and diamonds played a significant role in this conflict.³⁴⁵ The security situation is still fragile and the process of rebuilding the socio-economic structures continues. Liberia's population is split 52 to 48 per cent, rural to urban respectively. Liberia has a dual land tenure system comprising both customary and statutory land law. However, due to historical practices, the statutory system takes precedence if there is conflict of interpretation between the two systems.³⁴⁶ All non-deeded lands are considered public land, even where both customary and statutory law operate. Liberians tend to live on land that has been in their family for generations, often lacking the financial ability or knowledge of the system to formally acquire land deeds.³⁴⁷ Under customary land tenure, land is regulated by traditional authorities and not necessarily formally registered. Over 50 per cent of land is held under some form of foreign direct investment concession.³⁴⁸ Land in Liberia has strong connections to politics – land ownership has defined the very nature of the state and tends to define political power. As Liberia recovers from conflict and begins

to welcome investors, the land issue remains its most substantial challenge to long-term stability.³⁴⁹

Legislative protection for communities

Liberia has strong legislation in place for the protection of community tenure and promotion of women's land rights. The 1949 Hinter Land Act and the 2009 Community Rights Law make provisions for communal ownership of land, while the 2003 Inheritance Law recognises women's land rights. Both security of tenure and consultation are provided for in the Constitution (1986) but only for private ownership, and while there is a policy to support consultation, it is not specifically geared toward safeguarding communities from displacement.³⁵⁰ By law, all land, including that which is actively worked for production, is managed by the state. This renders customary ownership a weak safeguard for community land rights when pitted against statutory land law. Mechanisms for redress such as the constitutional court or the judiciary are overwhelmed with cases and undermined by few local legal services, particularly in rural areas. A proposed reform of civil law on land is currently under review.³⁵¹

Although there is an institutional framework for managing land, implementation is hindered by poor coordination, limited capacity and a weak institutional infrastructure that lacks on-the-ground presence, especially in local dispute resolution mechanisms. In an attempt to implement legislation and facilitate activity by the institutional framework, the government set up national and local administering bodies – Local Land Administrators and the Land Commission. However, to date the Land Commission is incomplete and the parts that do exist lack capacity to act effectively.³⁵² There is significant donor support for the creation of a new Land Rights Policy, although this is still in the planning phase.³⁵³ The Ministry of Lands, Mines, and Energy is responsible for setting the national land agenda but is also tasked with the mines and energy portfolio. This is indicative of the government's lack of prioritisation of land. Foreign exchange brought in by the mining and energy sectors trumps the impetus for overhauling the land governance system, when its current mandate is to collect revenue, not spend it or create innovative policy for better land management. In this regard, the role of the Land Commission has been to take on some of this mandate. With adequate support, funding and civil society oversight, this body may be able to push land up the political



agenda. There are land administrators at local level and land commissioners at county level, all of whom function under the Ministry of Internal Affairs. These have institutional weaknesses similar to their national counterparts with less resources, albeit a more local mandate focusing on dispute resolution.³⁵⁴

Land dispute resolution mechanisms exist within the formal court system, although these are largely inaccessible for most Liberians and are limited to land issues in terms of private property rights. Customary authorities have a mandate to address and deal with land-related conflicts, as does the newly formed Land Commission. Land disputes often arise from cherry-picking parts of tenure systems to support a particular land claim. This inherent weakness between land tenure systems delegitimises local institutions, which has a knock-on effect on their ability and legitimacy to adjudicate on future land issues.³⁵⁵

Currently, there is a moratorium in place that covers public land sales but does not cover land-based concessions. The moratorium should be used to revise existing land legislation and consolidate the steps taken so far to renew existing land legislation. Only a strong and implementable land regulatory framework will safeguard communities and protect women's land rights at local level. Broadly, implementation is challenged by: competing and multiple interests over the same land and resources; limited coordination and collaboration among the different actors and agencies; poor infrastructure and weak institutions; and inadequate human capacities. All of these are hindrances to Liberia's peace-building progress.³⁵⁶ The state continues to make decisions on land (awarding large-scale concession contracts) without much consultation with the people whose lives and livelihoods are most impacted.³⁵⁷ The centralised nature of land policies and administration makes it vulnerable to mismanagement, and corruption remains a critical impediment to resource governance.³⁵⁸ Communities, unaware of their rights, are the hardest hit when customary and statutory tenure systems overlap and limited information is made public about acquisitions. Measures for redress are limited by a judicial system that is already clogged with land disputes.³⁵⁹

Gender equality

Liberian laws recognise women's land rights, including the right to inherit and bequeath. But in practice these laws are undermined by low public awareness of the Inheritance Law's provisions and by locally applied customary laws that deny women's equal entitlement to land.³⁶⁰ The definition of gender analysis in policy advocacy is currently hotly debated in

Liberia by both government and civil society, which also affects legislative and constitutional provisions for women's right to land. Women make up four out of 30 senators and eight out of 74 members of the House of Representatives. Representation at ministerial level is slightly stronger, with six out of 19 positions held by women. Of these, none are active on land and only the Minister of Gender and Development is active on gender issues.³⁶¹

Measures in place to regulate investment

Liberia has the highest ratio of foreign direct investment to GDP in the world; foreign direct investment as a percentage of GDP rose to 45.92 per cent in 2010.³⁶² Liberia's abundant natural resources and the demand for raw material exports have made Liberia into a focus country for a plethora of investments. Water resources, minerals, good agricultural conditions and forests have drawn interest from investors, while food prices have been rising as Liberia's main staple – rice, cannot be satisfied through domestic production, in spite of its agricultural potential.³⁶³

According to International Land Coalition data, five large-scale land acquisitions have taken place, with countries of origin listed as Malaysia, UK and Singapore. All five deals were for agricultural developments, including three known to be for palm oil and one for rice.³⁶⁴ Liberia has been listed as a country with huge growth potential for biofuels. In response, investors have been quick to take advantage of this untapped potential. However, what this has meant in reality is an increased number of large-scale land acquisitions with the potential to re-ignite historical land conflicts, which in turn reduce the viability of these investments in the mid to long term.³⁶⁵

In spite of Liberia's openness to, and encouragement of, investment, its capacity to regulate falls far short of its current foreign direct investment to GDP global status. Liberia's business regulatory environment is ranked overall 151st by the World Bank Doing Business Index, 176th for registration of property and 147th for investor protection.³⁶⁶ It has been reported that the only formal recognition of land, the deeds registration system, is in disarray, with many records of lost, damaged or destroyed.³⁶⁷ Liberia has been named as one of the top five countries promoting land investment deals, which, without adequate safeguards in place, have led to land grabs.³⁶⁸ The lack of consultation with communities has resulted in local land conflicts that could affect the viability of these investments in the long term.³⁶⁹ Studies have found that compensation, when provided, is often inadequate, local jobs from

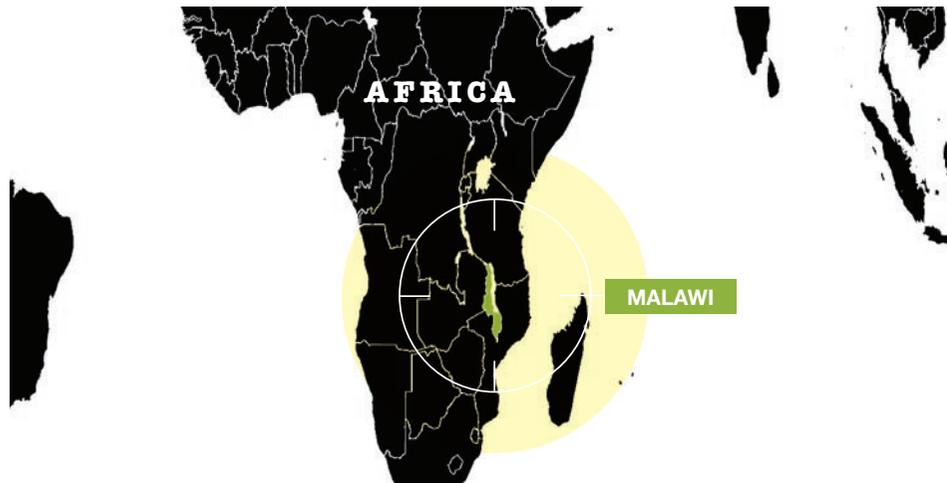


the investments have not materialised, and in the rush to get deals signed, the government often failed to ensure protection for communities during and beyond the acquisitions.³⁷⁰ In practice, this means that communities are not being protected by the laws in place and are unlikely to see tangible benefits from these investments.

The government has attempted to improve investment procedures by introducing legal reforms promoting transparency and addressing the challenges in professional negotiations. Community tenure security should likewise be supported to ensure Liberia's long-term sustainable growth.



MALAWI



In Malawi, 80 per cent of the population live in rural areas. The agricultural sector accounts for 90 per cent of the workforce, and over a third of rural households are dependent on small-scale farming for their livelihoods.³⁷¹ Historically, land reform has been politically important and something that was a top priority for the government following the transition to democracy in 1996, spearheaded by a Presidential Commission of Inquiry on Land Reform.³⁷² The findings resulted in the formation of a new land policy in 2002.³⁷³ Malawi has a mixed legal system of English common law and customary law, mirrored in the different tenure systems in place: customary land accounts for 66 per cent of the country's land, public land, 21 per cent, and private land, 13 per cent. These tenure systems have remained the same for the past 50 years.³⁷⁴ In practice, customary law is supreme. The weak land governance system and the number of legislative changes needed to enact the land policy mean that most Malawians lack title deeds for the land their families may have owned for generations.³⁷⁵

Legislative protection for communities

The 2002 National Land Policy attempted to address the tenure insecurity of smallholder farmers by allowing them to register their customary land as private property. However, the legislative changes needed to make this policy law have been stalled and await parliamentary approval.³⁷⁶ The legislative framework in Malawi is weak – except for customary law. The current Land Act provides for land, under customary tenure systems, to be governed by the agreed customary law in that particular area. What this means in practice is that land governance does not reflect the spirit of the Constitution (1994). This is both a positive and a negative – the Constitution makes no reference to consultation, tenure security beyond property rights, or explicit land rights for women. Customary tenure, however, because of its overwhelming patriarchal nature, denies women's land rights but does uphold community rights to land. Customary law in Malawi also places significant discretionary powers in traditional authorities, particularly in rural areas. There is a working constitutional court, but it lacks local legitimacy and is perceived to be a vehicle for upholding justice for the urban elite – as access remains skewed, and the process is very bureaucratic.³⁷⁷

Existing institutional structures rely on customary norms and practices – such as chiefs acting as arbitrators in land disputes. The Land Policy proposes more progressive mechanisms for mediation and redress that would take a more human rights-based approach. However, these are not yet operational. The Ministry of Lands, Housing and Urban Development is nominally in charge of implementing legislation but it concentrates on managing public and private land and largely avoids customary land management. This is due to historical trends of weak political will and limited resources to tackle customary practices in a way that would rouse traditional authorities.³⁷⁸ The focus of the Parliamentary Committee of Agriculture and Natural Resources has been on agriculture and not land governance or reform.

Challenges for Malawi mainly emanate from a lack of legislative alignment between different laws. The Land Laws (1965) have not been aligned with the progressive National Land Policy (2002), rendering the policy difficult to implement. A revised Land Act, which would turn the policy into law, has been stalled for several years.³⁷⁹ Beyond discrepancy between



legislation and policy, dynamics between local and national politics mirror customary tenure systems and prevent implementation. There is little political will to enforce legislation and significant power is held by local traditional authorities, which helps maintain the status quo on land. This, combined with low awareness of land rights, holds back implementation and any demands for more egalitarian land governance.³⁸⁰

Nationally, leasing of land is sanctioned by the land ministry but in practice 66 per cent of land is managed by chiefs on behalf of the government. Chiefs have substantial power, in terms of land administration and political power, as they canvass on behalf of political parties during elections, and on behalf of ruling parties otherwise. This level of patronage makes it hard for a sitting government, even with a majority in both houses, to push through the Land Bill, which would curtail chiefs' power. These leaders are vulnerable to manipulation and corruption, with local communities in reality only enjoying user rights to the land.³⁸¹

There is a significant connection between the Malawian political elite and the patterns of ownership and commercial use of land. Since the rush to post-colonial estate farming, a process characterised by the allocation of land to elites made access for those without political connections difficult – further entrenching a system of political patronage related to land.³⁸² A combination of political patronage within the customary system facilitates the transfer of customary land into public or private land – with little safeguards for the communities that use the land and need it for survival. In urban settings, the process of acquiring land is so difficult that it creates an environment ripe for corrupt practices and influence pedalling.³⁸³

Gender equality

Malawi does not collect sex-disaggregated data on land on a national basis. Land governance and management systems are for the most part customary and patriarchal. Women's land rights exist on paper, but not recognised in practice. In urban areas, where 20 per cent of the population lives, this is changing. The ministry collects sex-disaggregated urban land data.³⁸⁴ However, few women have land registered in their names. This practice contradicts both the Constitution and the supreme law, which recognises women's tenure rights. The archaic national land law is out of touch with human rights and the socio-political aspirations of women, especially land-dependent female farmers. At local level, land administration is in the hands of local leaders, most of whom are not aware of the statutory laws to protect

women's land rights. The Land Policy (2002) explicitly dealt with the importance of women's land rights, therefore instituting this policy is the first step in ensuring that women's land rights are protected in legislation.³⁸⁵ A joined-up implementation approach, combined with civic education programmes, would help to put this legislation into practice.

Measures in place to regulate investment

Malawi's economy is dependent on agriculture, which accounts for one third of GDP and 90 per cent of export revenues.³⁸⁶ Investment fell in 2009 by 23 per cent, a decline that continued in 2010. Malawi imports more than it exports and the value of imports outweighs exports, giving the country a balance of payments deficit and a huge national debt.

The International Land Coalition lists four large-scale land acquisitions since 2001; all four were for agriculture, although the crops are not listed. Investor countries' of origin are listed as one company from the UK and three from Malawi. These types of acquisition are not uncommon, given that Malawi has provisions for land leases of up to 99 years.³⁸⁷ The government and the investor are then both responsible for the consultations and compensation negotiations with the affected communities or villages.³⁸⁸ In practice, these consultations lack transparency and communities are left waiting for compensation that never arrives.³⁸⁹

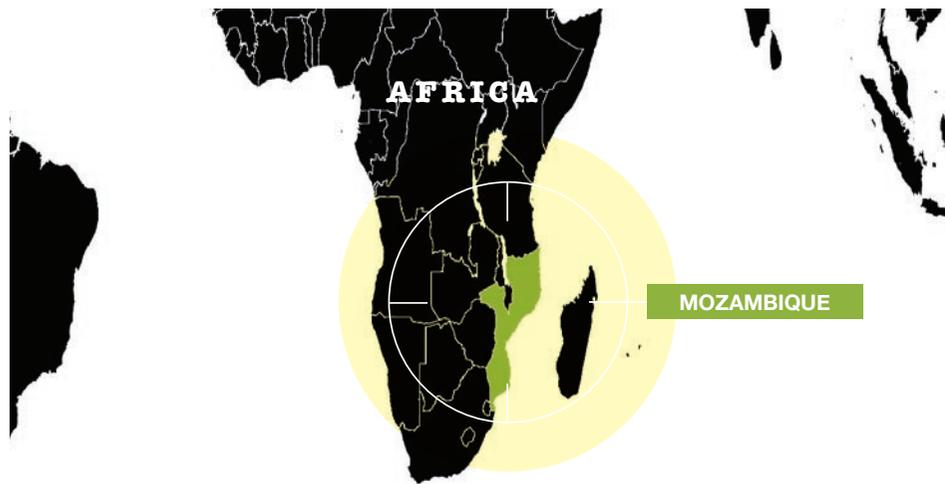
Malawi's government, with the support of donor direct budget support for sound economic policies, had presided over uninterrupted growth from 2005 to 2011.³⁹⁰ However, the national economic situation began to unravel, leading to the withdrawal of budget support in 2011 but crucially not the withdrawal of investment support by these same donors. Currently in talks with the World Bank, the Malawian government is developing a comprehensive economic reform package designed to re-establish a national macroeconomic balance and institute measures to protect the poorest from the impact of these reforms. Guidelines to help the government deal with large-scale land acquisitions and have an involvement in this process could result in long-lasting measures to protect communities and women from the impact of land grabbing. Altering the status quo on land in this way could also have a positive effect on the government's ability to ensure that large-scale land acquisitions do not result in land grabs.³⁹¹ Without these, Malawi's growth will, in the long term, be undermined by increasing food and tenure insecurity. Communities and women will be at risk of displacement to make way for large-scale investments.



Malawi is the most densely populated and one of the least developed countries; this means that large-scale land acquisitions impact much higher numbers of people. The harmful impact on local food security is exacerbated by such a high number of Malawians being dependent on land for survival. Large-scale land acquisitions, within a context of locally negligible acknowledgement of women's rights and limited application of community safeguards, will have disastrous consequences for a large number of people. The current land legislative system does not effectively provide oversight or sanctions for abuse. In some instances, government officials and chiefs have been known to sell customary land and dispossess smallholder farmers, who are already in fierce competition for dwindling arable land as the Malawian population increases.³⁹² The lack of sufficient protective legislation or a holistic approach to compensation means that companies, when they do compensate, compensate people for their homes and the crops, and not their future livelihoods lost upon losing their land.



MOZAMBIQUE



Over 70 per cent of Mozambique's population is rural and is heavily dependent on land for survival.³⁹³ In spite of 16 years of civil conflict and the return of millions of internally displaced people after 1992, customary land management systems endured and were fundamental to the resettlement of returnees and land claimants.³⁹⁴ Mozambique is particularly vulnerable to natural disasters, and studies show that the same local customary governance systems, local institutions and local land rights are critical in addressing land tenure issues in such countries.³⁹⁵ More than half of Mozambique's population (54.7 per cent) lives below the poverty line and suffers from food insecurity. Pre-existing customary rights are recognised in law and this allows for the demarcation of local territory and its administration under customary tenure norms.³⁹⁶ The 2011 moratorium on large-scale land acquisitions demonstrated how effective a moratorium on land investment could be at halting large-scale land acquisitions, albeit temporarily. The institutional framework in Mozambique is innovative in that land belongs to the state – no one can sell it, only ask for the right to use it.

Legislative protection for communities

The government responded to the scale of investment interests, especially biofuels, and the corresponding negative impact on Mozambican communities' land tenure and food security, as there were no mitigating regulations in place.³⁹⁷ In a bold move, the government instituted a moratorium to halt land concessions over 1,000 hectares until October 2011.³⁹⁸ However, after the moratorium ended, land concessions continued, although on a smaller scale, and some measures had been put in place to judge project viability and development impact.³⁹⁹ However, there is a lot of contention on the issue of investments in the ruling FRELIMO party itself, which needs to keep its popular base while still appealing to a growing 'middle-class' demographic.⁴⁰⁰ The moratorium was not followed by more legislation regarding future land concessions. This now needs to be a development priority.

Mozambique's land is owned by the state and can be occupied by Mozambicans through an application process; there are provisions for investors to lease land. The Mozambican Constitution recognises communal land rights; equal rights are afforded to men and women; and tenure security is based on inheritance, good faith or land deeds. There are provisions for consultation, although often in practice decision-making power rests with local leadership. In the absence of a Constitutional Court mandated to work on land disputes, dispute resolution has been delegated to community and judicial tribunals.⁴⁰¹ The Mozambican land legislation (Lei de Terras 19/1997 e seus Regulamentos 1997) and its supporting regulatory measures attempt to balance traditional concentrated ownership and create an effective land titling system.⁴⁰² Importantly, the legislation particularly mentions women's land rights.⁴⁰³ It contains a prerequisite that the entitlement to DUAT (state-granted land right) must be based on the opinion of administrative local authorities, preceded by consultation with the local communities, to confirm that the land is available and is not occupied.⁴⁰⁴ However, experience suggests that in most cases this process does not take place. If the DUAT is in any way linked to influential individuals or groups it is even less likely to happen. When it happens, many of the times is just for formality.⁴⁰⁵

National and local government are responsible for implementation: the Ministry for Agriculture, responsible for implementation for 2012 received 1.09 per cent of the 2012



budget; but this budget is tied to supporting specific large-scale agricultural projects. Its effectiveness in promoting small-scale farmers remains extremely poor. No parliamentary committees exist on land. Securing tenure, through the public cadastral services, is done on a demand basis and operates exclusively on an individual client/public service provider basis.⁴⁰⁶ This ad hoc process is problematic, given the limited resources of local representatives of registration bodies and the importance of securing customary land tenure as a community mitigation strategy against large-scale land acquisitions. The cadastral services have the potential to be an important way for communities to register land and increase their security of tenure – but many communities are not aware of the process because it has not been publicised and it relies upon demand, driven by knowledge of the system and how it works.⁴⁰⁷

Parallel procedures, innovative mechanisms and local institutions are being made use of where there are gaps in implementation and lack of organised national tenure security policy. In the absence of local tenure security, district authorities produce on-demand written declarations of land ownership, which provide locally accepted land ownership acknowledgement.⁴⁰⁸ However, because they are not authorised by the provincial government, these do help secure tenure at national level, particularly when faced with the competing claims of government land leases. Judicial courts are active on land disputes at district level. However, community courts are the main way communities can access land-related justice with paralegals trained by non-governmental organisations providing support on national legal provisions.⁴⁰⁹ Additionally, the 'living cadastre' – a customary group of elders with local land use and ownership structures committed to memory, are a locally accepted dispute resolution committee.⁴¹⁰

National policies related to land often contradict one another, which, coupled with poor legislative implementation, led to large-scale land acquisitions increasing in number and size between 2004-2009. The delicate balance between legal and customary tenure seeks to support communities, but in practice has been difficult to achieve. Land lease agreement terms are not always provided to the communities likely to be affected by the deals – so consultations are merely a formality for land deals to go ahead rather than a legal mechanism for communities to voice concerns.⁴¹¹

Gender equality

Women's rights to land were guaranteed in the 1997 Land Law, but due to people's lack of awareness of the laws and badly coordinated administrative practices, women have not enjoyed these rights in practice. Additionally, the Mozambican law recognises customary law, which often prevents women from exercising or employing their land rights.⁴¹² Family law establishes legal provisions for inheritance and divorce, although in practice and at local level, customary laws deny women's land rights within a family unit – as they are typically allocated to men. Mozambique does better than many of its neighbours on women's representation in local and national government, in no small part a reflection of laws demanding that women make up 30 per cent of decision-making bodies, including those at local level (CCD, CCL- District, Local Consultative Councils) under the Local State Organs Law. At sub-national level, 27 per cent of governors are women, 45 per cent of permanent secretaries are female, and 41 per cent of district administrators are women; at local level this is reduced, however, to 15 per cent of chief of administrative posts and just 7 per cent of municipal presidents. This significant representation is not limited to government: 36 per cent of provincial attorneys and 30.5 per cent of judges are women.⁴¹³

Measures in place to regulate investment

Foreign direct investment in 2011 totalled US\$199 million, with top investors for the first half of 2011 listed as South Africa, Portugal, Mauritius, the UK and the United Arab Emirates.⁴¹⁴ Agriculture contributes 31.5 per cent of GDP.⁴¹⁵ Mozambique has instituted laws to attract investment through its Investment Law and the supporting Regulation, the Code of Fiscal Benefits, and through the creation of CPI – a national body for the promotion of investment. CPI is mandated to improve the attractiveness of Mozambique to national and foreign investment as well as to facilitate investment through the following: provision of institutional assistance, receiving and registering investment projects, guaranteed tax breaks, and other incentives for investors.⁴¹⁶ Among other things, CPI sets out the minimum benefits that Mozambique should receive from investment, with remittance of profits and invested capital as incentives.⁴¹⁷ On top of these incentives, Mozambique is signatory to several bilateral investment treaties that insure investors against a number of risks associated with land investments.⁴¹⁸ Investor protection has clearly been the priority within this package, as registered by the World Bank Doing Business Index, where Mozambique was ranked 46th for investor protection – in spite of an overall rank of 139.⁴¹⁹

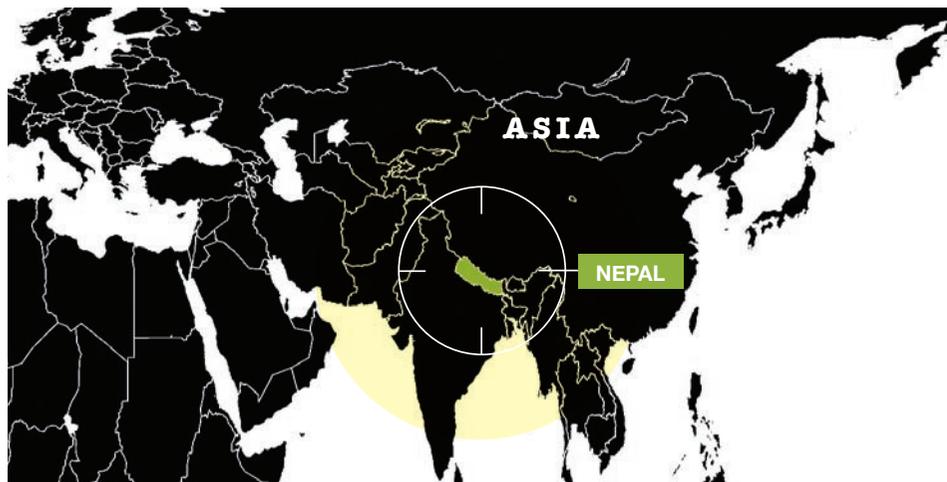


According to the International Land Coalition's database, Mozambique has been subject to 96 large-scale land acquisitions: investor countries include Brazil; Germany; India; Italy; Libya, with a local partner; Norway; Portugal; South Africa; Sweden; Switzerland; and the UK. Over half of the large-scale land acquisitions have been for agriculture – acacia, eucalyptus, six for sugarcane and 16 for jatropha. Seven of the deals were for forestry, 31 for livestock, three for mining and three for tourism.⁴²⁰

Despite alarming hunger levels, Mozambique has pursued a biofuel development strategy with vigour. In its Policy and Strategy for Biofuels, the government has called for the development of biofuel production capacity beyond 2020. This sector strategy aims to make sure that Mozambique produces the raw materials needed for ethanol and bio-diesel.⁴²¹ This controversial policy, which is already exacerbating communities' land access for food production, should be put on hold until hunger levels are brought under control and community land rights have been prioritised.



NEPAL



Following Nepal's return to democracy in 1991 and 10 years of Maoist insurgency, the landmark first Constitution Assembly elections were held in 2008 and resulted in the dissolution of the monarchy – and Nepal was established as a republic. Nepal's national economy is aid-dependent and ranked 157 out of 178 on the Human Development Indices.⁴²² It has a significant rural population, with 83 per cent of Nepalese living outside of urban centres.⁴²³ Nepal has made significant steps in reducing the poverty rate according to national standards, which was 25.4 per cent in 2009 down from over 40 per cent in 1996. A high degree of inequality between rural and urban areas means that rural poverty is prevalent and the inequality gap is getting wider.⁴²⁴ Agriculture is the biggest contributor to Nepal's economy and is the main source of livelihood for 66 per cent of the population. Small-scale, fragmented subsistence farming is characteristic of rural life. Average household plot size is 0.8 hectares, and 70 per cent of households cannot meet their basic needs with landholdings of this size.⁴²⁵ The most vulnerable groups in Nepali society tend to be the lowest social castes, indigenous groups and women. This affects their ability to access, use and control land, and their ability to ensure

food security, and makes them more vulnerable to land use change and expropriation. Historically, land ownership has been highly concentrated. There have been numerous attempts at land reform, with the state over time becoming one of the country's biggest land owners. Nepal has a complex tenure system, with Raikar (private state land) as the largest of eight systems. These eight systems also have sub-systems for rental, land use and land access – each of which affords different levels of tenure security to land users.⁴²⁶ These systems overlap with unofficial informal tenure systems that exist in informal urban settlements and remote rural areas, but neither of these informal systems is officially recorded by the government or recognised under the cadastral system.⁴²⁷ Vestiges of the feudal system exist in some parts of Nepal, where bonded agricultural labourers have no tenure security.⁴²⁸ Very few Nepalese have documentation to prove land user or owner rights.

Legislative protection for communities

The Nepalese government has made successive attempts to reform the country's land system. However, these have failed due to weak political will to support implementation.⁴²⁹ These attempts at reform have been made because of the high concentration of land, low productivity, high poverty rates, and the land-dependency of most of the population. The latest reform attempt was enshrined in the 2007 Interim Constitution, which established the need for overhauling remaining feudal land ownership practices.⁴³⁰ It set out the need for increasing land security for marginalised sections of society. The flip side is that land reform would also be used to develop the agricultural sector into a national industry.⁴³¹

The record on land reform in Nepal is not promising and its failings, as well as poor implementation, have created even more uncertainty in the land sector – uncertainty which disproportionately and negatively affects poor, landless Nepalese. Access to land is still a determinant of rural poverty – it is this access that has remained structurally unchanged despite reforms.⁴³² In fact, failed reforms have increased uncertainty in land systems, which current reform will need to take into account. Reforms have dismantled the feudal system but only in name. Serfdom continues to exist because land ownership, land user rights and



the social relations that underpin them have remained unchanged.⁴³³ Nationalisation of collective assets under Raikar has made the state the majority landholder, abolishing customary practices that used to manage natural resources.⁴³⁴ Modernisation of land ownership in the 1950s transformed landlords into registered land owners and land users into tenants. The reform of tenancy rights had the effect of increasing amounts of unused land as landholders preferred to leave land uncultivated rather than face the threat of losing land to tenants. This further increased landlessness.⁴³⁵ Serfdom, lack of rights to land and absentee landlordism continue to be significant land governance challenges.⁴³⁶ Finally, political will has remained unchanged: implementation continues to be limited when policy directly challenges the land status quo. However, lack of top-down reform has led to donor support for bottom-up, community-based land reforms.⁴³⁷

The impetus for reform is beginning to take shape at the bottom and top of the land system. Changes in the societal perception of previously marginalised populations are beginning to have an impact on policy. These sectors of society are increasingly vocal about their exclusion and the continued feudal practices. Policy makers have converged on the need to alter these structures and a specific ministry has been established to oversee a land reform process.⁴³⁸

The land administration system has been decentralised to 75 districts but policy decisions remain centralised with the Ministry of Land Reform and Management. Numerous land administration authorities and institutions have responsibility for maintaining land records and protecting public land from encroachment. Ambiguous and numerous roles and responsibilities make it easy for administrative bodies to shirk their responsibility, which impedes implementation and weakens local legitimacy.⁴³⁹ Accurate data on land, land ownership and land-use patterns is hard to come by in Nepal, which limits the ability of institutions to make timely policy decisions. In a situation where a limited number of people have official documentation proving ownership or access, and where there is tenure insecurity and little information on who is using what land on what basis, agricultural policy is hard to implement and there is an increased likelihood of conflict or competing land claims. The case of the Gandharva community highlights the problem of multiple authorities not following due process and exacerbating food insecurity for an entire community. As a nomadic Dalit community the people of Gandharva were provided with a piece of land from the Commission for Resolving Problem with Landless People. Five out of 19 families were given land certificates without registration of their title and without consultation with the owners of the land, a neighbouring community.⁴⁴⁰

Gender equality

Women's land rights have been strengthened on paper: legislation and amendments are an indication that women's rights have been climbing the political agenda. Anti-discrimination provisions were established under the 2006 Gender Equality Bill, which sets out amendments on women's ownership of land and property. However, lack of finance often prevents women from accessing these rights. Amendments to the Country Code, relating to land allocation of women upon marriage, mean that women do not have to give up rights to land. In particular, women (daughters, widows and divorcees) can now legally inherit family and ancestral property. Control of land by women is viewed as an indicator of female empowerment – one of the Millennium Development Goals. In practice, women's ownership varies along caste and ethnic lines; Tarai Brahmins and Hill Brahmins have the highest proportion of women with land registered in their names.⁴⁴¹ However, nationally, women account for only six per cent of total landowners and hold a combined share of only four per cent of arable land; however, they are the majority workforce, comprising of 65 per cent nationally.⁴⁴²

Societal perceptions of women are changing gradually by women's increasing political representation. The Interim Constitution established that women should comprise 33 per cent of the Constituent Assembly. Meeting this threshold has not been a problem. Women have jumped at the chance and are being voted in – they now comprise 33.2 per cent (197 of 594 seats) of the Assembly and have six Cabinet portfolios (out of 44).⁴⁴³ As the Community Self Reliance Centre states, land ownership and political representation are insufficient empowerment indicators. Quality of land and women's role within the family are also important measures and the extent to which women can shape policy on land requires further research.⁴⁴⁴

Measures in place to regulate investment

Land is the foundation of Nepal's economy, which is reliant on agriculture for 38 per cent of GDP (2011).⁴⁴⁵ The government has introduced new investment policies to attract foreign direct investment – through the 2010 Industrial Policy and the Board of Investment Act (2011), and has adopted investor protection against nationalisation of private industries. As with land policy, the challenge for the government will be to adequately implement these measures. Bilateral Investment Promotion and Protection Agreements have been signed with six countries including India. Donors are heavily involved in the ongoing reforms to



investment in Nepal. This investment drive is garnering international support; the FAO is supporting a unique National Agriculture Sector Development Priority for the medium term as an input to Nepal's Three-year Plan (2010/11-2012/13) as well as to the National Medium-Term Priority Framework, which seeks to link agricultural investment with food security.⁴⁴⁶

Nepal is in the process of commercialising the agriculture sector and enhancing its production and productivity by expanding extension services and irrigation facilities and promoting farming technology. The 2009 Trade Policy and the 2010 Nepal Trade Integration Strategy have identified several agricultural products as potential goods for export – for example lentils, tea, coffee, ginger, large cardamom and jute. Organic farming is emerging as a potential sector for generating income and export.⁴⁴⁷ The government, with a view to promoting investment and facilitating trade, has established clear institutional roles and responsibilities for attracting investment. Recently, a high-level Board of Investment was constituted under the Prime Minister, emphasising the prioritisation of investment for farming. Given the existing land scarcity and fragmentation of smallholder plots that lack adequate tenure security, large-scale farming could displace farmers and increase food insecurity.⁴⁴⁸

In its Trade Policy Review for the WTO, the government states that, “For the Government, trade is a means to fasten economic growth and alleviate poverty by providing employment and livelihood opportunities. Therefore, it has taken trade as an effective tool to reduce abject poverty in the country and to enhance the well being of the marginalised people.”⁴⁴⁹ Given that the current land reform process is meant to deliver both tenure security to impoverished Nepalese and agricultural-led growth, specific safeguards – and monitoring of those safeguards – need to be in place to ensure that Nepalese people are not vulnerable to having their land claims trumped by those of investment without appropriate consultation and compensation. There are currently 2.7 million rural households that are functionally landless, and 70 per cent of rural Nepalese cannot produce enough to ensure their food security.⁴⁵⁰ These people need to be the priority of land reform and bottom-up development.



NIGERIA



Nigeria is being marketed as an engine for agricultural-led growth for west Africa. Its diverse climatic conditions, rich soil types, water resources and available labour, mean it has great agricultural production potential.⁴⁵¹ The government is placing policy emphasis on supporting large-scale industrial farming, with a range of incentives to encourage acquisition of, and investment in, land.⁴⁵² Although much of Nigeria is urbanised, 45 per cent of the population depend on agriculture for their livelihoods, and therefore depend on the land that is being invested in.⁴⁵³ Nigeria's federal system, the corruption and inter-religious and inter-ethnic tensions that are running high, and the series of terrorist attacks in parts of the country, all make for a politically volatile climate.⁴⁵⁴ Nigeria's mixed tenure system differs across the federation. The most common forms of tenure are: private landholding (including family, individual and community customary tenancy); public landholding; and communal landholding. Legal loopholes between these land tenure types mean that communities are insufficiently protected from large-scale land acquisitions. At the same time, these loopholes effectively facilitate large-scale land acquisitions, which are increasing in scale and spread.⁴⁵⁵ This national and local

situation has meant that land reform was not a government priority until 2009, when a land reform commission was established to look at the gaps in the Constitution and land-related legislation.

Legislative protection for communities

The Nigerian Land Use Act (LUA 1978) restructured the property rights system in Nigeria from a mixed private property rights system into a collectivist framework.⁴⁵⁶ Land therefore became the property of the government, delegated to the governor of the specific state, and administered by local government.⁴⁵⁷ Local government provides citizens with customary rights of occupancy. It is responsible for administration of concessions to companies for any use, be it agricultural, industrial, extractive or real estate purposes.⁴⁵⁸ Beyond administration of land, the LUA lacks any recognition for women's land rights, provisions for security of tenure or measures to ensure community consultation, let alone consent.⁴⁵⁹ Even less prescriptive on land, the Constitution, established in 1999, recognises communal use of land but not communal land rights. It makes no mention of women's rights to land or to consultation, because of the fact that all land is owned by the state (Sections 20, 44, 297, 315).⁴⁶⁰ In practice, the only part of the legislation that is upheld is the right of the state to expropriate land for the national interest. The primary function of state-level ministries is to uphold the LUA in relation to housing and urban development, rather than to evolve innovative policy adaptation that would support land tenure security. At federal level, the Ministry of Land and Housing gets three per cent of the annual budget.

Local government is the third tier of government dealing with land; it largely manages the relationship with communal and traditional institutions, which manage land on the basis of customary norms.⁴⁶¹ The state and local land-related dispute mechanisms have been established on an ad hoc basis in response to inter-communal clashes over land.⁴⁶² Their capacity to find long-term, systemic solutions to land conflicts is undermined by an unequal land ownership structure and in many instances these conflicts have violently resurfaced. The role of local land actors is to enforce border demarcation in urban areas and issue land occupancy certificates in rural Nigeria.⁴⁶³ These tend to be more effective in urban settings; rurally, they run in parallel to traditional customary land use, lease and ownership mechanisms.⁴⁶⁴



Title to land does, however, remain very insecure, due to poor implementation of legislation.⁴⁶⁵ A significant issue is that a percentage of land, available for allocation to lowest-income segments of the population, has not been stipulated or implemented. This means that significant inequality in land distribution remains common.⁴⁶⁶ Furthermore, there are no enforceable ceilings on the size of land investments.⁴⁶⁷

Land is the most valuable and consistently appreciating commodity and asset to which the political and ruling elite have access. Land and landed property are usually the most preferred collateral for securing bank loans and funding and therefore play a crucial role in securing credit for small-scale farmers.⁴⁶⁸

Gender equality

Customary tenure systems are perceived to be one of the principal challenges to implementing any kind of land reform process. However, customary practices are not uniform, varying from one community to another, across states, and dependent on local cultural practices. Communities are increasingly allowing customary practices to evolve that accept women's land ownership. As yet, this change has not been acknowledged in formal land policy. Neither the Constitution nor legislation explicitly recognise women's right to own, access, inherit or bequeath land. What severely stunts women's land rights is their economic position – they often cannot afford to buy land.⁴⁶⁹

Out of the 41 members of the Federal Executive Council, 13 are women. Many hold strategic portfolios, such as: finance, petroleum resources, communication technology, aviation, environment, education, defence, and land and housing. These are important positions for promoting women's land rights. Few of those in positions of power see women's issues as a priority, nor are land and women's land rights deemed to be a priority for members of the two houses. Six per cent of the Federal House of Representatives and seven per cent of the Senate are female, and there is no affirmative gender policy to try and increase this proportion. Women's access to decision-making positions is restricted by lack of access to opportunities and resources, due to deep-rooted cultural or religious biases and the often violent nature of Nigeria's electoral process.⁴⁷⁰

Measures in place to regulate investment

Nigeria's overdependence on its petroleum resources has hampered its development and exacerbated political instability. Poor macroeconomic management of the petroleum sector and the proceeds from it have incentivised corruption and crippled the economy.⁴⁷¹ The current government's economic reform programme sought to build up the country's investment potential, and diversification of the economy away from oil is accepted as the first step to alleviating the 'resource curse' that allegedly has historically afflicted Nigeria since the 1970s. This has begun to reap rewards: according to the National Bureau of Statistics, in the second quarter of 2012 agriculture was worth 40.96 per cent of GDP.

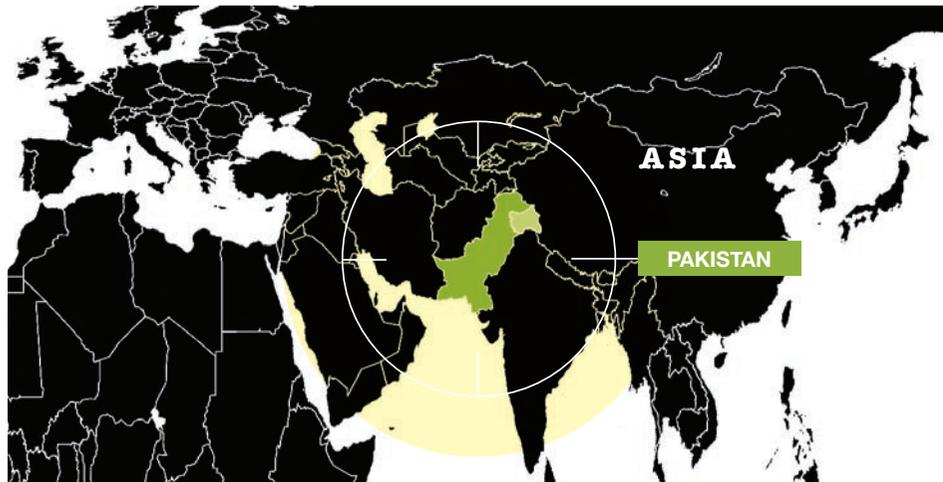
Within the context of weak tenure security and patchy implementation of legislation, agricultural investments are having severe negative effects on smallholder farmers, especially women farmers. Large-scale land acquisitions are exacerbating food insecurity and land inequality. Out of the 18 large-scale investments listed on the International Land Coalition land matrix, 17 were for agriculture, with two additionally for livestock, one for forestry and three for multiple crops. Of the agriculture investments, three were for jatropha plantations and two for palm oil, both of which are raw materials for biofuels. Of the 18 investors, there was one each from the UK, Italy and Belgium, with the remaining Nigerian.

On the face of it, this inflow of investment is significant, but the focus has been on attracting investment to large-scale agribusiness rather than supporting smallholder farmers. These projects have received the kind of investment support from the government that has never been extended to smallholders, who, in fact, play a crucial role in local food security. In fact, according to researchers, Kwara state has seen an inflow of South African and Zimbabwean investment, which has resulted in the dislocation of smallholder farmers.⁴⁷²

With the current scale of investment, and the continued reliance on investment for growth, concessions should be halted to ensure the protection of community rights. Policy should take into account the non-dynamic nature of the existing tenure system, which also fails to support farmers and landowners when they are affected by natural disasters.



PAKISTAN



Pakistan is heavily reliant on land for livelihoods and national food production; two thirds of Pakistan's population live in rural areas and rely on small-scale agriculture as their main source of food production and livelihood.⁴⁷³ Women farmers contribute 60-80 per cent of food for household consumption.⁴⁷⁴ As poverty levels have risen in recent years, the food and nutrition situation in Pakistan has consequently deteriorated – resulting in inadequate food production, unequal distribution of food, increasing food insecurity, chronically low dietary intakes, and acute food shortages.⁴⁷⁵ In Pakistan, poor progress is being made in increasing food security and reducing hunger and malnutrition. This is closely linked to inequities in land ownership – a historical phenomenon.⁴⁷⁶ Many people have been pushed into poverty and forced to migrate internally by high food insecurity due to concentrated land ownership. Recent large-scale land acquisitions by foreign investors are making the food security situation worse.⁴⁷⁷ Such types of land deals could result in the country producing food for export at the cost of its own domestic food security. Land in Pakistan is legally classified as state land, privately held land, or land subject to communal rights under customary law.⁴⁷⁸ Land tenure functions on

the basis of 'occupancy rights' based on traditional customs, with the government maintaining overall control over land.⁴⁷⁹ Nationally, the common law system presides with the notable influence of Islamic law. While there are no legal restrictions against women's rights to land, in practice, this differs across the country.⁴⁷⁸

Legislative protection for communities

The Constitution states that all citizens have the right to acquire, hold and dispose of property, subject to reasonable restrictions imposed by law in the public interest. Upholding Pakistan's Constitution (1973), however, is guided by socio-cultural practices and political agendas.⁴⁸¹ The legislative system functions in a fluid manner, meaning that many laws are under almost constant amendment – in order to adjust to Islamic jurisprudence, which itself is not static.⁴⁸² The legislative framework, and the institutions mandated to implement laws, need to be strengthened in terms of inter-institutional coordination and to join-up the nearly 30 different laws that govern land administration and management.⁴⁸³ Pakistan's legislation is much stronger than the Constitution, especially on women's rights to inherit and on consultation provisions. These strengths are only on paper, as the Prevention of Anti-Women Practices Act (2011) and the Code of Civil Procedure (amendment) Act (2008) are not upheld.⁴⁸⁴ The Ministry of Food Security and Research has the potential to be more active on food security in Pakistan but is hamstrung by severe budget constraints. Implementation of national legislation is hampered by Pakistan's highly heterogeneous customary land system, which has higher levels of local legitimacy, wider ranging coverage, and stronger bodies for enforcement – known as jirgas.

Pakistan has had some success securing tenure and housing for landless people on an ad hoc basis. The UN-Habitat's post-2005 earthquake reconstruction efforts supported the government to provide land for 14,000 landless families.⁴⁸⁵ In addition, tribal areas can apply their own laws in their territory, known as Federally Administered Tribal Areas (FATA).⁴⁸⁴ This goes some way to securing land tenure within a local context, as ownership is recognised individually, on a joint or extended family basis, or through a tribe where collective ownership is recognised. However, local tribal control can compromise security and women's rights, particularly in the disputed borderlands.⁴⁸⁷



Implementation of legislation is held back by political dynamics at local and national levels. 'Occupancy rights' are generally inadequate tenure security measures for Pakistan's rural populations, as, in practice, recognition of occupancy is rare, particularly in the face of large-scale land acquisitions.⁴⁸⁸ Limited state capacity to enforce laws, little local awareness of land rights, and tenure systems that are often used selectively for private gain, all create a perceived impunity for 'land grabbers'. Pakistan's land governance institutional framework is geared towards agricultural development and revenue collection.⁴⁸⁹ Its weakness in safeguarding rights is a result of a revenue-based rather than rights-based approach. Within institutions, low technical capacity and lack of accurate data for adequate forecasting and baselines means there is limited accountability and transparency.

Land reforms have been undertaken but have been unsuccessful in dealing with the high numbers of landless people.⁴⁹⁰ The impetus for three attempted land reforms stemmed from political interests that were short lived, and therefore reforms were not fully implemented. Pakistan's military is one of the country's biggest landowners, with a vested interest in maintaining the land status quo.⁴⁹¹ Similarly, a high concentration of ownership in the hands of those with political influence reduces the impetus for reform or for safeguarding communities, instead favouring investment as the primary means of national development.⁴⁹² Pressing water scarcity further complicates and politicises land in rural areas.⁴⁹³

Gender equality

Customary practices mean that women's ownership of land remains low – women owning less than three per cent of land.⁴⁹⁴ Women's land rights are not upheld in spite of provisions under the Constitution and statutory law, which includes anti-discrimination legislation as well as provisions in religious law, where this applies.⁴⁹⁵ Women's access to land for survival is inherently insecure.⁴⁹⁶ The gendered concentration of ownership means that Pakistani women in particular are vulnerable to landlessness. It is political issue because a pro-women's right to land policy has not yet been developed because of the limited political commitment to empower women socio-economically. Moreover, gender has not yet been put on the agenda of the leading political parties.⁴⁹⁷

Measures in place to regulate investment

The agriculture sector continues to be an essential component of Pakistan's economy. It currently contributes 21 per cent to GDP.⁴⁹⁸ Reports from the media allege that by September 2008 United Arab Emirates companies, with the support of the UAE government, had

acquired 324,000 hectares of farmland in Pakistan. The purpose of this huge investment is to cultivate and then export grains back to home markets. It is estimated that a staggering 25,000 villages may be displaced to make way for these long-term investments.⁴⁹⁹

The government has investment incentive schemes in place that facilitate foreign firms to obtain long-term leases without any ceiling on size.⁵⁰⁰ Agricultural development projects are given support – including 100 per cent of the required capital needed for a given project. The World Bank's Doing Business Index ranks Pakistan 29th for investor protection, showing that investors are taking notice of these policies. However, registration of property is ranked 125th and overall the country is ranked 105th for its regulatory business environment.⁵⁰¹ Importantly, Pakistan's investment potential is already being hampered by the same issues that are affecting local communities' tenure security – patchy implementation of legislation, a complex and difficult process to access the tenure system, and limited reform of the title registration process. Existing land inequality will increase if these incentives are successful in boosting investment in land without first instituting some measures to secure communities' land rights. It is also likely that this trend will reduce the impetus for redistributive land reform.⁵⁰²

The technology transfer, the increase in number of jobs and foreign investments, and the enhanced efficiency of production are usually cited as beneficial for Pakistan and its citizens. On the other hand, the vast land sales are likely to have negative impacts such as displacement of local farmers and uncompensated dispossession of their land. Food insecurity already affects 58.6 per cent of Pakistan's population, and continued food scarcity, as investors export what is grown, coupled with increasing environmental damage, will increase pressures on natural resources.⁵⁰³ Instead of going for policies leasing land to foreign investors, the government of Pakistan must support and empower its own farming communities.



RWANDA



Rwanda is a small mountainous country, with a large population of ten million people, 79 per cent of whom live in rural areas and the majority of whom are dependent on land for survival.⁵⁰⁴ The legacy of the 1994 genocide has had a significant impact on land rights and access to land, with thousands of landless refugees returning home.⁵⁰⁵ The government has demonstrated clear political will to support sustainable small-scale agriculture to reduce endemic levels of hunger.⁵⁰⁶ Its mixed legal system, part civil law and part customary law, is, in practice, not reflected in the tenure system, which only recognises private ownership with the obligation to register land under the National Land Registration Programme.⁵⁰⁷ The 2004 National Land Policy sought to create a new equitable legal framework and institutional structure, altering the land ownership system and reducing ownership and land usage concentration.⁵⁰⁸ Rwanda's policy reform agenda was designed to increase security of tenure for the most marginalised in society, including but not limited to female orphans and widows. Implementation of land legislation has been a priority for the government, which sees tenure security and access to land as crucial preconditions for national development.⁵⁰⁹

Legislative protection for communities

Prior to 2004, Rwanda's predominant system of land governance was customary tenure. The majority had informal rights, while a small proportion of the country held title issued under the colonial Civic Code.^{510,511} The 2004 National Land Policy was introduced to increase security of land tenure for all Rwandans through registration and support the development of an equitable land market in order to promote the sustainable use of land.⁵¹² Beyond these aims, it also was aligned with broader post-genocide societal reconstruction and reconciliation efforts as well as linked to the policies associated with achieving the Millennium Development Goals (MDGs).⁵¹³

The Constitution (2003) primarily dealt with property rights, acknowledging individual and collective private property rights and equal rights for both sexes. These property rights were granted by the state and under certain circumstances, such as in the 'public interest', could be expropriated with compensation granted. Communal land rights were not mentioned in the Constitution, nor were provisions for consultation, consent or security of communal tenure; these measures only applied to privately owned property. In a country previously governed by customary tenure, this created tenure security gaps for the majority of Rwandans. The National Land Policy (2004) established today's private tenure system model and instituted recognition of community land rights.⁵¹⁴ The Organic Land Law (2005), as an initial measure of political will to implement reform, was designed to facilitate the implementation of proceeding laws and compliance of land users with the registration system to secure land tenure.⁵¹⁵ The Organic Land Law recognised customary tenure, but only as long as it was subject to the same registration process as other land holdings. Women's rights to land were also promoted in terms of ownership, inheritance, and transfer. However, the current law does not adequately deal with provisions for consultation.

The Ministry of Resources oversees land 'sub-sector' governance, among other resources. The overall ministry is allocated two per cent of the current budget. These new institutions are seen to be effective in carrying out their mandate.⁵¹⁶ Locally legitimate and effective dispute resolution committees exist at village level, but they have limited formal legal training. Additionally, there are local land actors that are on hand to advise, register and implement policy.⁵¹⁷



Land registration will not guarantee poverty alleviation, nor will the creation of a land market. Seventy per cent of landowners own less than one hectare of land. Registration is still too expensive for the poorest landholders. There are still over a million plots to survey, which means that many still face tenure insecurity in the face of increased investor interest. Reforms are uncoordinated between the different ministerial roles: for example, between the ministry registering land and implementing the law and the ministry in charge of making the agricultural sector commercially productive. The incidence of local land conflicts has risen.⁵¹⁸ Land commissions have been set up to deal with disputes on a case-by-case basis but cannot deal with the underlying cause of the conflict, which is competing use of land, particularly between livestock keepers and small-plot holders.

Gender equality

Compared to the previous customary system, the comprehensive land reform package that the government has created and begun to implement has fundamentally altered women's land rights socially and in practice. Described as the "the prerogative of men", previous customary land systems in Rwanda excluded women from ownership and inheritance, in spite of them making up the bulk of the agricultural workforce, which is an important motor for the local and national economy.⁵¹⁹ The provisions in place under the reformed land framework could be strengthened by sustained awareness raising of women's rights in their local communities and for their female descendants to ensure that the policies currently in place remain effective. Educating local leadership is a crucial area requiring more work if the mindsets of traditional leaders are to be altered; if successfully done, the multiplier effect on women's land rights could pay significant dividends. There continues to be a grey area between the land law and inheritance law which may mean, in practice, that some women are denied their right to inherit.⁵²⁰

Measures in place to regulate investment

Ranked by the World Bank's Doing Business Index as the third easiest place to do business in Africa, and 45th internationally, Rwanda is open and primed for investment. However, despite its success in establishing a sound climate for investment, foreign direct investment remains low – due in part to limited infrastructure outside of urban centres and electricity shortages. The government has created incentives through outreach and tax breaks and by consolidating the institutions in charge of attracting investment. Importantly, for limiting

large-scale land acquisition that displaces local communities, foreign investors can acquire property, but there is a limit on land ownership.⁵²¹ Although land is owned by the state, both foreign and local investors can acquire land through leasehold agreements that extend from 50 to 99 years. Partnerships between local and international companies are encouraged by the government, as are public-private partnerships. The World Bank provided technical and financial support for the creation of the Rwandan Development Board, a self-professed one-stop-shop for investment in 2008.⁵²² The government has also established the Privatization Secretariat and the Rwanda Public Procurement Agency to ensure transparency in government tenders and divestment of state-owned enterprises. Over the last two years, Rwanda improved its rankings in Transparency International's 'Corruption Perception Index' from 102 in 2008 to 66 in 2010, placing Rwanda as the 'least corrupt' country in East Africa.⁵²³

The International Land Coalition (ILC) documents only one large-scale land acquisition in Rwanda since 2000. This was a land investment by a large Ugandan company involving 3,100 hectares of land for agriculture.⁵²⁴ Although the ILC data is limited to verified reports of land deals, effective legislation, a single tenure system for land management, historical context and demographic trends have meant that land grabbing is not as common in Rwanda as it is in other east African countries.

By making legislative implementation a top government priority, communities' and women's land rights are better safeguarded. Further to this, women-focused legislation has improved women's access to land, removing, on paper, customary gender discrimination.⁵²⁵ Research has revealed that the new land policy and legislation are, in practice, ensuring that women's land rights are protected, especially land access and rights for widows and female orphans.⁵²⁶ Women and vulnerable groups are therefore safeguarded from land grabbing and uncompensated displacement, which is remarkable in a country with Rwanda's recent history and existing pressure on land.



SENEGAL



Senegal is one of the most stable democracies in west Africa. However, poverty is widespread and concentrated in rural areas, with 75 per cent of rural Senegalese living in poverty.⁵²⁷ Senegal's population is dependent on agriculture, with over 70 per cent of the population engaged in the sector.⁵²⁸ Because of climate change and the retreat of the state from the agricultural sector, land use changes have led to land use competition.⁵²⁹ Despite numerous government efforts to control land tenure in Senegal through formal law, in practice customary law governs land and its transfer. The most recent attempts (2011) to formalise the system, through issuing permanent title deeds, will likely be most beneficial for the tenure security of city dwellers.⁵³⁰ Senegal's highly stratified society, also governed by customary practices and norms, means that women and lower-caste subsistence farmers are marginalised, especially when it comes to land access and ownership.⁵³¹ Measures to secure tenure need to become a government priority, to support rather than undermine communities' tenure security in the pursuit of the 'national interest'. Agricultural development and reduction of poverty levels were two electoral promises made by the incumbent President Sall. Implementation of new legislation

may be a way to achieve this much-needed bottom-up growth, but the new legislation also has the potential to attract more large-scale land acquisitions if land acquisitions are allowed to remain opaque and consultation with local populations does not take place.⁵³²

Legislative protection for communities

Senegal's land governance system, the legislative framework and the institutions that administer the formal and customary systems are in a process of evolution. The 2011 Senegalese Land Tenure Act marked an on-paper turning point to bring legislation into line with practice. The Act sought to harmonise amendments made to the out-of-date 1932 Land Decree. The Act's main function was to secure tenure by issuing land permits for permanent title deeds. Two different management models coexist: one founded on customary rules and the other based on national legislation. The 1932 law forms the basis of statutory land law and was added to over time using regulatory mechanisms such as the 1964 National Domain Act, the Law on Administrative Reform (1972), the Civil Code, the Law on Decentralisation (1996), Agriculture, Forestry and Livestock Law (LOASP 2004) and the 2001 Constitution. The 2011 reform initially succeeded where others had failed because it sought to smooth out discrepancies between different laws and codes on land. It also provided 'provisional' land occupancy papers to be transformed into permanent title deeds, which will have the most significant impact on landowners in urban centres where implementation and demand is higher. However, the legislation does have the potential to reinforce a dual system of land management along urban-rural lines, which may also reinforce a dual economy in which urban centres continue to grow, and rural areas remain undeveloped with limited formal land rights.⁵³³

The Senegalese Constitution (2001) stipulates land ownership as split between state-owned and privately owned land.⁵³⁴ Limited understanding of constitutional provisions mean that the Constitution is not upheld. In practice, and at local level, tenure security and community rights are secured through customary norms. However, the government has pursued an investor-friendly policy to attract agribusiness investment. And when investment policy and customary tenure security meet, customary loses out to the formal land governance system.



The LOASP prepared the ground for the land reform (2011) process and created a Law Reform and Commission to preside over drafting and to advise the government on reform. After the law's establishment, the Commission evolved into a thematic working group, under the Ministry of Economy and Finances, tasked with monitoring implementation of the law. This level of prioritisation of land governance and administration shows clear political will, although engagement with the customary system will be crucial to ensure that reforms are taken up at local level.

The Rural Community Law of 1972 provided the structure for elected rural councils, which have the authority to allocate land-use rights to individuals, conditional upon the landholder's economically productive use of the land.⁵³⁵ These councils provide communities with rights to withdrawal; however, this right is not legally recognised, often resulting in local land disputes if a community decides to withdraw from a land deal.⁵³⁶ The Ministry of the Interior has the power to trump decisions made by rural councils that are 'in conflict with national interest'.⁵³⁷ Local government has decision-making powers on initiating public land projects, as do some traditional leaders. Community consultations and compensation fall under the mandate of regional councils and local government.⁵³⁸ With final decision-making power resting in the hands of local government bodies, communities often have little say or protection in practice at national level.

Negotiation is the common way to solve land-related disputes at local level. This at least ensures that those affected are involved and have a say. However, the lack of publicity on the most recent legislation, poor general awareness of land rights and a patrilineal customary system, mean that communities as a whole may have a privileged position; women tend to lose out in these processes. Dispute resolution can be grouped into two forms: a) socially focused model, which seeks consensus, and is flexible and provisional in terms of the solutions; or b) individualist model, which seeks to secure individual rights through the cadastre and title deeds.⁵³⁹

Senegal's historic inability to impose a formal tenure system has, in itself, reduced uptake of reforms. At local level, limited human and financial resources hamper the ability of local councils to take a more proactive or progressive role. This has been in no small part due to the weak political will to decentralise resources, in case it resulted in demands for greater independence from the centre.⁵⁴⁰ This creates a patronage network of central government and 'decentralised' land actors and institutions – which are decentralised in name only.

Land is deeply political in Senegal and is often the biggest issue during elections, due to its polarising impact and public appeal. Large-scale land acquisitions were on the agenda in the period leading up to the 2012 election run-off. Historically, land has been often been allocated to elites and politicians to ensure loyalty.⁵⁴¹

Gender equality

Legally, Senegalese women have explicit and detailed land rights. Customary practices that discriminate against women owning land are banned under the Constitution, although citizens have rights above all women; despite this, customary practices continue to affect women's land rights across the country.⁵⁴² The law recognises equal access for land for men and women and institutes measures against gender discrimination. However, customary norms mixed with statutory law, and the structures in place to support implementation of both, mean that at local level, women's rights may not be respected, let alone implemented. This disjuncture between customary and statutory legislation undermines women's access to, and ownership of, land. Even instituting gender parity for political representation in 2010, and testing it in the 2012 legislative elections, has not resulted in changes to customary norms for land allocation and dispute resolution. Senegal is ranked as adequate on paper provisions, which go unimplemented outside of urban centres.⁵⁴³

Measures in place to regulate investment

Reports estimate that 17 per cent of Senegal's arable land has been acquired in large-scale land transactions – mostly for biofuel cultivation.⁵⁴⁴ Senegal has a large amount of marginal, unfertile soil resulting from erosion and unsustainable farming methods. This makes biofuel plantation mono-cropping deeply unsustainable.⁵⁴⁵ Investments in land for biofuels have been hailed as the solution to Senegal's energy problems because of booming demand for new fuel sources.⁵⁴⁶ Senegal's current annual energy imports of around a thousand barrels of oil are not sustainable. Oil imports alone make up 55 per cent of Senegal's import bill.⁵⁴⁷

In 2008 Senegal set up an initiative to increase food security and investment in the agricultural sector. The GOANA initiative involved the compulsory contribution of 1,000 hectares of land, the government provided subsidies and allocated land to those most able to cultivate it.⁵⁴⁸ In practice, the land was allocated to those in positions of influence and was used as a way of expanding land ownership, often for speculative purposes.⁵⁴⁹



Land investments continue to be under-documented, taking place through informal agreements, which, when disputed tend to result in the community losing out to national or international corporate interests.

The rush to meet the demand for biofuels has led to substantial land investment, facilitated by the government, which in turn has, allegedly, resulted in the displacement of thousands of Senegalese.⁵⁵⁰ If this trend continues without including community rights and safeguards into the national development plan it could put many more communities at risk of losing land or being displaced and affect investment viability in the longer term.⁵⁵¹



SIERRA LEONE



Sierra Leone emerged from a protracted conflict in 2002 and is in the process of reconstruction and recovery. Agriculture is the backbone of the economy and society. Two thirds of the population (3.5 million people) are dependent on agriculture for livelihoods and 70 per cent of these live below the poverty line.⁵⁵² Sierra Leone's conflict increased urbanisation as people moved to urban centres to escape violence. In spite of this, 61 per cent of Sierra Leoneans live in rural areas.⁵⁵³ Multiple tenure systems coexist in Sierra Leone; the three main types are freehold, customary and state. Sierra Leone's land system is, in practice, heterogeneous and how these systems intermix varies across the country. Sierra Leone's formal land administration system is weak, with significant capacity gaps. In order to consolidate peace, recovery and development, tenure security has been listed as a necessary prerequisite for pro-poor growth. Sierra Leone is ranked 180th out of 187 by the UNDP Human Development Index.⁵⁵⁴ In 2011, Sierra Leone was also listed as one of five African countries with critical problems of food insecurity.⁵⁵⁵ Currently, the national land reform process is supported by the World Bank. However, motivation for this wave of reforms has been the desire to attract investors and to facilitate access to secure land holdings rather to promote the

protection of community land rights and safeguard access to land that is needed for survival.⁵⁵⁶

Legislative protection for communities

Land reform was re-launched in 2010 and a current draft land policy has been disseminated countrywide for national consultation. Presiding over this process is the Law Reform Commission, which was created in 1994 as part of the national transformation strategy.⁵⁵⁷ The new land policy aims to create an effective land tenure and management system with clearly defined ownership forms and rights, effective and transparent land administration, and equitable access to land for all citizens. Its twin purpose is to stimulate investment for development. The implication here is that the current legal land system does not do these things effectively. To better understand the challenges that this policy will have to deal with it is important to understand the system that has governed land to date.

Currently, land is governed by a plural legal framework that splits the country's land governance into two systems: statutory law is made up of 48 different Acts, Ordinances and amendments that govern land in the Western Area (including the capital Freetown); customary laws govern land in the provinces.⁵⁵⁸ A legislative framework supports this division of land law, although in practice the system is more heterogeneous than simply a dual tenure system as set up under British colonial rule.⁵⁵⁹ The Provinces Land Act (1961) establishes land as the 'property' of traditional land-owning families ('lineages'). Under this system, paramount chiefs are the custodian of the land and chieftain councils manage land on behalf of communities.⁵⁶⁰ The multiple and context-specific customary norms regulating land sale, exchange and transfer makes regulating acquisitions difficult and temporary, as they can go back into family ownership.⁵⁶¹ Customary law continues to be enforceable in statutory courts, although in practice the judicial system is inaccessible to the majority of Sierra Leoneans living under customary systems.⁵⁶²

The statutory framework is cumbersome, complex and out of touch with the pressures exerted on it.⁵⁶³ Of particular relevance are the Land Policy (2005), the Land Commission Act (2005) and the Commercial Use of Land Act (2004). The Land Policy tried to do two things: reassure lineages of their continued relevance in land governance and secure tenure for tenants/outside investors. However, the policy's composite parts contradict its overall objectives, which include discouraging the sale of land and protecting landowners from



becoming landless or tenants on their own land while at the same time promoting the private sector as the engine for growth and guaranteeing investment.⁵⁶⁴ The Land Policy is directed by the Ministry of Lands, Country Planning and Environment, which has a broad mandate to manage state land, compulsory acquisition, surveying, mapping and planning but not registration of deeds. The Land Commission Act proposed to establish Land Commission offices at federal, provincial and district levels to grant land rights register titles. However, these institutions lack the capacity to undertake registration adequately.⁵⁶⁵ Underfunding also inhibits reach and increases opportunities for corruption. The Commercial Land Act strengthens investment possibilities in the provinces and sale of land is made feasible. The Act streamlines the acquisition process and extends leases to 90 years (from 50) to attract more investment.⁵⁶⁶

Overlapping legislation has had a direct impact on the evolution of current land policy and the institutional framework that supports its implementation.⁵⁶⁷ There are difficulties with the formal land administration system arising from land governance being split between administration and registration.⁵⁶⁸ Low levels of capacity within land institutions, in particular the Ministry, have made reform of institutions' functions a pressing priority in the current land reform process.⁵⁶⁹ Weak institutions and low capacity undermine the state's ability to implement existing laws. Insufficient resources mean that customary systems are relatively more effective at dealing with land disputes – which have a knock-on effect on the perceived legitimacy of national institutions.⁵⁷⁰

Gender equality

Women and men are afforded equal rights in Sierra Leone's Constitution (1999, amended 2001). The government has enacted the Devolution of Estate Act of 2007, which on paper removes discriminatory provisions against women. Legally, some women can own land and property: husband and wife can either separately or jointly acquire, own, manage or dispose of property and land. High rates of poverty and 60 per cent illiteracy rates among rural women undermine their use of these provisions.⁵⁷¹ In practice, although varying upon location, women in the provinces often are excluded from land ownership. However, this customary practice is not static or permanent: for example, some tribes grant women the right to inherit property, while others consider a widow to be a possession of the dead husband, and part of his inheritance.⁵⁷²

Sierra Leone presents a mixed picture on women's land rights in practice. Amnesty International reports that a woman was barred from standing in chieftaincy elections because of her gender. Elsewhere, women would-be candidates face hostility for participating in politics.⁵⁷³ Increasing women's visibility and political representation are part of a process of

expanding their political participation and changing customary prejudices and discriminatory practices. As of 2009, two members of the 20-member Cabinet were women, there were 16 women MPs (out of a total of 124) and every local council had at least one female member.⁵⁷⁴ Women also played a key role in peace negotiations. More should be made of their roles in these visible and valued positions to leverage broader political participation in policy making in relation to land.⁵⁷⁵ Despite few women being in formal political positions, there are several long-serving female paramount chiefs in the south of the country.⁵⁷⁶

Measures in place to regulate investment

Sierra Leone derives 44 per cent of GDP from agriculture.⁵⁷⁷ The government has marketed the country as an agriculture investment opportunity in west Africa; SLIEPA, the government investment promotion agency, advertised "over 4.3 million hectares of cultivatable land available".⁵⁷⁸ To date, it is estimated that some 20 per cent of Sierra Leone's farmland has been acquired by agribusiness investors,⁵⁷⁹ and by early 2011, close to 500,000 hectares of farmland had been leased or was under negotiation for lease.⁵⁸⁰ In spite of government claims of community protection, these acquisitions are skewed to favour investors, giving them significant incentives and guarantees in the form of long-term leases and fiscal, financial and special zone incentives.⁵⁸¹ The government plans to establish export-processing zones and agro-processing units in suitable locations as well as an industrial and economic zone in Freetown in line with export diversification strategies.⁵⁸²

Low levels of public debate, documentation and publication of demarcation, together with poorly implemented legislation, effectively mean that community safeguards, where they do exist, are effectively non-binding.⁵⁸³ However, Sierra Leone's natural endowments come with a lot of institutional baggage that has a negative effect on communities' food and tenure security as much as on the long-term viability of investments. The complex land administration system, the property registration system and the inability to register land formally under customary tenure mean that doing business in Sierra Leone is difficult.⁵⁸⁴ If it was to clarify and strengthen the institutions and the guidelines for tenure systems and tenure security, the government could support Sierra Leone's investment potential in a way that does not undermine the food security of communities who have worked the land for generations.



SOUTH AFRICA



Land is one of the hottest and most contested issues in South Africa, where 38 per cent of South Africans live rurally.⁵⁸⁵ Private tenure is the most prevalent type of land ownership – with private tenure being fairly secure and associated legislation and guarantees well implemented. The South Africans who live in rural areas exercise customary land law, which is not effectively regulated.⁵⁸⁶ Land-related investments also tend to be located rurally, putting more strain on customary land tenure systems that are unequally applied and context specific. This makes investments harder to guarantee through legal channels and adds to the potential for land-related conflicts outside of urban centres. Across South Africa, despite equal legal land rights on paper, women’s rights to land are especially dictated by customary practices.⁵⁸⁷ The land reform processes have been characterised by onerous bureaucracy, low capacity and limited procedural transparency, leading to extreme delays and the collapse of projects. Instead, pro-poor policy on land has actually reduced coordination of services and is distorting incentives in a counter-productive way.⁵⁸⁸

Legislative protection for communities

On paper, South Africa has a sound land governance system based on primacy of private property. The Constitution (1996) is explicit on the protection of property rights and fair compensation in the instance of land expropriation. There are debates about whether it facilitates or frustrates the settlement of the land question and whether it explicitly deals with women’s land rights. Section 25(6) of the Constitution includes provisions on insecurity of tenure arising from past racially discriminatory laws and practices.⁵⁸⁹ The Constitutional Court upholds the Constitution and has dealt with a number of emblematic cases, although not enough to structurally alter the patterns of ownership.⁵⁹⁰ The legal framework is made up of: Comprehensive Rural Development Programme; the land dispossession of black South Africans; the government’s land reform policy; Land Restitution; Land Redistribution; the Settlement Land Acquisition Grant; Land Distribution for Agricultural Development and the Land Tenure Reform.⁵⁹¹

A strategic framework for realigning institutions through reforms has been successful. However, land reform has not significantly altered the lives of the large majority of South Africans, nor has it led to the redistribution of wealth or assets. Instead the ‘pro-poor’ pattern of growth and land reform has been hotly contested.⁵⁹²

Although there is a Parliamentary Committee on Land and Environmental Affairs, limited transparency around large-scale land acquisitions reduces the committee’s ability to highlight irregular land acquisitions to Parliament.⁵⁹³ It should, in fact, act as a check on large-scale land acquisitions, particularly if they are likely to affect a significant number of constituents.⁵⁹⁴ Actual outputs of the South African land reform process to date has seen less than 4 per cent of the targeted land distributed. Poor legislative implementation results from insufficient political will, combined with the Ministry of Rural Development and Land Reform’s limited capacity to oversee and manage such a contested reform process.⁵⁹⁵

Political will and incentives to change the pattern of land ownership may begin to address existing imbalances. However, the entrenched interests of the property-owning classes are a significant barrier to change. The ‘Willing Buyer Willing Seller’ approach to land reform was



recently discredited for pushing land prices up artificially.⁵⁹⁶ In July 2012, bowing to significant pressure and overwhelming evidence, the government ended the 'Willing Buyer Willing Seller' approach to land reform.⁵⁹⁷ The approach had been costly and slow, with parts of the government claiming that landowners were selling land to the government at inflated prices, because the government was the only 'willing buyer'.⁵⁹⁸ This programme suffered also from corruption, fragmented land acquisition, a lack of attention to how support services were delivered, inexperienced officials approving purchases of poor quality land, and bureaucratic delays.

Gender equality

Legislation in South Africa explicitly recognises women's tenure rights, including the right to inherit and bequeath. South Africa falls short of practical day-to-day mainstreaming of gender in land policy as it does not collect sex-disaggregated data on land. Additionally, some local customary laws deny women's equal entitlement to land. The ruling ANC has an explicit policy to promote gender parity in government positions and among elected representatives. There have been gains numerically, with women's representation standing at 42.3 per cent (June 2012).⁵⁹⁹ So far, female representatives have been active on gender but continue to be weak on linking gender to land rights. The number of women ministers and deputy ministers has nearly doubled over the past 16 years, from 18 per cent 1994 to 40 per cent in 2010.⁶⁰⁰

Measures in place to regulate investment

Agriculture contributes 2.5 per cent of GDP and 9 per cent of the labour force. South Africa's export-economy is led by agricultural exports have been a long-term stable proportion of total export earnings: 54.6 per cent of total exports in 2011 and 47.7 per cent in 2001.⁶⁰¹ Sound macroeconomic policy making has not lessened inequality, which has been increasing not decreasing since the end of apartheid.⁶⁰² South Africa's economy is dependent on foreign direct investment, which was 18.4 per cent of GDP in 2011.⁶⁰³ South Africa, relative to other countries in Africa, attracts the highest amount of foreign investment and acts as an investment hub and springboard for investment going to other countries on the continent. South African investors and companies are leading intra-continental investment in Africa, and are increasingly associated with large-scale land acquisitions.⁶⁰⁴ One example of this is the South African farmers' association, Agri South Africa, which is organising a movement

of South African farmers to locations across the African continent – for example, to Congo Brazzaville, Sudan and Mozambique.⁶⁰⁵ This movement is framed as a way of harnessing South African agricultural knowledge, techniques and value chains for development across Africa – making use of 'empty land' across the continent. However, in many instances the land is not empty, but is used by pastoral communities and governed by customary tenure. Additionally, much of the land is rich in biodiversity, such as virgin forest or important ecosystems upon which local populations depend for their livelihoods.⁶⁰⁶ South African investors are listed as responsible for 10 large-scale land acquisitions according to the International Land Coalition's public land database.⁶⁰⁷

The International Land Coalition has reported three large-scale land transactions in South Africa – totalling 27,124 hectares of land.⁶⁰⁸ This relatively low amount of land grabbing can be attributed to the degree of development in the country, the high population density and the regulatory framework that effectively protects private property owners. The few land grabs in South Africa have been mostly related to the Clean Development Mechanism (CDM) projects and the growing production of biofuels, with most of the registered CDM projects in Africa located in South Africa.⁶⁰⁹

Land ownership in South Africa remains highly unequal along racial and gender lines, due to the country's apartheid legacy.⁶¹⁰ There are no exact figures, but the growth of black land ownership has increased only slightly since 1994; land ownership is still predominantly white, and, in particular, land ownership by black women remains very low. The structural, historical land inequalities need to be addressed. Land reform needs to be urgently prioritised to provide secure land tenure and guaranteed access to land for livelihoods for South Africa's rural population. Women's land rights need to be prioritised by the government and measures for securing their land rights in practice must be set up.



TANZANIA



Tanzania has one of the fastest growing urban populations in Africa. Unlike many of its neighbours, ethnic tensions have not to date characterised land management or land disputes. However, this former socialist country suffers from acute rural poverty, with 38 per cent of rural Tanzanians living in poverty and 20 per cent in extreme poverty.⁶¹¹ Governance is the most pressing challenge facing Tanzania, and this has direct implications for land management. Implementation of legislation to safeguard communities continues to be a struggle, with investors' interests outweighing community safeguards and resulting in a land system that is skewed to favour investment that is supported by political elites.⁶¹² National budget constraints and issues of transparency, mean that the government is becoming increasingly dependent on investment and hungry for investment revenue.⁶¹³ On paper, Tanzania has provisions in place for community consultation, consent and compensation, but, in practice, implementation to protect these rights is limited.⁶¹⁴ The President holds land in trust, on behalf of the citizens who have 'a right of occupancy'. Land tenure in urban centres is secured through registered right of occupancy certificates, while rural tenure is largely managed through customary tenure and certificates of customary right of occupancy.

Legislative protection for communities

Tanzania has specific laws that set out the national legal framework for land administration – the Land Act (1998) and the Village Land Act (1999).⁶¹⁵ These laws and the Constitution itself have established a centralised land framework that places huge emphasis on the President's role in the allocation, categorisation and transfer of land. It has created three categories of public land: general land, village land and reserved land. Although the Constitution, established in 1977, is largely silent on land issues, and is currently under review, the high court is active in presiding over problematic land cases, such as the Hanang Case – where pastoral communities were relocated from their land and filed a constitutional case to demand for their land to be returned.⁶¹⁶ Legislation sets out specific and clear terms of consultation and compensation in the instance of land expropriation for both titleholders and land under customary systems. As a partial measure towards implementing legislation, institutions such as the Land Commissioner's Office, the Land Allocations Committees, and the National Land Advisory Council were set up. Local government, district councils and village councils were allocated advisory roles.⁶¹⁷ The aim was to streamline land legislation administration and implementation, but what it produced was a system characterised by centralised decision making.⁶¹⁸

The central government's ability to provide oversight and ensure communities' tenure security is limited by institutional and financial challenges. Where implementation disturbs the status quo, weak political will means the policy is not put into practice. Tanzania suffers from endemic corruption and inadequate budget allocations to central and local government institutions, which undermine the implementation of legislation. In particular, Land Dispute Tribunals (established in 2002) at local level have very low case numbers and the National Land Use Commission has insufficient budget resources to undertake land surveying and carry out effective land use planning.⁶¹⁹

Gender equality

Tanzania's land legislation deals positively with some key gender issues. There are provisions for women to acquire, hold, use and deal with land under the same rules as men. Land



registration must be in the name of both spouses. In theory this should mean that land cannot be sold without the consent of both occupants. These measures aside, the land legislation opted not to tackle the underlying customary tenure system, which has some discriminatory characteristics like the denial of women's right to own or inherit land. An indication of the government's lack of focus on gender and land is that it does not collect sex-disaggregated data on land. Beyond land, there are specific policies to increase women's representation and political participation, with 30 per cent of elected representatives being female. Women representatives are potentially strong partners on land and gender issues but for the most part they are not active on land issues.⁶²⁰

The predominantly patrilineal customary system in Tanzania is biased against women's right to own and inherit land. In spite of this, customary tenure norms have evolved locally to create opportunities for women to de facto own land. For example, among the Pare in the Kilimanjaro region, upon marriage, women are given land parcels, which can be inherited by their daughters.⁶²¹ However, innovations in customary practices are also under pressure from the development of local economies within a context of customary land management. Production of coffee in this same area has led to a rise in value of land, which has had a knock-on effect for women, who receive increasingly smaller pieces of land or have their land taken from them.⁶²² Women tend to bear the brunt of such investments in the face of poor legislative implementation.⁶²³ When community consultations take place they predominantly involve men and male village elders, generally to the exclusion of women's land-related needs and legal right to own land and property.⁶²⁴

Measures in place to regulate investment

Tanzania's economy relies heavily on agriculture, which accounts for nearly a third of GDP and employs 80 per cent of the labour force.⁶²⁵ Macroeconomic stabilisation measures instituted under the current and previous governments have resulted in average annual growth of 5-7 per cent. Reduction of public expenditure, privatisation of state-owned enterprises and parastatals, and reform of the Investment Code and the taxation system have made Tanzania more attractive to investment and supported its transition to a market economy. The Tanzanian government is taking steps to support both small-scale and large-scale agriculture. The 2009 presidential initiative, Kilimo Kwanza (Agriculture First) sought to attract foreign direct investment through public private partnerships (PPPs) and to boost productivity and food security.⁶²⁶ However, without effective legislative implementation

combined with a complex customary system, large-scale land investments have been promoted that do not produce benefits for local communities.⁶²⁷

The Land Act and Village Land Act both allow for the re-classification of land from villages to state-owned land; this has facilitated the allocation of land from communities to investors.⁶²⁸ The Tanzania Investment Centre assists with the re-classification of village/public land to 'general land' – and community approval is not a formal legal requirement for areas of land over 250 hectares.⁶²⁹ There is a dispute resolution mechanism, namely the Private Sector Development Unit, within the Ministry of Agriculture, Food Security and Cooperatives, which deals with disputes between investors and communities.⁶³⁰ However, regulatory changes have meant that Tanzania does much better in terms of protecting investors (97th in the World Bank's Doing Business Index) than protecting communities' rights.⁶³¹

According to the International Land Coalition database of large-scale land acquisitions, Tanzania is one of the most targeted countries, with 41 acquisitions since 2001.⁶³² High levels of large-scale land acquisitions have been attributed to attractive investor conditions, with political elites leading or assisting with land investments, as documented by the International Land Coalition and the Land Rights Research and Resources Institution (HAKIARDHI).⁶³³ Out of these 41 large-scale land acquisitions, 37 were for agriculture – including 12 for jatropha and seven for palm oil. The top investor countries of origin are the UK, US, UAE and Netherlands.

Tanzania needs to implement its existing legislation and activate the potential of its regulation in order to protect communities' land rights and support smallholder farmers, who are the backbone of local food security. Guidelines for PPPs to promote food security and respect for consultation, consent and compensation provisions would ensure that communities capture more benefits – without these, large-scale land acquisitions will continue to undermine tenure security, food security and women's rights to access land.



UGANDA



Uganda is richly endowed with natural resources, arable land and climatic conditions that make agriculture the backbone of the local and national economy. Land in Uganda is more than just a factor of production. For 80 per cent of the population land shapes identity, provides livelihoods and enables survival by ensuring smallholder subsistence farmers' food security.⁶³⁴ This means that tenure security takes on an important role in ensuring land rights and food security for the majority of poor Ugandans. Land is also a valuable economic asset. These characteristics make land a political and contentious issue. The landmark 1995 Constitution established a multiple tenure system and made Ugandan citizens owners of the land, which the government manages on their behalf. Land can be owned under customary, freehold, leasehold or mailo systems.⁶³⁵ These four types of tenure co-exist in practice, although customary tenure has been established as the starting point of transforming to freehold through certification. Over 70 per cent of land is customary, predominantly in eastern and northern Uganda; the second largest is mailo land, common in central Uganda; freehold is the third largest; leasehold is the smallest and common in urban areas. The complex tenure

system and the way that it is locally administered means that managing land has become a serious governance challenge.⁶³⁶ Uganda has declared itself open for business with the government keen to attract investment – which privileges large-scale agro-industry and mono-crop production over smallholder farming which is depicted as unproductive, in spite of being the source of food security for most Ugandans. Within a context of weak regulatory institutions, high levels of corruption and a complex land tenure system have led to communities losing land to further the 'national interest', often without adequate consultation or compensation.⁶³⁷

Legislative protection for communities

Uganda's Constitution (1995) states that land belongs to Ugandans. It explicitly recognises alternative tenure systems that exist in practice and allows for community customs alongside statutory law.⁶³⁸ Uganda has one of the strongest land laws on paper, the Land Act (1998). It contains provisions that recognise communal ownership, provisions for women's land rights and against discrimination against women's land ownership, and provisions for consultation, consent and tenure security.⁶³⁹ However, in practice patchy implementation greatly undermines the legislation's good land governance potential. A major obstacle remains the lack of an operational land policy – this is still in draft form and has been since 2001.⁶⁴⁰

So while the Constitution provides for security of tenure, the practice is different. Under customary tenure, land is a communal resource and communities have user rights. Under the mailo, freehold, and leasehold systems user rights are based on individual ownership.⁶⁴¹ Land users on mailo have limited tenure security in practice; land title is held by a landlord, which means the land users (or tenants) are at the mercy of the landlords who use the title for collateral or sell it.⁶⁴² The law provides that tenants can acquire a certificate of occupancy through the landowner, who in many cases will resist. For communities to have tenure security under the land legislation, they must apply as individuals, families or as a community for a certificate of customary ownership.⁶⁴³ However, in practice the law has weak mechanisms for consultation with communities and for imposing penalties for not consulting. The draft land policy has a section setting out clear procedures and standards for local consultation, in the face of investments, in order to protect citizens' land rights. However, as long as this is not operational or finalised, large-scale land acquisitions continue.



The legislation's institutional framework is complex, uncoordinated and fragmented. The lead institution is the Ministry of Lands, Housing and Urban Development, which received only 0.5 per cent of the budget in 2011/12 and 0.7 per cent for 2010/11,⁶⁴⁴ an indication of low government prioritisation. Implementation thus far has been difficult to gauge, although public reports of extensive domestic land grabbing indicate that legislation is not being implemented.⁶⁴⁵

There are two institutional frameworks: formal government institutions and informal customary systems for localised land management. These operate in parallel but are often out of step with one another, leading to institutional and systemic conflicts and confusion as roles and responsibilities are not defined. The effectiveness of formal institutions is dauntingly low and varies geographically. Informal customary systems of land management and dispute resolution institutions are accessible, cheap, trusted as legitimate way of resolving land disputes, and thus fill an institutional gap at local level.⁶⁴⁶ These alternative dispute mechanisms have evolved as a response to the inaccessibility of judicial land processes for the majority, lack of adequate implementation of land laws, and a legacy of two decades of armed conflicts and internal displacements.⁶⁴⁷ However, the formal land dispute management system does not recognise the inherent difference between disputes over land held under customary tenure and other tenure regimes. Indigenous mechanisms for processing land disputes, in spite their importance and *actual* dispute resolution, get little recognition now that their role in transitional justice has largely ended.⁶⁴⁸

Implementation of legislation is held back by several interrelated factors. Coordination is lacking between and across institutions at different levels of government. The system to administer land lacks institutionalised and proper record keeping, which results in registries that hold inaccurate information, high levels of fraud that lead to public mistrust, and low levels of legitimacy.⁶⁴⁹ Extensive political patronage within institutions means there is little political will, skewed incentives and low capacity, which undermine the implementation of land laws.⁶⁵⁰ Finally, there are widespread allegations of political elites being involved in large-scale land acquisitions, either as facilitators or direct beneficiaries of the deals, using land legislation to legalise or enforce large-scale land acquisitions especially in resource-rich regions such as Bunyoro.⁶⁵¹ These structural, social and political barriers to implementation are exacerbated by low levels of local awareness by citizens of their rights, particularly their land rights.

Gender equality

The Constitution allows the community customs to be practised alongside statutory law. However, customary practices tend to discriminate against women and in their management of land access and ownership at local level.⁶⁵² In many patrilineal societies, which are common in Uganda, women are denied the right to inherit land from either their fathers or their husbands. Fathers often do not bequeath land to their daughters because daughters often marry outside the clan and take the family land to another clan. Husbands also do not bequeath land to their wives for the same reason, as they might re-marry outside the clan.⁶⁵³ This clashes with the legislation, section 27 of 1998 Land Act, which prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land.⁶⁵⁴

Nationally, there is a policy of affirmative action for women's representation – that is, reserving seats for women for all electable offices. This has increased the number of women in politics. This gender parity is in evidence at every level of representation. Unintentionally, this means women increasingly only run for these seats rather than directly competing with men. Women, including high-profile portfolios, occupy 32 per cent of ministerial positions.⁶⁵⁵

Measures in place to regulate investment

In 2011/12, agriculture accounted for 22 per cent of Uganda's GDP, down from 39.9 per cent in 2001. However, as a proportion of total exports agriculture still makes up 45 per cent.⁶⁵⁶ The government has actively pursued policies to attract investment, policies which are clearly paying off. Sustained growth and macroeconomic prudential policy, compared to its neighbours, has led to Uganda being cited as 'the development darling of the international financial institutions' and Uganda continues to be a competitive regional destination for foreign direct investment.⁶⁵⁷ According to the data compiled by the International Land Coalition, out of six large-scale land acquisitions since 2001, three have been agricultural – two were for palm oil and one for coffee; and another two were in forestry. By their countries of origin, the investors comprised one German, two Ugandan companies in partnership with a Dutch firm, one UK company in partnership with a South African firm, and one Norwegian company.⁶⁵⁸

The government sees investment as the solution to Uganda's development difficulties. However, this often means pitting human rights and community land rights against the

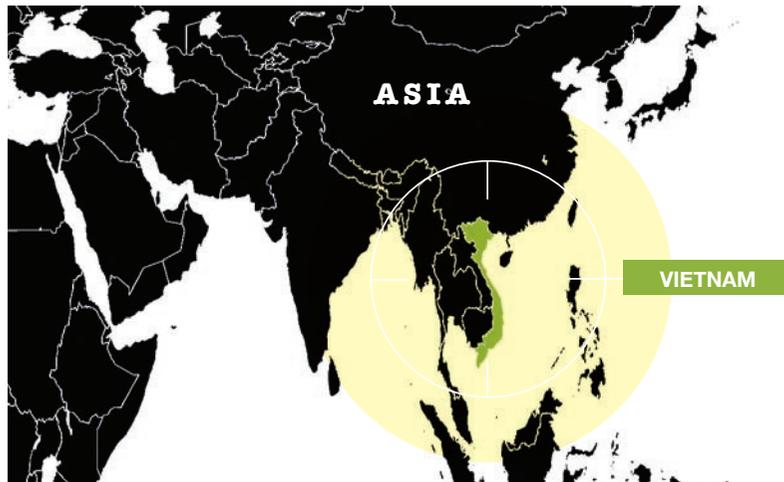


national interest, rather than engaging in dialogue to deal with the underlying issues. This practice is compounded by the criminalisation of protest, with communities who speak out being branded as anti-development and accused of undermining the government.⁶⁵⁹ Although Uganda attracts investments, the cost of a complex and often non-transparent land management system and unimplemented legislation is felt.⁶⁶⁰ The same reforms that would see Uganda pushed up the Doing Business Index could be designed in such a way as to also protect individual and community rights from large-scale land acquisitions.

Uganda's land legislation is among some of the soundest in eastern Africa. However, legislation is, more often than not, not implemented. Structures to ensure implementation at village level should be at the top of the government's list of priorities, in order to safeguard individual and community land rights.



VIETNAM



Vietnam remains a success story in southeast Asia, having achieved impressive poverty reduction figures and recently joining the ranks of middle-income countries.⁶⁶¹ Vietnam's example shows the importance of linking land certification to national development policies. In practice, land certification was a cornerstone of Vietnam's overall economic transition from a planned to a market economy reform package known as Doi Moi.⁶⁶² Land tenure reforms have been complemented by policies to enhance smallholder productivity. Apart from bringing Vietnam from a country that had severe food insecurity to one of the world's largest rice producers, the land reforms have induced a strong rural-based growth that has raised living standards and reduced the number of Vietnamese living below the poverty line. The few acquisitions lacking transparency have produced a backlash in public opinion, forcing the government to reprimand those involved and to implement legislation more effectively.⁶⁶³ The Land Law of Vietnam, enacted in 2003, reaffirmed state ownership of land as representing the land-ownership rights of all Vietnamese. Land is managed by the government; individuals, groups and companies have land-user rights. Vietnam has a well-rooted but poorly functioning land governance framework, which is increasingly undermined by corrupt practices.⁶⁶⁴

Legislative protection for communities

Land tenure in Vietnam has uniquely crucial roles in the country's history, culture, livelihoods and ways of life. Land tenure has been the focus of the historical transition that the country is still going through. Five phases of reform span over 50 years:

1. agricultural collectivisations (1954-80)
2. reforms to increase efficiency of a planned economy (1980-88)
3. the first wave of market-oriented reforms – land relocation to farm households and de-collectivisation, which placed land in the hands of smallholder family farms (1988-93)
4. building market institutions (1993-2001)
5. market reform consolidation (2001-present).⁶⁶⁵

The Constitution (1992) and the Land Law (2003) are the backbone of land policy in Vietnam. By making land into a national development priority, the political will to see through reforms has been sustained. Complementing legislation with a policy to kick start land-use rights certification has resulted in tenure of citizens' rights to use land. When placed alongside each other, legislation and policy recognise communal land-use rights ownership; equal rights for men and women in controlling and accessing land; provisions for security of tenure (of the rights to use) as well as conditions for consultation; and provisions for community consent.⁶⁶⁶ As such, on paper, Vietnam in relation to stated ActionAid priority areas, has one of the strongest on-paper land legislations.

Currently, land is owned by the state, and the state grants and officiates individuals' or families' land-use rights.⁶⁶⁷ As such, the mechanisms are in place to secure tenure while supporting rural development, for land users (as opposed to owners) through Land Use Certificates.

The Land Administration Policy has effectively supported implementation of the Land Law, securing land-use rights for most Vietnamese. In Vietnam's national socio-economic development plan, land was highlighted as an important domestic resource for many different types of investment projects, and land registration was further developed so that land-use rights and subsequent certificates could be used as an asset in the open market.⁶⁶⁸ The



effective implementation of the Land Law and land administration means that, comparatively, Vietnamese legislation protects the population from the negative impacts of large-scale land acquisition and safeguards their land rights.⁶⁶⁹ In May 2012, the government issued Decree No 42/2012/ND.CP on rice cultivation, land management and land use, which aimed to protect rice cultivation land and food security.⁶⁷⁰

Local studies show that Land Use Certificates have been particularly successful in achieving tenure security and that this security has, when combined with various forms of state support, resulted in increased local productivity. Certificates have been found to be associated with higher levels in the share of total area devoted to perennial crops and increased investment in irrigation.⁶⁷¹ In one extensively registered province, a household, on average, increased its share of cultivated land devoted to perennials, such as coffee, tea, rubber, or fruits like citrus, pineapples, bananas, and mangoes, by 5.6 per cent, compared to a household in a low-registration province.⁶⁷² However, serious corruption (combined with non-transparency) in allocation of Land Use Certificates is being felt by smallholder farmers eager to secure their tenure but without the financial means to pay for it.⁶⁷³

In spite of this strong legislative framework for safeguarding communities, Vietnam's legislation also sets out expropriation conditions for national purposes such as industrialisation and large-scale infrastructure projects. The incidence of national-level disputes over the allocation of industrial parks, alongside increasing urbanisation and the associated impacts of encroachment on smallholder farmers, demonstrates the challenges that can persist even where land reform has had marked success.⁶⁷⁴

The confluence of centralised decision making, poor transparency, and pressure from 20-year leases coming to an end in 2013, erupted into a confrontation between smallholder farmers and developers in 2012.⁶⁷⁵ The World Bank and other donors cite corruption as a serious threat to good land governance.⁶⁷⁶ The land corruption study described the process of gaining Land User Certificates as being increasingly slow, which led to corruption aimed at cutting corners to speed up the process.⁶⁷⁷ This is likely to negatively affect smallholders who cannot afford to pay, leaving them behind and vulnerable to dispossession in the rush to secure tenure. How the government of Vietnam deals with challenges in practice will establish whether measures in place are sufficient to safeguard community, smallholder and women's land rights. There are concerns about whether the suggested switch to a long-term leasehold system would actually give farmers more secure tenure.⁶⁷⁸

Gender equality

Legislation to promote equal land entitlement between men and women has had an impact. In October 2001, the government passed Decree No. 70 requiring all documents registering family assets and land-use rights to include the names of wives as well as husbands.⁶⁷⁹ But although the appropriate national policy has been passed, the General Department of Land Administration responsible for rural land titling has lacked the capacity to ensure that all provinces comply. This was initially slow to take effect, and in 2002 women accounted for only 10-12 per cent of registrations on agricultural land-use certificates.⁶⁸⁰ A survey conducted by the World Bank in 2008 indicated that women named in agricultural land certificates was 22.1 per cent in the north and 46.2 per cent in the south.⁶⁸¹

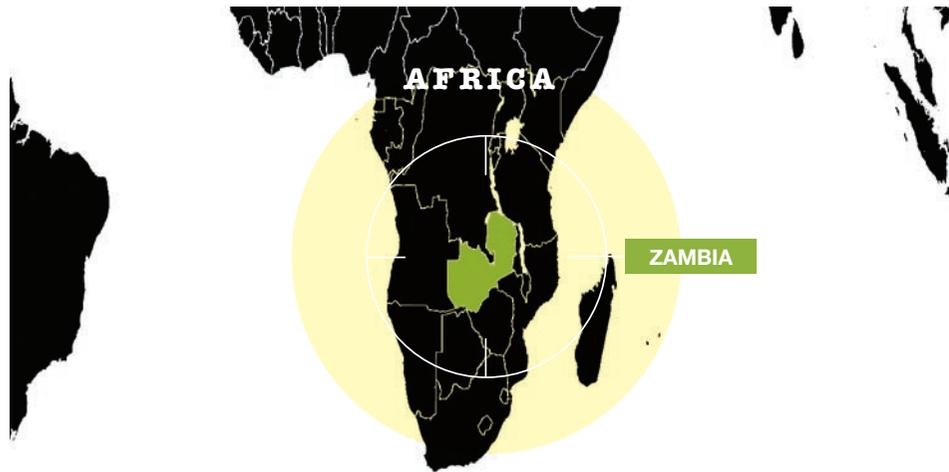
Measures in place to regulate investment

The de-collectivisation of agricultural production and improvement of land tenure security – along with the liberalising of markets and promotion of new economic incentives – played a critical role in accelerating agricultural growth, increasing food security and reducing poverty throughout the country.⁶⁸² By prioritising land as an important domestic resource for investment projects, the government recognised the importance of community and external investment for increased productivity and subsequent certificates could be used as an asset in the open market.⁶⁸³ Crucial to the land registration success was state support to foster the market and provide inputs and support to smallholder farmers. The knock-on effect of security of tenure, coupled with structured state support to fill gaps in market access, has increased agricultural productivity. But whether the government's continued interventions are sustainable in the long term is disputed.⁶⁸⁴ However, lack of transparency in the Land Use Certificate allocation process is already imposing high costs on the most impoverished farmers.

To ensure that no more corrupt land deals take place, the government needs to continue providing effective regulation and oversight over land deals in urban as much as in rural areas. This needs to be done in a transparent way, with fair benefit-sharing for smallholder farmers, should they decide to lease their land. Expropriations should not be used as a state tool to boost investment.



ZAMBIA



Zambia's combination of natural resources and political stability means it has been listed as having great development potential.⁶⁸⁵ But in spite of this potential and recent growth, Zambia continues to have high levels of poverty – it is one of few countries where the current Human Development Index ranking is lower than it was in 1970.⁶⁸⁶ However, the World Bank classifies Zambia as a middle-income country in spite of this persistent poverty. Zambia has a sparsely populated and predominantly rural population – 65 per cent of Zambians live in rural areas.⁶⁸⁷ Land in Zambia is formally owned by the state and can be divided into two legal categories: customary land tenure arrangements, meaning communal land, and privately titled land under the statutory system. The President holds state land on behalf of the population, while traditional authorities hold customary land on behalf of their communities. Our country experience suggests that approximately 64 per cent is currently held as customary land and 36 per cent is held as state land. This has changed significantly since the Land Act (1995) allowed transfer of customary land to state land in order to boost investment.⁶⁸⁸ The gradual erosion of customary land management within a context of investor interest has increased the demand

for customary land, which is already under pressure with rising numbers of people dependent on it for survival.⁶⁸⁹ Despite the fact that most land is under customary jurisdiction, there are no resources available to manage this land system.⁶⁹⁰ Tenure insecurity continues to undermine local land rights, especially for women. When considered alongside government promotion of land investment, this insecurity is not going to abate. The government needs to push for land reform and the implementation of legislation, especially with regard to customary law and women's rights to land.

Legislative protection for communities

Zambia is currently in the process of reviewing the Constitution, with the first draft published in April 2012. This new Constitution sets out significant changes from the 1964 version, which was amended repeatedly (1965, 1973, 1991 and 1996). The draft Constitution does not change underlying patterns of ownership or tenure in Zambia; it reconfirms that the President holds all state land and traditional leaders preside over customary land. The draft acknowledges the dual system of land administration in Zambia and includes compensation provisions for those who have title as well as those without, but who have acquired land lawfully. The draft Constitution establishes the underlying principles of a new land policy and mandates Parliament to draft legislation to implement and uphold these principles. It also establishes the need for a transparent land administration system to be managed through institutions such as the Land Commission, which will have provincial and district offices – as part of the Land Commission's mandate will be administration, management, monitoring of land use and land planning.⁶⁹¹

Depending on the final draft of the Constitution and the legislative timetable to enact it, land will continue to be governed by the existing legislative framework. Land governance has undergone significant changes since independence in 1964 when it was a socialist and nationalist system. The most relevant part of the current legislative framework, which creates a favourable environment for large-scale land acquisitions, is the Lands Act (1995).⁶⁹² This Act eased investors' access to Zambia and transformed land governance through market-based reforms that, among other things, enabled the conversion of customary land to state land.⁶⁹³



The Act also recognised the role of customary leadership as community representatives in the process of land alienation (conversion of customary to statutory land). Community consent is required for acquisitions to be legally compliant, but there is little enforcement of this provision. There have been numerous cases of land alienation without consultation, brokered by traditional leadership.⁶⁹⁴

Apart from the Ministry of Lands there is no clear institutional framework at national level. This ministry remains heavily centralised and bureaucratic. In 2007 there was a ministerial overhaul in the face of persistent allegations of corruption, which led to the prosecution of the then Lands Minister.⁶⁹⁵

The nature of national land administration has de facto placed more administrative responsibility at sub-national and local levels through district councils and traditional leaders. National and local government bodies are responsible for implementation. The Land and Environment Parliamentary Committee established in 2008 has been active in drafting the Constitution, although in practice, in terms of setting the agenda more broadly on land policy, it has limited clout. This may change under the new Constitution, but in general institutional decisions are made at national level and implemented by sub-national government.⁶⁹⁶

Gender equality

The 1964 Constitution and its later amendments made no provision for women's rights to land. This is something that the draft Constitution is setting out to reverse. The draft includes extensive provisions for promoting women's rights generally and women's rights to land. In terms of land access and ownership, the two crucial areas are marriage and inheritance – both are included under Article 51.5, which prohibits “any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men”.⁶⁹⁷ However, this is unlikely to result in a change of thinking on women within customary settings unless there are mechanisms for engaging with customary practices and policy to back up implementation. The new Constitution would recognise customary land as vested in traditional leaders.

Land tribunals exist, but they hold sessions on an ad hoc basis. The Land Act recognises women's rights to land but asserts the importance of customary law in communities, thereby making women's access to land difficult and often unattainable in practice.⁶⁹⁸ Additional

challenges emanate from the legal framework being unable to secure tenure for the most marginalised in Zambian society – those who most depend on land for survival.⁶⁹⁹

Customary law is not codified and is therefore open to misinterpretation. Customary norms are not homogenous – some communities practise matrilineal inheritance while others prevent women inheriting land. In terms of access to land and tenure insecurity, at local level, widows and female orphans are currently the groups most discriminated against. The Social Institutions and Gender Index cites a survey that shows 15 per cent of widows in 2006 were married to a relation of the deceased to ensure land stayed in the family; they were also subject to property grabs by the deceased's family.⁷⁰⁰ The Land Act is indicative of Zambia's contradictory approach to women's land rights; it provides for women to own land, but also allows for customary laws to dictate land ownership. Women generally lack control over land but may have access and user rights.⁷⁰¹ The National Gender Policy (2000), which attempted to allocate 30 per cent of all available land to women, is variably implemented and not monitored.

Political representation is limited in Zambia – women make up just 11 per cent of MPs and only nine per cent of councillors. The new Cabinet has four women ministers and six deputy ministers are women, a few of whom are quite active on gender but not on land. Some Village Allocation Committees have successfully distributed more than the 30 per cent threshold of land to women and are putting female representatives in local traditional dispute resolution councils.⁷⁰² These examples show that customary practices are not static, but evolve in response to local and national situations.

Measures in place to regulate investment

After receiving debt reduction packages facilitated through the World Bank in 2006, Zambia's prospects have become more promising. Prudent economic management, coupled with growth in the mining and telecommunications sectors, has resulted in almost a decade of GDP growth. While agriculture was worth 21.5 per cent of GDP in 2011, Zambia is still reliant on copper export earnings. The government established its Vision 2030 strategy in 2006, in which agricultural investment figures prominently and which sets out the means by which Zambia will incentivise and facilitate investment.⁷⁰³ Zambia has taken an innovative approach to promoting national investment through farm block development programmes, due to be completed by 2015. These are eight farm blocks of 967,150 hectares that will be made available for allocation through a competitive process.⁷⁰⁴ The government provides



the necessary infrastructure for the farm block and private investors then bid on a core venture of several large farms and many smaller commercial farms.⁷⁰⁵ Mandatory Environmental Impact Assessments and protection for traditional land users serve as de facto regulation of agricultural investment. The Land Act continues to be the driving force for converting land from customary to state land, at the expense of customary rights.⁷⁰⁶ The Land Act supersedes customary law in the case of disputes, easing restrictions on foreign ownership of land.⁷⁰⁷

A study commissioned by the World Bank states that Zambia's weak land governance system has insufficient checks and balances, which attracts investors who often do not meet basic legal compliance levels. In turn, investors have produced changes in the land governance system that benefits investors over communities.⁷⁰⁸ The Constitution drafting process could usefully start a national debate on land governance. But constitutional provisions alone are not enough – mechanisms for implementation, monitoring and evaluation, as well as measures for enforcement, must be established as part of the new legislative framework to ensure implementation.



Glossary

Acquisition

A process of getting full land ownership rights through purchase, donation, and exchange. In some countries it can also mean the process of getting full land ownership for public purposes i.e. by local or national government.

Agro-industrial products

Products produced through a highly technical or heavily mechanised process. (Often with the use of pesticides or specialist breeding or genetically modification techniques.) E.g. cut flowers for export; genetically modified crops; crops that are farmed using high levels of machinery and pesticides.

Biofuels

Biofuel is fuel that is derived from natural and renewable sources, in this instance the biofuels we mean are fuels derived from food and non-food crops such as from sugar cane (ethanol); palm plants (palm oil); and jatropha plants (jatropha) – see below.

Compensation

Something, normally money awarded to someone or a group to make up for loss, injury or suffering. Compensation can be in the form of money but in the instance of land loss it can be allocation of land to replace what was lost – in kind. The key issue here is whether the compensation in kind – has same soil fertility, productive capacity, water access, size, etc as the land which was lost.

Concession

A grant of land (or property), often awarded by a government in return, making the use of a tract of land profitable (this could be agriculture, farming, mining etc). This is often in the form of a lease between a company and government.

Consultation

To ask someone or a group's opinion on a development that is likely to impact on their livelihood, way of life or environmental surroundings. Consultation should take place before the activity starts and it should be done in an informed way, providing the community with as much information as possible on the potential impacts of the activity.

Customary land tenure

Customary land is land that is owned by indigenous communities and governed and administered according to their customs.

Contract or casual labour

Casual labour is when someone is employed on a daily basis and is not guaranteed work every day – they normally receive lower wages and no benefits. Contract labour is employment where a contract, a piece of paper stating names, job, payment and length of time the person will be in employment. In theory, contract workers should get benefits and receive a salary on a weekly or monthly basis.

Ethanol

Is derived from sugar cane, sugar beet or sugar itself. It is an alcohol that is one of the ingredients for creating bioethanol which can be used as a fuel – it is classified as a biofuel.

Food Security

All people, at all times, have both physical and economic access to the basic food that they need .

Inherit

Receive money, property, land or title as an heir upon the death of a previous holder of that money, property, land or title.



Jatropha

Is a set of plants, bushes and trees whose seeds can be used to produce jatropha oil – an ingredient of a type of biofuel.

Land Grabbing

Land acquisitions or concessions that are one or more of the following:

(i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation.

Land Rights

Land rights are the rights of citizens to occupy and use land and the associated water and other resources to support their livelihoods. Governments are responsible for ensuring these rights for women, pastoralists, smallholder farmers, agricultural workers, fisherfolk and all others whose livelihoods and well-being are dependent on the land. It is not enough to respect “existing rights,” for the laws and governmental practices in many countries do not reflect needs and realities of many people, particularly those whose claims on land are “informal” or “customary.” Additionally, Women’s Equal Rights to Land should be recognised: National laws must explicitly forbid gender-based discrimination in matters of ownership, tenancy, or control of land.

Land title

Land title is a legal document conveying title to a property/piece of land. It is a record (recorded usually with a government agency or department) that provides evidence of title, makes land transactions easier and is meant to prevent unlawful disposal.

Land Transfer

A land transfer is the transfer of land from one individual to another - a written deed signed by both parties is needed for the transfer to be legal.

Moratorium

A delay or suspension of investments in land for an agreed period of time, authorised by the government and imposed by legislation or through policy. Within the context of land grabbing moratoriums can (and do) serve numerous purposes. They have been used as a temporary measure to halt land acquisitions whilst proper planning, consultation, and impact assessment take place; or so that effective legislation can be nationally debated, formulated, implemented and monitored. In practice they can give governments breathing space to formulate policy proactively that should protect communities tenure and food security and womens’ right to land. Moratoriums can be by sector, land investment type, or on a national basis.

Private land tenure

Private land tenure systems are based on the right of individuals to own private land or the right of individuals to use land through a land rental agreement. (As opposed to customary land tenure, where the community owns land).

Subsistence

Maintaining oneself or ones family at the level of the bare minimum – in the context of farming, this means producing only enough crops to feed a family and not have any left over to sell.

Tenure systems

A tenure system is the basis on which the rights to occupy, use and benefit from land are held, for example by permission, by lease, by private or communal ownership. The tenure system also determines who has or who can get these rights. More than one tenure type can exist in any given tenure system, e.g. the coexistence of private and customary tenure.



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ActionAid is a partnership between people in rich and poor countries, dedicated to ending poverty and injustice. We work with people all over the world to fight hunger and disease, seek justice and education for women, hold companies and governments accountable, and cope with emergencies in over 40 countries.

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