



Cambodia: A road to a private farm owned by an ELC manager leads through community forest land.

Photo: Michael Dwyer

Inclusive land governance – Road to a better life

Secure access to land is key to sustainable development. However, in many countries, the existing land governance systems are still far from addressing the interests of all sections of the population, and hence from being inclusive. Nevertheless, despite very different contexts and legal frameworks, shortcomings show astonishing similarities, as was discovered on a learning journey of the Swiss Agency for Development and Cooperation in Cambodia, Mozambique and Brazil.

Land Governance is at the core of sustainable development. While landowners – sometimes the government itself – have an interest in intensive land use to maximise their profit, public interest is geared to maintaining ecosystem services, protecting agricultural production and having functional settlements as well as landscapes. Land governance is an impor-

tant aspect in solving these conflicts. In practice, however, measures to address these aspects face a wide range of obstacles. To enhance knowledge on the topic among development practitioners and promote a dialogue in order to include the know-how gained in country and programme strategies for inclusive land governance, the SDC set out on a learning journey over the last year. Insights gathered on this journey are briefly summarised in the following.

One fundamental discrepancy in land governance is the disconnection of the local realities from legislation.

Many countries have functioning land governance systems, but they only work for a part of society. In many cases, smallholders, youth, women, forest dwellers and ethnic minorities are excluded because of an asymmetry in information and political influence. This problem was detected at multinational level. As a consequence, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were elaborated. They serve as internationally accepted standards for practices for the responsible governance of tenure. The ultimate goal

Martina Hickethier & Felix Fellmann
Swiss Agency for Development and Cooperation (SDC)
Bern, Switzerland
martina.hickethier@eda.admin.ch

of the VGGTs is to foster a favourable political environment at national level to develop inclusive land governance frameworks. In some cases, the guidelines were used to develop inclusive legislations. However, on the ground, countries are astonishingly similar in the cruxes, as examples from Africa, Asia and Latin America show:

Accessibility and transparency of cadastres. The technical basis for land governance is the collection of data. However, generating evidence can be used to support much more than land claims. It can strengthen community organisation and identity, spatial planning and the management of environmental risks. The country studies in Mozambique, Cambodia and Brazil revealed a fairly large lack of data. Data is imprecise, only collected for certain areas and/or not openly accessible. The studies showed that the production of spatial data can itself be part of the conflict resolution process. Open land registers are also a tool in the fight against corruption, and private appropriation by ruling elites. For example, links to civil society organisations have enabled traditional communities in Brazil to use 'self-demarcation' processes in which boundary walks are guided by the community's own oral historians and spiritual leaders while being recorded with GPS technology. These maps were used in the negotiations with local governments, which have led to a better recognition of land claims by traditional communities.

Common land use. In many countries, collective land use is not foreseen by the legal frameworks. Although the traditional communities in Brazil have benefited from the gradual development of a consistent national policy framework, these communities continue to lack access to a common legal and institutional framework capable of reflecting their collectively-based territorial right claim. In Cambodia, only community forest, and not arable land, is designed for common land use. Legislations need to recognise the need for common land use and enable communities to organise themselves to a certain degree to make it work.

Inclusive land governance in Mozambique: Good law, bad inclusive politics?

Despite having one of Africa's most innovative and progressive land legislations, Mozambique's implementation of its legal framework has faced many challenges. Institutional fragility combined with corruption and the capture of the state and economic resources by the ruling elite pose significant obstacles to implementing the legal framework, particularly with regard to its most progressive elements. The ability to protect the legally acquired land rights of rural communities has been further challenged by the surge in demand for land that has accompanied Mozambique's economic development and, until recently, the large inflows of Foreign Direct Investment attracted to the country. In the context of a fragile governance framework, this has resulted in unlawful land occupation and widespread conflict with the local population.



Community members in Ribaue district, Nampula Province, Mozambique. In many cases, vulnerable groups such as women and youth, smallholders, forest dwellers and ethnic minorities are excluded from land governance systems. Photo: Lídia Cabral

The right to use and benefit from the land is a distinctive element of the Mozambican legislation that has land as the property of the state but recognises land use rights for occupants and users on the basis of a unitary system of tenure. The law may be progressive but government politics are not, as an increasingly hegemonic elite controls Mozambique's political system and resources. Demand for sound land governance and advocacy for the rights of customary occupants and local communities has been growing. Connecting the protection of rights with the promotion of rural development is a major challenge in the current context, where neither government nor the private sector has so far created opportunities for inclusive development. Notwithstanding the potential of community delimitation as an empowering tool for local communities, delimitation should be employed less as an act of ring fencing land and more as an instrument for strategically looking for ways of strengthening people's livelihoods. For that to happen, land tenure security would need to be addressed in conjunction with broader rural development efforts.

There is a need to combine land governance with rural development efforts, and promote a research agenda on land that fills current gaps. Areas that require in-depth analysis include: (i) experiences with community empowerment processes on land (such as delimitation) and implications for local governance and impact at the community level; (ii) the changing dynamics of land conflict over time; and (iii) the competing perspectives on the value of land and how land should be valued (beyond a narrow definition of productive use and market value) as part of an inclusive land governance agenda.

Lídia Cabral and Simon Norfolk

Land titling. In most parts of the world, rural communities are rarely the legal landowners – but governments are. The most striking example of this is sub-Saharan Africa, where up to 90 per cent of the land area

is currently untitled. Although land laws usually protect private property, protection is largely limited to lands with registered titles. Without legal owners, these lands fall to the state. Thus, is land titling the key to solving

Uneven developments: Towards inclusive land governance in contemporary Cambodia

With its legacy of enduring post-war conflict and neoliberal development policies, Cambodia has long exemplified a difficult mix of resource wealth and weak land governance. Since 2012 however, the government has undertaken a series of ‘deep reforms’ aimed at overcoming the enduring poverty, extensive land conflicts, and extreme imbalance in rural landholdings created by the boom decade of the 2000s. With elections on the horizon and the government promising to redistribute this newly reclaimed land to ‘the people’, many are asking whether these reforms are creating durable and grounded institutional change, or are simply temporary, calculated forms of inclusion aimed at managing an increasingly volatile landscape.



A new agricultural plot in a community forest; the sign reads: “Do not cut community forests”.

Photo: Michael B. Dwyer

Our case studies suggest that community forestry has played an important, if imperfect, role as a de facto tenure institution of tenure enhancement, even as land titling and concession regulation have failed for various reasons. Current efforts to combat ‘encroachments’ into community forest spaces highlight the rise of concession-induced land scarcity and associated tensions, as indigenous and migrant communities end up competing for arable land. Third-party conflict resolution is a viable option when it can be compelled, but there is also a need to reform statutory conflict resolution institutions such as the Cambodian court system.

We propose four general ‘ways forward’: (i) donors should continue to support the use and strengthening of institutions that protect land and resource tenure; (ii) continued support as well for broader efforts to create land-related transparency, inquiry and informed debate; (iii) building a series of land-related linkages across donor programming; and (iv) supporting efforts to reform Cambodia’s current Land Law (for instance, refining the category of possession rights, as well as using the state land doctrine for socially protective purposes rather than largely as an incentive to attract foreign capital).

Michael B. Dwyer and Young Sokphea

all land governance related problems? The learning journey participants answered “Yes, but...”

- 1) Land registration must render more advantages than disadvantages for smallholders; in Mozambique, the World Bank is putting pressure on the government to increase tax

rates on land to counter speculation, deriving more productive land use and a market-based value for land. However, the capacity to pay taxes within rural communities is often limited, and the formalisation of land rights may discourage people (in particular the poor) from registering their land use rights and

lead them to dispose of their land, increasing their vulnerability.

- 2) The administrative processes must be accessible and affordable for smallholders. In Cambodia for example, it takes a long time to register land for communities. The large number of institutions as well as their co-ordination and lacking independence are additional hurdles for these communities. The judicial system is not accessible for the poor, which makes it almost impossible for the disadvantaged to claim their legitimate rights.

Excellent legislation, but weak implementation at local level.

In practice, exemplary land legislation often contrasts with weak government institutions. As a learning journey participant stated “... much has been invested into the capacities of CSOs, but little into the ones who effectively have to do the job, ...”. In Mozambique for example, a favourable policy towards large land concessions, partial decentralisation and an unclear strategy for rural development and spatial planning from 2008–2012 have put significant pressure on land resources. Local governments and communities were unprepared to handle the situations they were facing. Although the progressive Mozambican legislation foresees consultation with local communities, and doesn’t require formal land titles to claim use rights, the local authorities have not had the human and financial resources to guarantee the rule of law. In Cambodia, implementation is complicated by the many interlinked institutions. In the northern part of the country’s Stung Treng province, for example, a conflict arose centred around competing state institutions. When a large land concession was reduced from 100 000 ha to less than 10 000 ha, the Ministry of Environment (responsible for conservation) and the local Forest Administration Office (responsible for community forest projects) both sought to claim territorial responsibility. This conflict over jurisdiction represents a type of territorial politics within the state that is hardly unique to Cambodia.

■ The way forward

What ought to be done to make land governance more inclusive? Eleven recommendations can be derived from experience gathered on the learning journey:

- 1) Make a very solid context analysis before designing a development intervention
- 2) Promote an integrated approach towards land governance
- 3) Empower local level actors and improve links to the national level
- 4) Stay engaged in national policy dialogue
- 5) Pursue a multi-stakeholder design of interventions
- 6) Promote the creation of evidence and access to information
- 7) Be cautious with promoting formalisation of land titling systems
- 8) Apply a systemic governance perspective
- 9) Acquire specific know-how for dealing with conflicts
- 10) Promote the implementation of the VGGT as well as the Guidelines for Responsible Agricultural Investments (RAI)
- 11) Facilitate regional knowledge networks on land issues

Some years ago, a woman farmer participating in legal literacy training in Senegal said: "We do not eat rights." Good land management practices are one element of a solution to substantially improve peoples' lives. Measures need to establish appropriate institutions and policies, which can deal with the challenges of land governance, which are constantly changing. Land governance is a general governance issue; it comes with daunting issues like bribery, violence, reform of the judicial system, and corruption. Inclusive land governance is therefore certainly a "Road to a better life" because it matters in so many aspects of people's lives.

'Traditional Peoples' and the struggle for inclusive land governance in Brazil

In recent decades, Brazil has attracted international interest both for the intensity of its land conflicts and for the extent of its land governance innovations. These innovations have derived from a land governance model shaped by the country's decentralised political structures and by the nature of the interactions taking place across the boundary between state and civil society actors, including rural social movements. Particularly under the Workers' Party (PT) government, this led to significant gains in recognition of and redistribution to some of the most marginalised of Brazil's rural communities. However, the model's potential to deliver genuinely inclusive land governance has run up against certain limits related to the underlying conceptualisation of land rights embedded in the country's legal framework and to the political economy of law-making and policy implementation in Brazil.



A timeline exercise with members of the Vazanteiro communities of Pau de Léguas and Pau Preto, municipality of Matias Cardoso on the Rio São Francisco, Brazil.

Photo: Zoe Sullivan and Deyvisson Felipe Batista Rocha

We argue that political mobilisation was an extremely successful strategy for North of Minas communities facing territorial encroachment during the PT period. It helped to secure favourable government policies that have brought recognition for previously invisible communities. However, the gains of the last few years have not included any substantive change in the legal framework to support community ownership of land. As a result, these communities are still forced to choose between accepting state control of their territories via the creation of protected areas or pursuing private land titling mechanisms that may lead to the fragmentation of communities. There has also been little change in the underlying political economy of law-making and policy implementation in Brazil, and in the current less favourable political context, some of the recently achieved gains may be reversed.

In the longer term, making inclusive land governance a reality for all marginalised rural communities in Brazil will require stronger alignment between the legal, institutional and policy frameworks. Despite several setbacks, some of the factors that enabled Brazil's recent progress towards inclusive land governance do remain in place. The North of Minas case shows what can be achieved by helping isolated groups to come together and form larger movements with national and international visibility, especially when these movements are linked up with academic networks that can help to produce an evidence base to support their demands for more inclusive land governance.

Alex Shankland, Zoe Sullivan, Carlos Alberto Dayrell, Anna Crystina Alvarenga and Deyvisson Felipe Batista Rocha

The findings presented in the article arose from the learning journey 2016. Around 100 professionals from SDC's Network for Agriculture and Food Security (A + FS) and the Network for Democratisation, Decentralisation and Local Governance (DDLGN) have joined forces to learn mutually and develop recommendations for future projects. Case studies were conducted in several countries (see boxes for its summaries) to give in-depth insight into the land rights situation.

The studies and more information can be found at: ► www.sdc-foodsecurity.com

For a more comprehensive version of the recommendations, see online version of this article at: ► www.rural21.com