



Reference note

Analysing land governance in the multi annual strategic plans

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1 Introduction

This reference note on Land governance is developed for the Netherlands Ministry of Foreign Affairs, particularly embassies. The aim of this note is to facilitate the inclusion of land governance in the context analysis of the multi annual strategic plan. Other resources that can be used are the inventory of existing experience with land governance related interventions of the Ministry (embassies and policy theme departments) over the period 2007-2010. This inventory also includes chapters on trends around land governance, large-scale land acquisitions and (inter)national responses (Ministry of Foreign Affairs, 2011). In addition, factsheets have been prepared for all partner countries.

2 Land governance¹

Land is a fundamental asset for economic development, sustainable resource and water use. Secure access to land is important also for social justice and dignity. **Tenure systems** define how to gain secure access to land and natural resources and under what conditions. These systems are **defined and regulated by societies** and consist of formal policies and laws as well as customs and practices.

If and how women, men, communities, companies are able to acquire rights to land depends on the governance of tenure systems. **“Weak governance** adversely affects investment, economic growth,

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sustainable use of the environment, and social stability. People can be condemned to a life of hunger and poverty, if they lose their farms, their homes and their livelihoods because of **corrupt** tenure **practices** or if implementing agencies fail to **protect** their **tenure rights**. People may even lose their lives when weak tenure governance leads to violent conflict" (FAO, 2011).

Land governance is the process by which **decisions** are made regarding the access to and use of land and natural resources, the manner in which those decisions are **implemented** and the way that **conflicting interests** are **reconciled**. Weak land governance can become a root cause of economic stagnation, ecosystem degradation, deprivation and injustice. Effective and equitable land governance systems that are predictable and transparent can be considered a **public good**.

The Netherlands' Development Cooperation has chosen four priority themes or "**policy spearheads**": food security; water; sexual and reproductive health and rights; and stability and rule of law. Gender, governance and the environment are cross cutting issues. Private sector development is a prioritised intervention approach. For each of these four spearheads, how rights over land and natural resources are governed is of importance to achieving the "**intermediary outcomes**" formulated in the strategic notes.

3 Problem analysis

The next section explores cause-effect relations between land governance and the intermediary outcomes for all four spearheads that can be analysed as part of the context analysis. Wider governance aspects are discussed in a separate paragraph. Gender is discussed in the context of sexual and reproductive health and rights, and environment in the paragraphs on food security and water

3.1 Food security

Focus areas for the food security spearhead are sustainable food production, efficient markets, access to healthy food, and a better business climate. The link between food security and land governance is included in the intermediary outcomes "access to land and water. Land governance systems set the conditions for production and influence the business climate.

In the 15 partner countries, the farming sector is composed in majority of landholders- producers or tenants/ sharecroppers, mainly using family labour. The ability of women and men to produce (healthy) food and generate employment and income requires secure **access to land**. **Security of tenure** is a second aspect. The **willingness to invest** in infrastructure and **innovation** to increase **production** and **sustainable management of the environment** requires confidence that those making the efforts today, will reap the benefits in future. Uncertainty and disputes over rights discourage investment, particular for those having an effect in the long-term (more than one cropping season e.g. water conservation). Growing perceptions of **tenure insecurity** generate fear of contest and eviction.

Secure access to land for **women** continues to be a constraint (see also 2.3). Land fragmentation and landlessness in rural areas is a growing challenge (Bangladesh, Burundi, Ethiopia, and Rwanda).

3.2 Water

Key concepts are water security and water safety. Focus areas of the spearhead "water" are efficient and sustainable use of water, especially in the agriculture sector; safe deltas and better management of river basins; and better access to safe drinking water and sanitation. Currently, activities in the field of drinking water and sanitation form the bulk of the total water programme.

Given that activities to increase food security, adapt to climate change and ensure safe deltas will be stepped up, which is influenced by the governance of land and natural resources. The strategic note indicates that the willingness to invest in **efficient and sustainable water use** requires **clear rights** over water and land, which often go together. Access to ground water, management of irrigation schemes, and equitable access to these scarce resources are **contested issues** in Afghanistan,

Ethiopia, Kenya, Mali, Sudan and Yemen. This issue may be of growing importance in Benin and Sudan where expansion of irrigated land is planned.

Participatory land and water use planning is one of the activities proposed to improve **management of watersheds and flood plains** (e.g. Bangladesh, Benin, Ethiopia, Indonesia, Mozambique). Again, successful implementation requires clarity of tenure as well as secure rights over land and natural resources. Subsidiarity of resource management is important for fine tuning activities to local conditions, which again depends on land governance systems (Boom et al., 2009)

3.3 Sexual and reproductive health and rights

Goals of this spearhead are reducing maternal mortality and enhancing access to reproductive health services. Focus areas are the reduction of unwanted pregnancy, maternal mortality and HIV infections. Intermediate outcomes refer to health systems and services, and societal norms and values. Underlying factors include access to healthy food and education for girls.

Gender equality and governance are crosscutting themes. Women's ability to influence decisions concerning her health and that of her children is influenced by the ability to produce food and gain an income. In rural areas, this requires **having a field of one's own** -that cannot be taken away- and protection of **inheritance rights** -both formal and informal-, which contribute also to self esteem and participation in public affairs.

The inventory of Netherlands development cooperation interventions around land governance identified women's rights to land and natural resources as an important opportunity that requires more policy attention. There is some progress (particularly via the MDG3 fund, work of some civil society organisations, EKN- Kenya). However, addressing gender issues effectively continues to be a challenge. Fortunately, the gender and land issue has re-gained prominence, also at the international level (Ministry of Foreign Affairs, 2011).

3.4 Stability and the rule of law

This spearhead is focusing particularly on (post)-conflict countries (profile 2 countries - Afghanistan, Burundi, Palestinian territories, Sudan and Yemen). Selected focus areas are stability and security for citizens; a legitimate government with sufficient capacity to act and respect for the rule of law; and realizing the peace dividend (employment, production). Land governance influences intermediate outcomes that focus on **preventing of conflict** and radicalization. Conflicts around land and natural resources may lead to economic **exclusion**, frustration and human **rights violation**. Outcomes with respect to the **peace dividend** and **women's economic participation** depend, particularly in rural areas, on access to land and security of rights (see previous sections).

Land or water related conflicts are important in all profile 2 countries. Disputes over land rights between groups, expropriation by government or **elite capture of resources** have been factors that ignited conflict and violence. Water conflicts were found to be important for understanding conflict dynamics in Uruzgan, and are also important in Yemen, in Sudan, in the Palestinian Territories. During the conflicts, land has been "grabbed". Return to their land by **refugees and internally displaced people** are included in peace agreements, and pose challenges for maintaining peace and stability. The return to the land of refugees and IDP is an issue also in other partner countries (Rwanda, Uganda).

3.5 Governance

In profile countries 1 and 3, **conflicts** around land issues are also high on the political agenda. Often land-related conflicts form the majority of the case load in both formal and informal judiciary systems. Growing scarcity of resources ignites conflict and violence and may lead to economic exclusion of certain groups (e.g. pastoralists, indigenous people), build up grievance and frustration or cause human rights violation (forced displacement as a result of large-scale land acquisition by investors). Land governance determines **equity of access** and a respect for the "**rule of law**", such as with respect to land **expropriation** by government and actions undertaken to correct (suspected) land **grabbing** and **corruption** in land administration. Land administration systems, both formal and informal, are sectors prone to corruption (allocating land, land titling). Weak land governance may **discourage** those sections of the **business community** that aim for long term **sustainable**

engagement, while attracting companies seeking a quick win. Private sector investments in land and other major infrastructural works need to be accompanied by a conflict sensitivity analysis.

4 Strategy

4.1 The policy agenda on land governance in the 15 partner countries

A land policy defines the principles and rules governing property rights over land, and the natural resources it bears, in order to achieve societal and economic goals. It addresses forms of tenure, distribution of entitlements, land administration systems, and land use and management. Specific policy aims may include securing rights and conflict prevention, facilitating investment, promoting land markets or encouraging sustainable use of natural resources.

An effective land policy is both legal and legitimate and therefore has to be the product of societal dialogue. So-called “domestic accountability” therefore should be an intrinsic part of policy formulation. It refers to government readiness to ensure effective participation in decision making, as well as the ability of civil society organisations and private sector to engage effectively. Non-governmental actors also play a role as “watchdog” during implementation and scrutiny of land governance processes, which may be risky in situations of conflict.

Implementation of a land policy requires appropriate legislation and institutions. In most partner countries, tenure security for smallholders continues to depend mainly on the (informal) recognition of their rights to land by their family, fellow community members and local authorities, which implies that their claims are not contested locally. Secondly, such claims should be respected, and better even, be acknowledged by government (and thus not be at risk of expropriation). A third aspect is an effective and fair system for dealing with disputes over land.

Security of land rights is not identical to an individual title or leasehold. Even when aspired, such a service for formal land registration is often not available or inaccessible for rural land. However, formal rights to land, which are not contested, are important for businesses and companies that are planning to invest significantly. In response, several countries are developing dual approaches, creating possibilities for long term renewable leaseholds or even ownership for business seeking to invest in land. However, these rights may be stronger than those for smallholders. Foreign and domestic direct investment in large-scale land acquisitions are under discussion or already in operation in countries like Ethiopia, Ghana, Indonesia, Mali, Mozambique, and Sudan. Acquisition of rural land by the urban elite is expanding in for example Benin, Kenya, and Uganda. This land may be left idle or leased to tenants.

Where formal land administration systems exist, procedures tend to be costly and slow. Often, the information in the system is outdated, which hampers land transaction and may cause conflict (Bangladesh, Indonesia, Palestinian territories). Corruption is another problem. Land administration systems to register rights and transactions, can be governed by customary or religious authorities and formally recognised (e.g. Ghana, Yemen).

A number of partner countries have completed an overhaul of land policies and legislation (Benin, Burundi, Rwanda, Sudan, and Uganda). Implementation has started in (Benin, Rwanda). Other countries overhauled their policy in the 1990s and are more advanced with institutional reform (Ethiopia, Ghana, and Mozambique). Another group of countries are in the process of discussing the revision of land policy and legislation (e.g. Afghanistan, Burundi and Mali). In Indonesia, a law around strategic land use plan may offer possibilities for innovations in land governance. Major policy changes are (more) recognition of long-standing (customary) rights by existing land users, and new land administration procedures and institutions that are more appropriate, accessible and low-cost. Some of the more promising experience with low-cost and innovative systems for land administration exists in Ethiopia and Rwanda. Pilots are ongoing in Benin, Burundi and Ghana. Mozambique has experience with granting community rights; in Indonesia, NGOs are experimenting with land use planning as a way for strengthening community rights and promote local investment in land.

Policy changes in land policy and institutions

	Is customary	Most recent	Most recent	Reform of	Pilots to
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	or local tenure recognised	Land policy	framework Legislation	Formal Land administration	improve land governance ongoing
Afghanistan	Yes	2007	2008	2010	yes
Bangladesh	Chittagong hill tracts only; elsewhere codified in formal law	No policy document; focus on land reform/redistribution; 2001 land use policy	1984	no	No
Benin	Yes	2007	Draft 2010	2009	Yes -100
Burundi	yes	2009	2011 (CDF)	modernisation	Yes- decentralised land reg
Ethiopia	Partly, Communal lands difficult to integrate	1997	1997	Yes – decentralised; Land banks for large-scale acquisitions	Yes- geo referencing; updating records
Ghana	Yes	1999 /2002	1999	LAP	yes
Indonesia	Yes-but weak	No land policy document	1960; 2001	no	Yes- land use planning
Kenya	Yes	2009	1968 –under review	proposed	No
Mali	yes	LOA 2006; PFN in preparation	2001, under review	2001	Yes- commission foncière (conflict resolution); OdN- titles
Mozambique	Yes	1997	1997	2003	yes
Palestinian territories	Yes	2008	Pre-1967; new law in preparation	2002	yes
Sudan	Yes	2011 draft	2009	2006	No
Rwanda	yes	2004	2005	2010	yes => up scaling
Uganda	Yes	2008/ 2011	1998	2001- implementation delayed	no
Yemen	yes	No	1995 (urban)	no	no

4.2 Identifying entry points

Fostering land governance is critical for making progress on all of the 4 spearheads. The issues and questions in the EU guidelines (2004) can be a good starting point for strategy development (see annex 2). Investing in food security or water without assessing first the implications for land governance, may harm the interest of poor and marginalized groups. Such analysis is even more important in post-conflict countries where tension over land and water rights can be high. Here, the margin of error is even smaller.

Existing experience of the Netherlands can also provide pointers. Many interventions around land governance have been part of sector programs (Agriculture, Natural resources and environmental governance, Justice) or in collaboration with international organisations. Netherlands development cooperation has supported processes towards securing rights to land and natural resources for smallholders, women and other more marginalized groups in Burundi, Ethiopia, Ghana, Kenya, Mali, Mozambique, Sudan and Uganda. Often, the contribution of the Netherlands served as a catalyst or “lever”, for example, because the embassy was perceived as an honest broker. In several countries, institutional innovations was supported which was set up to improve the position of specific target groups (women, smallholder farmers), integrate certain issues in land policy (river basin management) or by supporting pilot programs to speed up implementation of policy reform (e.g. on group rights, decentralised land administration services) (Ministry of Foreign Affairs, 2011).

The choice of entry points for working on land governance depends partly on host government initiatives with respect to policy, legislation and administration. "Political will", "windows of opportunity" and a leadership determined to overcome vested interests may be reasons for engaging in activities. Civil society mobilisation, such as by farmer organisation or private sector organisations, may generate also opportunities for change.

Assessing activities by other development agencies and possibilities for donor collaboration is important. Institutional innovation promoted by the Netherlands, for example, may be scaled up with support of other donors. An example is collaboration with the World Bank as is happening in some countries or with other EU countries. Active development agencies are USAID, AFD, GIZ, SDC, SIDA, and several UN organisations.

Land governance may be politically sensitive when touching on (latent) conflict and vested interests. Power relations in-country and at a more global level are partly build on control over land and other resources. However, the issue of land governance cannot be avoided as it can degenerate relatively easily into a "binding constraint" given the growing competition over land and natural resources.

5 Added value of Netherlands organisations

Knowledge institutes

The Netherlands has a strong knowledge & practice base with respect to land governance as well as the nexus land- water-energy, which is acknowledged at an international level. In 2010, for example, NWO approved 3 large integrated research programs.² Most universities in the Netherlands are engaged in research activities in relation to land governance such as from a legal perspective (Leiden, Groningen), Anthropology (VU, Nijmegen), food security and disaster management (WUR), geography (Utrecht), social movement (ISS, UvA) or more continent or country specific (ASC). The Royal Tropical Institute (KIT) is also active on land governance and ITC on innovation with respect to land administration. SOMO and TNI work on the link with the business sector, Aidenvironment in relation to environmental management.

Knowledge institutes which participate in the IS academy on land are Utrecht University, Wageningen University, Africa Study centre and KIT

Private sector

Triodos-Facet participates in the IS academy on land governance. Cadastre International is engaged in a number of land administration programs. FUGRO is also active.

Civil society organisation/ NGO

Agriterra and HIVOS participate in the IS academy on land. SNV is active in a wide range of activities related to land governance (policy, legal empowerment, land administration, land use planning) in Africa, Asia and the Balkans. Cordaid, ICCO and Oxfam Novib are engaged in land governance in relation to food justice/ right to food, conflict management, land use planning and from a human rights perspective. They also support civil society capacity building. Other organization such as Both Ends, NCIV also work on land governance (biofuel, land use planning, indigenous people). VNG works on cadastres in urban areas.

Overall, NGOs tend to approach land-related issues often as a cross-cutting theme in broader programmes, for example in support of political participation of excluded groups, food security, access to markets, and emergency relief and reconstruction. Several Civil society organization have build up expertise in specific work fields: Mama Cash and NIZA on gender & land, Cordaid (conflict, human rights, pastoralism), TNI, SOMO), participate in international networks (ICCO, Oxfam-NOVIB and others), are leading actors in campaigns that also address land governance (Oxfam-Novib) or active on forest rights and REDD.

6 Resources

- o For all the partner countries a factsheet has been prepared on land governance more in general.

² See also www.landgovernance.org for an overview of research activities by Netherlands based organisations.

- o For embassies which are working on land governance up to 2010 (Burundi, Ethiopia, Ghana, Kenya, Mali, Mozambique, Rwanda, Uganda), or have done so before 2007 (Indonesia, Sudan), overviews have been prepared of the project activities that were implemented or supported.
- o In countries where the World Bank is implementing the Land governance Assessment Framework, relevant information on the formal system is available. Benin, Ethiopia and Indonesia are available, Rwanda and Mali are starting, Mozambique and Sudan are being considered
- o At the website of the IS academy (www.landgovernance.org) links are provided to portals and other organisations active on land (e.g. FAO, ILC, IIED, IFAD)

7 References

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