International Seminar

Land Tenure and Policy Issues in Land Use Planning
Land Tenure and Policy Issues in Land Use Planning
with special reference to Southern and Eastern Africa

Proceedings of the International Seminar on
Land Tenure and Policy Issues in Land Use Planning
held 1998 from August 17 to 28 at Zschorntau and Berlin, Germany

Michael Kirk, Ulrich Löffler and Thomas Petermann (editors)
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Not included within this document:  
Annex 1: List of Participants, DSE-Team and Resource Persons  
Annex 2: Participants Papers  
Annex 3: Land Development Instruments
The seminar brought together 21 professionals who are involved in land policy, land administration and planning for sustainable land management mainly in rural areas. They are agronomists, economists, environmentalists, foresters, or land use and natural resource planners. They are senior officers from governmental institutions in Botswana, Ethiopia, Kenya, Namibia, South Africa, Tanzania and Zimbabwe.

This documentation is a record of activities and insights gained during the seminar. It is the direct result of an interchange of experiences, stimulating discussions and the presentation of concepts, drawn by the seminar participants together with the team of resource persons and facilitators.

This documentation consists of two parts:

**Part A: Seminar Documentation**

**Part B: Participants Papers** - collection of case studies prepared by the participants.
### Agenda of the Seminar

1. **Introduction and Keynotes**  
   - Monday

2. **Concepts and Experiences:** Participant’s Case Studies  
   - Tuesday-Thursday

3. **Analysis and Evaluation of Political and Legal Framework**  
   - Friday

4. **Instruments for Action:**
   4.1 Land Policy  
   - Sunday
   4.2 Land Administration  
   - Monday
   4.3 Land Development and Land Consolidation  
   - Tuesday

Technical tour: ZALF Müncheberg (near Berlin): Agrarian structural reforms and development planning in East Germany  
- Wednesday

5. **Institutional Preconditions:**  
   - Thursday
   5.1 Actors / Stakeholders
   5.2 Conflicts and Conflict resolution

6. **Synthesis:** General and Country Action Plans  
   - Friday
   Conclusions and Future Perspectives

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David Onkagetse Modisagape and Masego Mphathi (Botswana), Nurhussien Taha Ibrahim, Kidane Mengistu and Dessalegne Mesfin (Ethiopia), Charles Juma Mbara (Kenya), Ms. Khahliso Matsepe and Makalo Theko (Lesotho), Samuel Kapiye and Jesaja Seth Kohima (Namibia), Mkhacani Sammy Mhinga, Sheriff Linda Molefe, Letebele M. B. Sebitloane, and Sipho M.D. Sibanda (South Africa), Gasper Cleophas Ashimogo, Deusdedit Kalenzi, Wilbard Jackson Kombe, and Sigiti D. T. R. Mayeye (Tanzania), Solomon Mombeshora, Moses D. Munemo and Felix Murindagomo (Zimbabwe)
In this chapter:

⇒ 1.1 Welcome Address by the DSE: Introduction to the DSE

⇒ 1.2 Introduction to the seminar: Background, DSE seminar 1981, Role of integrated LUP, New LUP approaches. Seminar agenda and objectives

⇒ 1.3 Participants introduction. Expectations

⇒ 1.4 Keynotes: Michael Kirk: Land tenure and policy issues

Willi Zimmermann: Land tenure issues in development co-operation

Introduction to the DSE

Dr. Thomas Petermann, DSE programme officer in the fields of land use planning and watershed management, introduced the participants to the structure of German Development Co-operation and he explained the mandate and organisation of the DSE. For more details see last page of this documentation (DSE in Brief).
1.2 Introduction to the seminar

Dr. Petermann introduced the participants to the conceptional background of this DSE seminar which complements the following training courses and seminars, conducted since 1994 in the fields of Land Use Planning for rural development or for protected areas systems planning with special emphasis on African conditions.

1994
TK. Land use planning for protected areas and buffer zone development. Zschortau. 3 weeks. 21 participants from Asia and Africa.
TK. Land use planning for rural development. Methods and procedures at national and provincial level. Zschortau. 5 weeks. 26 participants from Africa and Asia.

1995
Land use planning for protected areas and buffer zone development. Zschortau. 4 weeks. 25 participants from Asia and Africa.
TK. Land use planning for rural development. Methods and procedures at national and provincial level. Zschortau. 5 weeks. 27 participants from Africa and Asia.
TK. Community based land use planning for rural development. Masvingo/Zimbabwe. 3 weeks. 28 participants from Africa. Partners: Agritex Masvingo, IRDEP and Zimtrust.

1996
TK. Land use planning for protected areas and buffer zone development. Peru. 4 weeks. 30 participants from Latin America.
TK. Land use planning for rural development. Methods and procedures at national and provincial level. Zschortau. 5 weeks. 28 participants from Africa and Asia.
SE. Land use planning for conflict management in protected areas and buffer zones. Krüger National Park/South Africa. 2 weeks. 26 participants from South Africa. Partners: Dep. Land Affairs, Rural Development Programme and LISTRA (GTZ).
TK. Community based land use planning for rural development. Masvingo/Zimbabwe. 4 weeks. 27 participants from Africa. Partners: Agritex Masvingo, IRDEP (GTZ), Zimtrust.

1997
SE. Buffer zone development - involvement of local people in resources management. Buea/Cameroon. 2 weeks. 33 participants from Africa. Partner: Mt Cameroon Project (GTZ)
TK. Community based land use planning for rural development. Masvingo/Zimbabwe. 4 weeks. 27 participants from Africa. Partners: Agritex Masvingo, IRDEP (GTZ), Zimtrust.

1998
SE. Land use planning for protected areas systems. Ganzekraal-Cape Town/South Africa. 2 weeks. 25 participants from South Africa. Partner: DLA, Transform and Rural Development Programme (GTZ).
TK. Land use planning for rural development. Methods and procedures at national and provincial level. Zschortau. 5 weeks. 26 participants from Africa and Asia.

Background

Land is the basis of human society because it provides food, water, energy, clothing and shelter. Land resources, however, are finite and becoming scarce in Africa and elsewhere. Problems of inappropriate land uses, population growth, over-exploitation of natural assets and environmental degradation are complex and long-term. They are exacerbated by their linkage with poverty, inequality and social conflicts because many people have inadequate access to land or to the benefits from its use. It is commonly agreed that tenure of land - and land policy in a broader context - is a fundamental variable in agrarian and rural development. Land tenure insecurity, associated with local political conflicts and gender inequality, for example can be a key factor in land degradation (The World Bank, Agenda 21, FAO).

In recent times, the land policy issues has assumed a new urgency in political and economic discourse in Africa and elsewhere. Many structural adjustment packages which have
included a rural sector component, demanded that reform of tenure be undertaken along with other changes. More precisely, many countries try to reorganise their property regimes to:

- permit the acquisition of exclusive and individually vested land rights and other natural resources rights,
- reduce state control over land delivery and administration,
- encourage the growth of robust land markets,
- free product markets from state regulations.

As a result, many African (and eastern European) countries have put in process expensive and deeply surgical tenure reform programmes desired to convert traditional and modern state regimes into individual and exclusively held holdings. Evidence from many countries suggests that the question as to what land tenure regime is appropriate is not that easy to resolve.

Especially those issues related to the role of the state, the nature of tenure security and the resilience of common property regimes are under debate, they require further land policy development if the nexus between tenure and sustainable natural resources management can be fully established. Sustainable management is one of the overall objectives in land use planning. It would also include efficiency in production and productivity, and equity among and between generations. It is doubtful whether a land tenure regime established under the new economic liberalism can advance those overall goals. What is required is probably a land regime that answers to a number of characteristics:

- relative simplicity in terms of access and transfer of resources,
- clarity as regards the bundle of rights confers,
- sensitivity to variations in culture and ecology,
- flexibility in the context of new and changing agricultural technology,
- accommodation of public interest in the domain of property without compromising private or community rights therein.

These characteristics are not necessarily evident in any particular regime. The design of new land tenure regimes and accompanying land reform programmes will require greater creativity than a simple conversion process. This is the primary challenge facing natural resources management (land use planning) in contemporary African development.

Legal and institutional conditions and especially the assessment of land policy and land tenure regimes are now integrated in the curricula of all DSE programmes in the fields of land use planning and watershed management. This seminar is designed on the basis of these experiences as well as the findings of applied research undertaken by the GTZ working group “Land tenure in development co-operation”.

It tries to answer fundamental questions related to land tenure and its relation to sustainable resources management:

- Does any particular tenure regime best serves the interests of optimum resource management?
- What regime should form the basis of development in particular circumstances?
- What requires African countries to re-organise their property regimes?

Introduction

DSE Seminar on land tenure and rural development (1981)

In 1981, the DSE conducted a workshop on land tenure aspects and their impact on rural development and vice-versa. Some major findings are summarised hereunder:

Sustainable rural development aims at fulfilling all of the following tasks:

- increasing production and productivity
- producing food for self supply and the market
- securing employment and income
- maintaining cultural identity and social security system
- maintaining ecological functions of land.

Some basic principles and definitions:

- Land rights (ownership) is a key aspect of agrarian structure and of similar importance than labour organisation, social structure and land management.
- Land tenure, in the context of a project, can be seen from two sides:
  - land tenure is part of institutional/political framework conditions
  - land tenure reform is an instrument to introduce change
- In Africa, land right is heterogeneous: autochthonous vs. modern vs. mixed forms
- Land right in Africa consists of two legal dimensions: right of use and right of control.

The discussion focused on the following issues:

- Autochthonous land rights are not necessarily in contrast to the goals of sustainable rural development.
- Autochthonous land rights have potential for changes to contribute to rural development.
- The analyses of land right in the context of a project should consider:
  - autochthonous (traditional) forms
  - formal changes (dynamic aspects)
  - right of control vs. right of access or right of use
  - changes in the cultural/social valuation systems regarding land right
- Federal, decentralised systems of land right (tenure system) can be advisable in a cultural and social heterogeneous situation.
- Strategy of little interference in existing land tenure is preferred to radical changes.

Role of integrated land use planning

In the face of scarcity of resources and increasing conflicts over land uses, the role of integrated land use planning for sustainable management of natural resources, i.e. development cum conservation becomes evident:

- to systematically examine current and future land use systems;
- to determine the natural resources assets and the carrying capacity of ecosystems for various land uses and considering changing demands;
- to assess physical, social and economic development factors including institutional and political framework conditions;
- to specify management standards and inputs for different land use types;
- to identify land use options, assessing their potential benefits and risks in ecological, social and economic terms, and thereby contributing to the resolution of conflicts over usage claims;
- to co-ordinate the work of sectoral agencies related to land use.
Land use planning is often misunderstood as being a process where planners from national or provincial institutions tell people what to do. Modern concepts of land use planning, however, promote an iterative, flexible and incremental process which aims to encourage and assist land users in selecting land use options that increase productivity, are sustainable and meet the needs of society. Such a process can only be successfully implemented if all actors are effectively participating in land use planning and if self-help potentials of land users are fully exploited. Important aspects which need to be analysed in land use planning are:

- Goals and focus of land use planning at different planning levels;
- Methods and tools and their use at different planning levels;
- Common steps in land use planning process;
- People (land users, stakeholders, gender issues) and their interests in natural resources management;
- What are the important legal, political, economic and socio-cultural conditions for successful implementation of land use plans?
- How to co-ordinate the work of sectoral agencies related to land use and land tenure?

One of the overall objectives of land use planning is to make the best use of limited land resources. This means, to match land potentials and land uses in the most rational way possible, so as to maximise sustainable production and to satisfy the diverse needs of society while at the same time conserving fragile ecosystems and the genetic heritage.

⇒ In summary, land use planning is an instrument for sustainable use and conservation of natural resources.

⇒ Land use planning policy objectives can be:
  - improvement of rural livelihood,
  - matching the demand for agricultural products,
  - conservation of resource base (biodiversity conservation in a broad sense).

⇒ Land use planning is a multi-sectoral process:
  - Land use planning goes beyond sector-specific approaches, although technical approaches (natural resources surveys, land evaluation, farming systems analysis, etc.) are the basis for land use planning, planning should be seen as a social process, i.e. a continued political discourse involving all actors that have an influence on, or depend upon resources use at local level.
  - Its focus is on local setting: ecological, social/cultural and economic conditions.

⇒ Specialist working at local level have a key role:
  - Enhancing local competence for decision making and action,
  - promoting local knowledge and considering local concerns,
  - developing and conveying information about local options,
  - decentralised and site-specific education and training.

Land use planning, thereby, supplements other instruments to promote sustainable natural resources development such as

⇒ international policy guidelines, treaties, conventions, etc. There are three policy guidelines which provide the conceptional background on sustainable natural resources management and the land use policy needed for implementation:
New land use planning approaches

In traditional top-down planning approaches government agencies identify problems, formulate the response and develop action programmes and projects. Land users adopt the government plan. However, land use planning is now understood as a decision-making process that facilitates the allocation of land (soil, water, fauna and flora) to the uses that provide the greatest sustainable benefit to a variety of local users and in line with provincial and national development strategies. Traditional land use planning follows a top-down approach, where government identifies problems, formulates the response and develops action programmes and implementation projects. Local people adopt the government plan. However, many of such land use plans are not implemented, because they do not reflect the needs, potentials and limitations at the local level.

⇒ Need for Action. Why?
* Most serious problems are not technical but institutional.
* Sector policies give rise to separate and often competing projects/programmes.
* Failure to implement an integrated planning system.
* Hierarchical institutional structures; divided responsibilities.
* Failure to communicate and collaboration between disciplines.
* Failure to involve land users (‘perceived problems’).
* Failure to address all of the relevant issues (complex farming household systems).
* Inability to integrate dissimilar factors (social, economic, environmental, political).

⇒ Issues in new land use planning are:
* stakeholder identification and involvement,
* identification of factors controlling agricultural/forest production,
* factors affecting sustainability,
* mechanism for conflict management,
* rules for planning procedures,
* empowerment of the institutional structure for implementation,
* training and awareness creation.

⇒ Elements of a participatory and iterative process of LUP are (selection):
* involving local people in resource management,
* integrated institutional approach,
* strengthening information systems for decision-making,
* improved analysis of land related issues to support decision making,
* strengthening monitoring and evaluation.
Seminar agenda

7. Introduction and Keynotes  
Monday

8. Concepts and Experiences: Participant’s Case Studies  
Tuesday-Thursday

Friday

10. Instruments for Action:
    4.1 Land Policy  
Sunday
    4.2 Land Administration  
Monday
    4.3 Land Development and Land Consolidation  
Tuesday

Technical tour: ZALF Müncheberg (near Berlin): Agrarian structural reforms and development planning in East Germany  
Wednesday

11. Institutional Preconditions:
    5.1 Actors / Stakeholders  
Thursday
    5.2 Conflicts and Conflict resolution

Friday
Conclusions and Future Perspectives

Seminar objectives

General objectives:
Participants are ...
- sensitised for land tenure problems and options.
- familiar with the development of land policy instruments which contributes to the sustainable use of natural resources.

Specific objectives:
Participants...
- share country-specific concepts and experiences in land tenure and policy issues which are related to land use planning.
- agree upon definitions, scope and objectives of fundamental terms regarding agrarian structure, land policy, land tenure systems, etc.
- analyse and evaluate legal and institutional framework conditions and their direct and indirect impacts on sustainable land use.
- identify legal, institutional and technical land policy instruments.
- compare various concepts of land policy in the context of case studies between Africa and Germany (especially land reform, restitution, etc.).
- analyse and identify actors and decision-makers in the process of land policy for sustainable use of natural resources.
- prepare process oriented action plans.
1.3 Participants’ Introduction

In order to get to know each other, participants introduced each other in the plenary:

The 21 participants are working at the following levels:

- 6 at national,
- 9 at provincial/regional,
- 7 at district/divisional/local level and,
- 4 at universities

13 are from the agricultural sector, 4 from forestry, 2 from livestock, 6 from natural resources management.

Who is who?

<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
<th>Institution</th>
<th>Position</th>
<th>Professional background</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana</td>
<td>Masego Mphathi</td>
<td>Department of Crop Production and Forestry (Ministry of Agriculture)</td>
<td>Head of Division of Land Utilisation, CLUO</td>
<td>Agricultural engineer, LUP</td>
</tr>
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<td>Botswana</td>
<td>David Onkagetse Modisagape</td>
<td>Ghanzi Land Board</td>
<td>Land Board Secretary</td>
<td>Forestry</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Nurhussien-Taha Ibrahim</td>
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<td>Soil science</td>
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<tr>
<td>Ethiopia</td>
<td>Dessalegne Mesfin</td>
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<td>Environmental Policy and Legislation Analyst</td>
<td>Lawyer</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Kidane Mengistu</td>
<td>Ministry of Agriculture</td>
<td>Head, Forestry and Wildlife Department, Senior Forestry Expert</td>
<td>Forester</td>
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<tr>
<td>Kenya</td>
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<td>Commissioner of Lands</td>
<td>Environmental planning</td>
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<td>Director</td>
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<td>Director, Directorate of Land Reform</td>
<td>Land tenure specialist</td>
</tr>
</tbody>
</table>
Participants expectations

The participants expressed their personal expectations in three tasks:

**Task 1: Specify one topic to learn from African Countries**

- To share experiences and learn from other countries
- Traditional tenure system preservation and the emphasis given to it

**Diversity in land tenure systems**

- Diversity of African land holding Systems
- Land Tenure Regimes
- Land Size Determination
- Relationship between the State and traditions in Land
- Solutions on communal tenure

**Nexus: land tenure and land use planning**

- Comparative potential of Land tenure and Land Use Planning Systems
- Institutional Framework for Land Use Planning
- Land Tenure and Soil Conservation
- Institutional Frameworks and Land Tenure Reforms
- Land Tenure Effects on Land Use

**Land Policy: options, framework, instruments**

- Land Policy Formulation
- Land Tenure, Land Administration and Land Reform
- Land Development and Legislation
Land conflicts and co-ordination in land policy

- Co-ordination in various Sectors as pertain in other African Countries
- Causes of Land Disputes

Task 2: Specify one topic to learn from German Experience

- Re-Adjustment Programs in the Land Development of the former GDR
- Challenges of Transforming the former socialist Land Management System in East Germany to a Market System
- Institutional Support for Land Reform
- Land Consolidation in former GDR
- The way adopted to Reform the Tenure System of Eastern Germany to conform with Privatisation
- Land Reform Implementation Strategies
- Land Tenure Reforms in Germany
- Land Tenure Systems and Reform in former GDR
- The way adopted to Reform the Tenure System of Eastern Germany to conform with Privatisation
- Land Reform Implementation Strategies
- Land Tenure Reforms in Germany
- Conflict Resolution Mechanisms
- What Germans choose to share with us
- Land Division Options
- Land Development and Consolidation
- Seminar Organisation
- Land and Natural Resource Tenure System
- What is behind a successful Land Tenure System?
- To learn about present Land tenure System
- Clarity on State Land Administration
- Land Development Issues and Legislation

Task 3: Name your general expectations regarding the seminar

- International Experience
- Constructive comments on my paper
- Papers to be published in an edited volume
- Preconditions of successful and effective Land Tenure and Land Use Planning
- To expand my knowledge on Land Issues
- How to design and develop implementation strategies for a Land Use Planning
- To have a better understanding of Land Tenure and Land Use Planning
- Policy development
- Guidelines for Land Natural Resource Policy Formulation
- Land Use Management:
  - Methodologies
  - Implementations
  - Regulations
- Methods and Models for effective Land Use Planning
- Technical Assistance in addressing Land Use Issues
- Collaborations in Division Programs in Land Division Resources
- Clarity on Land Administration
- Establish networking
- Share experiences
1.4 Keynotes

Keynote by Prof. Dr. Michael Kirk: Land tenure and policy issues

Land Tenure (Systems)
1. Why does land tenure matter more than ever? Regional hot spots, global trends
2. From land tenure to resource tenure
3. Functioning land/resource tenure systems: a fundamental framework condition for development
4. Models and concepts: the social construction of land
5. Property regimes in land: a socio-economic analysis

Land Policy
1. Models and objectives of land policy
2. Land policy instruments
   - Instruments for land administration
   - Land development instruments
   - Instruments for the implementation of Agrarian Reforms
   - Possibilities for conflict resolution
3. Land policy in a wider policy context.

Land Tenure definition

It cannot be too strongly emphasised that land tenure is a relation of human beings, individuals, and groups to the soil which they cultivate and use. This relation, on the one hand, transforms the land: human beings subordinate it, classify and apportion it, surround it with legal ideas, with sentiments, with mythological beliefs. On the other hand, their very relation to the soil makes human beings live in families, work in village communities, produce in teams, become organised by a common belief and common ritual of a magical character. Thus the discipline of land tenure must deal with sociology, as much as topographical details; above all it must constantly refer to economic activities. Since possession of tenure means also security of tenure and titles, it is necessary to dive deeply into historical tradition and mythological foundations.
(From: Malinowski 1935: 316 (Anthropologist from Poland/England, research in Oceania and Africa))

1. Why does land tenure matter? Global trends

- increasing scarcity of land, further land degradation and conflicts between different user groups
- agricultural production does not cope with increasing food demand due to land tenure problems
- unplanned changes in land use patterns due to industrialisation and urbanisation
- lack of investment to increase soil productivity due to legal uncertainty to reap the fruits
Introduction

- pressure on communal property due to government intervention, population growth, migration, individualisation of land rights
- discrimination of women’s usufructuary rights and access to land
- unequal distribution of resource ownerships increases the extent of poverty
- loss of social security based on land in agrarian societies
- waning interest in agriculture: „from access to land to access to income“
- governments are often overtaxed with land and agrarian reforms: == state failure
- inadequacy of formal legal institutions dealing with land: implementation problems
- shortage of functional land and rental markets

Asia:

Will land tenure regimes cope with the ongoing rapid socio-economic change?

- Redistributive land reforms have proved to be a cornerstone of the economic success stories of Taiwan and Korea ("Asian tigers"), creating immense environmental problems which are rarely taken into account.
- Uncompleted land reforms (e.g. Philippines) in contrast are still a ticking time bomb with social tensions and ongoing resource plundering in restricted military areas.
- Under demographic pressure, landlord-tenant relationships will persist for millions of peasants (e.g. India) and still wait to be improved.
- Tenure insecurity continues with few incentives for long-term investment for sustainable land use and active resource protection.
- private ownership of registered land is by no means a panacea for sustainable land management, as far as customary rights, decentralisation and local co-operation are not taken into due consideration (e.g. Thailand, Indonesia, Cambodia, Laos).

New threats for sustainable agricultural and rural development are predictable:

- resource conflicts between winners and losers of the second, biotechnological Green Revolution;
- coping with the dramatic conversion of land, land grabbing and the new competition about its best use;
- securing long-term investments and soil protection if no longer "access to land" but "access to income" is the future demand of the younger generation.

Latin America:

The cemented land distribution as a ticking social & environmental bomb

- The extremely unequal distribution of land, ongoing squatterings and environmental destruction by smallholders persist after the failures of land reforms.
- The neo-liberal miracle to give the masses access to land via viable land markets, as an excuse for not investing in the rural poor and to defuse the land question, did not occur.
- Accordingly, the rebellion of marginal groups is entering a new, militant phase (Mexico, Brazil).
- If recent trends of rainforest conversion due to settlement into "open spaces" persist as a valve for an unjust land distribution, ecological degradation, diminishing biodiversity
further global climatic change are most likely.

- Who cares about this externality which is rooted in land tenure problems in the international debate?

Africa:

Sustainable land tenure and land management with or better without the state?

- The global land tenure crisis has already reached Africa, with increasing landlessness, insecure tenancy, eviction of squatters and alarmingly violent local and regional conflicts (Ghana) up to civil wars (Rwanda) which are-at least partly-rooted in conflicts over land.
- Almost all governments completely failed to establish functioning land tenure systems for all citizens (men and women, agriculturists and pastoralists, old and young generation), as they still ignore the enriching interrelationship of customary and statutory law for sustainable land use.
- followed a hot-cold treatment between quasi-feudal, socialist and capitalistic experiments based on imported blue prints with short-term sighted land use patterns, over-utilisation of land and land degradation.
- allowed corruption and land grabbing by autochthonous and "modern" elites.
- What is necessary besides participatory local legislation and land use planning at different levels, to establish autonomous regional, national and transnational models for sustainable and flexible land tenure regimes and land management systems (agro-pastoralism, agro-forestry-systems, etc.)?
- What are the tenure conditions of success for sustainable agricultural and rural development after years of structural adjustment, state divestiture (e.g. Benin) and even transformation processes (Ethiopia, Mozambique)?

Countries in transformation:

Private land ownership as the silver bullet for sustainable land management?

- State divestiture in transformation countries leads to a phase of institutional vacuum, since the empowerment of local land users is difficult to implement (e.g. Uzbekistan, Laos).
- Those who are directly affected by transformation question more than external advisors whether private ownership is the silver bullet to trigger off access to credit, investment and resource-preserving production (e.g. former Sowjet Union).
- Do we know enough and make use of the socio-economic, religious and ethical roots of common property systems, e.g. in Russia?
- What are the viable perspectives or alternatives for new forms of autonomous co-operation (future of co-operatives?) and for family farms to earn their living and to produce in an environmentally sound way?

Industrialised countries:

About the sanctity of private property and impited environmental costs

- In industrialised countries private property is said to constitute democracy, individual freedom and flourishing markets. But is this sufficient for sustainable resource utilization?
- Do countries such as Germany follow the constitutional demand for "social responsibility of property" (§ 14,2 German Basic Law) with regard to land?
- The presumption of an absolute right to produce food creates an open-ended agricultural policy in which the state has become a captive of the sanctity of private
rights in land as it wrings out an **extensive financial obligation** to avoid burdening the environment.

2. **From land tenure to resource tenure**

- population pressure, commercialisation of agriculture and other factors have not only increased the demand for cropland, but as well for *pastures, trees and water*
- people in rural communities do not exclusively work as crop farmers in rainfed but as well in irrigated agriculture and as pastoralists, gatherers or fishermen
- interaction between shortages in resources due to overuse
  - land tenure must always be considered in the context of all other economically used and potentially used natural resources
- rights to pasture use - rights to trees and forests
- water rights - property rights and biodiversity

**Autochthonous and “modern” system of land tenure**

- autochthonous = born in the location ==> neutral term
- other terms used: indigenous, customary, *not: traditional*
- in contrast to imported concepts of land legislation (‘modern’)
- autochthonous tenure in Germany: Allmende, inheritance rules
- actual controversy about its economic, social and environmentally related effectiveness
- governments are very sceptical, donors and NGOs favour it

3. **Functioning land/resource tenure systems as a fundamental framework condition for development**

- tenure systems and economic *growth*: the concentration of land leads to misallocation of scarce resources
- land *distribution* has a strong poverty and environmental impact: land-poor people destroy their environment due to forced overuse
- land tenure systems and *employment*: employment generation within a more equitable farm size distribution
- deficiencies in existing land tenure systems lead to violent *land disputes*, ending up in civil-war like conditions
- smouldering conflicts endanger *political stability* and are detrimental to the investment climate
- the land question is crucial for the success/failure of *transformation* processes
- land issues are *power issues*: contrasted economic and political power facilitates the concentration of land
- rapid *urbanisation* and „mega-cities“ are challenges for urban systems of land tenure
  - problems of informal settlement of suburban areas
  - environmental protection and responsibilities of owners of landed property
4. Models and concepts: the social construction of land

Changes in the "social construction of land":

Land ...
- stands for property
- is an object of agricultural and industrial use (production factor)
- is homeland
- a place of ancestry
- a prerequisite to realise individual freedom
- a basis for survival and/or security
- an object to be taxed and desired by the government and other interest groups
- is a basis of power and dependency
- a cause of conflict and war

How to evaluate the existing or desired land tenure systems?

Suggested evaluation criteria:

Certainty of the law
- legal security for the transfer and use of land and the enforcement of legal claims are key prerequisites for socio-economic development
- prompt and accessible information on transactions
- hierarchical order of authorities responsible for arbitration

Rule of law
- a guarantee of basic rights by the state
- the separation of powers (executive and judiciary)
- legality of administration
- independence of judges
- certainty as to law and justice

Participation in designing systems of land tenure
- securing autochthonous land rights
- transfer of information to the local level
- securing a consensus in the case of conflicts
- a guarantee of basic rights by the state
- the separation of powers (executive and judiciary)
- legality of administration
- independence of judges
- certainty as to law and justice

Participation in designing systems of land tenure
- securing autochthonous land rights
- transfer of information to the local level
- securing a consensus in the case of conflicts
The meaning of property

- actually no discussion about property and no-property but about state & private property
- The definition of property is uniform and universal not according to different subjects (e.g. individual, community, state or foundation)
- property in land must be available to all market players (individuals, groups, state, legal bodies)
- property is not identical to privatisation
- property and other bodies of law (family, inheritance, tax law)
- social responsibility and the restriction of property

5. Property Rights Regimes (Land tenure systems)

⇒ State property
⇒ Private property
⇒ Common (communal) property
⇒ Open access

Private property is not necessarily - as Proudhon put it - theft, but a good deal of theft has ended up in private property (in: Bromley/Cernea 1989:13)

Land Policy Instruments

There are important, world-wide recognised and flexible land policy instruments for...
1. improving legal security
2. land administration
3. fiscal instruments
4. rural land development and land tenure
5. urban land development
6. the implementation of agrarian reforms
7. conflict resolution
8. education, training and applied research.

Plenary discussion: Some key issues

- Definition of Land/ Resource
- International conferences and private property
- Land/ Resource Tenure
- differentiate Land/ Resource rights
Keynote by Willi Zimmermann:
Land tenure issues in development co-operation

1. Enabling environment for sustainable land management

- National land policy
- Rights to land and security of tenure
- Economic incentives
- Improved physical and social infrastructure
- Access to information and inputs
- Peoples participation
- Gender and equity aspects
- Effective institutional & regulatory framework

2. The Vision of sustainable land management

The implementation of the Vision will be huge and complex:
## Regional Rural Development

Conceptual Design, Planning and Evaluation of Multi-Sectoral Programmes

<table>
<thead>
<tr>
<th>Operational Focuses</th>
<th>Regional Development Planning (comprehensive economic and social concepts)</th>
<th>Promotion of competence for decentralised multi-sectoral planning, co-ordination and management</th>
<th>Implementation of regional development measures</th>
<th>Natural Resource Management (NRM)</th>
<th>Land Management</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Areas of Action</strong></td>
<td><strong>Promotion of integrated planning approaches for urban and rural development in a given region</strong></td>
<td><strong>Tuning of planning and co-ordination structures at higher levels</strong></td>
<td><strong>Promotion of market accessibility for disadvantaged groups (finance and means of production)</strong></td>
<td><strong>Inventory and analysis of natural resource potential</strong></td>
<td><strong>Land Policy and Land Tenure development</strong></td>
</tr>
<tr>
<td>Packages of sector activities within an overall economical concept</td>
<td><strong>Institutional development at regional and local level</strong></td>
<td><strong>Improvement of accessibility to social services (health, education)</strong></td>
<td><strong>Development of strategies for participatory sustainable NRM</strong></td>
<td><strong>Decentralised land use planning</strong></td>
<td></td>
</tr>
<tr>
<td>Linking regional development with sector (investment) plans</td>
<td><strong>Mobilisation and administration of financial resources</strong></td>
<td><strong>Promotion of communal development</strong></td>
<td><strong>Integration of different user groups (farmer, pastoralists, etc.) in land use concepts</strong></td>
<td><strong>Land readjustment and land consolidation</strong></td>
<td></td>
</tr>
<tr>
<td>Strengthening linkages between rural areas and small and medium towns</td>
<td><strong>Strengthening and integration of non-governmental development institutions and organisations</strong></td>
<td><strong>Participative development and testing of problem solving innovations</strong></td>
<td><strong>Scaling up of local and regional NRM activities</strong></td>
<td><strong>Management of spatial information</strong></td>
<td></td>
</tr>
<tr>
<td>Financial flow and exchange of social and economic services</td>
<td><strong>Integration of &quot;bottom-up&quot; and &quot;top-down&quot; planning</strong></td>
<td><strong>Promotion of regional economic circuits</strong></td>
<td><strong>Development of indicators for monitoring of NRM</strong></td>
<td><strong>Development of adequate forms of land registration</strong></td>
<td></td>
</tr>
<tr>
<td>Analysis of functional urban-rural relations</td>
<td><strong>Procedures of regional co-ordination</strong></td>
<td><strong>Improvement of service delivery of public and private development institutions</strong></td>
<td><strong>Desertification control</strong></td>
<td></td>
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</tr>
<tr>
<td>Training and human resource development in regional and local level planning</td>
<td></td>
<td><strong>Improving the utilisation of productive resources and income earning opportunities</strong></td>
<td></td>
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</tbody>
</table>
3. The Role of the Government

What should Governments be doing?

- Create the institutional basis for a partnership between government and people
- Transform the bureaucratic process; institutions are stakeholders too
- Strengthen the technical support for Land Use Planning and Land Management
- Define a national land policy.

4. Effective institutional framework

4.1 Community Level

- Participatory land management
- Community based land use planning
- Integration of indigenous knowledge
- Capacities for conflict resolution
- Enforcing local land use decisions

4.2 District Level

- Adapt by laws
- Decentralisation of responsibilities
- Institutional capacity building
- Enhance co-ordination capacities integration of statutory law and customary rights
- Land use planning at district level and technical support to local level
- Appraisal of land use options

4.3 National Level

- Land policy and land use policy
- Legal and regulatory framework (enabling legislation, harmonisation of inconsistent/contradictory stipulation)
- Inter agency network
- Technical support service (data management, methodology)
- Capacity building strategy
- National plan of operation and financial resources

4.4 International Level

- Agenda 21
- Convention on biological diversity
- Convention to combat desertification and drought
- Convention on climate change
- WTO Agreement

5. Local Land Management

An efficient and practical way for land users in the community:

The Local Land Management Groups...

- Involve local people
- Ensure more rapid and more appropriate response to needs
- Achieve more effective implementation
• take full account of local capabilities, attitudes and customs
• co-ordinate individual decisions within the group
• address and resolve existing resource use conflicts
• enable the community to organise itself
• empower people who are traditionally excluded
• create a sense of community
• encourage a greater understanding of land interactions, environmental factors
• make more efficient use of resources

Principles in Law Making for Land Management

• Consciously identifies and includes resource users, including women and future generations, as the primary stakeholders in land management.
• Describes the rights and duties of stakeholders; empowers stakeholders with clear authority, jurisdiction and responsibilities.
• Recognises the importance of traditional agricultural practices and indigenous knowledge and supports their evolution through decentralised land management.
• Legitimises a process by which information flows from the resource users on needs and to the resource users for support.
• Provides an institutional forum for stakeholders, policymakers, administrators and others in authority to discuss, negotiate and make decisions on conflicting land use needs and priorities. Uses the forum to identify both incentives and constraints for production & conservation.
• Develops a regulatory framework for implementing agreed upon land management plans and rules.
• Shares and distributes decision-making authority and power of enforcement at levels most responsible to local needs.
• Provides ready access to reliable and qualified adjudicatory systems.
• Recognises the legal relationship between local land and water use, national agricultural, fiscal, economic development and environmental policy and regulations and international obligations. Creates an institutional structure that integrates these issues into land use planning and decision-making.
• Makes use of parallel institutional structures that support economic development, including off-farm, private sector development, as an essential component of improved resource management and conservation.

6. A Set of Land Policy Instruments

Instruments for...

• certainty of law
• interim regulations for rapid political and socio-economical transformation processes
• land Administration (Land registration, land market, land banking, lease regulations)
• matching rural land use pattern with land tenure structure and land use planning (Land redistribution programme, land readjustment, land consolidation, agrarian structure development planning, participatory local land use planning)
• urban and peri-urban development (regularisation of informal settlements, urban land readjustment, land banking, guided land development)
• land conflict resolution
• to facilitate the evolution of indigenous land tenure systems
• fiscal instruments
• enabling instruments: - decentralisation
  - capacity building
  - institutional reform
  - participation
  - management and performance control
  - complementary support service
  - participatory action research.

Plenary discussion: Some key issues

• Decentralisation and devolution
• Decentralisation without accompaniment of empowered institutions
• Solidarity-Deduction (Solidaritätszuschlag)
• Land owners mafia
• Level of co-operation of GTZ besides national level
• Decision on local level?
• Ultimate objective: improvement of productivity of land for food production
• Ownership status of forests
• Project proposals to be submitted to GTZ?
• Land policy support
• Decisive factors in natural resources management: human, institutional issues
• Comparison old-new LUP approach, often a combination of modern/scientific and participatory methods is required
• Land banking
• Competing user of land
• Land reforms cannot be separated from power relations
AFRICAN EXPERIENCES

In this chapter:

⇒ 2.1 Papers on land tenure and land policy issues

Day 1: Lesotho, South Africa, Ethiopia, Zimbabwe and Tanzania

Day 2: Ethiopia, Zimbabwe, Botswana

Day 3: Ethiopia, Namibia, Kenya and Tanzania

⇒ 2.2 Summary and conclusion from country experiences

Participants from 8 African countries had the opportunity to present their individual experiences in a 3-day session. They introduced legal and policy issues related to natural resources management, discussed problems of implementation and also success stories.

There were 15 presentations: the full text version is compiled in Annex II to this seminar documentation. In the following, an outline of the plenary presentation as well as some keynotes and some highlights of the discussion are presented.

2.1 Papers on Land Tenure & Land Policy Issues

Day 1: Lesotho, South Africa, Ethiopia, Zimbabwe and Tanzania

Eight participants from five different countries presented their paper orally while visualising the most important facts on transparencies.

1 - Lesotho: Land tenure and land use practices: trends and options

By Khaliso Matsepe and Makalo Theko.

Plenary presentation:
In their presentation Khaliso Matsepe and Makalo Theko first gave a synoptic overview of the past, the present and future development of land tenure and land administration in Lesotho. They introduced into the political history of Lesotho from the British Protectorate to the Kingdom of Lesotho and the democratisation process. Lesotho is characterised by a mixture of traditional, transitional and modernist tenure regimes challenging the actual land administration. The move to transform traditional tenure practices has, up to now, been deterred by the resilience of customary institutions.

There is a tendency for traditional and informal land management systems to have a common syntax and to be more responsive to local needs than formal and modern systems which, to the contrary, are convoluted, less effective and narrow in their application. The agenda for change, therefore, is focused on sustainable development, local empowerment, the adequate supply and delivery of goods and services and market liberalisation in bringing closer together traditional, modernist and informal tenure. Key features of the
reform are: local level decision making, private sector participation and smart partnership. Democratically elected community, rural and urban councils will administer the new system.

Any newly designed tenure system has to be in conformity with existing land use practices which as well change due to rapid urbanisation, unplanned and unserviced settlements, the encroachment of non-agricultural uses into agricultural areas leading to the reduction of arable-grazing areas. Thus, the land policy as it is part of the Sixth National Development Plan has to be embedded in broader national objectives, such as to assure household food security, to alleviate poverty, to create employment and to emphasise the role of the national planning board. Major land policy instruments are policy development, land administration, land information systems and land use planning.

**Highlights of the discussion:**

- Different tenure systems in Lesotho?
- Direction of change of communal lands?
- Provisions for disadvantaged groups?
- Influence of Republic of South Africa on Lesotho tenure systems?
- Capacity requirements of tenure related institutions sufficient?
- Role of leasehold?
- Motivation to register land?
- Land thieves? Does it happen on private or public land?

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**2 - South Africa: Taking apart the apartheid map: tenure reform in the RSA**

By S.M.D. Sibanda, L. Sebitloane, M.S. Mhinga

**Plenary presentation:**

In their joint presentation S. Sibanda, L. Sebitloane und M. Mhinga give an idea of the challenges which the post-apartheid South Africa is actually confronted with in formulating a reformed and consistent land policy. The new tenure law seeks to address the unclear status of current land rights, to give guidance to issues of governance and ownership, to put an end to the abuse of human rights under traditional or communal system and to overcome the ongoing breakdown in the handed-over land administration system. In concrete terms, the purpose of the proposed land rights bill is to secure land rights, to protect human (and tenure) rights under group systems and to unpack overlapping land rights. Basic rights will be secured by legislation, they cover individual and groups rights, protected rights will be registered. A re-structured administration will get greater autonomy, land rights boards will play an important role requiring advances in democracy, equality and participation. Any future land rights management has to be decentralised.

The different South African provinces support the ongoing task of reforming the tenure system by their own efforts: one of them is the Gauteng Farmer Settlement Programme (GSFSP). Its objective is to promote a viable and productive agriculture through land redistribution giving priority to land owned by and administered by the Gauteng provincial government. It addresses the skewed land holding patterns and provides land for farm workers, share croppers, labour tenants and other disadvantaged groups following clear-cut criteria. Land is restricted to individuals or groups who have already undertaken farming activities for some years, several requirements are promulgated for potential users (sustainable use, restriction to agricultural use, etc.). Besides selling land, the letting of plots is foreseen as well. An allocation committee, representing the Dep. of Agriculture, the Dep. of Land and other units, is responsible for the distribution of plots to the beneficiaries.
Key issues:
- Experiences of other countries
- “Right” size of workable farm units (in re-settlement areas)/viability

Discussion:
- “Consultation” process in settlement planning: resources allocated (financial, staff), sources of information?
- Informal settlements
- Impact of increase of population in settlement areas
- Which farmers are resettled?
- Co-ordination between departments
- Flow of benefits to local people (National Park)
- Security of tenure on communal lands
- Harmonisation of rights? National level/Provincial level

3 - Ethiopia: The impact of the 1997 land redistribution in region 3
- Case study
  By Nurhussien Taha

Plenary presentation:
Nurhussien Taha introduced into the existing Ethiopian land holding systems in differentiating between the monarchy regime in the pre-revolution era, the land tenure system under the Derg after 1974 to 1991 and the outline of a modified land tenure policy in the post-Derg period. One major obstacle to sustainable development of tenure relations was the forced periodic redistribution of land exercised since 1975 which has created a sense of insecurity. Land redistribution is going on; in his research area there was not sufficient land to give to all peasants in need for it. Land redistribution endangers the survival of rural families when plots drop below the minimum size to be required for subsistence farming. Additional challenges arise as customary coping strategies are not working any more. Therefore, it is imperative to give high attention to the development of off-farm livelihood strategies, including education and training programmes. As experiences in other countries have already shown, redistribution is be a necessary but seldom a sufficient strategy as long as rural credit facilities and other services are missing for the poor.

Key issues:
- Population pressure versus degradation
- Private/Public Ownership of land
- Security of land
Discussion:

Population pressure often goes hand in hand with livestock pressure
- Integrated Resource Management Approach
- New economic activities to reduce the pressure on land

Issues from the Tanzanian Experiences

When land is owned by the State: is it conform to a market economy?

What is the "provincial level" in Ethiopia?

What are the German experiences with their Federal System?

Was feudalism really eliminated by the revolution in 1975?

What are the functions of the Federal Ministry of Agriculture in Ethiopia?

What are the experiences with communication between administrations?

Security of land and higher value of land are correlated

4 - Zimbabwe: Participatory land use planning for natural resource management

By Moses D. Munemo

Plenary presentation:

In his presentation, Moses D. Munemo, talked about the origin of existing land tenure systems in Zimbabwe and the turning point in land policy after Independence. He pointed out that there are different types of land tenure in his home country and informed about the latest post independence initiatives on tenure. Moses D. Munemo distinguished between three types of property rights enshrined in the legal framework:

- freehold
- leasehold tenure and resettlement
- communal lands.

Furthermore, he commented on the structure of the District Environmental Action Planning (DEAP) in Zimbabwe. Following the most important aspects of this note:

- What is DEAP?
- Concepts of sustainability
- Objectives of the DEAP approach
- Who carries out DEAP?
- DEAP process
- Assessment and action planning tools

Key issues:

- Locally tailor-made monitoring and evaluation guidelines for programmes/projects are needed.
- How can programmes/projects financial management capacity building for beneficiaries/target communities be enhanced?
- Development of programme/project leadership training programs
- Programme linkages/integration which are geared to:
  - Maximising use of all available resources
  - Increasing and concretising co-operation among various institutions
  - Ensuring complementarity and sustainability
  - Re-planning activities in new and pilot areas in order to develop proposals for fundraising and implementation
- Involvement/participation of local communities in decision making processes of programmes/projects

Investment and policy analysis objectives
Experiences so far
Learning processes
Linkages of development programmes
Review of Preliminary Action Plan
• Creation and consolidation of a sense of ownership of programmes by local communities. A sense of belonging, self confidence and an assurance of programme/project property security urgently required.
• Sustainability of programmes

Discussion:

- Struggle on land as a dimension of power struggle?
- Co-operation between ministries?
- Conflict resolution in administration?
- DEAP: Does it work?
- Legislation for land use policy?
- What was first: policy formulation or legislation?

5 - Tanzania: The land tenure and land use planning question in the urban peripheries in Tanzania. The case of Dar es Salaam City
By W. J. Kombe

Plenary presentation:

In his presentation W. J. Kombe introduced the land tenure structure in Tanzania and the customary-traditional norms that are dominant in rural areas and before German (1985) and British Colonisation (1919), and Coined Deemed Rights which were considered to be static by the colonial administrators, they were non-alienated outside tribe or clan and non-monetarised and ownership based on usufructuary rights.

Besides that, he commented on the “right of occupancy” that dominates urban areas and plantations or estate farms in rural areas:
⇒ all land is public property
⇒ rights over land are vested with the President
⇒ confers rights to use and occupy not to own land (long term lease - 5,21,33,66, or 99 years, short term lease - year to year)

On land tenure and land use conflicts he remarks the following:
⇒ spontaneous conversing of land tenure, quasi customary tenure
⇒ Mechanisms: informal land markets since 1970
⇒ Actors: land owners, land seekers, community leaders
⇒ Security of tenure: social recognition, selling agreement (shamba), local community leaders authentication
⇒ Implications: misuse and abuse of land, depletion of prime agricultural land

Mr. Kombe explained his thoughts on the misconception of land tenure systems in Tanzania:
⇒ statutory are only two tenure systems
⇒ disregarding the social-economic and political changes
⇒ quasi-customary is the modus operandi in the urban peripheries
⇒ 1995 new land policy disregards quasi customary tenure
⇒ new Land Act 1998, disregards quasi-customary tenure
⇒ lack of policy framework for regulating land use change and registration
⇒ suppressing private land rights
⇒ political and social distress, case of (UBUNGO-agony)
⇒ dilemma of historically defined phenomena
Spontaneous conversion from customary/quasi-customary to statutory tenure:
⇒ Mechanisms are:
- declaration of ‘planning areas’,
- disregard of landowners rights - Bunju, Kongowe-Mbezi-Luisa, etc.,
- disregard of private property boundaries
⇒ Actors are: local government, Ministry of Land and Human Settlements
⇒ Implications are:
- ineffective mechanism - compensation based on unexhausted improvements make it difficult to access land
- poor insufficient infrastructure encourages ribbon development - encroach upon agricultural land

Key issues:
• How to regularise and provide a policy and legislative framework for safeguarding quasi-customary rights and interests?
• in the absence of land registry system (insufficient capacity to develop the same) how can the public intervene in order to be able to influence/regulate land in the peripheries including agricultural land?

Discussion:
☞ Land Commission interplay with other ministries?
☞ "Autocratic" dealing with delimitation of planning areas?
☞ Role and influence of technical experts in drafting legislation
☞ Participation/impact of foreign consultants
☞ Are people officially allowed to sell land?
☞ Inventiveness of people to sell land even if forbidden?
☞ What package of user rights?
☞ Land grabbing for re-selling or as a means of speculation?

Daily Review - Day 1

Case Studies:
8 presenters from 5 countries:
Lesotho [2], RSA [3], Ethiopia [1], Zimbabwe [1], Tanzania [1]

Lessons
• Similar conditions
  - common - history
  - resource base
• Diversity (in + out)
  -settler vs. smallholders
• Privatisation(+) vs. sustainability(-)
• Problems - Man-made
  - Natural
• Policy formulation + implementation
  - federal system
  - central government

• Emerging challenges
  - of complementaries
  - land grabbing
• Result of reforms
  - promising if institutions co-operate (e.g. Zimbabwe)
  - inhomogeneous situations (e.g. Lesotho)
Day 2: Ethiopia, Zimbabwe, Botswana

6 - Ethiopia: Issues of land and forest tenure for sustainable forest development

By Kidane Mengistu

Plenary presentation:
In his presentation, Kidane Mengistu, commented on issues of land and forest tenure in Ethiopia.

He attempts to review the associated constraints which contributed to the poor performance of the forestry sector in Ethiopia, with particular reference to issue of land forest tenure. Hence, his paper presents a brief account of the land and forest tenure status in the country since the 1970’s. Following a short situation analysis, suggestions are given on the strategies which will possible alleviate the tenure related constraints to enhance forest resources conservation and development.

Key issues:
- Administration and Management of Protection Forests and Production Forests
- Land Registration and Issue Ownership certificate
- Termination of an open access situation to National forests

Discussion:
- Pro and Cons of Freehold system
- Supplementary measures: Alternative job opportunities
- Conflicts of land use between forestry/agriculture
- Co-operation between different sectors
- Will encroachment stop when land is registered by the state?
- Be creative: Select the best things from different tenure systems
- Open access means public land?
- Restore previous landowner?
- What are the peoples involved saying?
**Plenary presentation:**
In his presentation, Solomon Modisagape conceptualised class, gender and land tenure and gave a background to Zimbabwe’s land policy. He talked about class, gender and land tenure in Zimbabwe regarding:

- **urban areas**
  - low, medium and high density suburbs
- **rural areas:**
  - communal lands: high performance class, medium performance class, low performance class
  - resettlement areas
  - large scale commercial land

At the end of his presentation he drew some conclusions and gave an outlook concerning his topic.

**Key issues:**
- Should the land for new settlers be allocated on a lease or freehold tenure basis?
- What are the various options for compensating those whose land will be redistributed?
- Should the criteria for allocating land be
  1. Competence in farming and evidence of some starting capital (regarded as elitist by some)
  2. Need for land (regarded by others as satisfying popular demands but likely to reproduce communal land forms of poverty)?
- How can government ensure class and gender equity in land reform and redistribution?
- How does one pre-empt inheritance related land fragmentation in the long run?

**Discussion:**
- Financial support from institutions (when land is sold to new “farmers”)
- Tanzanian Experience with parastatal organisations
- Experiences with the Grameen Bank in Bangladesh
- Role of Government in the subdivision of land?
- How you are dealing with corruption?
- Problem of controlling costs

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**8 - Botswana: Land tenure and land policy issues in relation to land use planning**

By M. Mphathi and D.O. Modisagape

**Plenary presentation:**
M. Mphathi and D. O. Modisagape talked both about land tenure and land policy issues in their presentation. They gave background information on geographical facts, land uses and socio-economic aspects. Mr. Mphathi and Mr. Modisagape also commented on different land tenure systems:

- tribal land,
- state land,
- freehold land

They discussed institutional arrangements as well as land use planning concerning historical facts, the land use planning process and land suitability assessment.
Furthermore, Mphathi and Modisagape talked about issues that justify revision of existing land related policies or the formulation of a new land policy in Botswana:
⇒ promotion of productive use of land
⇒ regulated land allocation and ownership to ensure equitable distribution
⇒ secured land rights for women, the poor and indigenous groups
⇒ addressed problems associated with land banking
⇒ reconciled conflicts in land use planning responsibilities

Besides that, Mr. Modisagape talked about the administration of customary land and the Botswana customary land tenure system:
⇒ customary land rights over residential, ploughing and grazing land
⇒ common law rights
⇒ the Tribal Land Act
Does customary tenure provide the holder with adequate security?
⇒ “Ownership” in customary land
⇒ Sale of land
⇒ Can land under customary tenure be used as security
⇒ Other criticisms

In his conclusion at the end of his presentation Mr. Modisagape summarised what was said and discussed.

Key issues:
• Ensuring that land is used appropriately and sustainable
• Land grabbing and land banking versus productive use
• Displacement of people due to tenure reform

Discussion:
• Experiences from South Africa (LDO-Land development objectives)
• Involvement of people
• Restriction in terms of ha
• How is the relation of the farming system (Ranching) and tenureship?
• What could be criteria for the subdivision of land?
• What are the problems of land degradation?
• Period of leases
• Development efforts and population growth
• Is there a formal land market?
• Appointment of Land Board Members
• How operate the Land Boards (Technical Section)
• Role of Chiefs and Land Boards
• Determination of size of land allocated?
• Principle of one bed/one plot
Daily Review - Day 2

Case studies:

Ethiopia

⇒ Focus: Forestry
- Historical Perspective:
  → feudalism → land reform → community & state forestry
- Ownership rights not clearly defined → deforestation
- Professional conflict due to uncoordinated programmes and unclear national policy

Botswana
- Clear elaboration of 3 land tenure systems and associated land use patterns
- Presence of enabling legal framework
- Flexible land tenure
- Decentralisation and devolution of land allocation & management powers to land boards -partnerships
  → eliminating traditional bias
- Cost recovery

Zimbabwe
- Class, race, gender
- Colonial legacy → land use patterns.
- Sensitivity of policy makers to the plight of rural African women
- Strategies?

General observations
- Well prepared presentations
- Alternative survival strategies vs. land as a safety net?
- Need for overall national land policy
- How much longer before the rural African woman is emancipated

Major challenges
- Liquidity problem vs. diversification
- Improve performance vs. retrenchment

Farm visit
Agricultural and environmental PLC "Loberaue" Zschartau

Historical background:
- 1952 first co-operating membership-contribution in cash and kind
- After mid 1960s: free membership
- Up to 1989/90: socialist co-operative
- After 1990: private (co-operative) company

Administrative structure:
- General assembly (598 share holders)
- Board of directors (9 members)
- Executive committee

Land:
- 3 crop farming companies - Motel - 2 husband companies
  - Size: 3.750 ha:
    - 3.600 ha lease: 150 ha owned/purchased
    - 700 ha government - 2.900 ha private individuals
Day 3: Ethiopia, Namibia, Kenya and Tanzania

9 - Ethiopia: Tenure and environmental issues in Ethiopia
By Dessalegne Mesfin

Plenary presentation:
In his presentation Dessalegne Mesfin explained the strong relationship between different land tenure systems and the degree of environmental preservation, or, resp. environmental hazard in a montageous country with steep slopes, which are often put into cultivation by agriculturists or used by herders, huge problems of inadequate reforestation and erosion.

Key issues:
- How should we go about to bring:
  - economically viable
  - socially desirable
  - environmentally sustainable
- Development within the framework of an usufructuary right over land

Discussion:
- Contribution of women to the agricultural work
- Labour organisation within the Household (Economic contribution)
- Selection criteria of peasants
- Issues of the Environmental policy

10 - Namibia: National land policy: White Paper
By Samuel Kapiye and Jesaja Seth Kohima

Plenary presentation:
Sam Kapyie and Seth Kohima presented an outline of the “National Land Policy White Paper” of Namibia.
In their presentation they discussed land tenure systems in pre-colonial and colonial time as well as tenure systems since the Independence of their country in 1990:
⇒ need for land tenure and land policy reform
⇒ treatment of informal settlement
⇒ resettlement policy
⇒ forms of land acquisition (agricultural land)
⇒ institutional reforms

Discussion:
- Illegally fenced off farms
- Unproductive resettled farmers
- Land degradation versus diversification
- Flexible land tenure system

Questions:
Reform of traditional land tenure system
Problem of squatting (rural > urban)
How to prevent corruption in the squatting process (specially application process)?
Temporary retention camps
Resettlement on a voluntary basis
Problems by dam construction (Hydro-power station)
Leasehold systems for communal land/state land?
Implementation of the Land Board System
Berlin congress and the East Boundary of Namibia

11 - Tanzania: Land tenure issues and land use planning in Tanzania

By Gasper Cleophas Ashimogo, Sigiti Mayeye

Plenary presentation:
Sigiti Mayeye discussed land tenure issues Tanzania in his presentation. He gave some background information and a description and future outlook of Lake Manyara National Park regarding land tenure.

Gasper Ashimogo presented the paper on Land Tenure and Land use Planning in Tanzania, written by himself and Aida Isinika.

Tanzania’s land policy has been in a state of crisis for quite some time. These crisis has stimulated public interest for land reform and the country is now on the verge of enacting a new land law that is expected to promote efficiency in land use while ensuring equity in access to land. It is envisaged that appropriate land laws that provide security of tenure to both investors and small holder farmers will back up the new land policy. This paper narrates the history of land tenure and land use planning in the country and examines some of its economic implications as related to emerging land markets, especially in rural and peri-urban areas. Implications on land use efficiency and equity are discussed, and lessons from other African countries that have implemented land reforms for over 50 years are drawn. Some recommendations are made to guide future land management strategies.

Key issues:
• Involvement of stakeholder

Discussion:
• Management Plans for National Parks
• International co-operation
• Population pressure and conflicts of land use
• Game farming as an alternative
• Conflicts between Agricultural Policy and Land Policy
• Education and awareness campaigns for local people
Plenary presentation:
Charles Juma Mbara’s presentation was on agricultural lands inventory in Kenya, on the importance of Kenya’s agriculture and smallholder agricultural production. Besides that, he talked about land resource and utilisation as well as land tenure. The main points in his presentation were:
⇒ Swynnerton Plan of 1954
⇒ Evaluation of Swynnerton Plan
⇒ Sub-division of agricultural land
⇒ Justification for agricultural lands inventory
⇒ Agricultural lands inventory
⇒ Data collection methodology (specific roles and format features)
⇒ Conclusions

Key issues:
• Social security
• Transgenerational rights
• Tension and insecurity
• Gender relations most effected
• Disappearance of Community Grazing Areas
• Generation of landlessness
• Disruption in organisation of community labour

Discussion:
◊ Land registration
◊ Criteria for registration
◊ Unemployment/Community labour
◊ Percentage of smallholders with registered land in comparison with middle and large farms
◊ Institutional arrangements: Why is land use policy under the Ministry of Agriculture?
◊ Revenue from land: Are the revenues collected from the department of land?
◊ Support services for Smallholder: Infrastructure, Financial, Extension, etc. provided free of costs?

Daily Review – Day 3

Kenya:

Key issues:
• Land tenure systems
• Land tenure reform
• Importance of agriculture
• Current administration initiatives

Types of land tenure:
• Customary
• Freehold
• Leasehold

Land tenure reform:
• History – 1954 onwards

Importance of agriculture:
• Contributes:
• Content:
  - negotiable title
  - exclusive ownership
  - land market
  - consolidated land parcels
  - resolving disputes?

• Farmers:
  - smallholder – linchpins of farming
  - medium-scale
  - large-scale

• Effects:
  - social (in)security
  - inheritance and land sub-division
  - gender relations
  - increased production from smallholders

Tanzania:

Key issues:
• Changing environment
• Effects of land reform
• Land use conflicts
• New land policy

Changing environment:
• Colonial and postcolonial land tenure changes
• Tension between communal (user rights) and individual (property rights) tenure

Effects of land reform:
• On production of food crops (transitional or lasting?)
• On farmers' land tenure and security

Land use conflicts:
• Pastoralism vs. arable farming and wildlife
• Case of Lake Manyara Biosphere Reserve
  - Invasion of LMBR by farmers
  - Farmers closing off migratory routes of wildlife and the Maasai and their livestock
  - Maasai grazing their livestock in farmers’ fields
• Peri-urban livestock production vs. environmental issues

New land policy:
• Centralisation vs. decentralisation - diversity of agro-ecological conditions
• Asymmetry of information flows - rural vs. urban areas
• Not explicit on gender issues
• Not really based on broad based debate(s) by citizens
2.2 Summary and conclusion from country experiences

Types of land

- Need for diversified, flexible land tenure systems (N/L)
- Can the best from public and private ownership be secured? (E)
- The most common pragmatic land tenure systems (B/SA)
- Role of the state to influence/regulate land tenure systems (Z/T/K)
- Historical burden of legal framework/land policy today (L/M)

Process of change in communal lands (K/L/N)

- Public lands = open access? (E)
- Communal tenure and the role of traditional authorities (B/SA)

Leasehold and usufruct rights in future systems (E/L/Z/B/T)

- Need for tenure systems, in particular communal tenure (K/E)

Pro and cons of freehold and registration (K/L/E)

- Need for experiences with land markets (E/T)

Process of change in communal lands (K/L/N)

- Pro and cons of freehold and registration (K/L/E)

Leasehold and usufruct rights in future systems (E/L/Z/B/T)

- Pro and cons of freehold and registration (K/L/E)

Need for experiences with land markets (E/T)

Environmental impact of land tenure

- Land degradation
- Protection of forests (E)

Land tenure systems

- Pro and cons of freehold and registration (K/L/E)

- Need for experiences with land markets (E/T)

Tenure development and population growth (SA/E)

- Land degradation
- Protection of forests (E)

Policy legal regulatory framework

- Consistent legislation on land use policy (T/Z)
- Need for clear, comprehensive and non contradictory framework:
  - Prevent land grabbing (L/B/T)
  - Illegal fencing (N)
  - Corruption (Z/N)

Different regional levels of legal and policy framework (SA/E)

- Gender - access to land - equity (B/Z/K/E)

Guiding Principles of Land policy + Land use planning

- Decentralisation and Devolution
- How does tenure structure affect government
- Co-ordination of programmes and clear national policy
- New role of the state
- Policy on pastoralists

Informal rural and urban settlements

- Problems of squatting in (peri-) urban areas
- Informal rural and urban settlements

Gender

- Access to land - equity (B/Z/K/E)

Sensitivity of policy makers to the plight of rural African women

Environmental impact of land tenure

- Land degradation
- Protection of forests (E)

Role of the state to influence/regulate land tenure systems (Z/T/K)

- Historical burden of legal framework/land policy today (L/M)

Need for diversified, flexible land tenure systems (N/L)

- Need for experiences with land markets (E/T)

Public lands = open access? (E)

- Consistent legislation on land use policy (T/Z)
- Need for clear, comprehensive and non contradictory framework:
  - Prevent land grabbing (L/B/T)
  - Illegal fencing (N)
  - Corruption (Z/N)

Different regional levels of legal and policy framework (SA/E)

- Gender - access to land - equity (B/Z/K/E)

Sensitivity of policy makers to the plight of rural African women

Problems of squatting in (peri-) urban areas

- Problems of squatting in (peri-) urban areas
- Informal rural and urban settlements
In this chapter:

⇒ 3.1 Land tenure institutions and property rights regimes
⇒ 3.2 Group work on analysis and evaluation of framework conditions
⇒ 3.3 Group work on major challenges in land tenure

3.1 Land tenure institutions and property rights regimes

Land Tenure: Definition

- **Land tenure** comprises the habitual/customary and/or legal rights that **individuals** or **groups** have to land, and the resulting social relationships between the members of a society (GTZ 1998, after Kuhnen 1982)
- But 'land' is part of a broader set of **natural resources**, therefore a natural resource system should be the term of reference:
  - as a single natural resource it provides several goods and services (food, shelter, income, wealth, status, myths, home of ancestors, religion, etc.),
  - its productive use is often dependent on other complementary resources (such as water),
  - people in rural areas do not exclusively make a living as farmers on rainfed or irrigated land, as herders on rangeland, as gatherers or entrepreneurs using land for construction or business: they are using many of the natural resources together:
  - one resource/land user has differing bundles of property rights to different resources,
  - different users have different bundles of property rights in one piece of land.
- Land tenure, thus, must always be considered as **resource tenure** (GTZ 1998)
- Land tenure in this broader sense can be defined as the "terms and conditions on which natural resources are held and used" (Bruce 1986:xxvii).
- This corresponds with the French "**foncier**", which includes cropland and all natural resources linked to it, such as pastures, water sources and forests (Hesseling & Ba 1994)
- Land tenure is based on **property rights regimes**, which are sets of institutions that define the conditions of access to, and control over goods and services arising from a natural resource systems (Swallow 1997).
- The property rights regime, the land tenure system, of a natural resource system may proscribe private, common or state property rights to the whole landscape or ecosystem, but in most cases proscribes private, common and state property rights to different components or products of a landscape or ecosystem.
- In a modern nation state, land tenure systems have to be developed on as a legal and regulatory framework on a national level.
Tenure Institutions and Organisations

Land tenure systems include institutions as well as organisations.

Institutions are "... the humanly devised constraints that shape human interaction ... they structure incentives in human exchange, whether political, social or economic. Institutions reduce uncertainty by providing a structure to everyday life... . They consist of both informal constraints (sanctions, taboos, customs, traditional codes of conduct) and formal rules (Convention, laws, property rights)" (D. North 1991).

Although institutions and organisations are often used interchangeably they are strictly speaking not the same.

Institutions are such things as land tenure rule or the structures and rules regarding trade (Swift 1995).

Institutions and organisations may be either formal or informal, the latter are often called customary.

Formal means established in written law, created by conscious, recorded decision (= decisions on land policies and law making). For land tenure these are the elements of national constitutions and legislation dealing with land ownership and use and transfer, or trade.

- Formal organisations, on the other hand, include the judiciary machine, government bureaucracies, such as the surveying service, the land office, political parties, aid agencies such as the World Bank or Oxfam, schools and churches.
- Informal or customary organisations and institutions are those which exist without comprehensive formal recognition by the modern state: they are habitual ways - not (yet) established in written law- a rural/urban society manages its everyday affairs.
- Informal institutions include customary land tenure rules, rules and conventions about marriage, inheritance or trade and customary regulations to resolve conflicts over the access to resources or theft of land.
- Informal organisations include all those which rural/urban societies have developed based on kinship, descent, traditional politics or geographic proximity.

<table>
<thead>
<tr>
<th>Institution</th>
<th>formal</th>
<th>customary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>the land law</td>
<td>customary land tenure</td>
</tr>
<tr>
<td>Organisation</td>
<td>land department</td>
<td>customary neighbourhood organisations</td>
</tr>
</tbody>
</table>

Property Rights Regimes (~Land Tenure Systems)

- state property
- private property
- common (communal) property
- open access
State Property

- **ownership** and **control** over use rests in the hands of the state
- mostly through conquest, nationalisation, expropriation with or without compensation (\(\Rightarrow\) land reforms)
- individuals/groups can make **use** of the resources, but only at the forbearance of the state
- **leasehold** of groups and individuals
- sometimes direct management through government agencies (state farms)
- national forests, national parks, pastures, military reservations are examples
- often unproductive due to state failure to manage the land in a sustainable way
- shifts from state property to other types are possible (**state divestiture**)  

Private Property

- **individual** or **corporate** property
- guarantees the owner the yields of his/her investment
- owners have pervasive **rights**, but as well **duties** (encumbrances, servitude, rights of way)
- no pure form, always "attenuated" through land taxes or "social responsibility of land" (constitution)
- the ability to exclude others is legally and socially sanctioned
- document of title gives comprehensive rights within limits of the law (**land use plans**!), allows to take land as credit **collateral**
- private property does not necessarily mean self-cultivation \(\Rightarrow\) tenants
- different agrarian structures are based on private property:
  - family farms in egalitarian structures
  - hacienda-minifundistas in inegalitarian conditions
- the **best** land has already been privatised and the **worst** has been left in the "public domain" (\(\Rightarrow\) state property, common property, open access)
- to "turn sand into gold" private property needs further prerequisites: sufficient farm size, external support institutions (credit)
- appears to be **stable** and **adaptive** and **effective** to resist unwanted intrusions (but: socialist revolutions!)
- danger to become an object of speculation
- need for functional land markets \(\Rightarrow\) additional institutions are needed  

Common Property

- common property is private property for the **group** (all others are excluded from use and decision making)
- **individuals** have rights of utilisation (and duties)
- property owning groups mostly are **social units** with
  - **some interaction**
  - **common interests**
  - **definite membership and boundaries**
  - **common cultural norms**
  - **endogenous authority systems** (as land priests)
• Examples are:
  - ethnic groups
  - neighbourhoods
  - small transhuman or mobile livestock keeper groups
  - kin systems or extended families
• Customary common ownership is held for
  - farmland
  - grazing land
  - water sources/wells
  - common forests
• Has secured the livelihood of farmers, livestock keepers, hunters and fishermen
• Allows for the use of spatially isolated resources and those with high natural risks (pastures)
• Guarantees the old and the sick their entitlement to benefits and social security
• Endogenous systems of authority to allocate land to enforce rules
• Management authority is often vested in (traditional) leaders ==> problems when they misuse their mandate (selling land)
• Strongly criticised by economists and politicians in the past ==> nationalisation
• Common property includes use rights, exchange rights and distribution entitlements
• Breakdown of compliance by co-owners with market integration, migration system, etc.
• Re-installation of common property through some agrarian reforms (‘ejido’ in Mexico)
• Do not mix up common property with collective farms and producer co-operatives (=state land!)

Open Access
• A situation in which there is no property
• "everybody's access is nobody's property"
• A grazing forage, fish, fuelwood, etc. belong to the party to first exercise control over it
• It results from the absence or the breakdown (policy failure) of a management and authority system
• "Tragedy of state failure" can lead to open access situations on pastures, wells, forests

Deconcentration, Decentralisation

Deconcentration:
... a redistribution of state powers to other levels, such that the territorial administration, represented by district commissioners and governors will receive a greater amount of authority for decision making.

Decentralisation:
... means the redistribution of power to the various regional bodies, including financial resources and budget autonomy. Decentralisation normally means the devolution to formal institutions. (Kirk/ Adokpo-Migan 1994)

Subsidiarity:
... i.e. administrative tasks should be carried out as near to the level of actual users of resources or beneficiaries of administration as is compatible with efficiency and accountability. (Swift 1995)
Land tenure and a legal and regulatory framework - The case of Laos

(Source: Legal and regulatory framework: The example of Lao PDR, Kirk 1996)
Points of discussion:

- Classification of "informal": informal tenure is a broader concept than customary, as it includes, for example, informal settlements in urban areas.

- Informal agreements, for example, with regard to urban tenure, can have as well formal elements (contribution of municipalities to develop informal settlements, such as waste disposal, water, etc.)

- Are "customary laws" necessarily unwritten laws? History of German customary law, originally unwritten, was first written in medieval times, such as the "Sachsenspiegel" (13th century).

- What is included in natural resources? Anthropogenic viewpoint which stresses on natural resources which serve man ("resources are not, they become"). In a broader concept, human beings can be regarded as resources as well, for example, as part of an ecosystem.

- Possibilities for the harmonisation of customary and modern land tenure systems.

- Formalisation of customary land tenure systems.

- Common property: how is the internal control in common property systems assured? Criteria are: group size, social cohesion, clear cut boundaries, local authority systems.

- "The best land has already been privatised": This may be true for arable land, residential sites or industrial plants, it is not necessarily true for highly productive forests, pastures etc.

- Is a differentiation necessary between common and communal property? Some economists do different.

- Meaning of "State failure": if the state is unable to manage properly the natural resources which he formerly nationalised: great distance of the central state to local users and their needs, no staff and financial means to control resource extraction and to enforce state property.

- Is exclusion on communal land possible: informal institutional arrangements worked in the past: banning (outcast), fines only work if the community complies with the customary regulations, Problems of declining social and economic coherence.

- Experiences with direct management of land by the state: in general, disappointing results.

- Is decentralisation always a solution? Depends on the capacities of the state (finance, staff) and its political stability. Different tasks need different levels of decentralisation.

- Examples for German experiences with decentralisation.

- More detailed explanations on subsidiarity: Principle of the Catholic social theory.
### 3.2 Group work on analysis and evaluation of framework conditions

**Group 1: Identify basic elements of an appropriate mix of land tenure systems for future development**

<table>
<thead>
<tr>
<th>Classes of land tenure</th>
<th>Customary / communal land tenure</th>
<th>Open access</th>
<th>State land</th>
<th>Freehold tenure</th>
<th>Leasehold tenure</th>
<th>Informal tenure</th>
<th>License or concession</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Communal ownership</td>
<td>No rules / regulations</td>
<td>Ownership vested in the state</td>
<td>Exclusive ownership subject to state only</td>
<td>Limited use right</td>
<td>Public concession</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Restricted access</td>
<td>Low economic value</td>
<td>Controlled access</td>
<td>Commodity / alienable</td>
<td>Leases issued by both the state or local authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family holding</td>
<td>Arid / semi-arid</td>
<td>National / sectional use</td>
<td>Mortgageable / rent</td>
<td>Limited security</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Held in trust/ egalitarian</td>
<td>Unappropriated</td>
<td>Can be redefined into various land uses</td>
<td>Individual / corporate title</td>
<td>May be subleased</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non alienable</td>
<td></td>
<td></td>
<td>Individual / corporate security</td>
<td>Issued by private land owners</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Social security</td>
<td></td>
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</tr>
</tbody>
</table>

**Justification of particular systems**

- Customary social security
- Communal use (common resources)
- "custom": egalitarian inherent rights

- Can be redefined
- Safeguard of national interests
- Environmental concern

**Resources / sectors affected**

- Wildlife
- Forestry
- Agriculture
- Grazing
- Cropping
- Settlements
- Mining
- Water

- Minerals
- Land capital
- Water
- Labour
- Minerals
- Wildlife
- Agriculture

- Investment facilitation
- Inheritable
Political & Legal Framework

Institutional arrangements required

- Deeds registration
- Environmental audit
- Legal systems
- Conflict resolution
- Resource use / access / sanctions formalised
- Flexibility and adaptability
- Technical report / services
- Subsidiarity
- Decentralisation

Organisations involved

- Deeds registry
- Financial organisation
- Financial organisation
- Deeds registry
- Deeds registry

Links with transition to other systems

- Transition to other systems
Group 2: National level needs and options for a clear, comprehensive and non-contradictory policy and legal framework

Needs for a unified national framework:
- Informal problem identification
- Stakeholders identification
- Sensitisation (at all levels)
- Consultations
- Stakeholder participation
- Problem in identification
- Criteria setting
- Prioritisation
- Decision making process

Elements / components of a framework:
- Political
- Legal
- Economic
- Environmental
- Socio-cultural

Institutions it is based upon:
- Public sector (government)
- NGOs
- Community based organisations
- Academic institutions
- Religious organisations
- Private sector
- Labour organisation

Links with other framework conditions / policies:
- Harmonisation with:
  - Industrial policies
  - Gender policies
  - Environmental policies
  - Defence policies
  - Forest policy
  - Population policies
  - Agricultural devolution policies
  - Wildlife
  - Mining

- Sustainability
- Customs and traditions
- Cultural practices
- Complementarity
- Cultural values
- Size of holding
- Yields
- Standard of living
- Land market
- Size of holding
- Yields
- Standard of living
- Land market
Group 3: Problems and issues in informal rural and urban settlements in the policy and legal framework

<table>
<thead>
<tr>
<th>Problems</th>
<th>Actors involved</th>
<th>Options for prevention / intervention</th>
<th>Collaboration between administration</th>
<th>Concepts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invasion of land (rural)</td>
<td>Land owners</td>
<td>Provide settlement policy</td>
<td>Networking &amp; co-ordination</td>
<td>Developing shorter and easier settlement formulising regulation</td>
</tr>
<tr>
<td>Disregard of settlement planning</td>
<td>Landless</td>
<td>Land-use legislation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncontrolled consumption of natural resources</td>
<td>Civil organisation</td>
<td>Formalise informal tenure</td>
<td>Build on informal institutions / organisations</td>
<td></td>
</tr>
<tr>
<td>Un-serviced settlement</td>
<td>Traditional leaders (local)</td>
<td>Dialogue participation consensus</td>
<td>Identify strategy intervention stages before saturation</td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>Agencies Commissions</td>
<td>Improve mass education</td>
<td>Waste management policy</td>
<td></td>
</tr>
<tr>
<td>Devaluation of property (adjoining)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Social problems escalate</td>
<td>Developers</td>
<td>Adapt / involve grass-root institution</td>
<td></td>
<td></td>
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<tr>
<td>Land-use conflict</td>
<td>Money lenders</td>
<td>Policy monitoring &amp; evaluation</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Governmental institutions</td>
<td></td>
<td>Resettlement</td>
<td></td>
</tr>
<tr>
<td>Political instability</td>
<td>Utility agencies</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Over-straining capacity</td>
<td>Law enforcers / judiciary</td>
<td></td>
<td></td>
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<tr>
<td>Loss of high potential agricultural land</td>
<td></td>
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<td></td>
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<tr>
<td>Marginalisation of endogenous settlers</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Unregulated land market</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
3.3 Group work on major challenges in land tenure

Group 1: Problems of and instruments / mechanisms for the implementation of agrarian reforms:

<table>
<thead>
<tr>
<th>Major problems</th>
<th>Instruments / mechanisms for successful implementation</th>
<th>Actors / institutions involved at different levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited capacity:</td>
<td>Capacity assessment</td>
<td>Government:</td>
</tr>
<tr>
<td></td>
<td>Manpower development</td>
<td>Local</td>
</tr>
<tr>
<td></td>
<td>Resource mobilisation</td>
<td>Central</td>
</tr>
<tr>
<td>Finance</td>
<td></td>
<td>Regional</td>
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<tr>
<td>Human resources</td>
<td></td>
<td></td>
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<tr>
<td>Logistics</td>
<td></td>
<td></td>
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<tr>
<td>Legislative framework:</td>
<td>Legislative audit</td>
<td>Quasi government:</td>
</tr>
<tr>
<td></td>
<td>Review</td>
<td></td>
</tr>
<tr>
<td>Out-dated</td>
<td></td>
<td>Academic institutions:</td>
</tr>
<tr>
<td>Overlapping</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incompatibility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institutions</td>
<td>Consultation + awareness creation</td>
<td>Private sector:</td>
</tr>
<tr>
<td>including the public:</td>
<td>Participation</td>
<td></td>
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<td></td>
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<td>NGOs:</td>
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<tr>
<td>- Lack of co-operation</td>
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<td>CBOs</td>
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<tr>
<td>- Resistance to change</td>
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<td>Donors</td>
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<td>norms + traditions</td>
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<tr>
<td>- Political power</td>
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<td>- interference</td>
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<td>Role definition:</td>
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<td></td>
<td>- Subsidiarity</td>
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<td></td>
<td>- Conflict resolution</td>
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<td></td>
<td>- Recognise traditional institutions</td>
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</tbody>
</table>
**Group 2: Land policy / agrarian reform: The roles of the state, the private sector and organisations of civil society (e.g. professional associations, NGOs)**

<table>
<thead>
<tr>
<th>Policy elements</th>
<th>Functions / responsibilities of different actors</th>
<th>Areas of co-operation (public + private)</th>
<th>Necessary preconditions for success</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political will &amp; commitments</td>
<td>The State:</td>
<td>Sharing of information</td>
<td>Political stability</td>
</tr>
<tr>
<td>Under/over-utilisation</td>
<td>Regulation</td>
<td>Participatory approach</td>
<td>Stakeholders recognition of the problem</td>
</tr>
<tr>
<td>Unequal access to land resources</td>
<td>Facilitation</td>
<td>Information dissemination / education</td>
<td>Adequate capacity:</td>
</tr>
<tr>
<td>Consolidation</td>
<td>Co-ordination</td>
<td></td>
<td>- institution</td>
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<tr>
<td>Need for development</td>
<td>Monitoring &amp; evaluation</td>
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<td>- human</td>
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<td>-resources</td>
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</tbody>
</table>

**Private sector:**
- Co-operate with the State
- Resource mobilisation

**Associations, NGOs, CBOs, etc.:**
- Sensitisation of masses/
- Promotion of public debate
- Resource mobilisation
**Group 4: Access to land and / or access to other income sources to reduce pressure on land:**

### Access to land:

<table>
<thead>
<tr>
<th>Feasible alternative income opportunities</th>
<th>Implication for (land-) policy</th>
<th>Actors / institutions involved</th>
<th>Problems and constraints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redistribution</td>
<td>Tenure reform</td>
<td>Govt., NGOs, CBOs, etc.</td>
<td>Security, stability, finance</td>
</tr>
<tr>
<td>Leasing</td>
<td>Appropriate institutions</td>
<td>Legal &amp; technical institutions</td>
<td>Capacity</td>
</tr>
<tr>
<td>Land reclamation</td>
<td>Ecological impact</td>
<td>National / international stakeholders</td>
<td>Food security</td>
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<tr>
<td>Intensification</td>
<td>Ecological impact</td>
<td>National / international stakeholders</td>
<td>Capacity</td>
</tr>
<tr>
<td>Resettlement</td>
<td>Tenure reform</td>
<td>Govt., NGOs, CBOs, etc.</td>
<td>Credit subsidy Environment</td>
</tr>
<tr>
<td>Family planning</td>
<td>Tenure reform / gender</td>
<td>Govt., NGOs, CBOs, etc.</td>
<td>Political, economical, cultural, environmental, etc.</td>
</tr>
<tr>
<td>Culling</td>
<td>Ecological impact</td>
<td>Govt., NGOs, CBOs, etc.</td>
<td>Religious, cultural, etc.</td>
</tr>
</tbody>
</table>

### Alternative livelihood:

<table>
<thead>
<tr>
<th>Feasible alternative income opportunities</th>
<th>Implications of for land policy</th>
<th>Actor / institutions involved</th>
<th>Problems &amp; constraints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bee-keeping</td>
<td>Rational resource utilisation</td>
<td>National / international stakeholders</td>
<td>Education</td>
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<tr>
<td>Poultry</td>
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<td>Finance</td>
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<td>Tourism</td>
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<td>Infrastructure</td>
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<td>Handy craft</td>
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<td>Technology</td>
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<td>Trading</td>
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<td>Market</td>
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<td>Vocational training</td>
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<td>Agro-industry</td>
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<td>Fattening of livestock</td>
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<td>Labour migrants</td>
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</tbody>
</table>
Daily Review – Day 4:

Beacons:
- LAND TENURE SYSTEMS & PROPERTY RIGHTS
- Systems are needed for diversified, flexible land tenure
- POLICY LEGAL/REGULATORY FRAMEWORK
- GUIDING PRINCIPLES OF LAND POLICY
- Other topics of interest that were outside of the clusters:
  - tenure development & population growth
  - environmental impact of / on land tenure
  - gender issues
  - problems of squatting

Implicit topics:
- Conflicts and conflict resolution
- Consultation and participation of stakeholders
- Education, training in land tenure issues
- International networking on land tenure issues

Review of (selected) work groups:

Problems of and instruments / mechanisms for the implementation of agrarian reforms:
- Major problems / obstacles:
  - Limited capacity (finance, human resource, logistics)
  - Legislative framework (outdated, overlapping)
  - Institutions, including the public – lack of co-operation, resistance to change
- Instruments / mechanisms for successful implementation:
  - Capacity assessment
  - Legislative audit review
  - Consultation and awareness creation
- Actors / institutions involved at different levels:
  - Government (local, central regional)
  - Quasi Government (academic institutions)
  - Private sector
  - NGOs, CBOs, Donors

Land policy / agrarian reform:
- Policy elements
  - Political will & commitment, underutilisation or overutilisation of land resources, unequal access to land resources, consolidation, need for development
- Functions / responsibilities of different actors
  - The state – reputation, facilitation, co-ordination
  - Private sector – co-operation, resource mobilisation
  - Associations, NGOs, CBOs, etc. – promotion of public debate, sensitisation
- Areas of co-operation (public and private)
  - Sharing of information, participatory approach, information dissemination
- Necessary preconditions for success
  - political stability, adequate capacity, stakeholders recognition of the problem

Requirements of a gender-balanced land policy:
- Fields of action
  - Gender equity, policy, legislative framework, implementing strategies, institutional support, sensitisation of men / women / children
- Institutions / organisations involved
  - Finance institutions, government, women’s groups, NGOs, CBOs, multilateral organisations
- Participation / co-operation of stakeholders
  - Co-ordination, communication + networking, co-operation
- Major obstacles / constraints
  - Patriarchy, matriarchy, politics, economy, ideology, religion, illiteracy & ignorance, lack of co-ordination
4.1 Land Policy

Models and objectives of land policy
• Models and objectives of land policy
• Land policy instruments
  - instruments for the implementation of agrarian reforms
  - instruments for land administration
  - land development instruments
• Possibilities for conflict resolution
• Land policy in a wider policy context

Models and objectives of Land Policy
A land policy which is rational and transparent to the population must fulfill particular conditions:
• it must be based on fundamental guiding principles
• it must follow
  - clearly defined,
  - in part universal, in part country, region- or group specific objectives
• its target conflicts must be made public
• a bundle of far-reaching non-contradictory land policy instruments should be developed
• the instruments' possible side effects must be identified and assessed
Land / agrarian reform

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

Land tenure reforms

- Land tenure reform redistributes not land but rights in land
- Starts with property rights (such as ownership or lease-hold) which are formed of a bundle of more specific rights and duties
- Tenure reform consists of removing some of those rights from the bundle and awarding them to others
- Adjusting the relative powers and responsibilities among the state, communities and individuals
- While land may not change hands, the changes in rights and responsibilities have long-term distributive implications, as for instance farmers gain the right to sell their land (Bruce 1998:44)

- Tenure reform is not just a matter of changing rules, but of implementing those rules and requires recognition and reorientation of existing land administration institutions
- in the past reforms remained in the books having no impact on actual access to land or security of tenure
- it is not a costless exercise in law reform, but demands for substantial commitments to public education
- creating new records of rights in land, hiring staff, running offices and vehicles, and training
- difficulty to create new institutions ex nihilo, better to build on existing institutional arrangements to the extent possible
- institutional innovation is extremely labour-intensive and expensive

- Replacement reforms: (old system is substituted by a new one)
  - state ownership with production collectively organised (Tanzania, Mozambique, Ethiopia)
  - shifted mostly to:
  - state ownership with production on a household basis (Zambia, Nigeria, Sudan, Uganda)
  - private individual ownership, eliminating the community interests in land (Kenya, Malawi, recently: Uganda)

- Adaptation reforms: (not idealising indigenous tenure, but building on them) (e.g. Senegal, Botswana)
  - incomplete or inconclusive tenure reforms create greater insecurity, so governments need to be sure they have the resources and the political will to finish what they start
  - perhaps the central lesson of replacement reforms in Africa, as they have left confusion and insecurity
Conditions for successful agrarian reforms

- Quick implementation
- Compensation in case of expropriation
  - actual amount depends on government’s power and ability to implement the reforms
  - it is rarely paid at one time
  - the expropriated often receive public bonds to be used to pay taxes or to purchase industrial stocks
- Land management measures should accompany the reforms
  - improvement in extension service
  - making credit available
  - improvement of marketing structures
  - access to factor markets (labour and capital)
  - access to product markets
  - reform of complementary resource tenure legislation (e.g. water laws)

Implementation problems

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

Causes for failing of land reforms

- Key questions is always from where the land for redistribution comes
  - state-owned land
  - “willing seller, willing buyer” principle
  - land owned by the military or churches or land previously purchased from large landholders (Brazil)
  - “voluntary” sale of land by threatening with a land reform than to undertake expropriation with compensation (but possibilities for attenuation of this process)
  - expropriation (upper ceiling is set for land ownership, political decision)
- Implementation problems
- Corruption of civil servants on all levels
- Opposing activities

Learning from comparative experiences with Agrarian Reform?
(based on J. Bruce 1998)

The positive East Asian Reform Experience

Strong political impetuses:
Japan: break the power of a ruling class,
South Korea: pose a popular alternative to the North egalitarianism.
Common features:
- Appropriation of land above stated ceilings and transfer of the land to small tenants already occupying the land
- No resettlement and changes in scale of farm operation
- Conferred full private ownership on the beneficiaries in a market economy in which private property was well understood
- No democratic reforms, imposed by governments of occupation (US)
- Beneficiaries were required to reimburse the government for the costs of land acquisition, though on favourable terms and assisted by subsidies

Differences:
- Taiwan: active support through already existing farmer's associations, others were much less participatory
- Taiwan: adequate compensation to landlords
- Japan/Korea: depended on state bonds which were eroded by inflation
- Repayment rates to farmers varied, although in general high

Macro-impacts:
- All achieved substantial equity and productivity gains
- Land remained in the hands of the beneficiaries
- They used it productively with positive impact on quality of life
- Positive macro-economic effects: compensation paid to landlords were invested in developing industries (not capital export)
- New prosperity of former tenants opened new markets
- Governments long-time benefited from political stability

Mixed results from Latin America:
- To 1985 was the time of land reforms in LA (Chile, Peru, Dom. Rep., Venezuela, El Salvador, Nicaragua)
- Based on fundamentally different agrarian structure compared to Asia
- In Asia: beneficiaries were largely tenants, in LA: Landless or labourers working on the latifundia or peasants with insufficient holdings
- Over estimation of economies of scale because of existing large units => reluctance to break them down
- Not only land to the tiller, but creation of production co-operatives to be able to cultivate the still big units
- Collective production is confronted with several difficulties
- De-collectivisation of ‘ejidos’ in Mexico as a consequence
- Stopping experiments with peasant co-operatives in Bolivia
- Subdivision of co-operatives into family units in Peru
- Combined models in Chile and Dom. Rep.: cropland was parcelled between the members of the coop., pastures, vineyards and orchards remained collective
- Only in Cuba co-operatives still dominate the agrarian sect.
- Poor production performance because of co-operatives
- Made the reforms vulnerable and open to counter-reform forces
- Alternative approach to split up in family farm units posed other problems: insufficient access to implements and inputs or to reconstruct marketing links
Conclusions:

- Difficulties of reforms of very big operating units
- Need to provide reform beneficiaries with an agrarian reform package of assets and services rather than just land
- Whenever production losses occurred, counter-reform efforts prevailed (in Chile more than 40% of the reform land was retaken under Pinochet) or peasants had to abandon their land (no support, indebtedness, ecological disasters)

Experiences in Africa

- Structurally the Ethiopian reform equals the East Asian ones
- Based on peasants on small holdings and land to the tiller thrust
- But accompanied by certain amount of violence, although with official public participation after campaign, few regard of prior property rights
- Redistributed vast amount of land in a short time
- Aspired collective production, but only a tiny fraction of the reformed land was ever cultivated collectively
- Collectives were short-lived
- Differences: beneficiaries received their land on extremely insecure terms, subject to periodic reallocation through the peasant's associations ==> undermining incentives
- Severely extractive policies towards the agricultural sector with quotas to be marketed through the state
- A promising reform degenerated
- Kenya and Zimbabwe resemble more to LA
- Large operating units, white owned commercial farms with the problem
- Parcelation to individuals or
- Collective cultivation after reforms
- Kenya: option for parcelation with full ownership, subject to mortgages etc.
- Adoption of more intensive land use patterns
- Investment in perennial crops and livestock production
- In Zimbabwe a first interest in co-operative production waned quickly
- Land resettlement in household holdings has been the predominant form
- Production results in Zimbabwe have not been nearly so positive as those in Kenya
- Possible reasons: no recovery of costs from beneficiaries
- Which stretched government resources for beneficiary support too much
- Prohibition of non-agricultural activities by the beneficiaries eliminated important sources of income which had been relevant in Kenya
- Undermining of production incentives when giving only use rights instead of full ownership
- Prevention of development of a rental market
- Insufficient delivery of inputs by state monopolies which interfere with investment by farmers (fertiliser)
- Inefficient output marketing

Lessons for Southern Africa?

- South African, Zimbabwean case involves reform of large operating units (see problems in Latin America)
  - how to maintain productivity and
  - enhancing living standard of reform beneficiaries
• Providing beneficiaries with only land and not a package of agricultural/social services undermines the potential of land reforms
  - danger of dislocation in links for input supply and crop marketing
  - changes in farm scale and capital / labour availability => new technology options and needs
  - even a market based reform (transaction between sellers and buyers) => urgency that government reacts on these needs
  - scattered locations of land acquired through restitution and redistribution makes it especially challenging
• Failure to provide beneficiaries with secure tenure undermines their incentives to invest and to produce
  - "tenure security" does not necessarily mean private property
  - property forms which local people can manage themselves and with which they are comfortable
  - "security" as a state of mind!
• Failure to maintain productivity renders land reforms vulnerable to counter-reform at least to political moves to truncate reforms
  - reforms always take longer than expected => productivity concerns have to be addressed from the beginning
  - competition for scarce public funds between reform for rural people and urban dwellers for example

Points of discussion:

• Do rights of use really undermine production incentives compared to unrestricted freehold?
• Security on tenure is not restricted to private property as long as there is trust in other institutional arrangements
• In Kenya the argument that only title gives access to credit and can be used as a collateral is no longer valid, as the commercial banks do not accept title deeds any longer as a collateral due to outdated files, smouldering conflicts, etc.
• Private property depends on certain minimal capacities of the state to introduce, maintain and protect it. If they are not sufficient registration and tiles do not work.
• Land reforms in Asia: what was the role of the private sector in the land reform process? Why did those who were expropriated and compensated invested in industry?
• What was the level of state intervention in Asian countries to encourage expropriated large landowners to invest in industry?
• Need for supplementary reform of land management: In South Africa new forms of extension on a self-help basis are practised: farmer to farmer extension service
• Definition: does the differentiation between land reform and land tenure reform makes sense?
• Is restitution a necessary mechanism for tenure reforms?
Experiences in Rural Areas of the Eastern Part of the Federal Republic of Germany

(Based on Thöne, 1996)

Fact Sheet

- 357,000 km²
- More than 80% of Germany’s surface area consists of rural areas (50% of inhabitants)
- 55% of the surface area are used for agricultural production (17 Mill ha)
- 29% of the surface area are forests (11 Mill ha)

Land ownership pattern

- 65% individual landowners
- 3% individual bodies (like banks)
- 32% public bodies:
  - Municipalities: 13%, - States (Länder): 11%
  - Federal Government 4%, - Churches: 4%
- About 40 million parcels
- 525,000 agricultural holdings with more than 1ha (1997) in Germany (decrease by 2.8%)
  - 494,000 agricultural holdings in the old Länder
  - 31,000 agricultural holdings in the new Länder
- 90% of all farms less than 50 ha
- 55% are part-time farmer (the main family income comes from activities outside farming)
- Individual farm enterprises: 97%
- Partnerships: 2%, Legal entities: 1% (but in the new Länder 18% of the farms and 78% of the farmland)

Aims and Significance of Rural Development

- Safeguarding the functionality of the entire rural area
  - preserving a wide scattering of land ownership as an important principle of democracy
- Slowing down the exodus of the (youth) population from rural regions
  - preventing the sprawling of urban agglomerations
  - producing a balance between urban and rural regions
- Preserving a pastoral influenced cultural and recreational landscape
  - living, dwelling, working and finding recreation in the countryside as a way of life
- Securing of ecologically intact biotopes
  - conservation of water reservoirs, landscape, species
  - recreational areas for people (tourism)
  - Preservation of the social and cultural home (identity of the rural population)
From the individual property system to collectivised farm units

**Phases of transformation**
- So-called democratic land reform 1945-1949
  - A total of some 3.3 million ha of agricultural land were socialised
  - Uncompensated expropriation of all agricultural and forestal land holdings larger than 100 ha
  - Creation of “newly settled farmers’ property” and “state owned farm holdings”
  - Expropriation as a result of German division of so-called “republic escapees”
- Forced collectivisation (1952 - 1960)
- Industrialisation of farming (from 1970)

**Forced collectivisation and industrialisation of agriculture**
- 1952: Formation of the first Agricultural Producers’ Co-operative (LPG)
- 1960: Full-collectivisation of East-German agriculture

- Collective land use rights of the Agricultural Producer Co-operative (LPG) by law superseded landowners’ property rights:
  - comprehensive
  - cost-free
  - permanent
- Content of the collective land use rights:
  - to farm the land
  - to improve the land (Melioration)
  - to construct roads and waterways
  - to construct farm buildings
  - to give land to third parties (for the construction of private houses)

**Legal basis of the German reunification**
- Does not undo the land reforms’ expropriations
- Act regulating monetary state compensation for land reform victims
- Newly settled farmers’ property was transformed into private property
- Expropriation after the land reform of republic escapees are being undone
- Privatisation of former state owned land by the “Treuhandanstalt” (2.1 million ha agricultural land / 0.75 million ha Forest)
- LPG’s use rights were rescinded immediately
- Land Readjustment Act of 1989:
  - Guarantee of private property in agriculture
  - transition from collective farming to a market-economy orientated system based on private property

**Regulations of the Agricultural Readjustment Act**
- The division and conversion of collective farms (LPG)
- Procedures for the registration and reorganisation of property
- Legal appeals and arbitration tribunal
Restoration of the private ownership system with the help of
Land reorganisation I

Measures with high priority:
• Reorganisation and consolidation of parcels
• Interim land use regulations between the reorganised LPG and new developed agricul-
tural farms/enterprises
• Resolution of conflicts that occur in connection with the return of land to original owners
and with the land cultivation
• Support of the privatisation of former state-owned land
• Readjustment and modernisation of the road and watershed system
• Surveying and boundary marking of the parcels
• Ecological renewal of the rural/agrarian landscapes

Restoration of the private ownership system with the help of
Land reorganisation II

Principles:
• Simplified and efficient reorganisation instrument
• Voluntary land exchange, land reorganisation procedure under the direction of the
consolidation authority
• Procedures follow principles and sequences pursuant to the Federal Land Consolidation
Act
• Cost-free reorganisation
• Land reorganisation must be carried out upon the application of an affected party (legal
claim)
• Possibility by law to charge private agencies (land agencies, chartered surveyors) with
procedures

Three-step concept for the privatisation:
• Long-term leasing (criteria for applicants are the farm development plans and the
qualifications)
• Purchase of privileged price for the leaseholder (on the basis of transparent rules)
• Sale on the land market in small portions over a longer period of time. The procedure
avoids hectic consequences on the land market. Existing lease contracts are protected
during the change of ownership

Points of discussion:
• Clarification on the claims of former “republic refugees“ on expropriated farmland in
Eastern Germany. => if they were expropriated after 1949 their land was restituted. Only
few of them came back to start farming (problems of optimum farm size: renting-in under
insecure conditions, high working capital for machines, prices for agricultural products)
• Have there been incentives of the German government to resettle refugees on their
former lands? => indirect ones, based on the old guiding principles of the government to
support in particular family farms. => changing policy: now competition of all different

types of organisation in agriculture
• Reaction of uncompensated land owners to the Treaty of Unification: => court cases in
all instances, which were rejected by the Supreme Constitutional Court, formation as a
pressure group and public campaigns, for examples through advertisements in the big
daily newspapers.
• Are the pending court cases a pressure for the German government? => Federal government tries to put a stop to the discussion, arguing with the verdict of the Supreme Constitutional Court.
• Are uncompensated cases still pending at court? => all in all it is estimated that about 600,000 cases are pending, uncompensated claimants are a minority, but important with regard to the acreage under dispute.
• Which rights do people have who built houses on land which was restituted to former owners? => complicated mechanism of land valuation to give them ownership rights of the ground where they built their house. => compensating former/new owners.
• Which socialist institutions are inherited from the unification process? => in agriculture: a transformed socialist producer’s co-operative, which is now an autonomous producer co-operative under German co-operative law and which is in competition with other forms of agricultural organisation.
• Which socialist institutions should be safeguarded? => pro and cons of social security system, kindergarten system which allowed women to organise their work at home and in the collectives
• Has there been a comprehensive laws use plan in the unification process? => Agricultural structural planning instruments for the new states
• What are the mechanisms and checks of performance of private enterprises acting in the unification process (surveyors, consultants)? => In the beginning major problems due to inexperienced consultants which led to considerable economic losses, now advanced system of checks
• Decision making of farmers: do they do it on their own, how strong is government involvement? => Farms are private enterprises, farmers have to decide on their own, but their are supported by government and private services (extension, financing, etc.)
• How is state and private property treated in urban areas? => Unified legislation, no differentiation between rural and urban tenure.
• Do people living in houses which go back to former owners have secured rights of occupancy? => in principle treated all as tenants, they have to accept developments of the real estates and increased rents, if they don’t they have to move in the end.
• Difference between socialist producer’s co-operatives and autonomous producer’s co-operatives in a market economy? Socialist co-operatives produced for the plan, got their objectives and inputs from other state agencies and had to deliver their projects to state monopolies. Autonomous co-operatives have to compete in a market economy with other economic agents, such as enterprises with limited responsibility, family farms etc. They produce for the market and have to survive in the market on their own.
• What were land tenure systems like before socialism? => Mixture of predominant private property (as family farms and large holdings (Junkernwirtschaft)), state property and property of foundations and churches.

Daily Review  Day 5

End of chapter 3, beginning of chapter 4.

Refocusing on:
• Seminar framework
• Concurrence, consensus on process and progress
• Key definitions: land reform?, land tenure?, land tenure reform?
Conceptualisation on:
• Key pillars of land policy
• Qualities of stable and dependable policy
• Lessons and requirements

German land policy principles in historical perspective:
• Derived from the basic law
• Right of inheritance
• Eminent domain by the state
  - taxation
  - expropriation
• Individual ownership remains dominant mode
• Political considerations
  - preservation of rural fabric
  - maintenance of status quo in mainstream tenure structure
  - restitution of land rights for former escapees
  - land key issue in reunification

The German experience:
• Land policy reform as a process and not an event
• Pending court / cases on nationalised property
• No clear cut answers on merits of socialism
• Transformation or demise of co-operatives by self-determination
• The merits of restitution

Global overview of international contexts:

Covering:
• Diverse political contexts
• Divers agrarian reforms
• Various tenure regimes
• Accompanying legal and institutional reforms

Regions: countries:

Africa
- Kenya
- Ethiopia
- Zimbabwe

Asia
- Japan
- Taiwan
- South Korea

Latin America
- Chile

Lessons learned:
• Different forms of state and beneficiary participant
• Various / mixed outcomes depending on circumstances
• Reforms to be comprehensive
• Participation of beneficiaries crucial
• Politics and agrarian reform not separable
• No quick solutions
• No tranquility in tenure
• “No easy walk” to sustainable / freedom of tenure
4.2 Land Administration

**Land Policy instruments**

- for improving legal security
- for land administration
- fiscal instruments
- for rural land development and land tenure (e.g. land use planning)
- for urban land development
- for the accompaniment and implementation of agrarian reforms and/or the transformation processes
- for conflict resolution
- for capacity development and participation
- for quality control and accountability
- for training, (higher) education and research

**Instruments for Land Administration**

- Land administration includes the regulations and measures of the following:
  - the rights to land and its fundamental elements
  - the use of land
  - the valuation of land
- Fundamental objectives of land policy are implemented by the land administration
- It provides the background information for structural change and transformation processes

**Land Administration**

_A good land administration system will:_

- Guarantee ownership and security of tenure
- Support land and property taxation
- Provide security for credit
- Develop and monitor land markets
- Protect State lands
- Reduce land disputes
- Facilitate land reform
- Improve urban planning and infrastructure development
- Support environmental management
- Produce statistical data

(UN, 1996)

**Advantages of a systematic establishment of land registers**

- Improved certainty in law with respect to land
- Stimulation for investments and sustainable use
- Improved access to credit
- Security and efficiency of property transactions
- Minimisation of land conflicts and the costs associated with them
Land Register and Cadastre

- In some countries there is one register for all of the land information (e.g. Netherlands, Sweden)
- In many parts of Europe the cadastre evolved as a support for land taxation, while the legal processes of land registration were dealt with separately by lawyers and the records entered in land books, for example the German Grundbuch (land registry)
- The legal status of the parcels of an administrative unit is described in the land register (to whom does the land belong and with what rights and responsibilities?)
- The cadastre describes the location, size, use and possibly the value of parcels

Land Registration: Advantages

- Farmers possessing a title are willing to:
  - invest more in their land (permanent crops and protection from erosion)
  - apply more inputs for increasing production (fertiliser) and, on average, obtain a higher yield than farmers without the land title (e.g. Thailand, Paraguay)
- Farmers possessing a title to their land have easier access to formal credit and may receive higher amounts of credit than farmers without the land title
- Land markets in regions with systematic land registration are more dynamic than regions without (e.g. Thailand)
- The land prices for registered areas are higher as a rule than those not registered

Land Registration: Main risks and problems

- Registration on a voluntary basis reaches only a diminishing minority due to a lack of information, the complexity of the process, centralised implementation and the resulting high cost
- Registration merely offers specific groups more legal security. Entries as a person by the head of the family only serve to reinforce the power of the old compared to those possessing secondary rights such as the young and compared to women.
- The formality of land registration is often out of sympathy with custom and tradition like the system of traditional inheritance (without the Land Registrar being notified) or secondary rights and thus giving rise to informal dealings
- The access to strategic information on the procedures is often asymmetrical. Those with management and legal experience or financial strong groups are more likely to use this to their advantage than are the rural landowner
- Registration will not solve the investment problems in agriculture if technology is unavailable or unadapted or if support services are lacking
- The costs for maintaining and controlling the efficiency of the land register are underestimated:
  - Keeping registries up to date is difficult due to the inadequacy of the administration
  - Those affected often have not internalised the procedures or they consciously avoid it in order to create a legal grey zone or to save land taxes
  - Correspondingly, legal uncertainty increases again when land is sold based on false entries in the register
- Credit is not only dependent on land offered as a collateral, but is based on the all-over creditability of the lendee and often granted informally.
- The registration of land titles is a very insufficient prerequisite for promoting rural development if parallel changes in the framework are not also implemented (infrastructure development, labour mobility)
Advantages for the government

- Efficient basis for raising a land tax
- Basis for structural adaptation like land reform, land redistribution and rehabilitation of urban areas
- Control over land transactions
- Efficient basis for planning (land use planning, effective procedures of land allocation and permission for specific land use)

Disadvantages for the government

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

Land valuation

The market price can be derived from different methods of land valuation and is the basis for:

- Land tax
- Basis for granting loans on mortgages
- Compensation for restricted use and expropriation
- Decisions for stemming land price speculation
- Decisions on urban planning
- Investment stimulation
- Inheritance regulations
- Transparency and efficiency of land markets
- Land consolidation and land reform

Value and the valuation of land

- Land is regarded as one of the basic elements from which a nation can derive wealth
- All land and construction work may be considered to have a value. The value or worth of land depends on the purposes for which the land is used (e.g. land for agricultural purposes, land for construction).
- The estimation of the value or market price of a property is more an art than a science and depends on many external factors as well as the physical nature of the land or property (e.g. soil classification, location, potential for development)

Fiscal instruments

- Land tax can be an important source of income for the public budget
- Especially for community development, can contribute 70%-90% of the income of local communities
- Mechanism for local community to take a proactive role in implementing environmentally sound, sustainable land policy
- Tax is simple to raise since the object is visible
• Tax is stable as the basis for calculation (land) doesn't change much
• E.g. high tax on extensive use of high potential lands (Latin America)
• Fiscal steering instrument: Besides its importance as a source of income, taxation of land can also be a fiscal steering instrument:
  - Production incentives
  - Provision of land for construction
  - Reduction of land speculation
  - Mobilisation of the land market
  - Guiding of land use
• Specially when the basis for the calculation of the tax is not the current use value,
• but the potential market value

Land banking

• One of several instruments to regulate land markets in rural and urban areas and protected areas (nature reservoirs and water conservation areas)
• **Goal:** The foresighted availability of land for specific target groups and specific purposes like for community development, for guiding of land use and/or for the control of land prices
• It should help the land market function efficiently and not to extend public ownership

Policy on Land banking to:

• Improve access of the poor or other specific target groups (like smallholder in irrigation projects) to land
• Support the implementation of urban and rural land development projects
• Reduce inflation in land price and reduce land speculation
• Promote public/private partnerships
• Improvement of the land tenure structure

Rules for Land banking

• Obtain adequate legal powers for land banking. Plan land acquisition in only essential cases and on priority basis and ensure the provision of appropriate roads and public amenities especially in the urban expansion areas
• Maintain adequate supply of land to the market whenever necessary to regulate smooth functioning of the land markets and to control undesirable increase in land banking
• Plan a realistic time frame for land banking and to cover only that quantum of land which can be effectively managed within the capabilities of the government
• Plan for appropriate interim use for the acquired land by the government until public use occurs by allotting the land for the period on lease and deciding the permissible use
• Provide consistent supervision and transparency to avoid misuse and corruption
• Establish flexible executing agency with the necessary legal, organisational and financial competence (e.g. joint venture between the executing agency and development bank)
• Make sincere and adequate efforts to improve the technical and managerial skills of the personnel engaged in land acquisition and land development processes
• Dispose land to the low-income groups at cost price with long-term easy conditions for payment; cost price to include the cost of land plus the overhead expenses of the administration including the interest on the capital invested
**Role-play:**

**Introduce and expand land titling in critical areas to foster the development of dynamic land markets:**

Consultation round of the Government of the Republic of Etazile-Nabokesa (EN)

**Participants:**

1. The Government
   - Min. of Finance
   - Min. of Justice
   - Min. of Agriculture, Livestock and Forestry
   - Min. of Environment

2. International Donors
   - Worldbank
   - DFID
   - GTZ
   - Danida

3. Employers’ Federation and Chamber of Commerce
   - Agro-Industry
   - foreign Investors
   - private consultant service association

4. Farmers’ Union
   - large-scale commercial farmers
   - small-scale farmers
   - livestock producers

5. NGOs
   - rural development and self help
   - other national Organisations, e.g. women's rights
   - international environmental NGOs

6. Scientific community
   - economists
   - ecologists
   - social anthropologists
   - surveyors

**20 minutes for preparation:**

- Each group nominates a speaker
- The other members of the group work as advisers to their representative
- It is up to the group which ministries, donors, NGOs, disciplines they want to represent

**Agenda:**

1. Introduction of the chairperson
2. Short introduction of the group and the organisations the represent
3. 5 min. statements of each group
4. Open discussion (moderated –if possible!)
Introduction / Keynotes:

1. Government:

- Young democracy
- Clear break from minimalist state
- Basic major resource: land (for livelihood)

Why this expertise of titling?
- Conflicts are reduced
- Develop & monitor land markets
- Secured, efficient property transactions
- Stimulation of investment (- by creditors; - by owners)
- Ownership & security guaranteed by law
- Income generation (- taxation; - titling; - transaction)
- State revenue increased through taxation
- Enhance environmental management

2. International donors (world bank):

Conditions:
- Modes of disbursement
- Provision of collateral by recipients
- Government guarantee (no drastic change)
- Repayment arrangements
- Agency arrangement for loan administration
- Details of beneficiaries profiles
- Popular participation by the beneficiaries
- Audited accounts
- Accounting procedures / quaterly
- Environmental concerns
- EIA (Environmental Impact Assessment)
- Transparency / good government
- Down sizing
- Government must reduce expenditure
- NO EIA, NO LOAN
3. Employers association:

**Sacrosanct of private property**

**Engine for development:**
- prerequisite for investment
- provides certainty
- access to credit facilitated
- exclusive rights

- provides mortgageability of land
- can sell to the highest bidder
- can be bequeathed
- enjoyment of benefits

4. Farmers union:

**Interests**

- Absolute need for title:
  - security
  - access to statutory rights
  - intensification

**Strategies**

- Provide:
  - credit
  - infrastructure
  - markets
  - incentives

**Large scale farmers**

- Need statutory rights:
  - reduce costs
  - can use as collateral
  - social integrity (+)

**Small scale farmers**

- Need communal rights:
  - sensitive area
  - flexibility of use
  - maintain social rights

**Livestock producers**

- Institutional support

5. NGO:

**Differentiate (urban / rural)**

**Urban** include statutory rights:
- provide credit facilities
- subcontracting to NGOs
- protect environment (EIA studies)
- facilitate CBOs to support owners
- compile & disseminate information

**Rural** include family title:
- help titling of female headed households
- create land ceiling before titling
6. Scientific community:

- Pilot area
- Local participation
- Economic growth
- Environment

Socio-economic considerations

Mobilisation of resources:
- Finance
- Manpower
### Group 1: Institutional / organisational requirements for a functioning land administration?

<table>
<thead>
<tr>
<th>Instruments / fields of land administration</th>
<th>Institutions / organisations needed</th>
<th>Working level</th>
<th>Co-ordination / co-operation needs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal:</strong></td>
<td><strong>Government:</strong></td>
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<td><strong>Central government</strong></td>
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<tr>
<td>Land registration</td>
<td>Deeds registry</td>
<td><strong>Inter-ministerial co-ordination</strong></td>
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<tr>
<td>Survey ordinance</td>
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<td><strong>Provincial government</strong></td>
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<tr>
<td>Cadastral law</td>
<td>Lands survey and planning departments</td>
<td><strong>Inter-departmental co-ordination</strong></td>
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<tr>
<td>Planning law</td>
<td>Ministry of Finance</td>
<td><strong>Local authorities</strong></td>
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<tr>
<td>Customary law</td>
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<td></td>
<td><strong>Co-ordination between central and local government</strong></td>
</tr>
</tbody>
</table>

| **Fiscal:** | | | |
| Rating regulations | Land boards | | |
| Levies & taxes | State attorney | | |
| | Ministry of Local Government | | |

| **Administrative:** | | | |
| Directives | Local / traditional leaders | | |
| Courts | District conflicts | | |
| Regulation | | | |
| Tribunals | | | |

| **Others:** | | | |
| Land consolidation | | | |
| Land valuation | | | |
| Land banking | | | |
| Information system | | | |
**Group 2:** Institutional / organisational requirements for a functioning land administration?

<table>
<thead>
<tr>
<th>Instruments / fields of land administration</th>
<th>Institutions / organisations needed</th>
<th>Working level</th>
<th>Co-ordination / co-operation needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution</td>
<td>Judiciary &amp; legal affairs</td>
<td>National level</td>
<td>Inter-ministerial technical committee</td>
</tr>
<tr>
<td>Land policy</td>
<td>Ministry of Lands</td>
<td>National level</td>
<td>Provincial / regional development committee</td>
</tr>
<tr>
<td>Legislation</td>
<td>Ministry of Agriculture</td>
<td>District to village level</td>
<td>District development committee</td>
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<tr>
<td>Strategies</td>
<td>Ministry of Natural Resources &amp; Environment</td>
<td>District to village level</td>
<td>Ward development committees</td>
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<td>Ministry of:</td>
<td>District to village level</td>
<td>Village development committees</td>
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<td>- Water</td>
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<td>Co-opted members (NGOs, religious institutions, etc.)</td>
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</tr>
</tbody>
</table>
Group 3: Cost recovery mechanisms to finance land administration?

- Distinguish tenure regimes
- How do we finance land administration?
- Collected at which level?
- Beneficiaries
- Coordination / co-operation needs

- Need to take into account various institution arrangements

- Freehold
  - Transaction fees / Taxes
  - Centralised / decentralised level
  - Transfers depend on national priorities
  - Private sector & government

- Leasehold
  - Rentals
  - Decentralised level
  - Transfers depend on national priorities
  - Private sector & government

- Customary
  - User fees
  - Local level
  - Local people
  - Capacity building

- State
  - Rentals (user fees) / license fees
  - Decentralised level
  - Transfers depend on national priorities
  - Capacity building
**Group 4: Cost recovery mechanisms to finance land administration?**

<table>
<thead>
<tr>
<th>Instruments to finance land administration?</th>
<th>Collected at which level?</th>
<th>Beneficiaries</th>
<th>Co-ordination / co-operation needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land policy:</td>
<td>District / local</td>
<td>All stakeholders</td>
<td>Consensus building:</td>
</tr>
<tr>
<td>Freehold Leaseshield</td>
<td>Regional / province</td>
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<td>Government Private sector NGOs CBOs</td>
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<tr>
<td>Legislation:</td>
<td>National / central</td>
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<td>Implementation:</td>
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<tr>
<td>Taxation Ground rent</td>
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<td>- Horizontal - Vertical</td>
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<td>Institutional capacity:</td>
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<tr>
<td>- Financial</td>
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<td>- Technical</td>
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<tr>
<td>- Administration</td>
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</table>
**Daily Review  Day 6**

**Land Banking:**
Positive speculation?

**Purpose:**
- Improve access of the poor or other specific target groups to land
- Support the implementation of urban and rural land development projects
- Reduce inflation in land price and reduce land speculation
- Promote public / private partnerships
- Improvement of the land tenure structure

Up to 1965 land market was regulated in Germany - Meaning?

**Value and valuation of land:**
A procedure for determining a well-supported estimate of the value of a property taking into account all pertinent data like the type of property, location, potential for development and special risks.

The market price derived from the different methods of land valuation can be used as a basis for:
- Land tax
- Basis for granting loans on mortgages
- Compensation for restricted use and expropriation
- Decisions for stemming land price speculation
- Decisions on urban planning
- Investment stimulation
- Inheritance regulations
- Transparency and efficiency of land markets
- Land consolidation and land reform

Valuation of agricultural land for tax and other purposes in Germany based on a survey which were conducted in 1934 (Maximum soil points: 100).

To rent agricultural land near Zschortau:
- DM 5.00 per soil point
- DM 5.00 * 65 points = DM 325 per ha/year

To buy land near Zschortau:
- DM 123 - 169 per soil point
- DM 123 - 169 * 65 points = DM 8,000 - DM 11,000 ha

**Group discussions:**
Institutional / organisational requirements for a function land administration
Cost recovery mechanism to finance land administration
- Views from different perspectives
- Land tax / revenue
Land resources need to be managed sustainably. Different land development instruments facilitate the purpose to plan for and to guide land management. Important instruments which aim to match land use pattern with land tenure structure and matching public policy with local and individual interest especially in rural areas are described.

This chapter gives an overview of the German planning system which aims to sustainable land development. The system is characterised by a variety of planning procedures and instruments which are mainly in the responsibility of the 16 individual Federal States (Länder) and at local level authorities. Each State has its own capacity and legal instruments for planning, implementation and responsibility for enforcement.

Important instruments for implementing land-related development goals are Comprehensive Spatial Planning for development plans at state - province/planning region - local level, Landscape Planning for nature conservation & landscape management, and other sector plans (e.g. water resources or agrarian structure) or special area development programmes, e.g. for landscape rehabilitation & village renovation. The spatial development plans at state-province-local level complement each other, i.e. one plan provides the base for another plan. Sector or special area development plans are produced by the relevant authorities at Province and District level to guide Communal (Land) Development Plans, i.e. they are not legally binding.

The overall situation can be characterised by horizontal and vertical linkages of various programmes and plans at different levels. The framework planning at State and Province (or Planning Region) level has the objective to harmonise planning with major emphasis to ensure that overall public policy goals are considered in implementation in the site-specific regional context with special consideration of local needs and opportunities. Most important in the German planning system is the implementation and interaction at local level: all plans are streamlined and congested in Communal Development Plans. These plans are fully in the responsibility of communities or municipalities who have capabilities and funds for both planning and implementation. There is usually little interference from higher authorities in such local plans, if laws are observed and State and Province planning framework are considered.

Exceptions are planning for airports, power plants, federal highways, railways, and major river development which are planned and implemented by Federal or State Agencies.
Farm level. There is no direct interference in agricultural planning at farm level in Germany: farmers or farm co-operatives are responsible for their own land use plans. However, there are landscape management and agricultural programmes with associated economic incentives, subsidies or management regulations which indirectly influence land use pattern at farm level.

Planning Instruments for Land Development in Germany

There are five major planning instruments with special emphasis on agricultural and rural development. They are related and complement each other:

1. **Landscape Planning** *(German: Landschaftsplanung)*
   - Type: Sector plan that contributes to or is part of spatial comprehensive planning
   - Mandate: Nature conservation and landscape management authorities at Upper (Province or Planning Region) and Lower (district, commune) level

2. **Agrarian Structural Development Planning** *(Agrarstrukturrelle Vorplanung, AVP)*
   - Type: Sector planning that contributes to spatial comprehensive (regional) planning
   - Mandate: Agricultural authorities at (1) Federal State (2) Province/Planning Region and (3.) District

3. **Action Programme: Rural Area Development** *(Aktionsprogramm Ländlicher Raum)*
   - Type: Comprehensive area development planning which contributes to landscape management, agro-ecological and village renovation and infrastructure development and that amends spatial comprehensive planning for special areas with highest priority
   - Mandate: Regional Planning Authorities, co-ordinated by the State Agency for Rural Development
   - Implementation: Jointly by the State Agency and local authorities (district, community)

4. **Comprehensive Spatial (Regional-) Planning** *(Landes- und Regionalplanung)*
   - Type: Development plans at (1) State, (2) Province (or Planning Region), and (3) local level
   - Mandate: Public administration authorities at State, Province (or Planning Region) and Community

5. **Land Consolidation Planning** *(Flurneuordnung und Landentwicklung)*
   - Type: Comprehensive rural development plan. Components are land readjustment (reallocation), agricultural-, village- and rural development, nature protection, infrastructure development.
   - Actors at state and local level are (e.g. in the State of Baden-Württemberg):
     - State Agency for Land Development and Land Consolidation (Supervisory Agency)
     - Agency for Land Development and Land Consolidation as the implementing agency at regional level. One planning region comprises several districts
     - Other: Sector Agencies at State level (e.g. Agriculture, Water, Housing, Roads, Energy)
     - Higher and Lower Authorities at Regional and Local Government resp.
     - District Administration and Municipalities (towns) or Communities (rural areas)

A detailed introduction into the planning systems is in Annex 3.
Land development. Experiences from Africa

In a brief brainstorming exercise, the participants identified various instruments or elements which are applied in land development, or which they associate with land development in their country specific context.

The answers were clustered in two groups: policy related instruments/elements and more technically oriented instruments/elements.

The discussions revealed that there is a variety of instruments in use. They are implemented by various institutions who have the mandate for planning and execution: regional planning, central administration at national, provincial or district level, agriculture, forestry, nature conservation, etc.

A major lack in the poor status of implementation is a lack of effective collaboration between various agencies and the often competing programmes which are conducted by various institutions.

<table>
<thead>
<tr>
<th>Specify one important element of land development</th>
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<tbody>
<tr>
<td><strong>Policy element</strong></td>
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<td>---------------------</td>
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<tr>
<td>Sustainable development</td>
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<td>Environmental conservation</td>
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<td>Land conservation</td>
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<tr>
<td>Appropriate land-use</td>
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<tr>
<td>Sustainable use of land</td>
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<tr>
<td>Integrated spatial framework</td>
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<td>National settlement policy</td>
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<tr>
<td>Integrated resource management</td>
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<tr>
<td>Development and planning legislation</td>
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<tr>
<td>Multispecies utilisation in marginal areas</td>
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<tr>
<td>Urban and rural development</td>
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<td>Common property management institutions in communal areas</td>
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<td>Measures to increase agricultural productivity</td>
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Daily Review  Day 7

Land development and land consolidation programme:

Technical elements:
- Infrastructure development
- Measures to agricultural productivity
- Dam construction etc.

No concrete definition on land development

Policy elements:
- Land conservation
- Urban and rural development
- Household food security
- Privatisation

Planning of regional / land development:

Land use planning for rural areas (interrelated, complementary)

Landscape planning:
- For nature protection and
- Landscape management (agricultural forestry, rural and urban development)
- Development infrastructure

Landscape management (agricultural forestry, rural and urban development)

Agrarian structural development planning:
- instrument used by agricultural authorities for decision making and planning to meet the agriculture policy goals in the regional context

Important elements:
- Land re-allocation
- Agricultural development
- Town-/ rural village development

 Actors at state level:
- State agency for land development and land consolidation
- Agency for land development and land consolidation (regional)

Land development and land consolidation planning:
- To enhance sustainable development in rural areas

Regional planning or spatial comprehensive planning:
- Aims to co-ordinate various land use demands at different administration levels

Regional planning or spatial comprehensive planning:

Regional planning or spatial comprehensive planning:
- Aims to co-ordinate various land use demands at different administration levels

Actors at state level:
- State agency for land development and land consolidation
- Agency for land development and land consolidation (regional)

Land development and land consolidation planning:
- To enhance sustainable development in rural areas

Important elements:
- Land re-allocation
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Actors at state level:
- State agency for land development and land consolidation
- Agency for land development and land consolidation (regional)

Actors at state level:
- State agency for land development and land consolidation
- Agency for land development and land consolidation (regional)

Land consolidation (instruments):

Improving agricultural structure:
- farm structure
- minimising production costs
- promoting mechanisation
- control of wind and water erosion
- controlled use of fertilisers

Improving agricultural structure:
- farm structure
- minimising production costs
- promoting mechanisation
- control of wind and water erosion
- controlled use of fertilisers

Improving infrastructure:
- re-arrangement of rural properties, associated with highways, railways, etc.
- prevision of land for the rehabilitation of rural areas, landscape planning

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Improving infrastructure:
- re-arrangement of rural properties, associated with highways, railways, etc.
- prevision of land for the rehabilitation of rural areas, landscape planning
Promoting nature protection:
- soil conservation measures (on-farm)
- ground water and surface water protection
- conservation of diversified landscape pattern
- protection of natural vegetation (wildlife, etc.)

Promoting village development

Actors of land consolidation process:
- Land owners
- Farmers
- Communities
- Forest agency
- Nature protection agency

Land consolidation procedures:
- Accelerated land consolidation (small-scale, voluntary regrouping)
- Standard (comprehensive infrastructure: ground, waterways, landscape management, village management)
- Supportive (major infrastructure measures: airport, highway, canals)

Daily Review  Day 8

Zentrum für Agrarlandschafts- und Landnutzungsforschung (ZALF):
⇒ Technical Tour Müncheberg, page 121

Programme:
- Concepts, methods and results in developing sustainable land use systems - The ZALF approach (Dr. A. Werner)
- A new indicator in the OECD indicator framework for the development of sustainable agriculture (Dr. H.-P. Piorr)
- Integration of environmental targets into agricultural land use - The development of MODAM - a Multi Objective Decision support tool for Agroecosystem Management (P. Zander)
- Effects of large nature conservation areas to the agricultural sector (Dr. H. Kächele)
- Visit at the Agricultural Co-operative "Müncheberg" (Dr. R. Roth, Dr. E. Reining, H. Gelfort)

Farm visit Müncheberg:

Land:
- Size: 1,000 ha (=10 km²) 95% arable, 5% grassland
- Soils: average points: 27 (Maximum in Germany: 100 Points)
- Rainfall: ca. 500 ml

- Collective co-operative since 1991
- Land is leased
- 150 cows, 250 pigs
- Cereal crops
- Overproduction (EU) → Subsidy: DM 600,-/ha
Institutional Preconditions: Implementation and Actors Involved

In this chapter:

⇒ 5.1 Actors / Stakeholders
⇒ 5.2 Conflicts and conflict resolution

5.1 Actors / Stakeholders

Rural Code in Niger: the “setting”

(Based on Elbow 1996)

- Legislative reform process in the area of tenure policy, decentralisation and natural resource management
- Land / resource law consisted of four competing systems: customary, Islamic, colonial and post-colonial law
- Since 1985 attempts to redefine tenure and resource management policy through a comprehensive Rural Code
- Starting from a highly centralised administration, with few registered and much non-recognised customary rights, based on the “French model”
- Sahelian droughts with impoverishment and degradation as a starting point for policy interventions in search for long term solutions
- Founding of CILSS (Inter-State Committee for Drought Control)
- International conferences (Nouakchott 1984, Ségou 1989 and Praia 1994) emphasised local control over natural resources
- “Gestion de terroir” as model for village based land use planning
- Integrated management of natural resources (soils, pastures, forest or water) universally accepted as superior to former sectoral approaches
Big impulses from the Sahel Regional Conference on “Land Tenure and Decentralisation to Achieve Democratic, Participative and Decentralised Management of Natural Resources in the Sahel” (Praia 1994)

Emphasis on popular participation, invited were besides the “normal” decision makers:
- rural producers (farmers and herders)
- civil servants
- elected officials
- private business people
- donors
- women’s groups
- researchers
- NGOs

Primary goals of Praia:
- appropriate and accessible legislation supportive of local rights and resource security
- greater knowledge and respect for customary systems
- recognition of the complexity of local tenure systems
- flexible legislation at the national level to allow for local specificity and innovations
- recognition of rights for a variety of actors such as herders and fishermen as well as farmers
- legal protection of marginalised groups
- regional planning for environmental protection
- improved circulation of information
- improved training, consciousness-raising and educational programmes at all levels (from local population to state agents)
- development of institutions for conflict resolution
- better understanding and integration of NGOs and associations
- family planning
- greater availability to credit regardless of land ownership

Rural Code in Niger: goals and obstacles

Obstacles with regard to institutions and stakeholders:

- Policy reform became difficult because of overlapping jurisdiction of autonomous and often isolated ministerial bodies, subdivisions and inter-ministerial units.
- Legislation was seen by bureaucrats as an end in itself, French tradition of rational rules, perhaps to the neglect of practical concerns regarding implementation and socio-economic content of the rules
- Five different government structures deal with land tenure issues and natural resource management
- Apparent incongruence between ministerial turf boundaries and the crosscutting mission of the Rural Code
- Different ministries responsible for core policy arenas such as land, forest, water, community associations and economic interest groups
- Sub-divisions within a ministry are often structured sectorally
- Multitude of autonomous policies related to economic interest groups, co-operatives, community associations and NGOs
- Bundle of legislative guidelines which regulate and define the permissible parameters for rural community organisations and which involve additional ministerial or sub-ministerial structures
Guidelines to be found in the “Introduction to the Rural Code”:

- Dual role: to secure rights and to achieve economic development
- Equal validity of customary and written law,
  - customary law as the starting point, but
  - has to be evolutionary and dynamic to reap transformation in society
- Adoption of an integrated or holistic approach to NRM
  - replacing old text restricted to land use and tenure, extended to resources
  - assumption that clarification and protection of individual and collective tenure rights will serve development goals.
  - protect rights from the level of the individual to the family and to the regional administrative collective
  - ensure justice and harmony
- Clear commitment to participation will avoid the chronic problem of non-application of state codes that are not compatible with socio-economic norms and values

Rural code as a process, which should not be done mainly by intellectuals (which was difficult to perform!)

- Campaign to collect and centralise information about tenure and NRM systems, conflict resolution institutions and procedures, rural organisational structures (assessment)
- A survey document (aide mémoire) later circulated in regional working groups with farmers, herders, NGO representatives and project management.
  - regional profiles, again discussed at regional (provincial) workshops
  - proposed texts (laws, etc.) were several times discussed in public
  - the “framework policies” were widely diffused through various media
  - translation of the orientation principles into five local languages
  - training courses in PRA at different levels to get a basis for self-assessment of tenure rights system and land use patterns
  - research undertaken by LTC
  - juridical analysis through expert investigation

Policy Choices defined by the Rural Code process: needed are

- Implementing regulations, institutions, procedures and sector-specific guidelines
- Application decrees or complementary texts
- They have to define, clarify and regulate the following four basic topics:
  1. Promoting security of access rights to resources for rural producers
  2. Conservation and NRM (including obligations and rights)
  3. Organisational structures and administration of rural populations
  4. Regional planning

This covers the following legal and institutional issues:

- mise en valeur (development of rural areas)
- Rural Code institutions
- co-operatives
- Land commissions
- home territories of herding populations
- conservation and exploitation of forest resources
- decentralisation of forest management authority and legal status of forests
- conservation and exploitation of wildlife, aquatic life and fisheries
- application of the water code,
- expropriation for reasons of public interest
- rural property and exploitation contracts
Institutional preconditions

- rural concessions (administrative acts granting long term use rights)
- land use planning (schémes d’aménagement fonciers)
- protected areas
- conflict resolution
- rural registry
- and public rural development

Promoting Security of Access Rights to Resources

- primary choice for agricultural areas: preference for exclusive private and individual rights to land/resources
  - holders of private rights are to be determined on the basis of statutory or customary rights
  - oral attestation is of equal validity to written law
  - strengthen customary claims of ownership relative to use rights claims of tenants
- Resurgence of the influence of the rural customary elite which had been disfavoured and weakened under President Kountché
  - their re-integration into the official Nigerian administration and as legitimised managers of the land and in dispute resolution
- Danger: use right holders, no matter of how long and how well-established, see their security diminished due to the regaining influence of nobility
  - obligations of exclusive property right holders in agriculture
  - farmers must allow herders access to water and pasture where rights to do so exist
  - farmers must exploit their holdings for agricultural production
  - land commissioners may monitor the status of land use
  - three years of misuse (fallow?) give him the right to give land to third parties on a temporary basis
  - same is demanded from use rights holders
- Rights of livestock producers
  - customary territories for herding groups (priority access rights)
  - not property of individuals or groups, but de facto open access
  - but possibility to award group titles

Conservation and Natural Resource Management

- Rural Code underlines the importance of environmental protection
- The State, territorial collectives, rural operators, individually or collectively must contribute to the “mise en valeur” of the national heritage (includes for example public and private forests)
  - management plans for state forests in collaboration with the local population
  - co-ordination of forest management with regional plans
  - state subsidies for initiatives to protect forests
  - encouragement and support of initiatives of local communities for resource protection

State Institutions, Regional Planning, Private Organisations

- State institutions and regional planning
  - central and guiding role of the state in resource management
  - policy making body: National Committee of the Rural Code
  - policy co-ordination mainly at the level of the executive body (Secretariat)
• Rural Code in Niger: elements
  - interministerial body attached to MoA&L
• Decentralised structures are charged with assuring appropriate and effective development of NR
  - land commissions and permanent secretariats at each district level
  - also secretariats at the regional level and in municipalities
• Local governments provide a
  - tenure management plan (schéma d’aménagement foncier) at the level of each region
  - and a rural registry of rights (dossier rural) at the district level
• Policy power for enforcement and maintenance of the administrative system is done through decentralised structures of MoI (Préfet, Sous-Préfets, Chefs de Poste)
• Centrepiece for implementation of Rural Code is the Land Commission at each district level
  - presided by sous-préfet (district commissioner)
  - permanent secretary
  - plus members representing seven governmental technical services
  - at least one representative of the following categories: farmers, herders, women and youth
• The permanent secretary of the RC at district level
  - manages the rural tenure registry in which individual and group rights are recorded
  - includes a written description of each right and registration of the identity of the right-holder
  - should have a geographical representation of the range and location of rights
• Land commission monitors farmers with regard to development
• Regional planning through required formulation of a tenure management plan to be implemented in each region
  - zoning regulations (allowable activities at specific sites)
  - to be completed in a participatory manner (discussed in public hearings)
  - Impact studies on proposed zoning decisions
  - rural registries as a tool for regional planning as they contain the detailed rights and use patterns

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Private Institutions

Rural associations are: co-operatives, NGOs, economic interest groups, women’s groups and youth groups:
- already existing laws regulating each of these types but too restrictive
- need for a complementary text to the RC, which allows for greater freedom and independence of co-operatives than in the past
- need to specify their creation, classification and procedural regulations by law

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Conflict Management

Resource conflicts first to be reconciled by traditional authorities
- first within the village or herding camp
- later at the level of the canton or herding grouping
- if no solution: begin with the judiciary authorities
Discussion on "Rural Code" Niger

- How was the grassroots’ participation facilitated and operationalised? Broad information and consultation campaigns down to the Nigerian villages, supported by projects.

- Have there been sectoral conflicts after the “Rural Code”? The RC has not yet been implemented due to the Coup d’Etat in 1995. The inner-ministerial conflicts have mainly been identified for the past and were a cause for the discussion on a new Code.

- Are villagers and herders able to understand the ideas and contents of the RC depending on their level of literacy? Differentiation necessary between the old and the young generation which relies more and more on new sources of information and media. A controversial discussion started on the validity of so called rural ignorance.

- The increased role of NGOs and CBOs in the RC process was in particular emphasised.

- Why was the leasing of land regarded as a problem in Niger? It depends much on the role of the traditional nobility, which questions the land reforms executed under President Kountché which transformed user rights of tenants into ownership rights. Now they want their land back. Therefore legal insecurity grows about the status of leased lands.

- Further information is needed about the pros and cons of the francophone system, in particular, of different approaches to PRA compared to the British inspired system used in Eastern and Southern Africa.

- Lessons from francophone and anglophone pilot projects should be compared.

- Further research and policy formulation is needed on institutional, legislative and policy wise empowerment of up to now neglected groups.

- What is the difference between participation and consultation. Consultation is part of a broader participation process. Participation is the “plan of the people, by the people, for the people.” The techniques of participation consist of consultation, dialogue, consensus building, PRA and others.

- Consultation fulfils an important task to be used to legitimise hidden agendas.

- Consultation can be extractive as well, if outsiders make use of their new knowledge for their own partial interests.

Resource Tenure and Interest Groups (The example of Lao, PDR)

1. The State Party
   - gatekeeper functions against too far liberalisation of land markets
   - defending state ownership in most natural resources

2. The Military
   - partners in the newly founded commercial logging companies
   - income from logging to be used as hidden military budgets?
3. **Bureaucracy**
   - differing interests in resource tenure development
   - complicated structures at the national level, some departments look for very close
cou-operation with international donors, others do not
   - creation of specific coalitions with donors to get things through
   - professional promotion through large project budgets
   - provincial level: loss of influence through re-centralisation
   - main burden of implementation for the local level administration, key role in
participatory land allocation etc.

4. **Smallholders**
   - not yet been able to build a forum to assert their interests directly
   - dependent on NGOs
   - coalitions with the local administration

5. **Village communities**
   - still a "spirit of community", great solidarity
   - additionally empowered by the legislation to undertake local land use planning

6. **National entrepreneurs**
   - de facto part of international investors
   - interest in claims to restitution of land, pressure group in parliament
   - sometimes frontmen for international companies

7. **International capital**
   - most powerful and successfully operating interest group
   - economic interest: exploitation of natural resources,
   - strong bargaining power (complete return of profits can be guaranteed)
   - special role of international logging companies

8. **International donors**
   - land policy reform and participation as central objectives
   - donor strategies become more subtle (trying out instruments in pilot projects)
   - countervailing power against dominant donors (WB) through NGO networks
   - mushrooming of interest groups led to enormous internal co-ordination problems,
including blockades
# Working group on involvement of stakeholders in different countries

<table>
<thead>
<tr>
<th>Key issues:</th>
<th>1 The three most dominating stakeholders</th>
<th>2 Is there a need to restrict their influence? (Why?)</th>
<th>3 Instruments approaches to do so</th>
<th>4 Three relevant, but up to now neglected stakeholders</th>
<th>5 Approaches to secure their consultation / participation</th>
<th>6 Instruments / actors / institutions involved</th>
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<td>Ministry of Justice</td>
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<td>Tanzania</td>
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<td>Effective use of the existing administrative structure</td>
<td>Central government</td>
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<td>Farmers</td>
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<td>No</td>
<td>Women</td>
<td>Training of grassroots leaders</td>
<td>Local government village councils/leaders</td>
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<td>Research institutions</td>
<td>Intensive use of media</td>
<td>Land owners</td>
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<td></td>
<td>Disseminate information in local language</td>
<td>Legal institutions</td>
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<td>Regional/ district stakeholders workshops &amp; seminars</td>
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<td>Financial institutions</td>
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<td></td>
<td>Political parties</td>
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</table>
### Institutional preconditions

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<th>instruments / actors / institutions involved</th>
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</thead>
<tbody>
<tr>
<td>Government</td>
<td>Yes</td>
<td>Policy + plans</td>
<td>Woman</td>
<td>Farming interest groups</td>
<td>Government</td>
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<tr>
<td>Private</td>
<td>Government: - decentralise decision-making - transparency</td>
<td>Strategies</td>
<td>CBOs</td>
<td>legal framework</td>
<td>Private sector</td>
</tr>
<tr>
<td>Smallholders</td>
<td>Private Sector: - accommodation of public interests</td>
<td>Participatory approaches</td>
<td>Commercial farm workers</td>
<td>incentives: tax rebates</td>
<td>Smallholders</td>
</tr>
</tbody>
</table>

### Zimbabwe

- **Government**
  - Control of dialogue process, no restriction
  - Management
  - To reach consensus
  - Joint meetings at all levels
  - Structures topics, but time bound
  - Research back-up
  - Through trade offs
  - External authoritative facilitation

- **Landless**
  - Landless including the youth
  - Resource poor land holders
  - Rural unemployed

- **Local institutions**
  - Local mobilisation

- **Private**
  - Problem analysis i.e. PRA
  - Government for facilitation
  - NGOs
  - CBOs

### Lesotho

- **Government**
  - Policy
  - Legislation
  - Policy

- **Political parties**
  - Policy
  - Legislation
  - Legislation

- **Trade unions**
  - Yes

- **Religious groups**
  - NGOs
  - Farmers

- **Government**
  - Yes

### Namibia

- **Government**
  - Yes

- **Policy**
  - Legislation

- **Religious groups**
  - NGOs

- **Farmers**

- **Policy**
  - Legislation

- **Government**

The three most dominating stakeholders are Government, Private, and Smallholders. Is there a need to restrict their influence? (Why?) Is there a need to restrict their influence? (Why?) Instruments approaches to do so are necessary. Three relevant, but up to now neglected stakeholders include Woman, CBOs, and Commercial farm workers. Approaches to secure their consultation / participation involve legal framework and incentives: tax rebates. Instruments / actors / institutions involved include Government, Private sector, and Smallholders.
Botswana

- Central government
- Local government
- Livestock

No! Need to increase the participation and influence of others

Impose legal regulations for participation of all important stakeholders for all major reforms

Women + Youth

NGO’s

Small scale farmers

Sensitise + consult each group separately

Involve them with other stakeholders in decision-making

Develop policies to address marginalisation

Government + all stakeholders

South Africa

- Governmental institutions
- House of traditional leaders
- Land-owners

No rationalisation and restrictions

Constitution shall guide

NGOs

CBOs

Tertiary institutions and quasi government

Workshops/ conferences

Media meetings

Research discourse

Kenya

- Government
- Farmers
- Financial institutions

1) Equitable distribution of land

2) Equal access to land

3) Rationalise agricultural production

4) Protect vulnerable groups

5) Consideration of the landless

6) Gender consideration

Pastoralists

Vulnerable groups: women - children

The landless: class victims - street children

Constitutional reform

Identification of their representatives

Modalities to bring them in reform process

Provincial administration - mobilization

Local councils - local level - division

NGOs

CBOs
5.2 Conflicts and conflict resolution

Land Tenure Conflicts in Indonesia

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

(Löffler 1996:41)

Resource Tenure Conflicts in Mozambique

Land / resource tenure conflicts occur primarily between the following groups:

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

(Myers 1995:30)

Out-of-the-Court Reconciliation of Interests

- Land conflicts at courts are usually very costly and time-consuming
- The number of suitable courts on all local level is often not sufficient
- Appropriately educated judges and lawyers are often scarce
- Out of court Reconciliation of interests is a complementary activity: "settling before judging" (Development of arbitration procedures / round-table conferences with different parties (state authorities, local authorities, affected persons, mediators)
- Important procedures are facilitation, mediation and conciliation
Institutions and Mechanisms for Conflict Resolution/Management in West Africa

- Local level institutions for conflict management
  - among pastoralists (e.g. joros (Mali))
  - among fishing folk (e.g. batigui (Mali))
  - among farmers (e.g. land chiefs, council of elders (Ghana))
- Administrative and judicial institutions
  - Formal institutions:
    - Courts
    - Administrative authorities
    - Resource tenure commissions (e.g. Niger)
    - Negotiation fora (e.g. Nigeria)
    - Stakeholder committees (e.g. Niger)
    - Management committees for agricultural lands (e.g. Ivory Coast)

(based on GRET/IIED 1996)

Discussion on Resource Conflicts:

- Conflicts could be avoided to a good part if more respect is given to cultural and traditional values and norms
- Literacy and awareness creation may help to contain conflicts or even not let them arise from the beginning.
- Do the common people really have confidence in their courts? There is a general tendency that the citizens lost their trust for the courts more and more. Many NGOs try to support claimants to get their court cases through as a law suit based on rule of the law is often not assured.
- If formal decisions and institutional arrangement cannot be enforced any more people often change or draw back to informal institutions.
- It is dangerous to rely exclusively on customary, traditional institutions as a means to solve conflicts when these institutions are already far away from reality. The re-empowerment of traditional institutions is thus a double edged issue.
- Experience has shown in many countries that there is an urgent need for local solution of conflicts as these are close to the parties involved and checked by local public.
- Sometimes conflicts are politically inspired also the party involved argues on a juridical and constitutional basis (Example of the „Volksstaat“ in RSA)
- More information is needed on the scope of co-operation between informal and formal institutions.
Working group on resource tenure conflicts resolution:

Country experiences

### Botswana

1. Kind of conflict: Illegal extension of plot
2. Involved policies: Complainant vs. defendant
3. Issues of conflict: Defendant’s plot encroaches into complainants plot
4. Causes of conflict: Defendant refuses to adjust boundary
5. Proposed solutions: Boundary adjustment
6. Specific conflict resolution: Land board and / or land tribunal
7. Actors involved: Land board and / or land tribunal

- Compensation of complainant by defendant
- Relocation of the complainant
- Consultation with local people
- Intervention by mediators
- Consultation
- Mediation
- All stakeholders

### Namibia

1. Ranch / pastoral land use
2. Pastoralists
3. Traditional / customary practices
4. Livestock-crop fields
5. Consultation
6. Communal participation
7. Land boards

- Environmentalists
- Crop producers
- Veterinary services
- Livestock vs. crop production
- Land boards
- Traditional leaders
- Foresters

- Policy issue
- Degradation of land
- Zonation
- Legislation / policy
- Civil courts
- Traditional courts
- Traditional authority
- CBOs
- Land boards
Kenya

Transform the Tana River Delta land into:

1. Kind of conflict
2. Involved policies
3. Issues of conflict
4. Causes of conflict
5. Proposed solutions
6. Specific conflict resolution
7. Actors involved

**Kind of conflict**
- Kenya
  - Transform the Tana River Delta land into:

**Involved policies**
- Government
- KWS
- Biodiversity conservation
- Diverse interests
- Technical feasibility study
- Technical feasibility study by experts
- Government

**Issues of conflict**
- Kenya
  - Transform the Tana River Delta land into:

**Causes of conflict**
- Kenya
  - Transform the Tana River Delta land into:

**Proposed solutions**
- Kenya
  - Transform the Tana River Delta land into:

**Specific conflict resolution**
- Kenya
  - Transform the Tana River Delta land into:

**Actors involved**
- Kenya
  - Transform the Tana River Delta land into:

Zimbabwe

1. Wildlife resources
2. Central government
3. Proprietorship
4. Exclusive ownership by the state
5. Decentralised rights of use ownership & sanctions
6. Legally-binding private & community resource rights
7. Government

**Use & ownership**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Local government**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Revenue sharing**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Limited ownership rights**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Rights of ownership (private & communal)**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Enforcing institutions (local)**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Private farmers**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Communal farmers**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Use rights vs. ownership**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Use rights**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Poaching (unsanctioned) use**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Equitable distribution of benefits & costs**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Definable use rights & obligations**
- Zimbabwe
  - Transform the Tana River Delta land into:

**Mediation arbitration adjudication**
- Zimbabwe
  - Transform the Tana River Delta land into:

**NGOs CBOs**
- Zimbabwe
  - Transform the Tana River Delta land into:
### Ethiopia

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<tr>
<th>Kind of conflict</th>
<th>Involved policies</th>
<th>Issues of conflict</th>
<th>Causes of conflict</th>
<th>Proposed solutions</th>
<th>Specific conflict resolution</th>
<th>Actors involved</th>
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<tbody>
<tr>
<td>Arable land vs. forest land</td>
<td>Government, smallholders, pastoralist</td>
<td>Land uses Water uses</td>
<td>Absence of appropriate land policy &amp; institution</td>
<td>- Policy &amp; legislation - institution</td>
<td>- Policy &amp; legislation - institution</td>
<td>Laws</td>
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<td>Smallholders vs. government</td>
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<td>Population pressure</td>
<td>Rehabilitation &amp; conservation measures</td>
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<td>Irrigation devt. vs. pastoralist</td>
<td>Landless vs. land owners (possessors) (among family)</td>
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<td>Environmental degradation</td>
<td>Off-farm income generating projects</td>
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<td>Landless vs. land possessors</td>
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<td>Lack of alternative livelihood</td>
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<td>Land hunger</td>
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</table>

### Tanzania

| Urban agriculture vs. water resource | Urban farmers / gardening Urban residents Water authorities Urban authorities | Water pollution | Misuse of purified water overutilisation of water resource | - Convene stakeholders forum empower grassroot institutions collaborative preparation of resource management plan | Water authorities urban councils | Central government Local government NGOs CBOs |
| Urban expansion & agricultural land use | | | | | | |
| Agriculture vs. forest resources | | | | | | |
| Mining vs. settlements | | | | | | |
| Customary tenure vs. statutory tenure | | | | | | |
| Irrigation / resource livestock keeping vs. water | | | | | | |
| Agriculture vs. wildlife | | | | | | |
| Crop production & livestock keeping | | | | | | |
Lesotho

Kind of conflict: Cross-communal grazing
Livestock holders
Depletion of grass
Scarcity Communal grazing
Land / agrarian reform
Clear national land policy
government local institutions livestock

Involved policies: Local institutions

Issues of conflict: Depletion of grass trespassing
Unclear geographical boundaries

Causes of conflict: Land / agrarian reform
Surveying clear boundary demarcation

Proposed solutions: Land registration

Specific conflict resolution: Government Institutions (formal/ informal) NGOs

Actors involved: Landowners Landseekers
Authority / power to allocate land
Non responsive allocation procedures
Simplification of land allocation procedures
Decentralisation Review of standards

South Africa

Boundary conflicts: Governments + CBOs
Racial + historical dispossession of land
Legislation
Land tribunals (appeals)

Land invasion: Farm owners unions
Landlessness + land hunger
Land restitution act 1994 as amended
Mediation

Traditional authorities vs. elected councillors: LHR + NGOs
Opportunism
Act 126 (redistribution)

Competing land use conflicts: Landless
Power relations
Labour tenant act 1994
Awareness campaigns

IMSSA

Land claims court
Farm evictions
Land right bill 1998

ESTA 1997
Discussion on group presentation "Resource tenure conflicts"

- Discussion if the Kenyan President’s intervention in the Tana River Delta conflict was useful.
- Improve the role and contribution of research institutions community in the conflict prevention/resolution.
- How can we define the role of government in conflict resolution: Its involvement was identified as the crucial issue in conflict resolution. Government acts as the “big brother” in conflicts.
- But governments should do better in formulating and implementing a clear national land policy which helps to avoid conflicts from the beginning. Lesotho is one example.
- clarification: IMSSA = Independent Mediation Services of South Africa.
- German experiences on mediation bodies in land conflicts were presented (Frankfurt Airport mediation process),
- EIA on policies and programmes prior to approval.

Daily Review Day 9

Niger experience:

Rural code:

The setting:

- Legislative reform process in the area of tenure policy:
  - Decentralisation
  - Natural resource management
- Land resource consisting of competing systems:
  - customary, Islamic, colonial law
- Attempt to redefine tenure & resource management policy in 1985
- Administration was based on French model
- Sahelian droughts lead to the formulation of policy interventions - long solutions
- International conference 1984, 1989 (Segou), 1994 (Praia)
  - Emphasis local control
- ”Gestion de territoires” as model for village land use planning
- Land tenure and decentralisation to achieve democratic, participative and decentralised natural resources in the Sahel (Praia 1994)
- Emphasis on popular participation
  - rural producers - donors
  - civil servants - NGOs
  - elected officials - gender
  - private sector
Primary goals of Praia:

- Legislation supportive of local rights - resource security
- Respect for customary systems
- Recognition of rights for fishermen & herders
- Regional planning for environment protection
- Development of institutions for conflict resolutions
- Integration of NGOs and associations

Obstacles regarding institutions and stakeholders:

- Overlapping jurisdiction
  - Isolated ministerial bodies
  - Subdivisions - inter-ministerial units
- Different governmental structures performing land tenure issues
  - Natural resource management
  - Ministries, such as water / natural resource, communal associations

Guidelines:

- Dual role
- Equal validity of customary & written law
- Starting point - customary law
- Holistic approach to natural resource management
- Tenure rights to development goals
  - Protect rights of individual
  - Ensure legal harmony

Rural code as process:

- Campaign on collection of information on tenure & natural resource management systems
- Survey document to be produced: Farmers, herders, NGOs, etc.
- Regional profiles
- Proposed taxes
- Framework policies
- Training in PRA

Policy choices:

Implementing regulations, institutional procedures, sector specific guidelines

- Application decrees
  1. Promotion of security of access to resources for rural producers
  2. Conservation & natural resource management
3. Organisational structures & administration of rural policies

4. Regional planning:
   - Rural code institutions
   - Co-operatives
   - Land commissions
   - Home territories of herding populations
   - Conservation of wildlife
   - Application of water code
   - Rural concessions
   - Land use planning
   - Protected areas
   - Conflict resolutions
   - Rural registry
   - Public rural development

Promoting security of access rights to resources:
   - Private individual rights to land / recourses
   - Resurgence of influence of rural customary elite
   - Integration into Nigerian administration
   - Danger: Useholders
     - Obligations of exclusive property right holders in agriculture
     - Rights of livestock producers

Conservation & natural resource management:
Rural code underlines importance of environment protection

State institutions / regional planning / private organisations:
State institutions and regional planning:
   - Central guiding role of state in resource management
   - Policy co-ordination
   - Local government
   - Implementation of RC - land commission
   - Permanent secretary
In this chapter:

⇒ 6.1 Country action plans
   Group work on country action plans

⇒ 6.2 Future action / follow up / networking
   Group work on future action / follow up / networking

⇒ 6.3 Land use planning: Why land tenure issues are important

⇒ 6.4 Conclusions and future perspectives

6.1 Country action plans

Although far reaching steps have already been made in the formulation of a new or reformed land policy in all participating countries in the 90’s, there is still a need for further action, in particular, with regard to implementation processes, capacity building, more decentralised, target-group oriented approaches which are under public control and enhanced participation of all stakeholders in rural and urban areas at all regional, district or village levels.

Major elements to be added to existing land policies or to be modified are the following: to start first with a profound problem identification assessment including all existing resource restrictions, to assure for a more comprehensive policy approach, including a stronger link of land policy with general policy guidelines, better to incorporate community based resource management strategies and the link between land, water, and tree tenure. Concrete strategies are required for innovative solutions to cope with informal urban settlements, to allow for cheap titling procedures in areas of demand, to identify criteria for optimum farm sizes in the redistribution process, to give a voice to female headed households and to find cost-recovery mechanisms.

Fine-tuning an existing land policy means as well to think about the further development of the legal and institutional framework: a much clearer definition of the tasks of different administrative bodies is urgently required, going hand in hand with more decentralised, publicly controlled decision making processes and a better integration between formal and autochthonous, informal institutions in the legislation process and for administrative tasks. The requirements for a reformed administration are high: it should play a co-ordinating role,
it should formulate new land policy strategies and implement them, it should try to recover sunk and running costs and should be autonomous as well as neutral.

In particular, this means that a still chaotic and fragmented land administration must overcome, such as in South Africa, or the necessary administration at district and village levels, including land boards in several countries should be improved. These administrative bodies should recognise cultural and traditional values and harmonise them with modern administrative structures when improving existing tiling and leasing arrangements and in environmental impact assessments. In order to make them work further training of land managers, local level employees and villagers in land use planning is strongly required (see below).

Policies for land development are not regarded as necessary for all countries. In others new models for land use practises are required to enhance land productivity, to increase production efficiency and to allow for mechanised agriculture. In overcrowded areas land consolidation has to play an important role in combination with strategies to create alternative sources of livelihood in rural areas and to develop locally based agro-industries.

To realise these ambitious objectives new partners to state activities are looked for and additional stakeholders have to be addressed: above all, the private sector will have to play a far more important role in future in nearly all countries. So far neglected groups of the society, such as landless people, women and the young generation need more consideration as do village councils, farmer's unions or NGOs or which are active in rural development.

To build up effective instruments for land policy some additional external consultation to the administration may be necessary: Research institutions can play a strategic role if they really do applied research. They are a necessary but not sufficient player as local, indigenous knowledge should be used much more as it was possible in the past: to exchange the experience of all core players meetings at different regional levels should be organised to end up in a national seminar.

A major future challenge will be the development of mechanisms and institutions to resolve or to contain, at least, conflicts related to land and other natural resources: First of all traditional and modern legal institutions have to be harmonised in most countries. Besides the specific official courts (land tribunals, land courts at different levels) off-court mechanisms, for example in village land development comities, are favoured to keep the procedure short and cheap. Therefore specific stakeholders and trained independent arbitrators have to participate more strongly than in the past in these (often) confidential resolution measures.

The implementation of a complex land policy increases the demand for better exchange of information, for training and education. The establishment of mechanisms for information sharing and capacity building at different levels is, thus, a precondition; it includes stronger links between research and implementing institutions among African countries (new networking and information centres), between research and training institutions, such as LTC or DSE in the international context, and the better use of newspapers, radio, TV programmes in local languages to disseminate institutional innovations in land policy.
### Working groups on: Country action plans

<table>
<thead>
<tr>
<th>No.</th>
<th>Elements / issues to be added to / changed in land policy</th>
<th>Zimbabwe</th>
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<tr>
<td>1</td>
<td>Working groups on: Country action plans</td>
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<td>2</td>
<td>Improvement / further development of legal / institutional framework</td>
<td>Improvement of legal / institutional framework</td>
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<td>3</td>
<td>Development of land administration</td>
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<td>Land development / land consolidation</td>
<td>Land development / land consolidation</td>
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<td>5</td>
<td>New / additional actors / stakeholders</td>
<td>New / additional actors / stakeholders</td>
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<td>6</td>
<td>Specify consultation / participation</td>
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<td>7</td>
<td>Conflict resolution mechanisms / institutions</td>
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<td>8</td>
<td>Information / network training / education</td>
<td>Information / network training / education</td>
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<tr>
<th>No.</th>
<th>Title</th>
<th>Description</th>
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| 1   | Titling of smallholder farmers | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 2   | Decentralised titling | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 3   | Establishment of customary and modern legislation | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 4   | Training of local level land administrators | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 5   | Harmonisation of modern administration structures | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 6   | Reconciling population growth with land use planning | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 7   | Harmonisation of customary and modern legislation | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions 
| 8   | Harmonisation of customary and modern legislation | Zimbabwe Decentralised titling Establishment of land boards at all levels Land consolidation in overcrowded communal areas Women and youth Conflict resolution mechanisms / institutions |

**Discussion:**

Conflict as a catalyst for change
Problem identification & assessment

Institution:
To play a coordinatory role & formulate framework and land policy strategies it should be autonomous as well as neutral.

The particulars mentioned from 3-8, shall be addressed within the new land policy & strategy. The would-be institution should able to implement all issues in collaboration with all actors.

Implementation
Registration
Titling
NGO’s
Kenya

1. Elements / issues to be added to / changed in land policy
   - Agricultural land inventory
   - Land use data bank
   - Environmental management bill
   - Participatory approach

2. Improvement / further development of legal / institutional framework
   - Define roles of different institutions
   - Critical mass in land law

3. Development of land administration
   - Recognise cultural and traditional values
   - Environment - impact - assessment
   - Sustainable land use

4. Land development / land consolidation
   - Land use practice that enhance land productivity
   - Increased production efficiency
   - Introduction of mechanised large scale production system

5. New / additional actors / stakeholders
   - Private sector
   - Environmental conservationists

6. Specify consultation / participation
   - Involvement of research institutions
   - Tolerance + accommodation of divergent viewpoints

7. Conflict resolution mechanisms / institutions
   - Office of Ombudsman
   - Commercial courts

8. Information / network training / education
   - Train stuff in G.I.S
   - Improve access to computers
   - Improve land information system
   - Information exchange among African countries
   - Improve education on land matters from all sectors
### Elements / issues to be added to / changed in land policy

1. **Community based resource management strategies**
2. **Integration of formal / informal institutions**
3. **Capacity building & technical support for land management strategies**

### Improvement / further development of legal / institutional framework

4. **Development of land administration**
5. **Currently unnecessary farmers unions**
6. **Enforcement of consultation procedures at various levels**

### Land development / land consolidation

7. **New / additional actors / stakeholders**
8. **Strengthening participation in confidential resolution**

### Elements / issues to be added to / changed in land policy

9. **Water utilisation: irrigation, livestock, other uses**
10. **Independent arbitrator in confidential resolution**
11. **Establishment of mechanisms for information sharing at different levels**

### Analysis

- **Namibia**

- **1** Elements / issues to be added to / changed in land policy
- **2** Improvement / further development of legal / institutional framework
- **3** Development of land administration
- **4** Land development / land consolidation
- **5** New / additional actors / stakeholders
- **6** Specify consultation / participation
- **7** Conflict resolution mechanisms / institutions
- **8** Information / network training / education

---

**Synthesis**
Tanzania

Participation at regional / district / village level (resource restriction)

- Capacity building of district & village council:
  - market systems
  - tenure systems
  - conflict resolution
  - skills of land managers

- Statutory land rights vs. granted rights in villages and informal urban settlements

- Sub-ward councils

- Ward councils

- Village councils

- Village Land Development committees

- National / district / regional / village level Land tribunals

Mechanism for preventive / guided informal urban settlements

- Training of middle cadre in G.I.S.

- Training of villagers in land use planning

- Over-centralisation of land administration functions to the commission for lands

- Publicity

- Improvement / further development of legal / institutional framework

- Land courts

- Development of land administration

- Development of land development / land consolidation

- New / additional actors / stakeholders

- Conflict resolution mechanisms / institutions

- Information / network / education / training

Elements / issues to be added to / changed in land policy

Syntheses
Lesotho

1. Elements / issues to be added to / changed in land policy
   - Customary tenure practices
   - Review of existing legislation
   - Decentralisation
   - Clear land use policies
   - Private sector
   - Co-ordination / co-operation
   - Dialogue
   - Meetings / workshops

2. Improvement / further development of legal / institutional framework
   - Tenure rights
   - Translation into simple language
   - Stratified land registration
   - Landless
   - Mobilisation
   - Transparency
   - Radio programmes
   - Press e.g.: - flyers - brochures - newsletters

3. Development of land administration
   - Taxation / user fees
   - Dissemination
   - Regulatory land development framework
   - Women
   - Joint meeting / workshops
   - Steering committees
   - Youth
   - CBOs

4. Land development / land consolidation
   - Commercial farming
   - Operationalisation of local governments
   - Land holding use-audit
   - Landless
   - Mobilisation
   - Tribunal
   - White paper

5. New / additional actors / stakeholders
   - Land development / land consolidation
   - Operationalisation of local governments
   - Land holding use-audit
   - Landless
   - Women
   - Joint meeting / workshops
   - Youth
   - CBOs

6. Specify consultation / participation
   - Land development / land consolidation
   - Operationalisation of local governments
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   - Landless
   - Women
   - Joint meeting / workshops
   - Youth
   - CBOs

7. Conflict resolution mechanisms / institutions
   - Land development / land consolidation
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Information / network training / education:

- Land development / land consolidation
- Operationalisation of local governments
- Land holding use-audit
- Landless
- Women
- Joint meeting / workshops
- Youth
- CBOs

National policy <-> other policies:

- Operationalisation of local governments
- Land holding use-audit
- Landless
- Women
- Joint meeting / workshops
- Youth
- CBOs

Landless

Mobilisation

Youth

CBOs

National land forums
### General discussion on plan of action:

- No general statements, more concrete steps
  - More to be seen as a direction
  - Shed some lights of particular concerns

### Elements / issues to be added to / changed in land policy

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<tr>
<td>Elements / issues to be added to / changed in land policy</td>
<td>Improvement / further development of legal / institutional framework</td>
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</tbody>
</table>

### Legal framework

- Constitution lays guidelines / legislation
- Legal framework is OK
- Land administration is chaotic & fragmented

### Land administration

- Elaborate mechanisms in place
- Not relevant
- Not relevant

### Land development

- New / additional actors / stakeholders
- Land development / land consolidation

### Specify consultation / participation

### Conflict resolution mechanisms / institutions

- IMSSA tribunals appeal courts
- Capacity building in process

### Information / network training / education

- Not relevant
- Not relevant
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<tr>
<th>Elements / issues to be added to / changed in land policy</th>
<th>Improvement / further development of legal / institutional framework</th>
<th>Development of land administration</th>
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<th>Specify consultation / participation</th>
<th>Conflict resolution mechanisms / institutions</th>
<th>Information / network training / education</th>
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<tbody>
<tr>
<td>Adjust existing land related policies to align new policies</td>
<td>Adjust / align</td>
<td>Revise existing land administration structures and procedures</td>
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<td>Broader participation in policy formulation to include:</td>
<td>Circulate report of seminar</td>
<td>Adequate at present</td>
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</table>
6.2 Future action / follow up / networking

There was a common understanding to reinforce and to extend the existing dialogue on land tenure and land policy between African countries, to build up networks and to develop further training capacities, together with partner organisations, such as DSE.

To strengthen the ongoing South-South dialogue among African countries, DSE could act as a facilitator bringing together interested experts and sharing new information with them. A greater decentralisation and regionalisation of workshop venues which are closer to the actual problem sites and include less lecture modules are supported by some participants. This would include as well a strong co-operation with regional institutions to run land tenure policy courses or seminar - already a common practice to DSE in the past.

A new kind of dialogue should be started between state agencies, government employees, NGOs, farmer’s representatives, academics and donors at workshops or seminars, where DSE can bring these groups together and can bring up “hot issues” for discussion as a neutral facilitator. There is already a wide range of burning land tenure related issues on which further seminars and workshops can be based upon:

- identification of the most important driving and impeding forces for land tenure and land policy changes, including the impacts of economic reforms on land use patterns,
- strategies to initiate alternative livelihoods and local industrialisation to take the pressure from the land,
- appropriate programmes and instruments for land titling,
- including innovative cost-recovery mechanisms,
- capacity building for land administration at the grass-root level,
- holistic, interdisciplinary approaches for integrated land use planning, respecting the differing interests of stakeholders,
- instruments for land development and land consolidation,
- conflict resolution and
- a better “selling” of achievements in African land use programmes in the international media.
Working groups on:
Future action / follow up / networking

Proposals for future action - regarding dialogue & training -

Dialogue South South
- DSE provide resources for “after care” purpose
- DSE to act as facilitator for South - South
- DSE to alternate venues of seminar - use areas where examples are
- DSE to facilitate regional training in Africa: Courses
- Regional training on a specific natural resource subject
- DSE: to facilitate annual / biannual workshops / seminar
- At DSE: Dialogue between governments, NGOs, farmer representatives, academics and donors at workshops, seminars etc.
- DSE networks with tertiary institutions in different African countries

Training (DSE)
- Constant direct alert from DSE on upcoming training programs / initiatives
- Less lecture
- GIS training

Further study / research

Networking
- DSE to facilitate national / regional land tenure associations (network)
- DSE to co-operate with a regional institution to run land tenure policy courses / dialogue
- DSE to facilitate national / regional land tenure associations (network)
- DSE to facilitate “after care” purpose
- DSE to act as facilitator for South - South
- DSE to alternate venues of seminar - use areas where examples are
- DSE to facilitate regional training in Africa: Courses
- Regional training on a specific natural resource subject
- DSE: to facilitate annual / biannual workshops / seminar
- At DSE: Dialogue between governments, NGOs, farmer representatives, academics and donors at workshops, seminars etc.
- DSE networks with tertiary institutions in different African countries
Follow-up for Southern / East Africa:
Burning issues for workshops / seminars
6.3 Land use planning:  
Why land tenure issues are important

The conditions under which land is occupied and how the access to natural resources and their exploitation are regulated are of crucial importance in determining how land is used, and whether it is used in a way that maintains its capacity to produce sustainably also in future.

In this respect, some key issues of the land tenure system are the following:

- **The extent of rights** enjoyed by the land users: (i) rights to exclusive or limited use of the resources or produce of the land, or (ii) exclusive right to manage the land and associated resources (this management can include some management restrictions or limitations by law or ordinances).

- **Source of tenure**: positive correlation between the land users perception of whether or not he/she will be allowed to retain possession of the land and can take care over management, especially the willingness to invest in long-term, land improvement or infrastructure.

- **Duration of tenure.** The land user must feel that it is worthwhile to take care of the land and invest in its improvement.

- **Land as a disposable asset.** There can be greater willingness to invest in the maintenance or improvement of productive capacity of land of the benefits is realisable some time in the future through sale of land. There are two aspects: one is the right to sell or otherwise dispose of the land; the other is the existence of a market in the sense of somebody to buy.

  (after: Negotiating a sustainable future for the land. FAO-UNEP, Rome 1995)

Especially, the extent of rights to use resources or to produce and the right to manage land are crucial elements which need to be observed in the land use planning process. For example, this can include: right for using water, right to manage cropland, or the access to common grazing areas or forest products.

An important element of analysis is the identification of land tenure systems with regard to (i) traditional or legal (modern legislation) or quasi-legal user rights and (ii) the differentiation between ownership of natural resources, for example, state owned land, communal land or individual tenure by companies or individuals.

The following section illustrates how the issues of land tenure and land policy are incorporated into the process of DSE-ZEL training courses on land use planning.

*Integrated land use planning is understood as an process for deciding about the best use of land (natural) resources through negotiation between the different interests aiming at sustainable development.*

In an ideal situation, the iterative process consists of the following major steps and elements:

**1. Analyse and Evaluation Stage**

- Identification of current land use problems or conflicts over natural resources;
- Identification of needs and development perceptions of major land users;
- Evaluation of the current state of natural resources (detailed resources analysis);
- Analysis of land use systems (e.g. farming systems) and socio-economic conditions;
- Evaluation of legislative, policy and institutional framework;
- Evaluation of strength-weakness-opportunities-constraints (SWOC) to find a balance between sustainable development and conservation regarding future land uses for a variety of current and future land users;
• Analyse of current land use types and their characteristics, their potentials and constraints for sustainable development (land evaluation).

2. Planning stage

• Identification of goals for the sustainable development of land resources (in a specific area and for specific land users);
• Developing options for future land use types and their characteristics in terms of objectives, user or property rights and management systems (definition of attributes and requirements);
• Design of draft land use maps;
• Assessment of environmental, social and economic impacts of land use changes.

3. Negotiation between actors (see below) and decision-making

• Establishing a negotiation platform and agreeing on decision-making procedures; (Note: this should be done as early as possible, latest when defining planning goals;
• Appraisal of options and alternatives (technical, financial, legal, social, environmental and institutional aspects); Note: this may be part of the planning step;
• Negotiation and decision-making on a set of preferable land use options and land use maps between the different actors involved and other decision-makers for plan implementation at national, provincial and local level;
• Identification of priority action areas of programmes and projects;
• Preparation of final land use development plan and design of final land use maps.

4. Implementation stage

• Programme and/or Project Planning (logical framework approach, planning matrix);
• Organisation of implementation;
• Monitoring and evaluation;
• Up-dating of planning documents and land use maps at certain intervals.

Actors. The main actors and decision-makers are: LU planning team (PT), sector specialists (SS), local government (LG), local leaders (LL), representatives of the land users (R-LU), and the assembly of all land users (A-LU).

Their direct involvement in the planning process varies, depending on planning goals. Most important, however, is that the land users (or their representatives) are involved from the very beginning and that they feel - during all planning stages - to be the owners of the plan and that they take responsibility for implementation. During the stages of decision-making, the role of planners and sector specialists would be more that of facilitators and technical or managerial advisers.

The incorporation of land tenure and policy analysis takes place (selection):

Firstly, land tenure systems need to be analysed at an early stage to analyse the actual situation because they can be a major cause of current land use problems, for example, land deterioration, the misuse of land or the under-exploitation of resources.

Secondly, the legal framework need to be analysed, namely the land policy and land legislation but also other laws related to natural resources, e.g. water law, forest law, etc.

Thirdly, proposals for future land uses (options) need to be checked whether they are in line with current policy guidelines and existing laws, e.g. the right to use water need to be ensured before irrigation facilities or water points for cattle are designed.

Subsequently, possibilities to modify or improve land tenure systems need to be checked and verified with policy makers. Also the possibility of re-establishing the present system on a more modern or legal base should be considered. Generally, there are three main areas for improvement: conditions of tenure (holder rights, length of time), boundary demarcation, registration and settlement of disputes, and conditions of transfer or sale.
Two diagrams show the integration of land tenure and land policy issues in the standard DSE-ZEL training programmes:

In this course, the key issues are addressed in (1) Case studies from participants, (2) Analysis of Framework (2 days) and (3) the Planning Exercise (integrated in the LU-planning process).

**Introduction to LUP**

*Keynote: Recent trends & approaches*

- dialogue and exchange of concepts
- Experiences from participants:
  - Case studies from Africa and Asia

- Defining objectives, goals and issues of LUP at different levels

**Technical Tour 1:** Mid-Elbe Biosphere

**Methods for LUP**
- Land evaluation methods
- Agro-ecological zoning (AEZ)
- Socio-economic information & Farming systems analysis (FSA)
- Participatory approaches in resources planning

**Technical Tour 2:** Baden-Württ.

- Land Consolidation & Land Development

**Analysis of framework conditions**
- Institutional context
- Policy context
- Land tenure issues in LUP

**Planning exercise:** Santa Cruz Regional Land Use Plan
- Introduction to the planning area
- Data analysis, mapping techniques, remote sensing, GIS
- Planning for Integrated Rural Development
- Impact Analysis: social, economic and environmental issues
- Implementation planning; project planning

**Technical Tour 3** (ZALF)

- Agricultural Policy, Regional Models

**Synthesis**

- group work (major learning; policy implications); and individual plans; course evaluation
This course has a practical field exercise in two villages. The key issues related to land policy and tenure are addressed in (1) Session 2: The Planning Area, (2) Session 3: Survey and Analysis and (3) Session 4: Planning for development when development options are identified and evaluated together with the land users.
6.4 Conclusions and future perspectives

After decades of neglect, the land question is currently being re-appraised worldwide, and greater importance is being attached to land tenure issues. It’s key role for sustainable land use, environmental protection, more efficient agricultural production and diversified land use in rural and urban areas, for equitable and socially balanced patterns of growth and for political stability is meanwhile undisputed. Land and resource policy are a key to future socio-economic development not only in Latin America, in Asia, in the transition economies, but as well in Africa (Kirk 1998).

The global land tenure crisis has already reached Africa, with increasing landlessness, tenure insecurity, eviction and restitution problems following economic and political reforms, such as in the Republic of South Africa or Zimbabwe. In part at least, disputes over land and related resource also ignite alarming, violent local land conflicts, sometimes escalating to civil wars. The core of this crisis seems to be above all a crisis of the state and one of policy failure. African governments in the past have often completely failed to establish functioning land tenure systems, including a framework for land use planning, for all citizens, including women, for the still influential elders as well as for young innovative families, for agriculturists as well as mobile livestock keepers, for forest users and urban squatters, etc.

The complex interrelationship between autochthonous collective customary rights and statutory law has been largely ignored in tenure legislation and policy. Historically, there was already a law without a central state which perceived and still perceives land as a social space where people live and work, not only as a geographical one, measured by GIS and adjudicated, consolidated and registered. As long as this cultural context, the “social construction of land” is not recognised, insecurity of access to and use of land will increase tremendously and lawlessness will spread further. Although it is difficult for policy makers and administrators to make use of existing institutional arrangements of autochthonous land tenure in national land policy, land legislation and land development, including land use planning, there is now doubt that without integrating indigenous institutional arrangements and local knowledge into this process, the investment in well-meant projects and programmes will not help achieving sustainable socio-economic development.

Many African countries still have to struggle with the consequences of a hot-cold treatment of governments after Independence between quasi-feudal, socialist and market-economy experiments based on imported western blueprints of tenure concepts (for example, Ethiopia, Mozambique, Angola, Tanzania or even Kenya). It is not astonishing that (small) farmers do not invest in fruit trees, in fencing, terracing or mulching if they are always confronted with the risk that they may lose their land because of expropriation, resettlement, collectivisation or compulsory sale due to indebtedness or land consolidation without compensation. Resource plundering is less a „tragedy of the commons“ but in fact a „tragedy of the state“.

It was the general objective of the DSE seminar on „Land tenure and policy for land use planning“ to sensitise for these increasing land tenure problems and to develop options which are based on a set of non-contradictory land policy instruments that contribute to the sustainable use of natural resources in future development. A common sharing of country specific experiences, a presentation of recently developed concepts and policy instruments related to land use planning clearly have shown the strengths and weaknesses and the challenges still to be met in future in Southern and East African countries: diversified, flexible and changeable land tenure systems are needed for future socio-economic
development, allowing for public, communal and private ownership of resources as well and securing tenure in all of these systems.

By further developing the policy and legal framework the role of the state has to be reconsidered in most Southern and East African countries: it should influence and regulate tenure systems more indirectly and more participatory than it has been done in the past to overcome the historical, colonial based burden of the legal and regulatory framework and land policy of today, the state has to give a voice to the different local groups and the regional administrative bodies and to fight better land grabbing, illegal fencing or corruption. These requirements are key issues of more general guidelines for future land policies and land use planning strategies common to all countries participating in the seminar.

These guiding principles for land policy are based on a new understanding of the activities of the central state, allowing for more decentralisation and devolution, for a clear-cut co-ordination of programmes and the co-operation between line ministries or other important actors. Emerging goal conflicts between different policies, such as land and agricultural policy or sectoral policies addressed towards agriculturists or pastoralists need to be tackled as well as the challenges of informal tenure arrangements in rural and urban settlements or a much greater sensitivity of policy makers to the plight of rural African women related to land issues.

The country experiences have revealed that land and/or agrarian reforms are not at all a historical relict but have to be further developed and fine-tuned as an integral part of the ongoing reform processes: what is still needed are selection criteria for the potential beneficiaries of agrarian reforms, guidelines for the restitution of land, regulations for compensation and planning mechanisms for resettlement initiatives. Further comparative country experiences are lacking with regard to the optimal size of family farms under different agro-ecological and socio-economic conditions in the future or the way to deal with uprising resistance of interest groups who may lose in the redistributive process. The German experiences in the process of Unification were considered to be very helpful to identify key issues to make a transformation process a success but as well to avoid the existing weaknesses and problems in future in an African context.

To come to a new orientation in land policy innovative instruments have to be adopted and modified to fit to different national and local settings: private property will develop further in highly productive regions and areas of agglomeration which makes a cost-effective and efficient land registration necessary. Fiscal aspects, such as cost-recovery through registration taxes or fees are generated only at an infant stage. African states, such as Namibia or Botswana, will further rely on their land boards for land administration and development, which still have to be prepared for some new functions in privatisation, decentralisation and more participatory land management procedures. The role which international development co-operation and external experts might play in this process remains controversial due to mixed results with their support in the countries or in other continents after the starting of the transformation process.

All countries are quite aware about the need for a bundle of instruments for land administration and land development. Land registration is no taboo any more in East and Southern Africa for areas with high population pressure, lively land markets, heterogeneous social structures and land shortages. The high costs to establish a functioning land register, even with simplified procedures, compete with urgent priorities to allocate public budgets to other purposes, such as to rehabilitate and secure communal tenure systems for rural poverty groups (as in Southern Africa). Land banking, land valuation and land taxation will be of increasing importance to facilitate agrarian reforms (compensation) and the reallocation of land to the black population in Southern Africa, to finance ambitious programmes, to speed up infrastructure programmes and to allow the government administration at all levels to play an active role in land policy. Although any direct
comparison between European and African policies is not admissible, there is a great and ever growing interest from the African partners in German experiences with land banking and land valuation.

The same is true for land consolidation and land readjustment as dynamic land development instruments and as a basic component for any comprehensive land use planning activities in all countries. Both instruments have supported the quick changes in agrarian structures in most West European countries since the end of the last century. Partner countries with considerable deficiencies in their agrarian structure in regions where there are primarily smallholders and where advice for participatory local approaches for solutions are demanded are showing increasing interest in German experiences (GTZ 1998). There was a common understanding that great challenges in land use planning lay ahead all participating countries. Both the methods and contents of land use planning should be oriented towards the diversified local conditions and should be based on local knowledge and successful traditional strategies for problem solving. Land use planning is seen as process from the “bottom” and is based on self-help and interdisciplinarity.

International donor organisations have supported African states on a bi- and multilateral basis to establish a reformed land legislation in the course of state divestiture, economic reforms and transformation. Unfortunately, the crucial importance and the costs of a necessary legal and regulatory framework to make a consistent national land policy possible have often been misjudged and underestimated by planners allowing for rent-seeking, corruption and land grabbing by new and old elites (Kirk 1998). Much work has still to be done to create an efficient system of contract, inheritance and family legislation as elements of private law, and land taxation, land evaluation or land banking as components of public law. Any new (often western-inspired) legal and regulatory framework, in turn, has to be compatible with autochthonous rules.

Several African states have already started systematically to integrate indigenous local tenure institutions and autochthonous rules into the national legal system as in South Africa, Botswana or in Niger. The results have so far been mixed. In general, only models developed by national experts together with the population in a participatory dialogue, as through the Land Commissions in Tanzania, in South Africa or in Niger, will be successful at long term. However, even then, new laws usually remain “dead letters“ unless the machinery exists for their implementation-

Despite the willingness to enforce the new land policy and the legal principles it is based upon even in the remotest village, almost all African countries have failed miserably due to a lack of resources, appropriate institutions and qualified staff. The consequences are that the new powerful elites with access to information have been able to make use of the “modern“ instruments of land administration and land development which still leads to numerous conflicts and increasing legal insecurity, too little investment in the land and insecure tenancy.

Any further development of new or reformed land policy might solve existing smouldering or virulent resource conflicts but will create new one. Innovative and flexible conflict resolution mechanisms, such as land tribunals or mediators are in urgent need to cope with conflicts about competing land use and power struggle about land, as it was reported for Kenya, Ethiopia, Tanzania or Zimbabwe. Many conflicts can be avoided from the very beginning if stakeholders can participate and are consulted during the formulation of new policies and the implementation of land policy instruments at the local and regional level. Existing and new information and communication means have to be evaluated if they fit into the different socio-cultural environment, if they reach the rural population and if they are cost-effective. They will only work if government staff and those working in projects, NGOs or other organisations of the civil society are well trained in land tenure issues. Thus, capacity
building in human capital and manpower, such as leadership training and awareness creation need to be intensified in the future.

Existing world wide knowledge needs to be shared more effectively than in the past asking for international networking on tenure issues. Experiences from francophone West Africa, for example about the Niger „Code Rural“ with its participatory approach are not yet sufficiently disseminated in other regions of the continent. An African network on land tenure, established and forward driven by African policy makers, representatives of the organisations of the civil society, development agencies and scientists waits for it its creation. In this new kind of dialogue between state agencies, government employees, NGOs, farmer’s representatives, academics and donors at workshops or seminars, organisations such as DSE can bring stakeholders together and can bring up “hot issues“ for discussion as a neutral facilitator. Several burning land tenure related issues wait for solution, such as the identification of the most important driving and impeding forces for land tenure and land policy changes, the strategies to initiate alternative livelihoods and local industrialisation to take the pressure from the land, appropriate programmes and instruments for land titling, including innovative cost-recovery mechanisms, the capacity building for land administration at the grass-root level, holistic, interdisciplinary approaches for integrated land use planning, instruments for land development and land consolidation, conflict resolution and a better “selling“ of achievements in African land use programmes in the international media.

In 1996, the FAO World Food Summit referred to land tenure in its Plan of Action in the following: “Establish legal and other mechanism, as appropriate, that advance land reform, recognise and protect property, water and user rights, to enhance access to the poor and women to resources. Such mechanisms should also promote conservation and sustainable use of natural resources (such as land, water and forests), lower risks, and encourage investment.“ All countries represented in the seminar have already started this process with different intensity and commitment, a process which will be characterised by trial-and-error in many ways despite all achievements in conceptual and co-ordination work already done. All future steps have to be critically analysed, revised and updated continuously, all stakeholders have to be involved from the beginning to solve the problems rooted in the past and to meet the challenges in land tenure, land policy formulation and land use planning activities in the future.
TECHNICAL TOUR: ZALF MÜNCHEBERG

In this chapter:

⇒ 1 Company Profile

⇒ 2 Concepts, methods and results in developing sustainable land use systems
   The ZALF approach (Dr. A. Werner)

⇒ 3 A new indicator in the OECD indicator framework for the development of sustainable agriculture (Dr. H.-P. Piorr)

⇒ 4 Integration of environmental targets into agricultural land use
   The development of MODAM – a Multi Objective Decision support tool for Agro-ecosystem Management (P. Zander)

⇒ 5 Effects of large nature conservation areas to the agricultural sector
   (Dr. H. Kächele)

1 Company Profile

Centre for Agricultural Landscape and Land Use Research (ZALF)
(Zentrum für Agrarlandschafts- und Landnutzungsforschung (ZALF))
in Müncheberg, Germany

The ZALF is a research unit, that was founded in 1992 with the intention to do integrative research concerning all relevant aspects dealing with agriculturally used landscapes. The primary scientific objective of the ZALF is to do interdisciplinary research regarding the impact of land use technologies and strategies as well as the impact of politics onto land use systems and the Oral areas.

Basic research is done in natural sciences as well as in social and economic sciences. The main intention is to analyse, evaluate and predict processes in agriculturally used landscapes. The ecological research activities are based on the knowledge of functional relationships within ecosystems. From that, new concepts of land use and strategies to enhance sustainability of all relevant functions in agriculturally used landscapes are derived.
Most of the research activities lead to methods that can be used to predict changes of the land use systems in regions and to evaluate the impact of such changes onto ecological as well as socio-economic indicators.

Relevant research activities are done in interdisciplinary projects to analyse the changes of land use and within the rural areas that are caused by changing agro-political frame conditions. These results are used to do strategic planning with the relevant acting groups in that region or with higher authorities on state or federal level. In several cases examples for new approaches in mural planning and land use planning (i.e. participial, iterative planning) are established in these regions.

The ZALF is member of the Wilhelm-Gottfried-Leibnitz Association, a group of high standard research facilities in Germany. The ZALF has seven research departments. One is dealing with the social and economic aspects of land use and rural development. The other departments are working on the level of land use systems and landscape modelling as well as on fundamental science of landscape ecology. Actually 80 scientists and 160 technicians are working on permanent positions. Further staff is drawn due to additional funding through grants. The general ZALF budget is received equally from federal and state funds.

2 Concepts, methods and results in developing sustainable land use systems – The ZALF approach (Dr. A. Werner)

Research on Landscapes and Land Use in the ZALF:

goal:

• develop methods and tools that are necessary to optimise land use under objectives derived from economy and ecology

problems:

• optimal land use depends on the actual natural and socio-economic restrictions
• landscapes are systems with a very high degree of complexity
• research in landscapes requires joint efforts of several scientific disciplines
• scientific activities have to be concentrated onto major topics in the field of landscape research

solution:

• develop a set of nested scientific questions, a hierarchy of research problems
• invite for applications of projects to work on these research problems
• financial support of research groups composed with scientists from several disciplines and institutes
Special Problems of Land Use in the Near Future:

* large scale changes of land use - which areas, what size
  - which land use systems
  - what impact onto economy of land use
  - what impact onto environment
  - what impact onto function of landscapes

* recycling of matter into landscape - slow and uniform contamination
  - what impact onto environment
  - protected areas / dirt areas

* regionalized matter- and energy flows - shortcuts
  - local self supply (energy and matter)
  - retain within landscape

* landscape planning - valuation tools
  - multi criteria optimization

* secure land for future use - sustainability
  - “parking” abandoned land

* education / professional training of land users - understandin vs. knowledge
  - complex thinking, thinking in systems

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CENTER for AGRICULTURAL LANDSCAPE and LAND USE RESEARCH
(ZALF) in Müncheberg
Director: Prof. Dr. H.-R. Bork
240 employees as permanent staff founded Jan. 1992

<table>
<thead>
<tr>
<th>Department of</th>
<th>Head</th>
<th>major scientific research areas</th>
</tr>
</thead>
</table>
| Landscape Modelling | Dr. K.O. Wenkel | * develop landscape models
  * support development of process oriented models
  * remote sensing |
| Socioeconomics | PD Dr. K. Müller | * social aspects of land use
  * economy of land use and agricultural production |
| Land Use Systems and Landscape Ecology | Dr. A. Werner | * analyse and model all land use forms
  * develop sustainable land use systems
  * land use and its impact on ecosystems
  * optimization of land use goals |
| Hydrology | Prof. Dr. J. Quast | * hydrology of landscapes
  * impact of land use on ground- and surface-waters |
| Soil Landscape Research | Prof. Dr. Mo. Frielinghaus | * land use and soil protection
  * regional soil science |
| Rhizosphere Research | vacant – (acting: Dr. J. Augustin) | * rhizosphere research
  * land use and gaseous emissions |
| Microbiology of Ecosystems and Soil Biology | Dr. sc Seyfarth | * land use and microorganisms in the phylloshere
  * ecology of soil biota |
3 A new indicator in the OECD indicator framework for the development of sustainable agriculture (Dr. H.-P. Piorr)

ENVIRONMENTAL
- Agro-ecosystem
- Land attributes
- Meteorological
- Random events

ECOSYSTEM
- Biodiversity
- Natural habitats
- Landscape

NATURAL RESOURCES
- Soil
- Water
- Air

HEALTH AND WELFARE
- Pesticide spray
- Livestock odour

ECONOMIC AND SOCIAL
- Market signals
- Farm financial resources
- Government policy
- Technology
- Socio-cultural
- Population

FARM INPUTS AND OUTPUTS
- Chemical input use
- Energy use
- Use of water resources
- Farm management practices
- Level and mix of farm crop / livestock outputs

CONSUMER REACTIONS
- Changes in food consumption patterns

AGRO-FOOD CHAIN RESPONSES
- Changes in technology
- Voluntary adoption of safety and quality standards

FARMER BEHAVIOUR
- Changes in input use and farm management practices
- Co-operative approaches between farmers and other stakeholders

GOVERNMENT POLICIES
Changes in:
- Regulations
- Economic Instruments
- Training and information
- Research and development
- Agricultural policies

PRESSURES
State
RESPONSES

Source: OECD Secretariat, 1996.
## Summary of the Most Common Indicators from the Selected International and Regional Lists:

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<th>ISSUES</th>
<th>Pressure</th>
<th>State</th>
<th>Response</th>
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</thead>
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<tr>
<td>Climate Change</td>
<td>• <em>Emission of greenhouse gases</em></td>
<td>• Global mean temperature</td>
<td>• Energy intensity</td>
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<td></td>
<td>• <em>Energy supply (total and structure)</em></td>
<td>• Greenhouse gases in the atmosphere</td>
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<td></td>
<td>• Energy production</td>
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<td></td>
<td>• Energy consumption</td>
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<tr>
<td>Ozone layer depletion</td>
<td>• <em>Production / consumption of ozone depleting substances</em></td>
<td>• Ozone depleting subst. in atmosphere</td>
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<td></td>
<td></td>
<td>• UV radiation</td>
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<tr>
<td>Eutrophication and water quality</td>
<td>• <em>Discharge of N and P</em></td>
<td>• BOD/DO, N and P in inland and marine waters</td>
<td>• Wastewater treatment coverage</td>
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<td></td>
<td>• <em>Use of fertilisers</em></td>
<td>• Algae / chlorophyll</td>
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<tr>
<td>Acidification and air quality</td>
<td>• NOx and SO₂ emission</td>
<td>• <em>Exceedance of critical loads in soil and water</em></td>
<td>• Percentage of cars with converters</td>
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<td></td>
<td>• Concentration in acid precipitation</td>
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<td></td>
<td>• <em>Atmospheric deposition of S and N</em></td>
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<tr>
<td>Toxic contamination</td>
<td>• Emission of heavy metals</td>
<td>• Heavy metals and toxic organics in env. media and species</td>
<td>• Risk assessment / restriction of substances</td>
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<td>• Consumption of pesticides</td>
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<tr>
<td>Urban environmental control</td>
<td>• Emissions in urban air (SO₂, NOx, VOC)</td>
<td>• SO₂, CO, NOx, O₃, TSP in urban air</td>
<td>• Green space</td>
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<td>• Degree of urbanisation</td>
<td>• Population exposure to air pollution and noise</td>
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<td>Biodiversity, landscape</td>
<td>• Habitat alteration and natural land conversion</td>
<td>• Threatened / extinct species vs. known species</td>
<td>• Protected areas vs. total area and by ecosystems</td>
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<td>Waste</td>
<td>• <em>Waste generation (total and by type)</em></td>
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<td>• Reuse and recycling</td>
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<td>Water resources</td>
<td>• Water use intensity</td>
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<td>• Disposal of waste</td>
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<td>Forest resources</td>
<td>• Harvest</td>
<td>• Area, volume, structure of forests</td>
<td>• Forest management and protection</td>
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<td>Fish resources</td>
<td>• <em>Fish catches</em></td>
<td>• Stock size</td>
<td>• Regulation of stocks</td>
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<td>Soil / land</td>
<td>• Land use</td>
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<td></td>
<td>• Arable land</td>
<td>• Water / wind erosion</td>
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<td>General</td>
<td>• Population growth / density</td>
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<td>• Environmental expenditures, economic and fiscal instruments</td>
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<td>• GDP</td>
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<td>• International agreements</td>
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<td></td>
<td>• Industrial Production</td>
<td></td>
<td>• Passenger and goods transport modes</td>
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<td></td>
<td>• <em>Transportation networks and stock of vehicles</em></td>
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Significance of Agricultural Landscapes in the European Union

- Geophysical formations
- Climate
- Abiotic resources (soil, water, ...)
- Biotic resources (fauna, flora)

- Land cover
- Biodiversity

< 5% of the EU-Area

- Agricultural land use
- Settlements
- Architectural monuments
- Natural monuments

77% of the EU-Area

- Arable land
- Permanent grassland
- Wooded areas
- Permanent crops
- Water

< 20% of the EU-Area

Other area: Urban and Industrial area
Natural landscapes: own assessment

Piorr & Wascher (1998)

Indicators and Valuation Methods for Landscape Related Policy Measures

Resources of Agricultural Landscapes

- Land Use Systems: A
  - Economic
  - Social
  - Arable land
  - Grassland
  - Stock keeping
  - Forest

- Natural Features: B
  - Surface water
  - Wetlands
  - Field break structures
  - Forest edge structures
  - Natural monuments

- Infrastructure: C
  - Settlements
  - Farm buildings
  - Roads
  - Architectural
  - Monuments

Landscape Analysis/Monitoring on the Basis of selected indicators

Influence of A, B, C on:
- Individual quality of agricultural landscapes
- Contribution of A, B, C to:
  - Sustainability of agricultural landscapes

Goal System / Function known

Determination of a Goal Function

Biodiversity_{\text{opt}} = (A_{\text{opt}} + B_{\text{opt}} + C_{\text{opt}})

with n % protected areas

Valuation of Biodiversity

Development of protected areas

Biodiversity Potentials according to Scenario Models

Analysis of change of Biodiversity according to Scenario Models

Valuation of landscape development potentials

Development of protected areas

Biodiversity Profit

Selection of Valuation Methods for the Analysis of State and Development of Landscape

Choice of Valuation Methods for the Analysis of State and Development of Landscape

Determination of Profit Function

Valuation of Biodiversity

Goal System / Function known

Determination of a Goal Function

Biodiversity_{\text{opt}} = (A_{\text{opt}} + B_{\text{opt}} + C_{\text{opt}})

with n % protected areas
4 Integration of environmental targets into agricultural land use - The development of MODAM - a Multi Objective Decision support tool for Agro-ecosystem Management (P. Zander)

Nature and environmental protection on agriculturally used fields

- What are the goals of nature and environmental protection?
- Which agricultural fields are concerned by the goals?
- What are the effects of cropping practices on the protected goods?
- What measures can be taken to realise a better goal achievement?
- What are the costs resulting from goal oriented measurements?
- Which instruments are suited to realise these goals?

Context of the modelling approach

Sustainability a participatory process of goal definition

- goals and priorities are a societal decision
- implementation can not be done against the actors of a region

Information

- the interdependencies between different goals
- possible changes in the behaviour of the actors
- possible instruments for policy makers and their effect on actors and on the environment

Modelling interdependencies between

- environmental goals
- economic and environmental goals
- socio-economic frame conditions
Assumptions of the modelling approach

- farmer behaviour is always economical rational
- farm models allow simulation of farmers behaviour
- sustainability can be defined by the use of indicators
- major ecological effects of the farms activity can be assessed by analysing the cropping practices

Cropping practices  a key position

Modelling cropping practices for

- economical evaluation
- strategic planning of farm activities

- detailed description of every measurement
- long term average technical coefficients of the cropping practices
MODAM – A Multi.Objective Decision support tool for Agroecosystem Management

**Modules of MODAM**

- production practices from expert knowledge
- site characterisation
- partial economic evaluation
- partial ecological evaluation
- agricultural society
- farm resources
- multiple goal linear programming model
- regional sector model
- trade-off, scenarios, interactive simulations
- regional land use pattern
- economic overall evaluation
- spatial ecological evaluation

**MODAM**

- hierarchical organised modules
  - cropping practices
  - gross margin
  - ecological evaluation of cropping practices
  - generation of farm modules

- high flexibility
  - sites
  - production systems
  - type and number of farms
  - environmental objectives
  - dynamic / statistic
5 Effects of large nature conservation areas to the agricultural sector (Dr. H. Kächele)

Construction of Modelling System MODAM

ZALF/LS, Peter Zander, 8/98 sheet

Influence of Land-Use Scenarios to the Regional “Variable Gross Margin”

- Details in DEM -

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Reference Scenario</th>
<th>Agriculture Scenario</th>
<th>Nature Protection Scenario</th>
<th>First step Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total VGM</td>
<td>11.612.000,-</td>
<td>11.278.000,-</td>
<td>10.239.000,-</td>
<td>10.890.000,-</td>
</tr>
<tr>
<td>Difference</td>
<td>-</td>
<td>334.000,-</td>
<td>1.360.000,-</td>
<td>722.000,-</td>
</tr>
</tbody>
</table>

Source: Own calculation

Institut für Sozialökonomie / Harald Kächele 5 / 98
How does the exchange of fields between the farms influence the regional “Variable Gross Margin (VGM)”

- Details in DEM -

<table>
<thead>
<tr>
<th></th>
<th>Reference Scenario</th>
<th>Nature Protection Scenario</th>
<th>Agriculture Scenario</th>
<th>First step Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>without exchange</td>
<td>11.612.000,-</td>
<td>10.252.000,-</td>
<td>11.278.000,-</td>
<td>10.890.000,-</td>
</tr>
<tr>
<td>with exchange</td>
<td>11.773.000,-</td>
<td>10.721.000,-</td>
<td>11.405.000,-</td>
<td>11.079.000,-</td>
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<tr>
<td>Difference</td>
<td>161.000,-</td>
<td>469.000,-</td>
<td>127.000,-</td>
<td>189.000,-</td>
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</tbody>
</table>

Source: Own calculation

Institut für Sozialökonomie / Harald Kächele 5 / 98

Share of the Agrarian Environmental Programs at the Loss of “Variable Gross Margin (VGM)”

- Details in DEM -

<table>
<thead>
<tr>
<th></th>
<th>Reference</th>
<th>Nature Protection</th>
<th>Agriculture</th>
<th>First step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total VGM</td>
<td>11.612.000,-</td>
<td>10.252.000,-</td>
<td>11.278.000,-</td>
<td>10.890.000,-</td>
</tr>
<tr>
<td>VGM</td>
<td>-</td>
<td>1.360.000,-</td>
<td>334.000,-</td>
<td>722.000,-</td>
</tr>
<tr>
<td>Total Subsidy</td>
<td>2.985.000,-</td>
<td>2.197.000,-</td>
<td>2.343.000,-</td>
<td>2.407.000,-</td>
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<tr>
<td>Subsidy</td>
<td>-</td>
<td>788.000,-</td>
<td>642.000,-</td>
<td>578.000,-</td>
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<tr>
<td>VGM Subsidy</td>
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<td>-</td>
<td>572.000,-</td>
<td>-308.000,-</td>
</tr>
</tbody>
</table>

Source: Own calculation

Institut für Sozialökonomie / Harald Kächele 5 / 98
Chapter 3:

Bruce, John (1986), Land tenure issues in project design and strategies for agricultural development in sub-Saharan Africa, LTC Paper 128 (Land Tenure Center), Madison, Wisc..


Kirk; Michael (1996), Land Tenure Development and Divestiture in Lao P.D.R., (GTZ study), Eschborn.


Chapter 4:


Chapter 5:

Elbow, Kent (1996), Legislative Reform, tenure, and Natural resource Management in Niger: The New Rural Code, (Paper prepared for the CILSS, Land Tenure Center), Madison, Wisc..


Löffler, Ulrich (1996), Land Tenure Development in Indonesia, (GTZ study), Eschborn.