

# How can land tenure reform contribute to poverty reduction?

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„The vision of a prosperous agriculturally based market economy in which increasingly diversified and commercially oriented small farmers with secure and exchangeable land rights, able not only to feed but also to remunerate themselves and their families while supplying [...] growing cities, generating local employment and national revenue, is powerful, attractive, motivating and valid. The question is how to achieve it.“ (J. Quan 2002:10)

## ***Under what circumstances can land tenure reform contribute to rural poverty reduction and sustainable natural resources management?***

### 1. What is our *understanding of land tenure reform*?

- As critical land issues never emerge and persist in isolation from broader agricultural and rural development problems, land tenure reform has to become an *integral part of more comprehensive strategies* for rural poverty reduction.
- ‘Integration’ also means to consider tenure in the context of all economically used natural resources in a particular space (irrigated and rainfed cropland, pastures, forests, woodlands, fishery grounds). Combining the use of these natural resources is often the only viable livelihood strategy for the poor in rural areas. Therefore, ‘*resource tenure*’ would be more appropriate terms to work with.
- It is, therefore, critical to conceive *resource tenure reform* not only as a means of redistributing land but as an integral process for providing access, tenurial rights and sustainable use of natural resources such as forests, water, seed, genetic resources and biodiversity.
- Even land tenure reform is a much *broader concept* than redistributive land reform or agrarian reform, encompassing the (re-) formulation of a comprehensive land/resource policy, reforms of the legal and regulatory framework, the implementation of instruments for land administration, land development, and conflict management.
- Its objectives, instruments and target groups strongly differ depending on actual circumstances and tenure-related ‘hot spots’.
- There is no blueprint for instruments to be applied, their *prioritization, sequencing* and for the *actors* to be involved. Country specific, *tailor-made options* are needed; however, similar patterns exist and help to learn from each other (Southern African patterns with dualistic land ownership compared to West Africa with patches of registered private lands only and still strong customary regimes).

2. The more cropping, livestock keeping or (agro-) forestry continue to be the major sources for income generation, employment, safety net and (human) capital formation, the more tenure reforms will have a *direct impact on rural poverty reduction*. In Least Developed Countries with a large agricultural sector that are relying on the consumption of *nature capital*, a high percentage of *less-favored lands* and *low economic diversification* and urbanization, tenure reforms should aim at the following:

- *Securing existing access and use rights to land and related natural resources* for the rural poor against a silent expropriation through the encroachment of cropping, public interests in new land use patterns (infrastructure, concessions, national parks) etc..

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- In some cases this security can be based on *individual*, in others on *common property*. Even if not associated with high levels of transferability and formality, they provide incentives for labor-intensive, non-monetary *investment* in tree planting, drainage, irrigation, and help to reduce social conflicts.
- Securing *secondary rights* and access provides options to use extensive rangelands, forests, river swamp lands, etc. In combination, these resources form an important income source and element of *risk reduction* for the poor. Most of these lands have to be held in *common property* (due to high monitoring and enforcement costs in case of privatization or nationalization).
- In case of less-favored lands which cannot be used intensively, *titling is rarely an option* to secure rights and to promote credit. Formal titles cannot be established in a cost-effective way yet, since they are not enforceable and can be disruptive to the existing social fabric. Credits for agricultural investment are cheaper if money is lent against the farm enterprise, the anticipated crop value or against moveable assets rather than land itself.
- In particular in less-favored lands, land tenure reforms can generate a *double dividend*: Generating income on a household and national level plus protecting the regional/global commons, such as biodiversity, reduced desertification or climate change. Thus, a local assessment and documentation of rights is required which, in future, can easily merged with more formal titling activities in economic growth poles.

3. In rural economies based on *diversified small-scale agriculture* and family farms with emerging factor and product markets and well-established linkages to the national and international economy, land tenure reforms can contribute to rural poverty eradication in different ways:

- Enhancing the degree of *transferability of property rights in land* through the verification of ownership status at low costs to facilitate land transfers - in particular rental arrangements.
- Although contested by interventionist governments and parts of civil society, the Asian experience has shown that rental markets are a key '*buffer institution*' to give the landless access to land, to create *viable farm units* or to *consolidate* fragmented plots in an efficiency enhancing way. Increasing demand to rent-in land coincides with *additional land supply* when out-migration into urban employment and part-time farming continue. In these cases land can easily be transferred to the best user without losing its role as a *risk-reducing asset* and safety net in case of old age or illness for existing owners.
- Where active but informal land sale markets, a working banking sector in rural areas and profitable investments are available, the time for *titling programs* may be ripe in order to give better access to credit by using land as a collateral.
- It should, however, be *noted critically* that titling is *neither a panacea* to address the poor *nor that land is the only one source to secure credits*. There are high administration costs for smallholders and formal title may not be sufficient, as under African smallholder structures where most benefits of this institutional innovation accrue only to larger or medium landowners. In situations where access to credit is biased toward large lump sums, improved titling will not necessarily be equity and efficiency enhancing.
- Whenever complex strategies for sustainable rural development are discussed (as in the European Forum 2002) or promoted in development cooperation either through agri-business, non-farm employment, trade liberalization, or the support of producers

associations and rural finance, *innovative models for land market development* have to be an integral strategy element.

4. In countries with a continued *dualistic distribution of land ownership* based on former settler colonies and apartheid policies as in Southern Africa (or parts of Latin America), strong arguments for *land redistribution* as a core element of land tenure reform exist from efficiency and equity grounds:

- There is strong empirical proof for a *negative farm-size productivity relationship* for all but the smallest farm size classes (with the exception of plantation crops) due to lower supervision costs and more motivated (family) labor.
- In addition, there are *different channels* through which a more egalitarian distribution of land assets might affect economic performance:
  - *bringing large tracts of productive land into production* which are lying idle on large farms means reducing production risks and *environmental hazards* for small peasants who have to make a living on marginal, endangered lands;
  - contributing significantly to food security, nutritional well-being, creating *safety nets* through land and to better withstand exogenous shocks when factor markets are still incomplete;
  - improving *social and political stability*, stimulating participation in political decision making and providing public goods, such as social cohesion, functioning mechanisms to govern the commons etc.
- The implications are twofold: *no simple land redistribution* which tries to do good to all potential beneficiaries - may they be landless or land-poor - will help the poor in a sustainable way. Only viable, medium-sized farms will have a chance for sustainable production in a market economy.
- Depending on the performance of *complementary rural credit and insurance markets*, even these units need *additional costly technical and organizational support* as start-ups. This lesson has not yet been learned by those playing the politically popular land reform card.
- The more diversified economies are, the more *complementary instruments* can be mobilized to *substitute land as an asset* and basis for capital formation by other reform elements: Housing programmes, support of small and medium business start-ups or investment in human capital can be substitutes for those who do not want to start with agriculture or to stay in rural areas. Instead of allocating land to them which they want to rent-out or to sell immediately, more focused approaches would be more cost-effective and reduce the pressure on politicians, who want to achieve greater equity.

5. Although poverty is still a mainly rural problem in Africa and parts of Asia, land conversion and the allocation of new functions to land will gain importance in *peri-urban areas* putting new pressure on the '*urban*' poor. Under these circumstances, land tenure reforms should be *pro-active* and anticipate severe future changes:

- Increased tenure security is again an issue in case of informal (illegal) land occupation of the poor at the urban fringe which are either fleeing from worsened living and environmental conditions in rural areas or are evicted from other rural or even urban sites. Here, a group- and situation specific *differentiation of degrees of tenure security*, including intermediate solutions might be appropriate.
- The *state* has to play an important role in increasing the supply of lands in these crowded areas where peri-urban cropping, livestock production and horticulture play

a crucial role. This includes mechanisms to *limit land speculation* and artificial withdrawal of plots from the land sale and rental market.

- What is still lacking is an open, *critical discussion* on the impact of existing standards for regularization and planning on the poor. Does higher regularization really lead to better land access for the peri-urban poor or doesn't it encourage artificially high land prices, speculation and privilege only those which are already part of the system?

### ***How can land tenure reform be carried out in a manner that is pro-poor?***

Several steps have to be taken which strongly depend on each other and cannot be performed in isolation:

1. Formulate a comprehensive, inclusive and transparent *national land/resource policy* on which land tenure reforms are based: Its *guiding principles* are:

- tied to existing socio-economic systems and embedded in the established property relations to ensure society-wide credibility,
- imparting visions regarding a desirable path of development and
- facilitating ongoing sectoral and economic change,
- actively promoting the rights of the poor, such as of popular organizations, indigenous communities, peasants, pastoralists and women to fully *participate* in the formulation, implementation and enforcement of policies,
- thus, including an intensive dialogue between government, the private sector and organizations of civil society.
- long-term oriented and, in its basic commitments, immunized against the influence of daily politics and strategic behavior of interest and lobby groups, and
- focused on an evolutionary process of change.

Note: These guiding principles are, of course, *controversial* between cultures, religions, or political systems: the rule of law does not necessarily mean equality for all people before the law or (not yet) equal opportunities for men and women with regard to land access and land use (e.g. Islamic law or customary rules).

Its *overall objectives* are:

- efficiency and the promotion of economic development
- equality and social justice
- sustainable resource management and environmental protection
- viable governance structures.

2. Identify a *bundle of instruments and measures*, assess its *impact* on the (rural) poor and identify appropriate governance structures to make them work!

- To enhance efficiency, land tenure reforms can only be implemented in a pro-poor way if a *uniform legal and regulatory framework* has been developed providing equal opportunities for resource use to all private and legal persons, as well as collectives and the state.
- This includes a precise distinction between *private* contract law (civil law) and *public* law (restrictions on land use) and clearly defined *liability regulations*.

- Land sale and rental markets do not develop by themselves, in fact they critically depend on instruments of *land administration*, such as land registers, land valuation.
- A forward-looking land policy has to cushion the effects of *sectoral change*. This includes the provision of instruments for *land development*, from land regularization to land use planning up to land consolidation and expropriation against compensation in the public interest. If, however, the *state should play a major role* in this process and whether these instruments do really work for the poor is a controversial issue!
- Pro-poor land policy has to be prepared for *new functions of land*, such as the protection of biodiversity, climate, water retention, leisure, tourism, and to acknowledge the critical role the rural poor can play in this context. As it is often poverty groups which create *positive externalities* for society when protecting village forests, watersheds, small irrigation systems or pastures, mechanisms are needed to *remunerate* these efforts much better than in the past.
- It is also disputed if a ‘social’ responsibility of land exists. Any comprehensive land policy has to analyze the current and future importance of land for *social security* (old age, illness) or *community based natural resource management* (CBNRM). Therefore, measures to promote and to support existing systems of *collective action* and the formation of *social capital* are a key issue.

3. In a genuine *participatory process* between government, the private sector, civil society representing also the poor (and donors?), the *key controversies* and *trade-offs* with regard to objectives, instruments and their impact should be made transparent. Critical issues are:

- *The role of the state*: There is no doubt that the state still has a *key role* to play in promoting and facilitating land tenure reforms. The *provision of public goods* (price information, legal security, registers), the enforcement of rights and the *correction of negative externalities* (control-and-command, taxes, other economic (dis-)incentives) provide a strong rationale for government involvement. A public provision of records, police and judiciary is often cheaper compared to private militia. Where are the limits of *state intervention*? The so-called ‘social function’ of land is often just an excuse for far-reaching *government intervention* protecting those who have the time and money to follow them or to bribe civil servants while excluding mainly the poor.
- *Restrictions on land ownership*, like ceilings or fixed rents often do not really protect the poor but only those who are already part of the game. Arrangements often date back to colonial times, imposing unrealistically high and non-enforceable *standards*, putting land out of the reach for the poor while at the same time opening the door for bureaucratic abuse and corruption. A negative impact on business start-ups also for the poor is another consequence. These restrictions rarely prevent land accumulation and may not be any more necessary when land markets work.
- How to create a *supportive institutional environment*? Besides accessible registries, integrated with cadastre, this includes the development of *private professions* to support land administration (surveyors, notaries) and to *avoid overlapping mandates*.
- It means as well to allow for *different standards* of evidence and precision requirements for plots in poor countries which are characterized by different land values and to give communities the *choice* between different types of property rights regimes and the upgrading of standards.
- *Rental markets and land consolidation*: The question is how supportive the fragmentation of agricultural holdings is: risks are diversified but as soon as insurance markets emerge this justification does not hold true any longer giving strong arguments for land consolidation. Therefore, tenure reforms should allow for *different forms of*

*tenancy: fixed rents* in the case where credit markets and insurance markets work, share contracts as a second best solution in more insecure environment being in long-term social or kin network.

- => Legislation has to look for appropriate frame conditions to make these institutions work while, at the same time, protecting as well the rights of landowners in order to give incentives for land owners to rent-out land.
- *Titling* is not at all a panacea to achieve different land policy goals at the same time. So small farmers really need a costly title deed register. Titling is not necessarily the best way to secure credit when taking into account the experiences of (the) cooperative banks in Europe based on joint liability. A decentralized implementation of titling is costly and local institutions that are prepared to do the job are not yet developed.
- Titling has to be assessed against secured long-term, *renewable lease rights* which can be inherited and mortgaged within the specific lease period. This may lead to a more organic and evolutionary development of land sale and rental markets in a next step.

4. Develop viable mechanisms to *implement* land tenure reforms at the *user level*, to *enforce* them and to make them *sustainable*:

- Immense *challenges* remain for the implementation of pro-poor tenure reforms: How to construct tenure regimes that can enhance the livelihoods of people in areas under customary tenure, how to harmonize in a bottom-up process all tenure-related laws and regulations (participatory law making?) and how to upgrade insecure tenure? Often, processes have been too slow in the past, too expensive, too bureaucratic and too far away from the constituencies.
- Once there is a national decision to implement land policies and land tenure reforms, the process of *decentralizing* should guarantee the involvement and participation of popular organizations, social movements and local governments in a way that does not reinforce the power of local landed elites or traditional authorities alone.
- The *principle of subsidiarity* serves as a guiding principle for the envisaged process. In its horizontal interpretation it gives priority to *private performance* (either by the private sector or self-help groups) rather than to government one, whenever appropriate. Therefore, *devolution* - rolling back the boundaries of the state- is part of the process.
- In its, *vertical interpretation* it requires the allocation of responsibilities and authorities to the *lowest institutional level possible*, that is, close to the citizens. This requires decisions about which land policy instruments have to be administered at the national or international level (transboundary pasture use regulations) and which ones at lower levels. But neither decentralization nor devolution is an excuse that a state rids itself of *responsibility* once for all; subsidiarity requires (that it is expected) to support local institutions during a learning process and to enable them to perform tasks assigned to them more efficiently. It also implies that the state reserves the right to withdraw the decision-making power and authority from them in case they cannot perform the assigned tasks any longer.
- There are strong arguments for pro-devolutionary approaches to land management, but this demands as well *local communities* which can perform the job assigned to them. Does the central state use devolution and decentralization only as an excuse to *get rid of expensive responsibilities* (registers)? Are the real poor capable of participating in collective action and governance of land management at the local level?

- It is an open secret that decentralization and implementation only work with *fiscal autonomy* at lower level going hand in hand. Local governments and organizations of civil societies can provide land-related services and enforce protective property rights for the poor only if they have a viable revenue basis. As direct income taxes play a minor role only in most of the poorer countries, a rethinking of the role of *local land taxes* is urgently needed.
- Successful implementation means locally accessible institutions for *land/resource conflict resolution, as well*. The comparative advantages of formal courts versus out-of-court resolutions and the future role of local chiefs have to be assessed critically.

### ***What types of actions should donors support in order to promote pro-poor land tenure reform?***

Support the creation of an effective *land policy* which, in a given historical and political context, can build an efficient land administration system.

- This system is a composition of rules, authorities and rights, targeting state and customary bases, fitting into reality of a contemporary democratic state and providing a broad set of solutions that meet the specific needs of diverse stakeholders, in particular, the rural poor.
- Therefore, this policy has to *build on existing systems*, support social networks and inter household cooperation. It has to modify the existing system to fit into the modern economy, ensuring that these modifications do not marginalize the more vulnerable groups.
- Support the countries by facilitating the *exchange of best practices* and concepts from other countries of the South.

Contribute to a more consequent *integration* of land/resource tenure issues into national and international poverty reduction and resource protection strategies and programs:

- Land tenure and land policy issues are nearly non-existent in most of the *PRSP* although access to land and use is so important for the rural poor.
- National action plans to fulfill the requirements of the *International Conventions* to combat desertification and preserve biodiversity (CCD, DBC) do not adequately address tenurial issues and complementarities between land policy instruments and instruments to achieve the objectives of the Conventions.

Help to identify adapted, cheap and easily *implementable instruments* to overcome the major tenure-related bottlenecks, e.g.

- revision of the legal and regulatory framework by referring to a pool of *Southern experts* (jurists, economists, surveyors and anthropologists),
- elaborate models to build on *legal pluralism*,
- *village/district based land registers* that are in the long run compatible with set national standards,
- development of *conventions* to manage local woodlands, forests and pasture and to create at the same time income for the poor and to protect the commons (like the ‘marchés ruraux du bois’ in West Africa),
- create *innovative land tax models* as an incentive plus revenue for local jurisdictions.

Support efforts assuring that a sufficient and consistent level of *participation* of all relevant groups of civil society, in particular the rural and ‘rurban’ poor without a voice yet, is established

- assess critical experiences from former ‘*round tables*’ in the process of market-oriented reforms in the early 90s.
- identify *key self-help organizations* which can still take over additional responsibilities without getting overcharged, and can therefore serve as a model for others.
- check to what degree *modern communication* (cellular phones, email) can strengthen their voice,
- assure that participation and inclusion is foreseen in reforms of the legal and regulatory framework,
- work as a *mediator* in case of severe clashes between government, private sector and civil society organizations, if desired.

Try to put *redistribute land reforms* again in a broader focus of agrarian reform, rural development and agricultural policies:

- assure that the *rule of law* reigns land reforms in future more than it happened in the past: no expropriation without compensation, open legal channels for complaint, etc.,
- Provide avenues that allow beneficiaries to make *productive use of the land* they received,
- review the lessons from WCARRD (World Conference on Agrarian Reform and Rural Development/FAO) to the Bonn Conference on Innovative Agrarian Reforms and identify keys for future intervention,
- link land reform with development at the local level (micro-finance, CBNRM, etc.),
- provide *training and capacity building* as well as provisions for complementary investment to make land productive,
- develop *grant programs* for land if explicitly targeted to the poor,
- help that land rights, the right of beneficiaries and those who give away land is secure and *unconditional* to allow the *children generation* to get out of agriculture,

Don’t shy away from supporting the development of *land sale and rental markets* in countries where the frame conditions exist already; even if the task may be controversial and provide a platform for ideological debates on market liberalization, marginalization:

- create *legal clarity* on land transfers (contract law), remove unjustified restrictions of transfers,
- but also *eliminate policy distortions* which mostly favor large farmers or former collectives,
- improve complementary factor markets (credit),
- a sequenced, step-wise *reduction of barriers to land rental*,
- develop clear policies for *land conversion* and the establishment of land tax systems (together with decentralization and local government strengthening)
- *reduce costs for transaction* due to excessive charges for private services for land transactions,

Support national policies which try to link land tenure reforms with *devolution, decentralization* and strengthening in the *competition of local jurisdictions*. Help to

- develop workable land tax systems which encourage the more effective use of land and
- create revenues for local governments and the capitalization of local amenities and real land values,
- support efforts to assess the value of land to cash-poor local councils,
- *divest more state land* which has been accumulated after nationalization to the local market,



- make land registration accountable for the local population.

Take a lead in addressing future challenges related to land:

- In the *context of HIV/AIDS*:
  - develop mechanisms to assure that *impoverished households* will not be evicted without compensation and that children can inherit the property,
  - secure rights to rent out land in case of shrinking family size due to aids (including sharecropping!) As to keep the land as a source of income.
- Prepare for a *shift of poverty from rural to urban* and peri-urban areas in the future and the implication for land tenure and land policies.

Prepare for a *decreasing importance of agriculture* as a contributor to GDP and the increasing role of new functions of land to society: Are there incentives for the remaining rural poor to get new employment in preserving nature? What are transfer mechanisms to get them paid?

***What actions should be taken to address the particular problems faced by women, indigenous groups and pastoralists in gaining secure access to land?***

Customary and secondary rights:

- Resolve problems which arise when *multiple owners* have legitimate claims to the same piece of land, dependent on the law applied by them (statutory, customary, Islamic law, etc.).
- Acknowledge that these groups are often the *most important users* of the resources and the key actors for their protection.
- Develop mechanisms to *compensate* the poor for secondary rights during privatization e.g. in peri-urban areas, either through access to alternative plots or through access to other durable assets.

Women:

- Customary rights and *customary authorities* often *discriminate against women*, in particular widows and female orphans (aids!). Often, there is no *independent security system* for them, when land is falling back to the husband's lineage.
- => Develop instruments to strengthen women's position and to prevent forced eviction of widows from land after their husbands have died from aids without disrupting the existing social fabric.
- => Develop *incentives for traditional authorities* to protect widows and orphans access to land and discourage them to follow their own rent-seeking strategies.
- Check if it is possible to change customary law in specific priority areas.

Pastoralists:

- In case of well managed rangeland systems, pastoralists create important *positive externalities (environmental protection)*, which must be taken into account.
- Empirical research has shown that the *cooperative capacity* of a community still significantly affects land use and herd management, even when there are no formal rules and regulations regarding resource use. Affirming or strengthening these rules through reforms of pastoral codes and their implementation should enhance further capacities to manage extensive fragile lands in a sustainable way.
- Policy makers as well as donors must consider that, in most cases, there are *multiple institutions* involved in managing externalities in rangelands with both formal and in-

formal institutions having comparative advantages in improving these management capacities.

- The approach of relying on only *one* institution to carry out sustainable range management activities has resulted, in most cases, in competition and conflicts.
- Therefore, the process of institutional and legal reforms must focus on *reducing uncertainty and ambiguity* over property rights, since ambiguity often leads to the “Tragedy of the Commons”, i.e. open access situations and resource degradation.
- Any *legal framework* needs to incorporate the valuable aspects of flexibility in access and use of pastures, while mitigating the potential negative consequences of increased conflicts and misuse of resources by subsets of herders or households.

### ***How can the European Commission and Member States work differently in order to raise the effectiveness of development cooperation in tackling rural poverty?***

There are comparative advantages for the EU to initiate and to accompany the creation and work of *flexible donor consortia* to tackle key issues related to land in partner countries. Complementary to ongoing bilateral development cooperation of Member states, the European Commission can

- try to initiate a *common approach* to land policy and land tenure reforms,
- in *reviewing* side by side with member state representatives the policy work not only in these states but as well of multilateral donors, such as the World Bank,
- act as a *lobby group* to push a much stronger integration of land tenure issues into the *PRSP process*,
- bring in more recent research results into PRSP formulation by challenging orthodox ideas about land titling which are often not applicable in rural areas.
- help to better *coordinate programs*, initiatives and responsibilities for poverty reduction with those implementing International Conventions,
- facilitate the *flow of information* and the continuation of existing networks between *franco- and anglophone* neighboring partner countries,
- develop - together with selected member countries - initiatives for *applied research* and development on the *land-poverty link* by better coordinating EC-DG “Development” with DG “Research” priorities,
- possible fields of action could be, in particular, applied research on HIV/AIDS and land, agrarian reforms and second generation issues (out migration, part-time farming, etc., applied rental market models, land taxation, etc.), the future of land when agriculture loses importance,
- develop solutions for *low-cost infrastructure* for land administration and land use planning (technical solutions) by creating economies of scale and scope through member state coordination,
- support human resource development in complementing member state initiatives to train land management, conflict resolution and land taxation specialists,
- try to coordinate activities with regard to land tenure with programs for devolution, decentralization and community development.
- if not directly involved in land management programmes in a specific country, act - in controversial cases - as a facilitator or mediator between partner countries and dominant multilateral donors (such as the World Bank) and protect ownership issues of partner countries.

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