DECENTRALISED LAND GOVERNANCE: CASE STUDIES AND LOCAL VOICES FROM BOTSWANA, MADAGASCAR AND MOZAMBIQUE

Rick de Satgé and Karin Kleinbooi, with Christopher Tanner

Decentralised Land Governance: Case Studies and Local Voices
from Botswana, Madagascar and Mozambique

TABLE OF CONTENTS

Contributors

Rick de Satgé has been involved for almost 20 years in the NGO sector in South Africa, Zimbabwe and Botswana. He has worked on the ground as a rural fieldworker, living and working in remote rural areas and played a central role in the founding and management of two NGOs and in the establishment of local and regional inter-sectoral learning networks. He is currently a development consultant and a partner in Phuhlisani Solutions, based in Cape Town and is an Associate of the Institute for Poverty Land and Agrarian Studies (PLAAS) at the University of the Western Cape in Cape Town, South Africa. He has been an independent consultant for more than 15 years as a development specialist in land, livelihoods and capacity development, with comprehensive experience in rural and urban development and adult learning .

Karin Kleinbooi is a researcher at PLAAS and holds an MPhil in Land and Agrarian Studies at the University of the Western Cape. She has been involved in research work on existing and emerging land policy issues, farm labour and dweller land reform and women's land rights, and has monitored and evaluated land reform implementation in South Africa.

She co-ordinates learning that enables key practitioners and scholars in the land sector to share experiences and derive policy-relevant lessons from practices, articulating the benefits and limitations of decentralisation in southern Africa, i.e. people-led (but state-supported) approaches to land reform in the Southern African Regional Land Programme funded by the Austrian Development Agency of which this case book is a major output.

Christopher Tanner is a FAO Senior Technical Advisor on Land and Natural Resources Policy, who currently works in Mozambique in a programme to train community level paralegals and local government officers in the use of Mozambique's progressive legal framework for land and natural resources management.

His work on land issues began with a PhD at Cambridge University, researching childhood malnutrition and household reproduction in North-eastern Brazil. Since the early 1990s he has focused increasingly on land issues in Portuguese speaking African countries.

After doing field research and rural development work in Mozambique, he was appointed to lead FAO support to the Mozambican Inter-ministerial Commission to Revise Land Legislation in the mid-1990s and has since been overseeing the development of a programme to support implementation of the 1997 Land Law and a range of related legislation covering Environment, Forests and Wildlife, Territorial Planning, Tourism, etc. Through this programme, implemented by the Centre for Juridical and Judicial Training (CFJJ) of the Ministry of Justice, he has been directly involved with several projects which have used the devolved management and decentralising elements of the Mozambican policy and legal framework to promote an inclusive and participatory rural development process.

Acknowledgements

Preface

The *Southern Africa Programme on Land*, managed by PLAAS and supported by the Austrian Development Agency (ADA), has sought to develop a learning culture through documenting land reform practices and experience. This book examines the experience of three countries in their attempts to decentralise the governance structures and systems for recording, allocating and managing land rights and reflects on the lessons learnt.

We started out with a team of three researchers

- Karin Kleinbooi from PLAAS, who managed the project and researched the Madagascar case study;

- Rick de Satgé from Phuhlisani, who worked with the staff of DITSHWANELO – The Botswana Centre for Human Rights, to research the Botswana case study and think through lessons learnt;

- Tessa Cousins from The Association for Water and Rural Development (AWARD) in Mpumalanga Province, who started to research the case study and develop a toolkit to assist with local processes of decentralised land governance.

We had begun to develop a conceptual approach to the complex issues contained within the rubric of decentralised land governance, and had started with field research at the different sites when Tessa was killed in a climbing accident in Scotland on 31 May 2011. Her role in the planning and thinking about this publication was pivotal. Her tragic death brought our work to a halt for a period as we tried to come to terms with this loss. We have felt Tessa's absence keenly and it has inevitably diminished what we have been able to achieve without her. Sadly, the case study she was working on was incomplete at the time of her death.

We would like to thank Chris Tanner for coming to our assistance at very short notice to provide a case study from Mozambique and to ADA for their patience and understanding of the challenges we have faced in completing this important work.

Tribute to Tessa Cousins

Tessa in discussion with a resident of Craigieburn

In her professional life Tessa was a listener and a creator of conversational thinking spaces that gave voice to many different people and provided the impetus for dialogue, and the interrogation of problems and practices, which generated both practical solutions - and further questions.

Knowing Tessa, many images of her come to mind. For me, as a fellow facilitator and researcher it is the tools of her trade: the emerging lines of enquiry and the kokis, the coloured cards, the matrices, the maps and ideograms – the means to record thoughts and ideas, to ground concepts and to leverage different interpretations and meanings.

From the many deeply thought and felt tributes which family, friends and co-workers have written and shared since her death, it is clear that Tessa has made a lasting imprint on many lives.

We do not have to search hard to discover the patterns and trends that represent Tessa's life. They are writ large. As Robert Chambers, Tessa's Participatory Rural Appraisal (PRA) mentor, has advised, we must take comfort in her life, what she did, what she started and who she influenced -and in this way, we can add to the legacy that she leaves behind.

Rick de Satgé
September 2011

INTRODUCTION

Decentralisation has been on the Southern African development agenda for a long time. It is a concept which appears deceptively simple. The principle of subsidiarity holds that decision making about local development priorities needs to take place as close to the people locally involved as possible. Decision making about land access and resource allocation is a key component of a broader decentralisation agenda.

However, on closer examination, discourses around decentralisation are complex. They combine pre- and post colonial histories, changing development trajectories, and understandings about tenure and governance systems. They are set against major shifts in global and local balances of power and fast changing socio-economic relations which further marginalise the poor and deepen inequality.

Goals of the book

The purpose of this project was to develop an accessible book for policy makers and practitioners which locates selected country case studies within a broader theoretical and practical discussion on decentralised land governance in the context of increasing commercialisation of rural land.

The book sets out to give voice to local people, land rights activists and decentralisation practitioners in Botswana, Madagascar and Mozambique and to stimulate collaborative conversations among different

sets of actors in the land sector in order to reflect on the different approaches and practices of decentralised land governance in the region.

The three cases aim to:

- contribute to a shared understanding of changing local country contexts;

- identify emerging country trends, highlighting the increasing competition for resources and the implications for the rural poor;

- examine the evolution of approaches to decentralisation and the roles of state and non- state actors and institutions in the process;

- explore gender differentiated impacts of decentralised land governance initiatives; and

- identify approaches which practically strengthen rural people's rights and ensure that their voices are heard in decision making process which impact on the changing use and management of land.

Overall we seek to:

- facilitate debate among rural communities and civil society organisations about how to best respond to their fast changing environments and engage in collective action to balance power relations and secure their rights;

- contribute to improving capabilities to support communities affected by tenure insecurity and deals involving land which communities depend upon for their livelihoods; and

- provide space for reflection on practice.

The book is divided into three sections:

1. An introduction to decentralised land governance, which sets the scene, provides contextualisation, and presents a brief review of the different approaches to decentralisation and their respective institutional and operational frameworks.

2. In depth country case study reviews.

3. A reflection on the issues and trends arising from the different country experiences which can inform an agenda for action.

The three case studies are located against the backdrop of changing land governance, tenure policy and legislation in each country. The case studies examine how power and authority over decision-making and resources or functions is distributed between central, regional and local levels of governance. They explore the roles and perspectives of other actors such as non-governmental bodies, traditional governance institutions, user associations or village committees, the private sector and other organisations of civil society.

Local voices identify lessons for policy and practice and highlight advocacy actions required to secure the land rights of vulnerable people in poor communities.

The cases collected in this book represent an important resource for researchers, policymakers, land reform practitioners and organisations working to strengthen democratic and downwardly accountable governance of land and natural resources.

CHAPTER 1: DECENTRALISED LAND GOVERNANCE

by Rick de Satgé and Karin Kleinbooi

Introduction

Customary and statutory land tenure systems still operate side by side throughout much of southern Africa. These dual systems have their roots in the colonial era and the land reforms in the last three decades in Southern Africa, which were aimed at increasing land access through land redistribution and improving land tenure through formalising customary tenure.

Despite decades of attempts to formalise land tenure systems during both the colonial and independence eras, just 1% of land in Africa is registered under the formal system (Commission for Africa 2005, 231). Evidently, the centralised, top down formalisation of land is not working (Easterly 2008).

Our focus is on land which is owned by the State and to which citizens claim rights through diverse customary tenure systems. In such systems access and entitlements are mediated by multiple policies and institutions. These land tenure and governance systems are highly dynamic. Change is driven by relations of power between different land users and has been shaped by major policy and institutional shifts over time.

Setting the scene

Mounting pressure on land held under customary tenure systems

The country case studies provide valuable indicators of how the tenure and land rights security of the poor is becoming increasingly precarious and subject to powerful forces within an increasingly globalised economic system. Realignments in global resource equations have contributed to a sharp spike of interest in arable land and natural and mineral resources by foreign corporations and governments. Resource rich land held under customary tenure systems, which until recently was deemed to be outside the economic mainstream, has acquired new value as a commodity and is increasingly being regarded as a strategic resource and potential source of wealth waiting to be 'unlocked' by external investors. These tenure systems are complex and have been influenced 'by a century or more of contact and interference by governments' (Cotula et al., 2004: 2).

The increasing commercial interest in opening up 'new land' for commercial production is driven by a complex array of factors including:

- the implications of the global peak oil scenario, coupled with growing concern about carbon emissions and climate change which has led to a massive expansion in land under sugar cane, maize and other crops destined for ethanol production or bio fuel;

- rapidly increasing global per capita consumption of meat and related demand for grain as animal feed;

- concerns about national food security in countries with fast growing populations and inadequate agricultural land to meet domestic needs; and

- rising global food prices.

As agricultural land under customary tenure acquires new value, deals struck between foreign investors and powerful local elites stand to radically alter rural land access and social relations. The political and economic impetus driving these transactions threatens to fast overwhelm the limited protections afforded by local tenure systems, which are often underpinned by weak land governance institutions and poorly supported by law.

The global expansion of land cultivated for bio fuel production and non- food agricultural commodities has been significant in the last decade. Deals of this nature involve long term leasing of large tracts of public or communal land by foreign, regional and domestic companies or governments. An additional, but separate category (with a much longer history) is mining, as this fundamentally alters existing land use and quickly sweeps aside those who had prior rights to the land.

The acquisition of land for expanded commercial agricultural production in Southern Africa has involved investors from the Gulf, South Korea, India, China and other countries who often enter into partnership with local elites. This can represent a major threat to the livelihoods of poor local land users, while simultaneously providing enormous opportunities to those who are better off. The scale of some of these land deals is enormous. One of the contributory factors to the recent political turmoil in Madagascar was the government's decision to lease 1.3 million ha, approximately half the country's arable land, to Daewoo Logistics to grow maize and palm oil for export to Korea.

It is often claimed that the land earmarked for such deals is 'vacant' or unutilised. But this has been challenged by analysts who argue that 'existing land uses and claims go unrecognised because land users are marginalised from formal land rights and access to the law and institutions' (Cotula et al., 2009: 6).

While there was initially some optimism about the potential for bio fuels to 'revitalise land use and livelihoods in rural areas', this quickly gave way to concerns about the impact of investment in bio fuels on the land holdings of the poor, particularly in conditions where land tenure was insecure and not recognised in law, which would result in 'poorer groups losing access to the land on which they depend' (Cotula et al., 2008: 2, von Braun and Meinzen-Dick, 2009).

Even where policies, laws and institutions are in place to protect the rights of local land users, these type of investments involve 'strong power asymmetries' and 'they are likely to achieve little if they are not accompanied by sustained investment in building people's capacities to claim and secure their rights' (Cotula et al., 2008: 4). Large-scale land allocations for the development of monocrop estates contribute to the dissolution of existing rural social bonds and in worst case scenarios, can lead to displacement of entire communities.

A rapidly changing context

Any discussion of decentralised land governance also has to take into account how members of rural households are increasingly dispersed – many migrate to the cities and others move across borders and continents. This increasing social fragmentation, movement of people and changing household composition has major implications for rural livelihoods, land uses and resource management and involves complex flows of people, cash and goods. The precarious nature of the livelihoods of the urban and rural poor results in a dynamic relationship between town and country characterised by 'circular migration of people and movement of capital between rural and urban areas' (Whande, 2009: 2).

The rate of urbanisation taking place in Africa is currently the highest in the world. Current projections are that by 2050, the continent will have an urban population of 1.2 billion, accommodating nearly a quarter of the world's urban dwellers (United Nations Human Settlements Programme, 2008: xi). But in most instances, this urbanisation is accompanied by limited development, taking place against the backdrop of a 'weak agricultural sector; poor national economic performance, the absence of secondary cities... leading to the growth of megacities with poor economic bases' (Cheru, 2005: 4).

Those who remain in the countryside, as well as many of the poor who have migrated to the cities, continue to depend on access to land and natural resources which play an important role in their livelihood strategies. This land is also used to grow the food required to feed the

populations in fast expanding urban centres. Rural people require secure access to land for housing, cropping and grazing. Rural land also represents a key retirement asset for many who have gone in search of work and livelihood opportunities in the cities. These factors and relationships underscore the importance of rural land as an essential component of nation social safety nets, as well as local and national food security.

Decentralisation and land governance

While foreign interest in agricultural land grows, many foreign donor agencies are taking a renewed interest in funding decentralisation initiatives, ostensibly designed to strengthen local governance and land rights management in African countries.

In order to understand and compare contemporary initiatives and approaches to decentralisation, they need to be located within their respective historical contexts. The relationship between states, international multilateral agencies and rural land users on the commons has undergone a number of important transitions since the 1960s when decolonisation started to gain momentum in Southern Africa. Within colonial and post colonial states there is a long history of antipathy to customary tenure systems. For a long time both the systems and the 'traditional' leaders and institutions which administered them were regarded as 'backward', 'feudal' and a brake on investment, modernisation and agricultural development.

In the immediate post colonial period, some newly elected governments sought to implement wide reaching measures to fundamentally change the way in which land was held, allocated and governed (Economic Commission for Africa, 2004), while others 'simply re-entrenched and sometimes expanded, the scope of colonial land policy and law' (Okoth-Ogendo, 1999: 3). How to understand and address the legacies of these 'bifurcated systems' has remained a massive challenge. Large questions remain about the legitimacy of hereditary leaders in the countryside and about what authority and role they should have in a democratic society.

As table 1 highlights, decentralisation initiatives have a long history in Africa. Decentralisation encompasses a number of different, but related concepts and approaches (Meinzen-Dick et al., 2007). The different types of decentralisation have been shaped by political, ideological and development shifts in the agendas of both states and donors in recent decades (Larson and Ribot 2005).

The history sketched above highlights the slippery nature of the concept of decentralisation, and of its deployment to serve diverse agendas ranging from increased state control to the promotion of democratisation and downward accountability.

Defining decentralisation

The European Commission observes that there is no universally agreed definition of 'decentralisation' and that 'one risks getting lost in a jungle of expressions and terms' (European Commission, 2007: xi).

From the perspective of this book, decentralisation refers to the redistribution of power and authority over decision-making and land and resource management functions between central, regional and local levels

of governance and other actors, including traditional institutions, user associations or village committees, together with other organisations of civil society and the private sector.

In its broadest form, decentralisation seeks to change relations of governance between central government agencies and legitimate, democratic and downwardly accountable local institutions to enable greater participation by local land users in determining decisions over resources; these include the responsibility for planning, management and allocation of such resources (UNDP, 2002a).

Institutional co-responsibility for governance between formal and informal, official and non-official, and state and non-state institutions at the central, regional and local level, creates a platform for more effective decisions by 'the lowest level or most local level of authority competent to deal with such matters' (Agrawal and Ribot, 1999). Hence decentralisation involves delegating decision-making authority away from a central authority to local authorities - whether public, private, community or traditional - who are presumed to have better access to information and to be more accountable to local

Box 1: Forms of decentralisation

Political decentralisation refers to situations where political power and authority is transferred to sub-national levels, such as elected village councils and state level bodies.

Fiscal decentralisation involves some level of resource reallocation to allow local government to function properly, with arrangements for resource allocation usually negotiated between local and central authorities.

Administrative decentralisation involves the transfer of decision making authority, resources and responsibilities for the delivery of selected public services from the central government to other lower levels of government, agencies, and field offices of central government line agencies.

Divestment involves a transfer of responsibilities from government to entities outside the sphere of government and is often regarded as the privatisation of planning and administrative responsibilities. This transfer can take different forms, including 'contracting out' or 'public-private partnership with communities, NGOs, or private business.

Source: UNDP 2000; MacLean, 2003.

Table 1: History of decentralisation initiatives in Africa

Period	Decentralisation approaches	Land tenure and governance
Pre 1945	Those countries without settler populations were governed through systems of 'indirect rule' which represented 'rule by a few colonial officials with the aid of the most compliant traditional rulers' where local administration comprised a native court system, a local tax and a treasury; (Olowu, 2001: 4).	Customary tenure was deemed 'to lack security of title and hence to fail to provide incentives for investment and modernisation' (Peters, 2004: 271)
Phase 1: 1945 – early 1960's	A post war shift by colonial administrations in Anglophone and Francophone Africa to develop local government structures which increasingly involved elected local councils that started to assume responsibility for local service delivery – a period which has been described as 'the golden age of local government in Africa'(Hicks, 1961).	The perceived lack of tenure security and recognition of individual rights led some countries to promote individual or family titling.
Phase 2: Early 1960s – late 1970s	The post independence period was dominated by Cold War geo-politics which saw the majority of newly independent states embark on processes to centralise planning and political power(Hicks, 1961, Mawhood, 1983). Many countries adopted a socialist ideology and single party political systems, which 'tried to forge local administrations that were essentially instruments of control within the framework of a one party or military state' (Olowu, 2001: 5). Mawhood (1983: 8) highlights how a 'deconcentrated administration was left in charge of the locality similar to but weaker than the colonial one.' Post independent states were hit hard by a global economic crisis, driven first by bank lending on the back of vast oil revenues, followed by a collapse in primary commodity prices and rising interest rates which created a massive debt crisis. The IMF and World Bank responded with structural adjustment programmes which enforced economic and political liberalisation.	In many countries there was a post independence backlash against customary institutions. 'In the years after independence, socialist regimes in Tanzania, Ethiopia, Burkina Faso and Mozambique condemned 'traditional' and 'customary' organization and law as 'feudal''(Peters, 2004: 273). At the same the World Bank argued that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land (ibid). Promotion of individual property rights through titling programmes continued.

Phase 3: Late 1970s – late 1980s	Structural Adjustment Programmes (SAPs) enforced state spending cuts and encouraged decentralisation 'to reduce central and local government expenditures and size' (Olowu, 2001: 8). Reduced expenditure on public services drove up poverty. Decentralisation was associated with a new focus on districts and district planning.	While there was a continued push to formalise property rights systems accompanied by 'the possible individualisation' of common property resources (Boone, 1998: 2), new research highlights that contrary to received wisdom, customary tenure per se, did not prevent investment and that individual/family rights were adequately catered for within these systems. This research also illustrates how earlier titling programmes 'encouraged speculation in land by outsiders' and often displaced the people they were intended to protect (Peters, 2004: 274).
Phase 4: 1990s	The fall of the Berlin Wall in 1989 signalled the end of the Cold War and rapid globalization of capitalist market systems. Decentralisation initiatives reflected a new impetus towards 'democratic decentralisation' as a key component of 'good governance' programmes. However there is increasing recognition of how decentralisation was also a 'political mechanism by ruling groups to neutralise, contain or seek compromises with regional elites' (Crooke and Manor 1994 in Olowu 2001: 11).	World Bank and donor agencies revise their negative thinking about customary tenure which is now recast as adaptive and inclusive (Deininger, 2003). This is accompanied by a revalorisation of the 'traditional' and the local. New approaches encourage the identification of local solutions to secure land access and rights. However this revised approach frequently overlooks the new alignment of forces between international and local elites and the global moves to secure control over productive land and natural resources. Increasing commercialisation of production and alienation of land 'which usually occurs with the collaboration of leaders at community level' (Amanor, 1999: 19).

| Phase 5: 2000 to the present | The European Commission (EC) observes that 'whether by own choice or as a result of external pressures, the large majority of third countries are currently involved in some sort of decentralisation with varying degrees of commitment and success' (European Commission, 2007: x).

The EC argues that the new reform agenda focuses on (i) devolution of power to elected local governments as a distinct set of state actors; (ii) local governance (based on principles of participation, transparency and accountability); (iii) a new paradigm of local economic development; (iv) a rediscovery of the importance of territorial (regional) planning; and (v) the overall modernisation of the state (ibid) | Rising inequality and differential access to land and resources.

Increasing tendency for state institutions, including those regulating access to land, to serve personal agendas of powerful and well connected people. |

populations. Borras and Franco (2009) emphasise that it is the institutional arrangements from above (government action and policy) that influence what happens from below (autonomy and capacity).

In practice the nature of this redistribution varies considerably, as shown in the different forms and processes of decentralisation summarised in the boxes below.

While some governments are increasingly transferring functions to local institutions, others maintain hierarchical accountability with deconcentration of responsibility and authority to regions, provinces or districts. However the various types and forms of decentralisation often occur simultaneously, follow upon one another, or are combined. Decentralisation varies in the quantity and the combinations of function, responsibility, resources, and administrative, political and fiscal autonomy that are vertically transferred to either regional, district, municipal governments, or other actors (MacLean, 2003).

Since the 1990s, a number of countries across Southern Africa have initiated reviews of land policies and legislation, introduced new approaches to land administration and embarked on institutional reform towards greater devolution. Increasingly, the discourses on land management in the sub-region have emphasised decentralisation to the local level in order to address governance problems raised by tensions between state laws and institutions, on the one hand, and 'customary' rules and practices, on the other.

Decentralised land governance therefore involves a process of negotiating and restructuring power relationships between local people and the state regarding access to, control over, and use of land resources. The presumption is that local land tenure institutions have a greater sensitivity to local circumstances and are better able to respond to local land needs because they are nearer to local communities and have mandated responsibility, and accountability to the whole local population (Agrawal and Ribot 1999).

Democracy, participation and accountability

The effectiveness of decentralisation hinges on three linked and strongly associated issues: *democracy, participation* and *accountability*. Democratic decentralisation and community participation often stand at

the centre of an agenda of good governance and can be defined as the transfer of powers to elected local authorities to enable effective participation of local communities in decision-making (Ribot and Larson 2005; Ribot, 2004). Truly democratic institutions are also accountable to their electorate. Local institutions may be held downwardly accountable to their constituencies through genuine participation of local populations (Ribot, 2004).

One of the strongest arguments in favour of decentralisation is that it will increase democracy and result in increased participation in civil society activities, as people respond to opportunities that enable them to make decisions that affect their lives. However the issue is whether or not democratic decentralisation leads in practice to genuine participation of the poor. On the one hand, there are numerous critiques of participation (Ranhema, 1993, Cooke and Kathari, 2001, Slocum et al., 1998) which highlight how the potentially insurgent

nature of the concept has been domesticated and main-streamed. These argue that concepts like 'community participation' and 'empowerment' have degenerated into de-politicised 'tools of the trade for governments and establishments such as the World Bank' (Miraftab, 2004 : 239) On the other hand, the debate has often overlooked the diverse ways in which local people, and in particular marginalised citizens, use the opportunities provided by democratic decentralisation to engage local authorities and demand accountability (Dauda, 2006). Clearly, we need a more critical perspective on how 'community participation' unfolds under democratic decentralisation, and why in some cases, it has proved to be detrimental to marginalised groups and particularly to women and in others, has strengthened their access to resources.

In many rural areas where levels of education are low and civil society organisations are weak and poorly organised, there is a strong risk that transfers of authority

Box 2: Processes in decentralisation

- **Devolution** is generally considered the broadest form of decentralisation and is often referred to as political decentralisation, or democratic decentralisation. It involves the full transfer of responsibility, decision-making and resources to an autonomous, local-level public authority that is politically and operationally controlled by locally elected officials (lower levels of government). In a devolved system, local governments have some degree of political autonomy that is substantially outside direct central government control, yet remains subject to general central policies and laws (USAID 2000; MacLean 2003).

Deconcentration and delegation are considered to be two types of administrative decentralisation (Maclean 2003):

- **Deconcentration** is the most limited form of decentralisation and is sometimes the first step in a decentralisation process. It involves the redistribution of decision-making authority and responsibility over policy implementation from one level of government to another – i.e. local units of centralised agencies. These structures do not act independently, and central government retains control over resources. Hierarchical systems of accountability from local to central government remain intact (Litvack et al 1998; Gregerson et al 2004).

- **Delegation** involves transferring responsibilities and authority to organisations that are accountable to the central government but are not totally controlled by it – i.e. semi-autonomous authorities.

and resources may lead to an abuse of power and increased vulnerability or marginalisation of individuals or groups (Ouedraogo, 2005; Agrawal and Ribot 1999). In situations where power is shared, conflicts can arise between local and national interests, whether it is between government structures or between government and other actors such as traditional authorities. The danger that each will act in their own narrow interests is then all the greater, and how 'democratic' the governance structure really is, then becomes questionable.

How has decentralised land reform worked in the region?

Case studies in the southern African region illustrate the complex and dynamic process of decentralisation in land governance. Policy reforms in countries such as Botswana and Tanzania (where land administration is supposed to be carried out by autonomous institutions), suggest that decentralisation has the potential to improve land access and security of tenure for the poor and to increase gender equity in land rights. Practical experience, however, suggests that enormous challenges exist around creating local capacity, allocating adequate resources, preventing elite capture and exclusion, and overcoming the reluctance of central government to transfer real authority (Wily, 2003). Other countries like Madagascar, South Africa, Swaziland, Zimbabwe and Lesotho are moving towards greater devolution of powers to give effect to local land governance, but concerns are often expressed about the capacity of local institutions to fulfil these functions effectively.

Introducing the case studies

The three countries selected as case studies have very different histories and experiences.

Botswana

When Botswana gained independence from Britain in 1966 after a peaceful transition from colonial rule, it was one of the poorest countries in the world. However, the discovery and mining of diamonds provided a stream of revenue which has helped the economy to grow and diversify, enabling Botswana to achieve the status of a middle income country. However this economic growth has also been shadowed by rising inequality. This inequality has also become a feature characterising access to, and management of land and natural resources. Botswana has experienced uninterrupted democratic rule, albeit by the same political party, with *de facto* power held by a small elite. A decision soon after Independence led to the establishment of Land Boards as local land management bodies.

The case provides a history of land and agricultural policy and a critical analysis of the Land Boards and their effectiveness as institutions for decentralised land governance. The case focuses on the Chobe District, where people occupy portions of land which are sandwiched between three protected areas: the Chobe National Park, Chobe Forest Reserve and the floodplains of the Chobe River. It examines key issues impacting on local land governance and land rights management from a variety of different perspectives and draws out key lessons from the Botswana experience.

Madagascar

Madagascar has experienced a complex and turbulent history, combining resistance and accommodation to French rule prior to independence in 1960. Madagascar has experienced volatile post colonial politics, including socialist policies and economic nationalisation, governments toppled by military coups, a period of structural adjustment, and large political swings. The most recent political crisis in 2009 saw President Ravalomanana toppled by troops loyal to Andry Rajoelina, who cancelled a deal which had been negotiated to lease 1.3 million hectares on which to grow maize and establish palm oil plantations.

In March 2004, the Ministry of Agriculture, Livestock and Fisheries initiated the National Land Programme, referred to as the Programme National Foncier (PNF), as the main framework for improving land management in the country. This led to the establishment of local land offices. The case provides a background on Madagascan land governance and decentralisation policies, and profiles two rural communes, examining the decentralised land governance system in action.

Mozambique

Mozambique experienced a long history of Portuguese colonial occupation and was a major slave trading centre in the 18th and 19th Centuries. The Portuguese initially lacked the resources to run its colony and leased out large portions of the territory to commercial trading ventures before assuming direct rule in 1932. The Mozambican liberation movement FRELIMO undertook an armed struggle to free Mozambique from colonial rule, which was achieved in 1975, and to establish a socialist republic. Within a short time after independence, the country was caught up in an externally sponsored conflict which escalated into a full scale civil war, displacing an estimated 6.5 million people. In 1989, following the collapse of the Soviet bloc, Mozambique adopted a multiparty political system through which FRELIMO has been returned to government in every election held since then.

In 1995 Mozambique developed a new land policy, followed by a Land Law in 1997 and Land Regulations in 1999. The country put in a place a policy and strategy for bio fuels in 2009, an indicator of mounting foreign interest in land deals.

The case highlights how the current market and political context tends to favour a national elite in partnership with foreign interests seeking to invest in 'unused' land in a setting where there is a progressive land law but weak institutional capacity for effective decentralised land governance.

References

AGRAWAL A and RIBOT JC. 1999. 'Accountability in Decentralization: A framework with South Asian and West African cases,' Journal of Developing Areas.Volume 3, p.473–502.

AGRAWAL A and RIBOT JC. 2000. 'Analyzing Decentralisation: A Framework with South Asian and West African Environmental Cases,' World Resource Institute (Series: Environmental Governance in Africa).

AMANOR, K. S. 1999. 'Global Restructuring and Land Rights in Ghana: Forest Food Chains, Timber and Rural Livelihoods Research Report,'108. Uppsala Nordiska Afrikainstitutet.

BOONE, C. 1998. 'State building in the African countryside: Structure and politics at the grassroots,' Journal of Development Studies, 34, 1.

BORRAS, Saturnino Jr. and FRANCO J C. (2010). 'Contemporary Discourses in and Contestations around Pro-Poor Land Policies and Land Governance,' Journal of Agrarian Change 10(1). Article first published online: 24 DEC 2009

CHERU, F. 2005. Globalisation and uneven urbanisation in Africa: the limits to effective urban governance [Online]. California: UCLA, accessed on 2 September 2011 at: http://www.international.ucla.edu/media/files/57.pdf.

COTULA, L., DYER, N. & VERMEULEN, S. 2008. Fuelling exclusion: The biofuels boom and poor people's access to land [Online]. Rome: IIED and FAO, accessed on 2 September 2011 at: http://pubs.iied.org/pdfs/12551IIED.pdf.

COTULA, L., TOULMIN, C. & HESSE, C. 2004. Land tenure and administration in Africa: Lessons of experience and emerging issues [Online]. London: IIED and FAO, accessed on 1 September 2011 at: http://pubs.iied.org/pdfs/9305IIED.pdf.

COTULA, L., VERMEULEN, S., LEONARD, R. & KEELY, J. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa [Online]. Rome: FAO, IEED and

IFAD, accessed on 2 September 2011 at: ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf.

DAUDA, CL. 2006. 'Democracy and Decentralisation: Local Politics, Marginalisation and Political Accountability in Uganda and South Africa,' Public Administration and Development. Volume 26, Issue 4, p.291-302.

DE SATGÉ, R., HOLLOWAY, A., MULLINS, D., NCHABALENG, L. & WARD, P. 2002. Learning about livelihoods: Insights from southern Africa, Cape Town: Periperi Publications and Oxfam Publishing.

GREGERSEN H, CONTRERAS-HERMOSILLA A, WHITE A. and PHILLIPS L. 2004. Forest Governance in Federal Systems: An Overview of Experiences and Lessons. Forest Trends, Washington, DC.

HICKS, K. 1961. Development from Below: Local Government and Finance in Developing Countries of the Commonwealth, Oxford, Clarendon Press.

LITVACK, J., AHMAD, J. AND BIRD, R. 1998. Rethinking decentralisation in developing countries. Sector Studies Series. Washington: The World Bank.

MACLEAN M. 2003. Developing a Research Agenda on the Gender Dimensions of Decentralisation. IDRC Gender Unit Research Competition.

MAWHOOD, P. 1983. Local government in the Third World. Chichester: Wiley.

MIRAFTAB, F. 2004. 'Making Neo-liberal Governance: The Disempowering Work of Empowerment,' International Planning Studies, 9, 239-259.

O'LAUGHLIN, B. 2000. 'Class and the customary: the ambiguous legacy of the Indigenato in Mozambique,' African Affairs, 99, 5-42.

OLOWU, D. 2001. Decentralization Policies and Practices under Structural Adjustment and Democratization in Africa [Online]. Geneva: United Nations Research Institute for Social Development, accessed on 2 September 2011 at: http://unrisd.org/unrisd/website/document.nsf/ab82a6805797760f80256b4f005da1ab/543ffcd9808693fd80256b5e003b4e1e/$FILE/olowu.pdf.

OUEDRAOGO H MG. 2005. Decentralization: An Enabling Policy for Local Land Issues, available at: http://www.capri.cgiar.org

PETERS, P. E. 2004. 'Inequality and social conflict over land in Africa,' Journal of Agrarian Change, 4, 269-314.

RIBOT JC and LARSON AM. 2005. Democratic Decentralisation through a Natural Resource Lens. London: Routledge.

RIBOT JC. 2004. Waiting for democracy: The Politics of Choice in Natural Resource Decentralisation. World Resource Institute. Washington.

SLOCUM, R., WICHHART, L., ROCHELEAU, D. & THOMAS-SLAYTER, B. (eds.) 1998. Power, Process and Participation - Tools for Change. London: Intermediate Technology Publications.

UNDP. 2002a. A Global Analysis of UNDP Support to Decentralisation and Local Governance Programmes. Institute Development Group, Bureau for Development Policy, UNDP. http://www.undp.org/governance

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME 2008. State of the World's Cities - 2008/2009: Harmonious cities. Nairobi: UN-HABITAT.

USAID. 2000. Decentralization and Democratic Local Governance Programming Handbook. Center for Democracy and Governance U.S. Agency for International Development. Technical Publication Series. Washington, DC.

VON BRAUN, J. & MEINZEN-DICK, R. 2009. '"Land grabbing" by foreign investors in developing countries: Risks and opportunities,' IFPRI Policy Brief.

WHANDE, W. 2009. Challenges to rural land uses and resource management: Rural —urban migration patterns and networks in Southern Africa [Online]. Cologne, accessed on 1 September 2011 at: http://www.raumplanung.tu-dortmund.de/rel/typo3/fileadmin/download/Conference/programme/Whande_Challenges%20for%20rural%20land%20use%20and%20resource%20%20management_16.09.09.pdf.

WILY L. 2003. Governance and land relations. A review of decentralisation and management in Africa. London: IIED.

CHAPTER 2: BOTSWANA
by Rick de Satgé

Introduction

When Botswana gained independence from Britain in 1966, it was one of the poorest countries in the world with less than 5 kilometres of tarred roads and just three secondary schools (Clover, 2003). The discovery and mining of diamonds the following year provided a stream of revenue which has enabled the economy to grow and diversify, enabling Botswana to achieve the status of a middle income country. However, this economic growth has also been shadowed by rising inequality. Access to land and particularly key rangeland resources is increasingly the preserve of large and well-connected livestock farmers. This is despite policy and legislative commitments which guarantee citizens the right to land in tribal areas, which have been expanded from 49% at independence to 71% in 2008 (White, 2009).

This assessment of decentralised land governance in Botswana is divided as follows:

- **Sections 1 and 2** provide an overview of changing land policy in Botswana with a particular focus on resource tenure and decentralised land governance.

- **Section 3** examines the situation in Chobe District where tribal land is allocated by the Chobe Land Board and where DITSHWANELO, the Botswana Centre for Human Rights runs a land rights programme, with case studies in **Section 4**.

- **Sections 5 and 6** summarise key issues and lessons for decentralised land management which emerge from the Botswana experience.

- **Section 7** provides concluding remarks.

Land policy in pre-independent Botswana

During the **pre-colonial era**, Tswana polities known as *morafe*, or chiefdoms were presided over by hereditary *dikgosi*. The *morafe* were divided into wards administered by a ward head appointed by the *kgosi* (Ngcongco, 1989). Tswana society was socially stratified in a number of different ways. *Digkosi* accumulated cattle and 'lent them out' to 'commoners' through the mafisa system (people without cattle providing herding labour to those with large herds in exchange for benefits such as milk and some calves), which commentators argue enabled them to 'create a client class' (Datta and Murray, 1989: 60).

The *morafe* also incorporated a number of minority and subject groups including the Basarwa, the Bakgalagadi and Bayei and the Kalanga. The *mafisa* system also played an important role in their incorporation but was unable to erase the deep social and economic differentiation which persists in different forms today.

The British established the **Bechuanaland Protectorate** in 1885 and set about moulding the *morafe* into 'tribal' reserves and the *dikgosi* into 'chiefs', mirroring policies of indirect rule practised elsewhere in Africa (Mamdani, 1996). While the British administration kept pre-colonial governance structures largely intact in the early period of the Protectorate, a number of changes were introduced through the process of colonial incorporation.

The **colonial era** created new means of accumulation for chiefs who were entitled to take '10 percent commission on the hut taxes collected for the administration' (Peters, 1994: 38).This enabled them to diversify their income streams, while remaining the largest cattle owners. At the same time the spread of education and the creation of opportunities in the administrative structures of the colonial state created a new modernising elite which provided the foundation for subsequent challenges to chiefly rule and colonial control.

People were able to graze their stock on the commons, but the land overseer appointed by the Chief played a role in managing the grazing land, in consultation with the land users. For example the land overseer 'might suggest that in times of drought people with bigger herds should move somewhere else. And they might consult with neighbouring land overseers to coordinate this move' (ibid).

Before the 1930s, the extent of the grazing range was confined to those areas with seasonal surface water, or where the water table was high and wells could be

Historical land governance in Botswana

 In both the precolonial and colonial periods rights in tribal land were vested in the Chief who had both the right and the obligation to allocate land to their tribesmen. There is in customary law a right of avail. You have a right to a share of the tribal land. You have a right to build your residence and the right to a piece of land to plough. You also have the right to establish a cattle post somewhere and to pasture your animals on the commonage. But that right was somewhat modified by the fact that you had to get the approval of the land overseer, who was the chief's man on the ground who had to agree that there was space for you. He would not agree to that until he had consulted the other users of the commonage of that particular area.

Your rights to a dwelling site and arable land are exclusive. Once these rights have been allocated you may fence the land. You had other rights too. If you wanted to dig a well you had to ask the land overseers' consent.'

 (Richard White, former chair of the Kgalahadi Land Board interview, 2011)

dug. Much potential grazing land remained beyond the reach of stock owners because of the unavailability of water. From the 1930s state money was invested to develop deep boreholes with motorised pumps to tap into groundwater sources. Improvements in these technologies in the 1950s enabled livestock farmers to expand into the sandveld. Subsequent borehole investment was made by the state together with syndicates of cattle owners and individuals with large herds. Given that access to water was the key factor enabling the utilisation of rangeland, the grazing around these new water points came to be exclusively utilised by the borehole owners.

The overall thrust of land policy in Botswana post independence has been to increase the area of tribal land at the expense of both state and freehold ownership. (Adams et al., 2003: 2). However, as we discuss below, the expansion of the tribal land area conceals the fact that much of the grazing commons has effectively been privatised through leasehold arrangements.

Land policy post-independence

Decentralising land governance?

The history of independent Botswana is characterised by contested narratives about decentralisation. Official accounts highlight orderly processes of devolution, deconcentration and delegation from Central government to district and local institutions. For example a recent African Development Bank report describes the process of decentralisation in Botswana as follows:

Decentralization in Botswana involves three major processes of devolution from central government to Local Authorities and Land Boards; de-concentration within the central government ministries; and delegation from the ministries to other agencies and parastatals. The devolved Local Authorities are rural and urban local government bodies, that is, District Councils, Town Councils, and City Councils, which derive their authority and functions from the District Councils Act (1965) and Townships Act (1955).

A major boost for decentralisation for local development and capacity building was the establishment of the District Development Committees (DDCs) and Village Development Committees (VDCs) in 1970. The weaknesses of decentralised local government include lack of human capacity and problems of retention of qualified, competent and experienced staff. The local government authorities have, nevertheless, adequate financial resources allocated to them through the national budgeting process.

(African Development Bank, 2008: 4)

However there are strong counter narratives which question the success of Botswana's decentralisation process, particularly in relation to the Land Boards. Some studies argue that 'the establishment of tribal land boards has enabled local elites to centralise decisions about land to their own benefit' (Peters, 1994: 191). Peters cites Werbner (1982), who argues that the Land Board in North Eastern Botswana actually 'replaced a highly decentralised system' characterised by locally negotiated rights and claims.

With independence in 1966 a number of measures were taken by the new government to change policy relating to land allocation and governance. These included a battery of new laws and the establishment of a range of new institutions.

The new laws included:

• The State Land Act, 1966

• The Chieftaincy Act, 1966

• The Tribal Land Act,1968

• The Customary Law Act 1969.

At independence, about 49% of the national land area was tribal land, less than 4% was freehold and the balance was state land (Adams et al., 2003). The promulgation of the Tribal Land Act (TLA) in 1968 marked a major shift in the land governance and management system while continuing to keep key aspects of customary law intact.

The new modernising political leadership which spear-headed the drive for political independence set out to put in place a new system. Ng'ong'ola (1992) recalls the view of the first President of Botswana that customary land administration systems could not incorporate 'modern concepts and practices in land use'.

The basic premise underpinning land law and policy in Botswana is that land itself remains vested in the State. The State allocated citizens land through different mechanisms including certificates of customary rights and common law leases. The rights on the land can be transacted, as opposed to the land itself. For example, 'The lease on the land can be sold through the property market based on the value of the improvements to the land, rather than exchanging ownership of the land itself' (Ditshwanelo, 2007).

New institutions were put in place to implement the post independence approach to land rights and governance.

Democratically elected district councils comprising local government were introduced in Botswana only after independence in 1966. Before independence, tribal councils headed by traditional leaders (digkosi) performed limited local government functions. These councils included some members nominated by the chief and some elected by the Kgotla. After independence, democratically elected bodies established by statutes of parliament replaced these tribal councils.

(Sharma, n.d: 3)

The key thrust of the TLA and the Chieftaincy Act was to recognise the institution of the digkosi but to limit their powers, particularly with respect to the allocation of land (Morapedi, 2010). From the 1960s, legislation sought to address the 'imbalances' resulting from the operation of the customary land allocation system during the colonial period. There are different views about the nature of these imbalances. One highlights widespread and systemic imbalances in both rural and urban areas:

The system under the Chiefs was very, very imbalanced...because once you are nearer the chief and once the chief has appointed you to oversee the allocation of land you will normally go there and designate some areas for your own self. So it was full of imbalances. And an average Motswana, a moderate Motswana would not get plots, would not get land and would not think of even going out there to look for land because they were suppressed.

(Ministry of Lands interview, 2011)

In the other view, such imbalances were restricted to particular peri-urban areas, but that in most rural settings people were able to access land without much difficulty.

The extent to which the new system has addressed these imbalances remains questionable. New institutions such as the District Councils and the Land Boards were established to give effect to the new land administration system. Comaroff (1982) in Peters (1994) has argued that the Land Boards simply 'became a vehicle for further accumulation by a landed elite.'

At a broad institutional level Ng'ong'ola (1992: 140) has observed 'the persistence of the gap between the law in the statute book and law in action.' He notes that Land Boards particularly have often failed 'to supervise land dealings and transfers' (ibid) in peri-urban areas. This reflects the acute pressure on land in these areas, the existence of informal land markets and the mismatch between peri-urban land needs and the assumptions underpinning Tribal land application procedures.

In the new system the *digkosi* were rapidly 'stripped of much of the formal authority' which they enjoyed under the Protectorate (Peters, 1994: 47). A House of Chiefs was established as part of the post independence governance structures, but this was primarily an advisory body. The *digkosi* were recast as paid functionaries of the State. '*Kgosi* is now a civil servant receiving instructions mainly from the government.' (Mgadla and Campbell, 1989: 56). The fact that Seretse Khama, the first President of independent Botswana was also

the paramount chief of the Bamangwato people was an important factor in helping to push through these reforms.

As might be expected many *dikgosi* did not welcome the new institutions and the changed approach to land management and governance which diminished their powers. As an official in the Department of Lands observed:

Well after the Land Boards came into operation it was a little bit of a problem --- let me say it was a huge problem to get the chiefs to understand why these Land Boards had been created.

(Ministry of Lands interview, 2011)

The implementation of the Tribal Land Act

The Tribal Land Act recognised the land rights which people could acquire in terms of existing custom and practice. As Richard White explains:

The Tribal Land Act ...did not touch customary law. It left it intact. What it changed was who was responsible for administering it. It took that power away from the Chiefs and gave it to the Land Boards which were decentralised. The first Land Boards had two District Councillors to make sure that there was democratic accountability. The Chief was a member which was to minimise the chief's opposition to having the land allocation function taken away. Most of the balance of the members were appointed by the Minister on the recommendation of the District Commissioner whose interests were to have a Land Board which operated efficiently and fairly because then disputes and complaints would not end up on his desk.

The TLA provided for 'the issuing of certificates as evidence of customary grants of individual rights for wells, borehole drilling, arable lands and individual residential plots. The Act also provided for the granting of common law leases with the consent of the Minister' (Adams et al., 2003: 4).

The TLA started to be implemented in 1970 and in the early years, the Secretary of the District Council acted as ex officio Secretary to the Land Board. This effectively located the Land Board functions within the District Council, but as more skilled people became available in the 1980s, the Land Boards began to operate as independent entities as envisaged by the legislation.

Tribal Grazing Land Policy

The TLA was followed by new land use policies which aimed to accommodate 'more modern practices of land use, such as more exclusive allocation and utilisation of tribal grazing ranges' (Morolong and Ng'ong'ola, 2007: 146).

The enclosure of the commons gathered momentum in 1975 with the introduction of the Tribal Grazing Land Policy (TGLP). Ostensibly this aimed to address rangeland degradation through allocating exclusive rights to groups and individuals on land designated for commercial ranches.

 As Hitchcock (1980: 2) observes:

It appears as if the planners have a clear notion of the traditional system that must be changed. But it is striking that the features most often mentioned are negative; a lack of something or a condition somehow unrestricted. Above all, government reports insist that the traditional system of land tenure is structured in such a way that individuals lack the incentive to conserve the range.

The approach to rangeland management underpinning TGLP reveals the influence of Garrett Hardin's (1968) article 'The Tragedy of the Commons.' Hardin's thesis was echoed by Botswana's first President Sir Seretse Khama in 1975 when he stated that 'there is a growing danger that grazing will be destroyed by uncontrolled use of communal grazing areas by ever growing numbers of animals. ... And under our communal grazing system it is in no one individual's interest to limit the number of his animals. If one man takes his cattle off, someone else moves his own cattle in'(Frimpong, 1995).

Despite Hardin's later assertion that the title of his article should have been 'The Tragedy of the Unmanaged

Commons', an enduring narrative was generated about the inevitability of overgrazing and mismanagement of communal rangeland which continues to dominate rangeland management policy and practice in Botswana today.

The TGLP tried to address perceived rangeland degradation by encouraging ranching through the allocation of exclusive rights to groups and individuals on newly designated farms, which stock owners could access through a nominal common law lease. The new policy direction was given effect through a World Bank funded programme to promote a 'modern' cattle ranching sector. A substantial portion of the communal grazing land was designated for commercial ranches and allocated to individuals on 50 year leases (Mathuba, 2003).

Today there is widespread acknowledgement that the enclosure of the commons has effectively instituted a system whereby those people who have been allocated TLGP farms have acquired dual rights on enclosed ranches and on the commons.

A former District Officer in the Ministry of Lands notes that:

Initially the TGLP farms were being rented out at 4 thebe hectare. The standard farm was 6400 ha (8x8 km) and at 4 thebe a hectare this was virtually nothing. So ...big cattle owners received an additional piece of land which could only be accessed by themselves while still having access to the communal grazing.

(Former District Officer interview, 2011)

Despite the tragedy of the commons thesis there is widespread agreement that the allocation of TGLP farms has done nothing to improve grazing management. If anything the retention of dual rights has provided a perverse incentive to accelerate the pressure of available grazing.

An official in the Ministry of Lands expressed concern that:

Mismanagement (on the enclosed farms) is still going on. People are over grazing their farms and

a later stage they take out their livestock to the communal areas. This still persists even today.

(Ministry of Lands interview, 2011)

Solway in Datta and Murray (1989) argues that the TLGP accelerated the privatisation of land and cattle while increasingly limiting the access of the poor to pastoral resources - a process which has contributed to the growing polarisation of Botswana society.

The role of the Land Boards

The TLA established Land Boards for specified 'tribal areas' that corresponded with the original nine 'native reserves'. The Land Boards in each of these areas exercise a variety of functions. They allocate land. They are responsible for the development of land use plans in the areas under their jurisdiction. They approve changes in land use as well as land transactions and transfers between individuals. However it is important to note that for land use plans to have legal effect they still had to be approved by the District Council.

All the land use plans, although they may have been developed through the Land Board officially have to be adopted by the District Council. If the land-use plan has not been adopted by the District Council, strictly speaking the Land Board is not entitled to allocate land on the basis of that plan.

(Former District Officer, interview, 2011)

At the same time District Councils took control of taxation and stray cattle (matimela) - former functions of local kgosi. (Morapedi, 2010, Peters, 1994).

Subsidising decentralised land management services

The Botswana government has made a significant investment in decentralising land management over the years. For the average Motswana most of the services which the Land Boards provide on tribal land are free. A Ministry of Lands official explained that:

You don't pay anything because the government says customary rights are common to all so you have the right to own a piece of land across the

board. So it's a free service unless you want to change that (customary land light) into a common-law entity where you want to go to the bank and get money and build something there. But naturally, customarily every Motswana has a right to own a piece of land. So it is a free service.

(Ministry of Lands interview, 2011)

Revenue sources

Apart from their budgetary allocation from central government the Land Boards do have some forms of independent revenue. This includes income from common-law leases where people pay for commercial plots and ranches. Mines also pay an annual land rent. However it appears that revenue from such sources consistently falls below the costs of keeping the Land Boards operating efficiently. This has raised questions about the extent of public subsidy required and the sustainability of the continued provision of free land management services

Changing structures of management and representation on the Land Boards

There have been a number of approaches to management and representation on the Land Boards since their establishment. The membership of the board was initially made up of:

- two members of the District Council, elected by the council from amongst its own members to represent it on the board;

- the Chief of the tribe whose land the board administered;

- up to 12 members appointed by the Minister acting on the advice of the District Commissioner (the number of members varies from one board to another); and

- two ex officio members to represent the Ministries of Agriculture and Commerce and Industry (White, 2009).

However, as time went by steps were taken by the State to remove the digkosi and their representatives from the Land Boards altogether. This was followed by a period where Land Board representatives were elected at District level. However this was replaced by the current system where people apply to sit on the Land Board and are appointed to their positions by the Minister.

The preferred approach has been to professionalise the management of the Land Boards. This is consistent with the dominant governance approach in Botswana which has been characterised as an 'Administrative State' in 'which the social order is indistinguishable from the administrative order' (Gundersson in Picard, 1979). At present the decisions and priorities of the Land Board are tightly guided by the Land Board Secretary in consultation with the appointed members of the Board.

However since 2010 there have been moves to reintroduce chiefs or chief's representatives to the Land Board (Molebatsi interview 2011). This can be interpreted as

---

Changing representation on the Land Boards

In the early years the kgosi sat on the Land Board. However as time went on there was deemed to be a conflict of interest between the kgosi's continuing role in presiding over customary courts to resolve local disputes and their role in land allocation. The Chief was then taken out of the Land Board.

Other members of the Land Board have at various times been elected through District processes, but this gave rise to government concerns that the functioning of the Board was becoming 'politicised'. This system has subsequently been abandoned and replaced by periodic calls for persons to apply to sit on the Land Board. Applicants are subsequently selected and appointed by the Minister of Lands and Resettlement.

(Richard White interview, 2011)

a measure to retain the political support of the dikgosi. This is consistent with moves by ruling blocs across the region to re-emphasise the administrative and political role of traditional authorities which Oomen (2005) refers to as a process of 'retraditionalisation'.

Establishment of Sub Land Boards

It was quickly found that the Land Boards could not cope with the volume of work involved in the registration of customary land rights. Initially they delegated the work back down to headmen, but this was unsatisfactory as the whole point of introducing the TLA was to democratise the land allocation process. The overextension of the main Land Boards led to the establishment of subordinate Land Boards in 1973 to allocate land under customary law for residential purposes, ploughing, grazing cattle and other stock and for other 'communal' uses (Griffiths 2010). This has been an ongoing process as Government has tried to respond to persistent complaints about the slow pace of registration and transfers.

Applying for a customary land rights certificate

The customary land right application form is reproduced below. The applicant must complete the form and obtain the signature of the land overseer.

The certificate is accompanied by a sketch map of the plot, but as a former District Officer in the Ministry of Lands observes:

One of the major shortcomings of the system to start off with was that there was no cadastral survey. It really complicates matters. Because we don't have a very strong written history and everything is verbal when the older generation slowly falls away we have great difficulty in trying to recall what was happening and where things were.

(Former District Officer interview, 2011)

White, adds:

Your neighbours and the land overseer are supposed to know where (the plot) is but it does not always work. One of the big issues is to set up a system where you spatially define what everybody has. Before the Land Board were created allocations were verbal and there are still a lot of people occupying land which was allocated on this basis who have never felt the need to go to the Land Board to obtain a certificate. Without the certificate it is possible that people can be dispossessed.

(Richard White interview, 2011)

Managing land disputes

Werbner (2004) notes that until 1995 the Land Boards still referred appeals which people brought against Board decisions to the Minister. But as the volume of cases increased, it became clear that an independent system for managing land related disputes was required. While the customary courts were empowered to deal with small local disputes, a Land Tribunal was established to rule on contested land allocations and cases of conflicting and overlapping rights.

Between 1996 and 2005 an appellant was able to have a case heard by the Tribunal at no cost. However in recent years the policy has shifted to allow the Tribunal to award costs against an appellant who brings a case to court and loses. This risks undermining the effectiveness of the Tribunal as in a land dispute those with the resources to hire lawyers are likely to intimidate those who cannot afford such services and who fear that if they lose they will be saddled with crippling legal costs.

Regulating land leases

A Presidential Commission on Land Tenure report in 1983 recommending that:

- Commercial and industrial leases issued on tribal land should be allocated for a period of 50 years.

- Common law leases could be sold to another citizen without the Land Board having to provide its consent for the transaction.

Full names of applicant			
Postal address		Tel: No	
		5 Man/woman*	
Are you a citizen of Botswana	Yes/No*	ID number	
Marital status	Married/Single/Divorced/Separated/Widowed*		
If married full name of spouse			
Name of place where plot applied for is			
Present use of plot applied for			
Size of plot applied for			
Proposed used	a) Residential	b) Ploughing	
	c) Cemetery	d) Others: Specify	
Is land applied for debushed?			
List in full the names of people you have consulted who hold land bordering the plot for which you are applying			
List any other land rights you possess anywhere in the Country			
Are all the sites mentioned above developed?		Yes/No*	
I (full name of the applicant) .... state that the above information is complete and correct. I understand that the discovery of incorrect or false information on the application shall result in the rejection of my application and/or prosecution and/or forfeiture of the plot if already granted to me			
Signature of Applicant		Date	
I (Full name of Land Overseer) confirm that the plot applied for above: a) has been allocated/not been allocated* b) its allocation will interfere/not interfere with other people's rights* c) the proposed land use will/will not conflict with the land use in the area*			
Signature of the Land Overseer		Date	
*Delete words which do not apply			

- Common law leases for residential plots on tribal land should be extended to 99 years to provide sufficient security to enable the owners of residential dwellings to apply for mortgage finance.

- If the leaseholder died his leasehold rights could automatically pass to his descendants.

The recommendations recognised a de facto land market in land leases which further accelerated after their adoption by Government and a further amendment to the Tribal Land Act ten years later, which stated that a person does not have to come from a particular area to apply for land there.

This has given rise to a situation where people, particularly those well versed in the functioning of the Land Boards, have been able to acquire plots of land in several different areas. To date there appears to be little effective restriction on the acquisition of multiple plots. In peri-urban settings this has fuelled fronting and informal transactions around the transfer of residential plots which are in high demand. This has led to a burgeoning informal land market which tends to benefit those who already have access to resources. As Mathuba (2003: 13) has observed:

The laws stipulate the requirements for transfer of land rights. However, landholders often find ways around these requirements and transfer undeveloped land. Transfer of land is rarely ever done in favour of the poor or the disadvantaged groups. Like fronting, the transfers are mostly to those who have the means to buy the land and not those who need it - thus creating skewed distribution of land.

This has its roots in the recommendations of the Land Tenure Commission and has contributed to widening inequality and mounting social tension in Botswana society.

Enabling women's independent access to land

In its original conception the TLA 'bore all the hallmarks of a patriarchal institution'. Until 1971, husbands retained absolute power over their wife's property and estate. (Kalabamu, 2006: 240) Historically, land rights were vested in men. Original drafts of the Tribal Land Act referred to the land rights of 'tribesmen'. However the increasing prevalence of households headed by single women in Botswana prompted NGOs and women's advocacy groups to press for the legal recognition of women's land rights. This issue started to gain momentum in the 1980s and became increasingly prominent in the 1990s. In 1993 an amendment to the Tribal Land Act substituted the word 'citizen' for 'tribesmen'. This change was far reaching on a number of fronts. From a gender perspective, it represented an important step towards gender equality before the law. However, it should be noted that where property is inherited 'tradition still gives unequal succession rights to boy and girl children' (Ntema, 2011).

The amendment also did away with the tribal basis on which the TLA was premised, which had meant that people mostly applied for land in the area from which they originated. The new legal order meant that citizens could now apply to be allocated land located in a tribal land area anywhere in the country, irrespective of where they resided.

Eleven years later the Abolition of Marital Power Act (2004) abolished the husband's power of control over family property and the acquisition and transfer of land (Griffiths, 2010: 7). The 2006 Demographic Survey (Government of Botswana, 2009: 26)records that 64.6% of the population has never married and that 46.6% of the households in the country are headed by women.

Contemporary research by Griffiths (2010) in Kweneng District demonstrates that women are acquiring land in their own right through the acquisition of customary certificates and leases. Between1999 to 2009, 2 063 out of 4 041 land certificates and leases issued in the District were registered in women's names (Griffiths, 2010). DITSHWANELO confirms this trend but cautions that while women may now be able access land in their own right, inheritance practice continues to discriminate against women and minors. Kalabamu also sounds a caution concerning the 'mutative nature of a patriarchal gender system'(Kalabamu, 2006: 244)

and its persistence in limiting married women from the control and ownership of land.

National Policy on Agricultural Development

The National Policy on Agricultural Development (NPAD) which was issued in 1991 restated the assertion of the TGLP that the growth in livestock numbers on the unmanaged commons had caused significant overgrazing and rangeland degradation. This was based on an assumption that livestock and vegetation were in equilibrium and that grazing stock in excess of the carrying capacity calculated to maintain this equilibrium would result in long term rangeland damage. Non equilibrium approaches to rangeland management (Behnke and Scoones, 1992) which hold that 'rainfall has more impact on rangeland productivity than livestock does', never gained official support in Botswana.

The NPAD proposed acceleration of the issue of exclusive rights over much of the Tribal Land Area as a solution to this problem. This was based on the assumption that individual livestock owners would manage the grazing on ranches which they had been allocated more effectively.

Land on the commons in the vicinity of water points owned by individuals or syndicates (de Queiroz, 1993) was targeted in terms of this policy, which sought to allocate fenced ranches after land use plans had been

prepared and had been approved by Land Boards. By 2003 a further 552 ranches had been demarcated under NPAD (Mathuba 2003).

With the predominant focus of rangeland management policy being on the enclosure and privatisation of the commons, critical questions have been raised about the impacts this has had on the sustainable management of land and natural resources in the remaining communal areas and the livelihoods of small scale livestock farmers. As noted above, policy awarded dual rights to the large ranchers allocated exclusive access to ranches and TGLP farms, who continued to be able to exercise their customary grazing rights on the commons, running their stock there until the grazing was exhausted before moving their stock on to private land for fattening. Small scale graziers on the commons were left with poor quality grazing for their stock which rendered them particularly vulnerable in times of drought.

These and other issues were to be addressed as part of a comprehensive land policy review which was undertaken in 2003. However this review, which made detailed recommendations on all aspects of land management and suggested alternatives to the system of dual rights, was never publicly released. This gave rise to speculation that the proposals contained in the report, recommending that dual rights be abolished, were blocked by large cattle owners who exercise significant political influence.

Table 2: Plans for district development

District Development Plans	The Department of Physical Planning does District economic planning.
Village Development Plans	Individual village development plans are prepared by the physical development committees within the different villages in consultation with Village Development Committees.
District Settlement Strategies	The District Settlement Strategy is carried out by the Department of Town and Regional Planning.
District Integrated Land Use Plans	The District Integrated Land Use Plans are prepared by the Land Boards and must be approved by the District Council.

During our research it was reported that Cabinet had recently approved a new Land Policy. However, at the time of writing in August 2011, this was not yet in the public domain.

Land use planning

District land use plans prepared by the Land Boards are but one of many plans developed at district level. A variety of government institutions are responsible for plans of different types. The table below highlights the array of plans guiding district development.

The Town and Country Planning Act of 1974 is the key piece of planning legislation in Botswana. This Act, which is modelled on the British planning legislation from 1947, has not kept pace with the planning needs in Botswana. 'The major feature of this Act is that it is very much centralised. The Minister of Lands has the final say' (Prof Molebatsi interview, 2011). While the Land Boards feature prominently in the discourse on decentralised land governance Molebatsi cautions that:

We have many players but a lot of centralisation. When it comes to land allocation yes there are many players. But at the end of the day everything is centralised. I am not sure that there is much decentralisation in the way that land is allocated.

 (Prof Molebatsi interview, 2011)

Perspectives from Chobe District

Having outlined some of the key features of the over-arching land policy and governance environment above, we now examine how these factors play themselves out in the Chobe District setting.

The research in Chobe involved:

- interviews with DITSHWANELO staff responsible for the organisation's land rights programme;

- a meeting with the Chairman of the Chobe Land Board together with the Land Board Secretary;

- a meeting with the Acting District Commissioner and officials from the State Land Allocation Committee; and

Figure 2: Districts in Botswana

- meetings in three different settlements with the *kgosi*, or *subkgosi,* the land overseer and members of the local community knowledgeable about the process of land allocation and governance.

The aim of the research was to hear a variety of local voices and to reflect on practical land governance practices.

Chobe District is relatively small compared to many other Districts in Botswana. People in the District occupy portions of land which are sandwiched between three protected areas: the Chobe National Park, Chobe Forest Reserve and the floodplains of the Chobe River. It receives a rainfall of more than 650mm per annum and is the highest rainfall area in Botswana, most suitable for growing rain fed crops, particularly maize and sorghum (Jones, 2002). Some 25 000ha have been targeted for commercial agricultural production in the Pandamatenga area (African Development Bank, 2008).

Chobe is also a prime tourist destination with tourist lodges along the river which accommodate foreign visitors who visit the Park and view game from the river. The town of Kasane is the hub of wildlife tourism in

Figure 3: Chobe District – Settlement areas
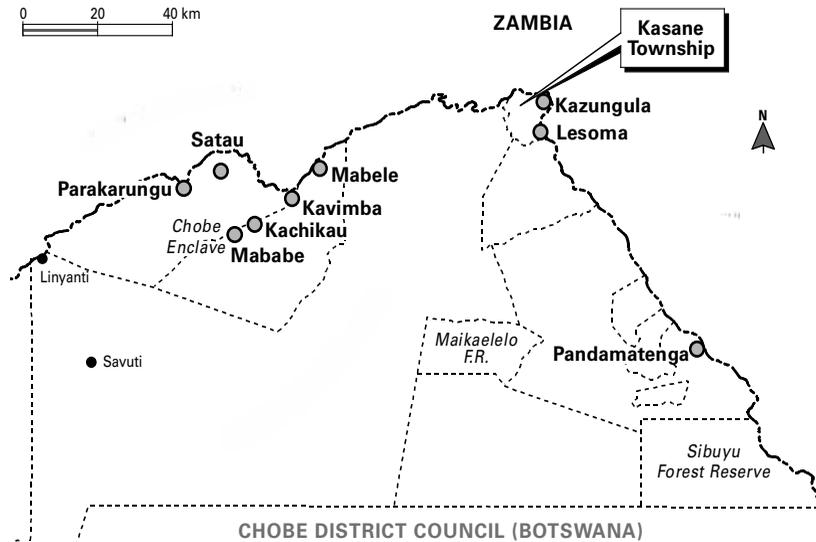
Northern Botswana (Jones, 2002). Wildlife, particularly elephants, is not confined to the Park. They migrate between different wildlife areas. Elephants and buffalo frequently destroy crops while predators kill livestock.

Tribal land in Chobe constitutes a third of the total land area in the District while the remaining two thirds are designated as state land – mainly national park and de-clared forest reserves. There are a number of villages in the area including Kazungula, Lesoma, Pandamatenga, Mabele and Parakarungu.

People in the area derive their livelihoods from a variety of sources. Subject to land availability, they can access plots for arable agriculture through the Land Board. The minimum plot size allocated for arable agriculture is 12.5ha and the maximum is 39.5ha (Chobe Land Board interview, 2011). The Botswana government is encouraging what it terms 'cluster farming' which encourages people to form groups who may apply for up to 150ha. People in villages close to the river are involved in fishing.

People raise some livestock although Chobe falls into a red zone for foot and mouth, a disease carried by buffalo (Jones, 2002). This restricts the sale of livestock, which can only be sold on local markets. The combina-tion of foot and mouth disease and tsetse fly limits the extent of livestock holdings. In this setting there is a

significant tension between conservation and agricul-tural livelihoods.

Some revenue is derived from community trusts involved in community based natural resource manage-ment partnerships with tourism or safari companies. Five villages within the Chobe enclave, Kachikau, Kavimba, Mabele, Satau and Parakarungu formed village trusts that are represented on the Board of the Chobe Enclave Conservation Trust, which manages wildlife quotas on behalf of local villages (Jones, 2002). However, local informants argued that very little of this income is finding its way back to realise meaningful benefits for people in local communities.

The Chobe Land Board

The Chobe Land Board is responsible for land allocation and management on tribal land in the District. Land Board Secretary, GG Moepeng and Board Chairman, Nelson Masule provided background on the work and structure of the Chobe Land Board:

We are responsible for land allocation, consideration of disputes, complaints, transfers, change of use, additional uses, even compliance to development because you know we allocate and we have to see to it that people comply. Even if we have allocated a residential site we have to see to

it that the site is used for residential purposes and nothing else. So that is our responsibility and we have to monitor that time and again.

(Chobe Land Board interview, 2011)

They explained that the Chobe Land Board is a fully fledged Land Board. Because the area of tribal land is relatively small compared to the proportion of State land in the District, there is no need for a Sub Land Board. The Board normally has ten members but in Chobe it is operating with eight. Members of the Board sit six times a year. They elect their own chairperson annually and allocate people to sit on various development committees where the Land Board is represented. The Secretary, as the Accounting Officer, is responsible for the execution of the Board's mandate and implementing decisions made at Board meetings, together with compiling and presenting the budget. Board members are accountable to the Minister and are appointed for staggered time periods of three and four years each to maintain institutional memory and ensure operational continuity. The Board Secretary reports directly to the Permanent Secretary in the Department of Lands. People seeking access to state land approach the District State Land Allocation Committee, which falls under the Department of Lands.

The Land Board combines technical departments, including mapping and surveying and administrative departments, including records management, accounting and supply. The Board operates in terms of the TLA and can formulate its own local policies in consultation with District Council.

In the day to day execution of its tasks, the Land Board works closely with the Department of Physical Planning (DPP) which is based in the District Council. The Land Board prepares a holistic land use plan for different areas under its jurisdiction while the DPP is responsible for preparing the detailed layouts.

The Chobe Land Board currently employs 77 staff. Central Government has delegated human resource management responsibilities for staff on lower salary scales, to the Land Board Secretary who is responsible for hiring, firing, training, transferring and promoting junior and lower level management staff. However, the appointment and management of more senior posts remains the responsibility of the Ministry.

With regard to the role of *digkosi* on the Land Board, the Secretary confirmed that once again, 'according to the new appointments to Board we will either have chiefs or their representatives on the Board'. This would seem to confirm the resilience of the *digkosi* in Botswana, to which Nyamnjoh (2003: 96) attributes a 'fascinating inherent dynamism and negotiability that guarantees both resilience and renewal of its institutions.'

Local level co-ordination

The District Commissioner who reports directly to the office of the President acts as the district coordinator for all development activities planned in the district. Development co-ordination takes place in a number of fora including:

- a Plan Management Committee where the District Council, the District Commissioner, the Land Board Secretary and the Tribal Administration meet;

- District Development Committees where all the authorities are represented and the district development plan is discussed; and

- a District Land Use Planning Unit which brings together a range of other departments.

Contrary to the concerns expressed by other actors about lack of co-ordination in development planning, the Land Board Secretary was of the view that:

Here the system is working very well. Things must be scrutinised thoroughly before they are being implemented. The District Commissioner plays a key role in that process to ensure coordination. Some of the things we do are visible and others are invisible. For example with regard to development you can see a village growing up slowly, slowly. Even though it is not fast they have still have the opportunity to grow. People really understand the procedures and regulations although we still encounter some lack of lack of understanding here and there. Things are going well because

Land allocation processes managed by the Chobe Land Board

The Board Secretary described the processes of application for customary and common law land rights:

Each and every Motswana has the right to tribal land. If you are 21 years and above you have the right to apply. If you are below that you need to have reasons to substantiate your request to be given land at that age. You would need to complete an application form. We have customary and common law application forms. So it's up to the person to choose which one. But basically they mean the same thing because you are applying for the same land. For the customary one the applicant has to consult with the land overseer who is the representative of the chief. The land overseer is not a paid official. but they receive some compensation for their time from the land board. But when we have these pre-demarcated plots there is no need for this consultation.

After the person has met the requirements set out on the form, the application is submitted to the Land Board where it is registered. Normally a period of 21 days is given before the applicant is invited for an interview. The purpose of the interview is to extract more information from the person, confirm the availability of land and commit the person to ownership of the land. The person who takes ownership of land also acquires some responsibilities in terms of the Act. The plot must be demarcated within six weeks of being approved and, if it is a customary application, it should be developed within five years. If it is a common law application the land must be developed within two years. Common-law applications are usually for business premises, hence the stipulation that the property must be developed within a shorter time frame.

So after the interview, because of the schedule of the Land Board, sometimes it takes two or three weeks before approval. Then there will be a site visit if the plots are not already demarcated. If the plots are already demarcated then people are simply allocated as we have the layouts on the table. People have to go and be shown their plot. Thereafter they are given their certificate. Customary certificates must be signed by the Board Chairman or the Secretary while common law leases must be signed by the Minister.

For commercial leases people pay a lease rental which is calculated according to the size of the plot. There is a formula which is being applied for this purpose. But as for the customary certificates there are no fees. That's where we get the distinction between the common law and the customary because customary you don't pay and it's for an indefinite period, while the lease you pay and it is for a fixed period. The lease period for residential sites is 99 years and for commercial it is 50 years, but the period can vary according to the class.

There are also applications for noncitizens which are part of our jurisdiction. They follow the same procedure, but after the Land Board has considered they have to make recommendations to the Minister so that he can consent to that. That's when we prepare the leases.

(Chobe Land Board interview, 2011)

people are being consulted. Where they don't like they indicate. We also see that there's a lot of preservation of wildlife and because of the coordination we're having we maintain that in existence. And of course we are enjoying the outside world admiring us. Even the land itself – we don't give it out just like we are issuing some sweets. Consideration is made. So I take it these are our achievements.

(Chobe Land Board interview, 2011)

The Chobe Land Board also acknowledged a number of challenges. These included:

- a shortage of land which required the Land Board to negotiate for the release of the portion of the forest reserve to enable people to access land in certain areas;

- some constraints with regard to lack of resources for monitoring that land awarded is properly utilised.

DITSHWANELO's Land Rights Programme

DITSHWANELO (The Botswana Centre for Human Rights) is a Botswana human rights organisation

Richard Kashweeka

established in 1993. It established an outreach office in Kasane, following a direct request from the Basarwa/San community in the area. However Richard Kashweeka, the manager of the Kasane office explained that the services of the programme have been extended to all marginalised people who 'lack self esteem to be able to confidently interact with land authorities and who do not have a clear understanding of procedures to be followed to access land or protect their land once it is allocated to them' (Richard Kashweeka interview, 2011).

DITSHWANELO land rights programme officers, Mushanana Nchunga and Onalethuso Ntema described how the programme combines local level interactions with villagers and processes which engage directly with the authorities. DITSHWANELO have organised a variety of programmes, seminars and conferences to raise land rights related issues with government officials and other actors.

DITSHWANELO points out that officials often have a limited understanding of the needs and concerns of the poor. They observe the changing context characterised by accelerating social inequality and the progressive commodification of land (Peters, 2007). Overall the programme seeks to provide protection against the 'greed amongst those who are well off which results in the grabbing of land and related resources from the poor' (Richard Kashweeka interview, 2011).

DITSHWANELO argues that in the Chobe district there is a particular need to balance conservation with socio economic rights and development. Many people have very limited access to land because they are trapped between conservation areas and commercial farms. In this context DITSHWANELO provides support as part of the Technical Advisory Committee to assist Community Trusts to get maximum benefits from the wildlife resources they are allocated. They lobby to degazette portions of the forest reserve to ensure that people can access sufficient land to meet their needs. They also try and find ways to mediate the animal/human conflict which contributes to an increase in the poverty of poor households whose livelihoods derive from cropping and livestock.

In Chobe elephants can walk anywhere they like. Government gives land, seed and tractors, but once people have ploughed and planted and their crop is grown large game comes and wipes everything out.

(Richard Kashweeka interview, 2011)

The land rights programme focuses on the socially and economically marginalised. DITSHWANELO places particular emphasis on Alternative Dispute Resolution (ADR) methodology which they argue is well rooted in Tswana society. ADR is premised on getting parties in dispute around the table to talk matters through and jointly identify mutually acceptable solutions by means of facilitated discussion.

We start by assisting people to find local solutions. If this fails then we explore other options. The other option is to go to the Kgotla – the traditional court. If people are not satisfied we can take matters to the Customary Court of Appeal. If they are still not satisfied and people require a lawyer, we refer them to the legal clinic at the University of Botswana or we assist them to identify a human rights lawyer who charges a low rate. Sometimes the matter has to go to the High Court – particularly in cases of inheritances.

(Richard Kashweeka interview, 2011)

In the case of land disputes where the Land Board's attempts at resolution have been unsatisfactory, DITSHWANELO assists parties to appeal to the Land Tribunal and if necessary, from there to the higher courts.

Richard Kashweeka (interview, 2011) observes that:

Most people don't want to go through court system as it is too expensive. If the matter involves land we will involve the Land Board, the Social and Community Development Officers from Council together with somebody from District Commissioner's office.

DITSHWANELO has also been involved in action research related to land problems and has played a role in policy development and review, including reviews of

land, tourism and community-based natural resource management (CBNRM) policies and the development of the first forest policy in Botswana.

In everything we are doing the main thing is that the marginalised are protected and their rights are promoted. Protection and promotion of the land rights of the marginalised to us is key. Our goal is to make sure that land is equitably distributed and not skewed toward the rich. It is a great challenge.

(Richard Kashweeka interview, 2011)

Village voices

We visited three separate villages with very different histories and located in different settings:

- Kazungula – a peri-urban village close to the ferry crossing to Zambia at the confluence of the Chobe and the Zambezi rivers;

- Pandamatenga – a village close to Zimbabwe border and the Matetsi Safari Area; and

- Mabele – a village accessed through the Chobe National Park on the Chobe River and adjacent to the Chobe Forest Reserve and close to the Namibian border.

We held focus groups discussions in Kazungula and Mabele with the *kgosi*, the land overseer and local residents. In Pandamatenga, we were only able to conduct an interview with the local *kgosi*.

Kazungula

History of the area

Members of the Kazungula focus group traced the origins of the village to the activities of WENELA, a South African mine recruitment agency which set up an office there in the 1930s. However, development only started to happen in this area after the 1960s when Botswana became independent. As tourism activities expanded in Chobe so jobs were created and more people settled in the area. Mr Balemogeng estimated that the population of Kazungula was currently about 3 000 people. No

Figure 4: Kazungula village
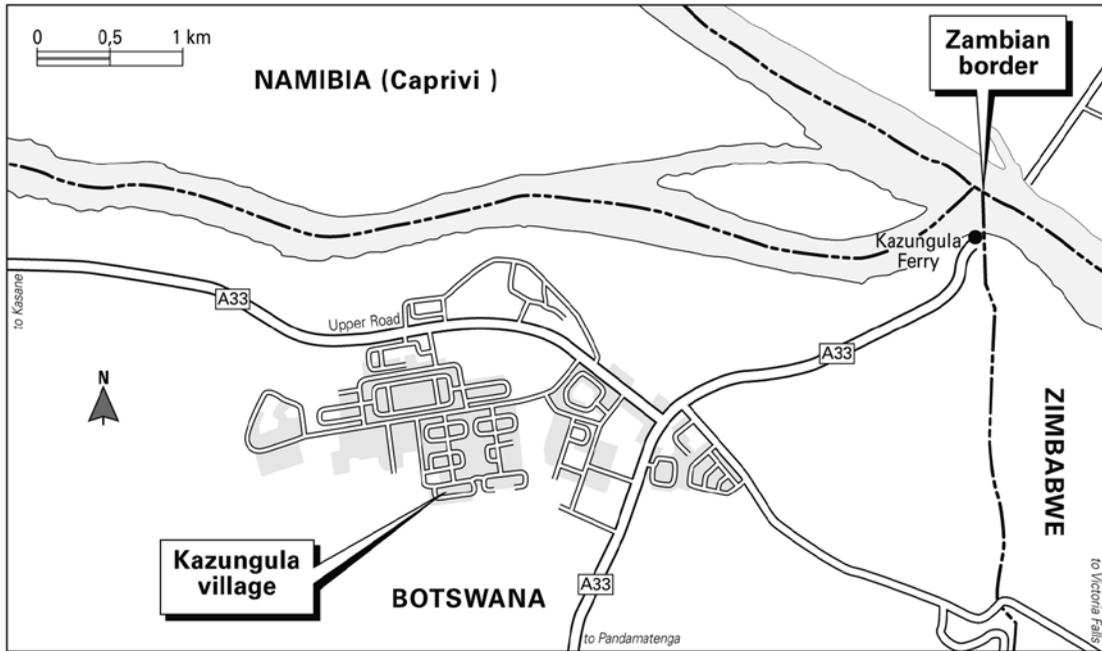
Mr Balemogeng: Deputy sub-chief
Kazungula village   Kazungula Land Overseer

accurate information was immediately available about the number of households.

Declining role of agriculture

Informants reported that agriculture had played an important role in local livelihood strategies in the past, but small scale agricultural activity has declined sharply over the years. A key factor contributing to the decline of small scale agricultural production was game encroachment. Currently, households derive their most of their income through poverty alleviation programmes and household members in formal employment. Many people in Kazungula now regard themselves as urban dwellers although some people continue to keep stock and are involved in some agricultural activity.

Access to natural resources

People also have access to the Forest Reserve to collect firewood and harvest medicinal plants, but only if these are for personal use. Commercial harvesting requires paying for a permit which is issued by the relevant department for a set fee. The land overseer reported that he played no role in such things which he said were the responsibility of forestry and wildlife officials. While local residents are supposed to derive benefits through the community trusts which have been established as part of the broader CBNRM initiative discussed above, people stated that the benefits were erratic and unevenly spread. However some examples were cited, where the Trust had identified destitute people and constructed shelter for them. Money from the Trust was also used to maintain local community facilities.

Land allocation processes

Land allocation in Kazungula village almost exclusively involves residential sites. In 2010 the land overseer reported that about 600 applications had been received and forwarded to the Land Board. All applications were for residential stands. In the previous 18 months not a single application had been received for agricultural land. The *kgosi* and the land overseer were reluctant to estimate the gender breakdown of the applications for residential stands. They stated that no local records were kept of applications. These were held by the Land

Board which kept all data on land. They confirmed that applicants were not required to pay anything as part of the application process. The land overseer reported receiving an honorarium of 170 pula per day (US$25) when allocating sites.

Generally the *kgosi* and members of the focus group felt that the *dikgosi* and local people had little real power when it came to the allocation of land:

The Land Board has been given power by the government to allocate the land. We kgosis we don't have any power. If they do anything we just look on them only.

Some people keep cattle and small stock which graze nearby – in the village and surrounds. The focus group members said that they had applied to be allocated grazing land but that this had not been approved as yet. People stated that a land shortage might require degazetting a portion of the forest reserve.

The land overseer stated that the government is encouraging cluster farming and that Kazungula residents had come together to acquire land to plough, but the Land Board had told them that they should go and plough at Pandamatenga which is far from where they stay. Apparently the Land Board had stated that land adjacent to the community has been set aside for other purposes. People felt that the land use plan was not taking into account their needs and that it was not clear how they could influence this.

Land Board performance

In their discussion about the performance of the Land Board, residents of Kazangula noted that waiting periods could vary substantially from person to person. It was stated that some people seemed to have the connections to get their applications to the front of the queue. Concerns were also expressed about local people fronting for others to enable them to gain access to residential stands which were quickly resold.

Pandamatenga

Pandamatenga village is sandwiched between the Zimbabwean border and a commercial farming area.

The surrounding area has been the target of various government programmes to increase cereal production since the 1980s when some 25 000 ha were initially allocated to 'farmers associations'.. However the prevalence of flooding in the area and the lack of roads and drainage infrastructure meant that much of the land was never brought in to production (African Development Bank, 2008).

A large infrastructure development worth about US$70 million was launched in September 2010 to construct a water drainage system and a new road network to improve access to the farms in the area, and will cover more than 27 500 hectares of farmland. (African Development Bank, 2008). The project area has been divided into three separate blocks:

- Central farms – 16000 ha

- Southern farms – 9000 ha

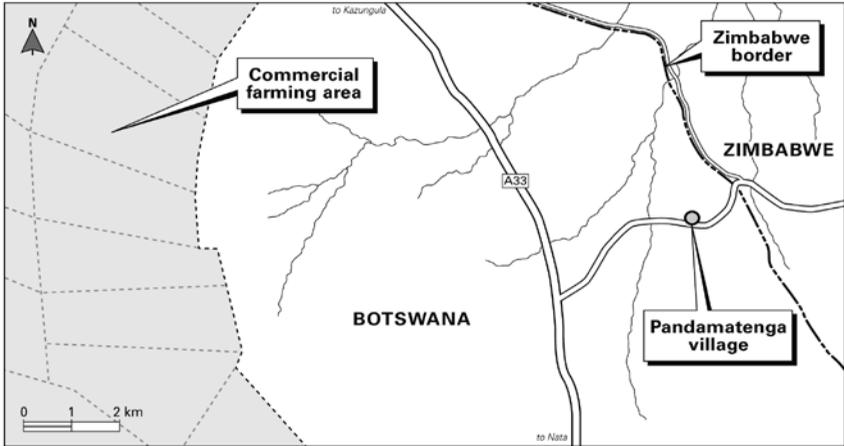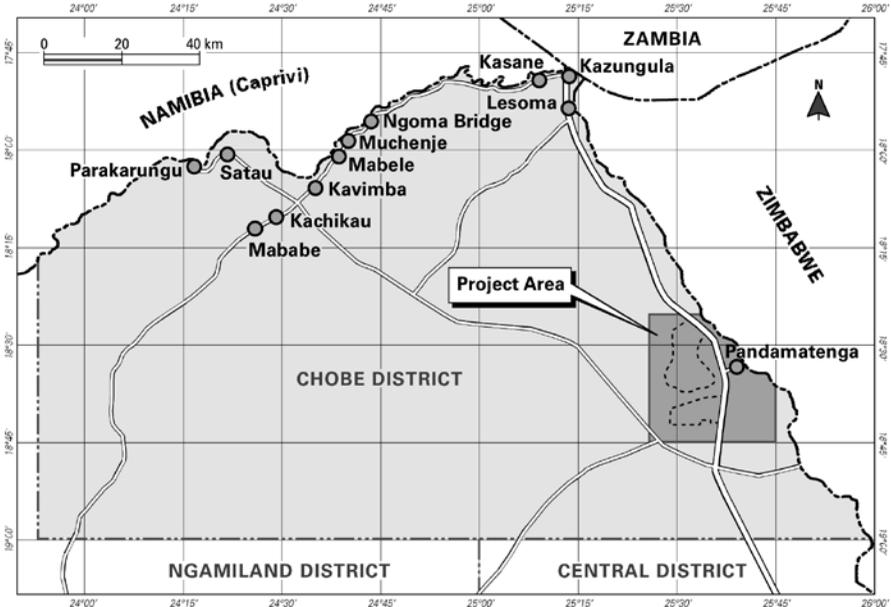- Small scale farms – 2500 ha.

Figure 5: Padamatenga village

Figure 6: Pandamatenga Commercial farming area (African Development Bank, 2008: Annex 1)

Kgosi Banika

In the new plan, 245 households will access the areas set aside for small scale production while 21 farmers will have access to the remainder. According to the African Development Bank (ADB), the Project will encourage the Chobe Land Board to promote a preference toward women in the smallholder allocation process.

A kgosi's perspective

In Pandamatenga we spoke to Kgosi Banika who is the *kgosi* for the area. She explained how the village originated in the 1890s when a white trader opened a shop in the area. She highlighted how historically the area was predominantly inhabited by San people. During the 1950s the Colonial Development Company developed farms in the area to feed cattle which they purchased in Ngamiland before selling them on to an abattoir in Northern Rhodesia.

Kgosi Banika noted that Pandamatenga is one of the most diverse settlements in the country, with a total of eight ethnic groups comprising the village population of 250 households. These include the original San, the Bananjwa who came in 1937, Ndebele who settled in the 1950s, Lozi from Zambia and Basubiya from the other side of District as well as other groups. With the opening up of the commercial farms in the 1980s, there was also an influx of white farmers into the area.

Kgosi Banika provided her perspective on how things had changed in Botswana after independence.

The kgosi and land allocation

The kgosi used to have powers over land. That was very important. But then changes in the law meant that there were no more tribesmen only citizens. During the colonial era a person could not move from one area to another without a letter introducing him to the kgosi of the other area. Nowadays someone can come to stay here and I won't know about it. They can apply for land and I won't even know who they are. The only time I will know who they are is when they have a problem and they need assistance. This has eroded our powers.

 (Kgosi Banika interview, 2011)

According to Kgosi Banika she currently plays a minimal role in allocating land and has no relationship with the Land Board.

If someone applies for land the application passes through the land overseer who is appointed by the Land Board as well as the community. Only the land overseer has to sign the application. The kgosi does not have to sign. Most of the time the Land Board predemarcates plots in Pandamatenga which are then advertised and people apply.

As the kgosi I don't have any say in the allocation. Also I don't play a monitoring role - the Land Board does that. Kgosis were involved in the Land Board up until the 90s. I was once a Board member. Then the forms were signed by the kgosi, but then I don't know what happened. There was a directive from the Minister taking out the kgosi.

(Kgosi Banika interview, 2011)

Kgosi Banika also reported that land disputes were taken to the Land Board or the Magistrate's Court rather than being settled at the village kgotla or customary court. 'I have been in office for 10 years and I have never heard a dispute around a land matter.'

Fields in the commercial farming area

Fields of Pandamatenga villagers

Local land shortage

The *kgosi* described the high rate of unemployment in the area, noting that the wages on the commercial farms are very low, which provided people with little incentive to work there. She observed that it was now very difficult to get land in Pandmatenga – particularly since the area had been identified to spearhead national arable production. She described how 58 ploughing fields had been advertised and 3 000 people had applied for these plots from all over the country. The people who were successful were eventually selected through a raffle.

Land access favours the wealthy and well connected

Kgosi Banika argued that the qualification criteria which applied to the allocation of the nearby farms favoured outsiders with money and resources:

You first have to buy a tender document for 500 pula (US$72). Then you have to make a business proposal and have a financial statement from the

bank. It is not each and every community member who can get a certified financial statement. This makes it impossible for the people in the village to get a farm. People have to apply like any other citizen in the country regardless of whether you are staying there or not.

(Kgosi Banika interview, 2011)

Vulnerability of the poor to downward raiding

Because both residential plots and arable land are in short supply there is a flourishing local land market, but Kgosi Banika argued that this was serving to further marginalise the poor.

Some local residents have resorted to selling the fields which they have been allocated. This means at the end of the day some of our people will end up by having not even a residential plot and not having a field which she or he inherited from their father. Very often people don't know the value of the land which they are selling. They may sell their land

for 10,000 pula, 5000 pula or 2000 pula – whatever, because they need cash for a day or two, and then that person is landless... Despite all the attempts to control this, the selling is ongoing

(Kgosi Banika interview, 2011)

The situation in Pandamatenga highlights the vulner-ability of local residents to 'downward raiding' - a phenomenon impacting on both the urban and rural poor. In these settings 'low income households often sell land cheaper because of crisis-sales (as money is needed quickly) or because of a greater fear of reprisal because they are selling land they do not own' (Thirkell, 1996). Currently it appears that there is no system to monitor the land sales or to indicate fair market value per hectare in any particular area.

Dysfunctional CBNRM institutions

Kgosi Banika also spoke about how the poor were not benefiting adequately from local land and wildlife resources. She attributed this to the poor governance in local development institutions such as the community trusts established to manage funds obtained from wildlife lodges and safaris.

The Trust is not working well. No AGM has been held. Sometimes all the money just disappears into thin air. A lot of money is going to the community trust and the people are not gaining any benefit. The money does not go to the community because of the people who have been elected by the community -- the board members they are the problem. The most unfortunate part of it is that every two years when they are elected, they elect different people, but the same type of people who are working for their own pocket. Sometimes we just feel like crying.

(Kgosi Banika interview, 2011)

Kgosi Banika noted that these problems were wide-spread and had also affected the Village Development Committees in Pandamatenga. While it needs to be recognised that the situation in Pandamatenga which is represented here is largely a representation of the kgosi's perspectives, her views resonate with the broader literature and views articulated by other village level actors in Chobe.

Mabele

In Mabele we met with Kgosi Yambwa, the land overseer, Mr K Tidimalo and a group of local villagers. Different informants provided perspectives of the history of the village which originated in the early 1900s.

Figure 7: Mabele village
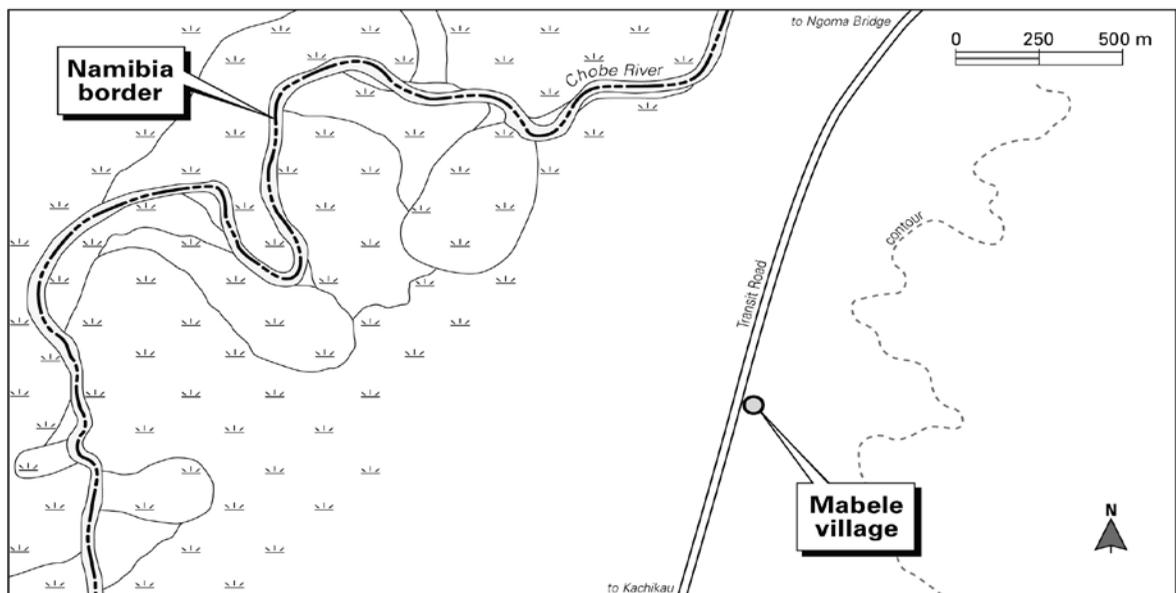
Mabele's proximity to the Namibian border meant that in the early years there had been some conflict over land with the neighbouring Hereros who had eventually returned to Ngamiland.

Changing land allocation and governance procedures

Informants described how land was allocated in the years prior to the Land Board. In the early years people simply identified and made use of land according to their needs as there was little pressure on the resource.

As time went by the *kgosi's* permission was required before land could be allocated, but informants stressed the deciding role of the elders gathered in the *kgotla* and the consultative nature of this process.

The establishment of the Land Board resulted in 'great changes'. Now everybody had to acquire land through the Land Board. The establishment of the Chobe National Park and the Chobe Forest Reserve during the 1960s impacted significantly on local people. Mabele is located on a narrow strip between the park, the forest reserve and the river.

Tsheko, a Muchenje farmer with DITSHWANELO's Richard Kashweeka

Kgosi Yambwa and Rick de Satgé during the focus grouping in Mabele village.

Mabele village – the view from the kgotla towards the river and the Namibian border

Mr K Tidimalo, Land Overseer for Mabele village and villagers gather for focus group session

This affected our pastoral and arable agriculture and restricted our grazing.

(Mabele focus group, 2011)

Informants noted that the Land Board did not automatically issue certificates which recognised people's pre-existing rights in land. In certain instances the Land Board repossessed certain pieces of land if its uses did not fit with the Land Use Plan for the area developed by the Land Board. Informants argued that this plan had not been developed with their involvement and that they had been consulted after the fact. They also criticised the process for registering land rights held by families which predated the passing of land law. People with long term occupation rights were required to go through the same process as those people who applied for new sites. Some people stated that they were not happy with this approach and had not approached the Land Board to formally record their rights. DITSHWANELO expressed concern that there those households whose de facto land rights were not recorded could be vulnerable to land grabs by persons from outside the area.

Of key concern to people in Mabele were the implications of the amendment of the TLA which substituted citizens for tribesmen and which gave Batswana from all over the country the rights to acquire land in the tribal areas irrespective from where they originated. Linked to this was the problem that 'some people in the community are selling land without consultation and as a community we do not condone this' (Mabele focus group, 2011).

One man spoke about how his neighbour had sold land to a businessman who was not from the area without following the procedures set out by the Land Board. He alleged that 'Forms can jump over the land overseer and go straight to the Land Board.' He argued that transactions with outsiders can bring problems for local people as 'lodges and livestock do not go together' (Mabele focus group, 2011).

Generally in Mabele, informants expressed scepticism about the operations of the Land Board characterising it as distant from the people and out of touch with what was happening on the ground. People were critical about how they had to go to the Land Board to address land matters and that officials from the Board did not come to them. They said that there were a lot regulations established by government but that very few of them were enforced.

Although members of the focus group at Mabele clearly recognised and understood the functions of the Land Board and its procedures, they expressed concerns about how local control over land matters had been eroded and bureaucratised and how the current system of land governance had opened up access to land in the area to people from outside at the expense of local needs. Members of the focus group questioned the extent to which the Land Board effectively engages with local people and whether the process of land use planning undertaken by the Board addresses local development needs and priorities.

Assessing decentralised land governance in Botswana

Meinzen-Dick et al (2008: 1) argue that 'it is critical to distinguish among the reforms that are referred to as decentralization according to the type of institution to which authority or functions are devolved.' Their typology distinguishes between:

- deconcentration or administrative decentralisation where authority is retained by the State and accountability is upwards to central government;

- democratic decentralisation to elected local government; and

- privatisation

Democratic decentralisation or administrative deconcentration?

The establishment of the Land Boards in Botswana has long been held up as a model of decentralised land governance. However, our analysis suggests that Botswana has instead put in place a process of administrative deconcentration that saw the establishment of the Land Boards as new local State institutions

which initially marginalised traditional authorities but retained strong upward accountability to central government. The accountability of the Land Boards to the landholders in their area of jurisdiction remains weak. The combination of upward accountability and the opening up of eligibility criteria to allow citizens to access land irrespective of where a person resides has created a space of opportunity for the wealthy and the administratively savvy. It renders the poor more vulnerable to domestic land grabbing in a context where land is becoming an increasingly valuable commodity.

The balancing act

Central government has had to address a range of responsibilities to:

- give effect to the national commitment to develop a liberal democracy which protects the rights of citizens;

- secure the entitlement of citizens to land;

- respond to the need for transparent land governance and administration;

- manage rapid urbanisation and the growing land market in urban and peri-urban areas;

- recognise and accommodate the socially embedded institution of *dikgosi* in Botswana society;

- address growing criticism from minorities that the way in which the institution of *dikgosi* had been constituted in law has privileged the dominant Tswana merafe at the expense of numerous minority and historically subject groups; and

- respond to rapidly changing household demographics which increased the demand by women to be able to access land independently.

Discourses of democracy and citizenship

As we have seen, the establishment of the Land Boards and District Councils was one of the modernising thrusts associated with Independence. Werbner (2004: 110) identifies a post colonial consensus between

'leading politicians, senior civil servants and prominent entrepreneurs' who wanted to overhaul land administration to bring 'the many tribes of the colonial protectorate into one democratic nation under an elected government.' Werbner (2004) cites Masire to the effect that the new system of land governance would end 'the arbitrary decisions of chiefs'.

Initially the TLA was a legal codification of a patriarchal system of land rights management and governance (Kalabamu, 2006). The subsequent amendment of the TLA in 1993 to substitute 'citizen' for 'tribesman' has simultaneously strengthened and weakened entitlements to land. Together with other legislation, the amendment has enabled more and more women to access land in their own right. However, at the same time it has opened to door to outsiders acquiring land in localities to which they had no prior connection or claim. As we see from the Chobe case study this has led to sales of land to outsiders without local consultation, which has the potential of undermining local access to resources and eventually diminishing security of tenure. Persistent concerns emerging from residents in Chobe highlighted the erosion of local control over land matters. They highlighted how wealthy outsiders were gaining access to land at the expense of local needs, sometimes without observing due process.

As discussed above, the system which has been put in place ensures that certificates of customary land rights on tribal land are freely accessible through relatively simple application procedures. There is no restriction on the amount of land for which an individual can apply. The key question is: Who benefits from a dispensation where people can access tribal land in different areas across the country?

Available evidence suggests that it is the political and economic elite who are positioned to secure benefits through the system by acquiring property portfolios of Tribal land and profiting from the developing and trading of these assets, particularly in peri-urban areas.

Likewise, access to grazing land is marked by increasing inequality with a relatively small number of livestock producers gaining exclusive rights on large tracts

Figure 8: Relative Gini rankings per country
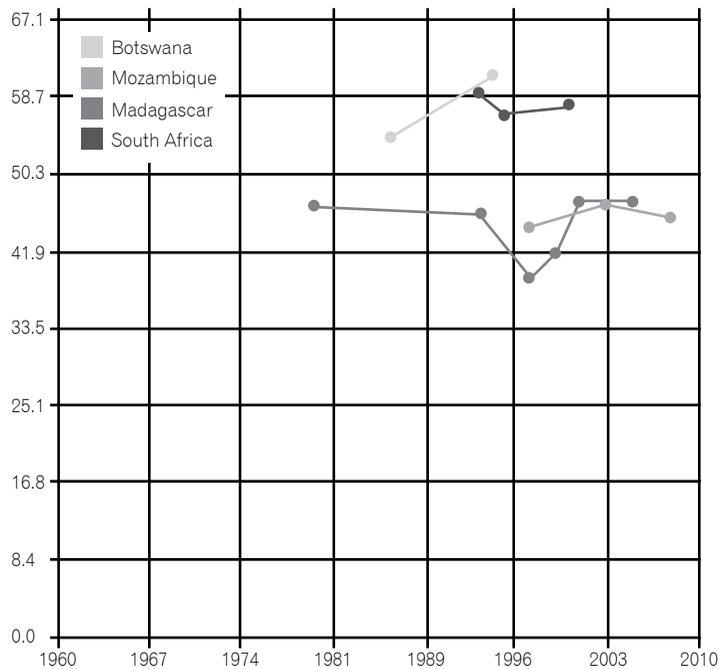
of land – something which favours those who are wealthier and better positioned to meet the application criteria for ranches and farms allocated for exclusive occupation. The absence of a coherent communal rangeland management strategy and the retention of dual rights by those already allocated exclusive rights remain key issues. It remains to be seen how they will be addressed in the recently approved, but unreleased land policy.

Increasingly skewed access to rangeland and trading in residential sites in peri-urban areas are part of a broader pattern of rising inequality in Botswana which has seen the overall Gini index jump from 54 in the 1980s to above 60 in the 1990s. The graph highlights the steep rise of inequality in Botswana relative to South Africa, Mozambique and Madagascar.

Land policy and governance concerns

Contemporary research is increasingly critical of Botswana's land policy and governance (Cullis and Watson, 2005, Werbner, 2004, Peters, 1994, White,

2009). Researchers track the emergence of winners and losers as a consequence of policy directions which favour large stock owners and the enclosure of communal grazing. But there is also increasing criticism of the Land Boards themselves. Werbner (2004: 109- 112) asserts that 'throughout the country... no state agencies have been more controversial and less loved than the Land Boards.' He argues that citizens frequently perceive their actions 'to be arbitrary, to wind through unreasonably long delays between Land Boards and Subordinate Boards, to be contrary to prior understandings of the law, and to diverge from expectations of public order that is regular and predictable.' Other commentators highlight increasing delays in processing applications and a rising incidence of corruption in land dealings (Adams et al., 2003).

While the land users interviewed display detailed knowledge of Land Board policies and procedures, there is a strong perception that the Land Boards are 'up there', bureaucratically remote and promoting policies and practices which seem increasingly out of step with the real needs of the poor. Several users spoke of powerful

people having preferential access to the Land Boards, of procedural shortcuts and 'fronting' activities which favoured those with access to resources, and of planning and allocation practices which did not adequately address local livelihood needs.

Although the Chobe Land Board seemed to manage the process of application for land reasonably well, their capacity to monitor what actually happens on the ground thereafter remains weak. Stipulations about time periods for the development of land are frequently not enforced. Once allocated to an individual, rural land is seldom purposively repossessed. Although kgosi Banika spoke about the shortage of residential sites at Pandamatenga it was evident that there were a number of sites which had been occupied at some point and subsequently abandoned as families moved away. Nationally, information about who owns what and the spatial description of land parcels remains weak despite significant investment in the development of the cadastre. Local land overseers remain important repositories of knowledge, but given some uncertainty about their powers and roles, such knowledge is in danger of being lost.

As land in peri-urban areas and areas with tourism or other economic potential began to acquire market value, it exposed the vulnerability of institutions like the Land Board which rely on upward accountability to persons with the power to exercise undue influence. Irregular land sales in peri-urban Gaborone in the early 1990s involved top ranking government officials and led to the forced resignation of Peter Mmusi Botswana Vice President in 1991 (Taylor, 2005: 4). More recently in Francistown, a Chief Technical Officer in the Land Board is alleged to have colluded with businessmen in the illegal sale of state land worth in the region of 2.5 million pula (Gabathuse, 2010).

But perhaps of more significance than the allegations of corruption is the increasing inability of the Land Boards to manage peri-urban land in the face of accelerating urbanisation which is compounded by the 'lack of data on available and allocated land' (Botswana Council of Non-Governmental Organisations, 2002). State management and control over land allocation are increasingly overwhelmed by informal land occupation as a reflection of popular frustration with the slow pace of formal application procedures.

These problems are exacerbated by dated and increasingly inappropriate land use planning legislation and systems which are out of step with current planning needs.

The role of dikgosi in land governance

Initially the Land Boards began by combining *dikgosi* with elected representatives to make decisions in the new land management and governance system. However, as the Land Boards became institutionally consolidated, so the administrators and officials exercised increasing administrative power and influence. A push to professionalise the Land Boards as an extension of the administrative state marginalised the *dikgosi* who lost influence and representation.

In 2011 it appears that there are new moves to reincorporate *dikgosi* or their representatives onto the Land Boards, which is indicative of changing attitudes in Government to the role of traditional institutions in land governance and management. Partly, this represents expedient recognition of their political weight in Botswana society and the perceived importance of keeping them aligned with the ruling party. However it is also an acknowledgement of the resilience and adaptiveness of these systems and their continuing social significance across the social spectrum.

Of particular interest is the growing challenge from minority groupings in Botswana who assert that the institution of chieftaincy is one which submerged the interests and identities of historically subject groups in the interests of the Tswana majority. This seems to be a growing arena for contestation as minority groups gain voice and influence in the political sphere.

Enabling women to access land independently

Improved access to land by women seems to be an important achievement that reflects protracted lobbying by civil society groupings in Botswana which influenced a favourable policy stance within the state. Griffiths

(2010: 20) makes a compelling argument that 'women in Botswana today are in a much stronger position regarding access to resources, including land, than they were twenty-five years ago.' The policy of government enabling single women to access land in their own right puts in place important social protections.

While there is mounting evidence that women are increasingly able to access land in their own right these gains are partially offset by inheritance law and practice which frequently overlooks the rights of women.

Lessons from the Botswana experience

The case study highlights a number of lessons for policy makers and practitioners advocating decentralised land governance systems:

- Social relations of power in a society shape land use management priorities and policies and influence the design of land governance systems.

- While the Land Boards have brought the State closer to land users, local people's involvement in day to day land governance has receded. Local management systems have been subsumed by the administrative state.

- Central government's retention of key powers and decision making restricts meaningful downwardly accountable land governance and opens spaces for potential abuse of the system.

- The impact of the introduction of various certificates of customary land rights and common law leases has been to regulate new applications for land rather than to record existing land rights. Many people did not feel the need to formally record their existing rights, which rendered them vulnerable to dispossession.

- The role of the *dikgosi* in the land governance system – and perhaps in the broader society remains unresolved. Everything points to the resilient and adaptive nature of this institution. Determining its proper role in a democratic and decentralised land governance system remains a key challenge.

- The decision to enable people to apply for land in other areas other than where the applicant resides opens opportunities for accumulation by those well placed to navigate the land allocation system. Such allocations risk undermining local livelihoods and resource entitlement and enable concentration of valuable land resources in fewer hands.

Figure 9: Changing roles of dikgosi in the land governance system in Botswana

Dikgosi, kgotla and land overseer administer local systems

Dikgosi represented on Land Board. Land overseer retains local knowledge

Dikgosi removed from a professionalised Land Board, Land overseer retained

Dikgosi reintegrated into Land Board functions

Pre TLA   Establishment of Land Boards   Consolidation of Land Boards   New direction
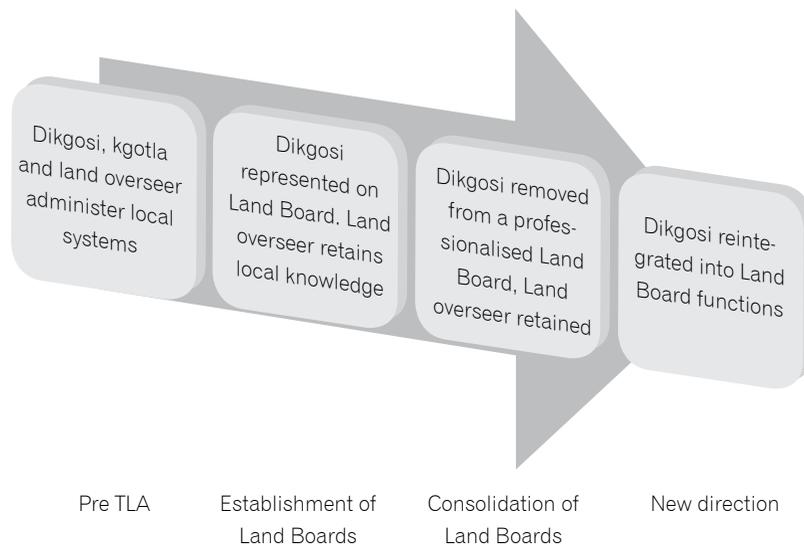
- The limited monitoring capability of the Land Boards undermines the effectiveness of land policy.

- The Botswana case highlights how organisations in civil society play a vital role in policy advocacy – particularly around enabling women to gain independent access to land and in defending the rights and entitlements of vulnerable citizens in a context of rising inequality.

Conclusion

The experiences of Botswana provide important insights into the complexity and contestation inherent in land governance and management. These contestations are embedded in policy, legislation and living customary law and in the power asymmetries between different actors including:

- modernising politicians, many of whom retain interests in livestock farming;

- *dikgosi* who continue to play an important, if diminished role in Botswana society;

- men and women who seek land for different uses and at different scales;

- public servants and planning professionals who govern, serve and mediate between them; and

- CSOs which monitor the policies and practices of the State while advocating on behalf of the poor.

The case highlights the challenges and potentials implicit in any attempt to put in place coherent and equitable systems of land governance backed by robust institutions which are effective and efficient.

As indicated in figure 10, the current balance of forces continue to tip the scales against the interests of the poor. However at the same time there remain important entitlements and areas where real progress has been made.

While the expansion of the tribal land area since independence remains an important indicator of the State's commitment to ensure land access to all its citizens, the manner in which land allocations have been managed has failed to address deepening social and economic inequalities in Botswana.

Figure 10: Assessing the balance

Factors limiting access and undermining security

Poor management of peri-urban land

Land governance system increasingly favours accumulation by few

Dominance of large stock owners

Rangeland management paradigm has resulted in large stock-owners acquiring dual rights – exclusive access to ranches and continued access to the commons

Deconcentrated land governance model limits local accountability and control over land use planning

LAND GOVERNANCE

Every citizen has the right to land

Land application and allocation process is free

Women can and do access land in their own right

Pro-poor influences

References

ADAMS, M., KALABAMU, F. & WHITE, R. 2003. 'Land tenure policy and practice in Botswana - Governance lessons for southern Africa,' Austrian Journal of Development Studies, XIX, 55-74.

AFRICAN DEVELOPMENT BANK. 2008. Pandamatenga Agricultural Infrastructure Development Project: Appraisal Report [Online], accessed on 27 May 2011 at: www.afdb.org/.../afdb/.../BW-2008-116-ENADB-BD-WP-BOTSWANA-PANDA-MATENGAAPPRAISAL-REPORT.PDF.

AMANOR, K. S. 1999. Global 'Restructuring and Land Rights in Ghana: Forest Food Chains, Timber and Rural Livelihoods,' Research Report no. 108. Uppsala Nordiska Afrikainstitutet.

BEHNKE, R. & SCOONES, I. 1992.'Rethinking range ecology: Implications for rangeland management in Africa,' World Bank Environment Working Papers 53. New York: World Bank.

BOONE, C. 1998. 'State building in the African countryside: Structure and politics at the grassroots,' Journal of Development Studies, 34, 1.

BOTSWANA COUNCIL OF NON-GOVERNMENTAL ORGANISATIONS. 2002. Workshop Report on Land Problems in Botswana Particularly in Peri-Urban Areas (Mogoditshane) [Online]. Johannesburg: Southern African Regional Poverty Network, accessed on 8 July 2011 at: http://www.sarpn.org.za/EventPapers/ botswana_may2002/report/page1.php.

CHERU, F. 2005. Globalisation and uneven urbanisation in Africa: the limits to effective urban governance [Online]. California: UCLA, accessed on 2 September 2011 at: http://www.international.ucla.edu/media/files/57.pdf.

CLOVER, J. 2003. Botswana: Future prospects and the need for broad based development. Pretoria: Institute for Security Studies.

COMAROFF, J. L. 1982. Class and culture in a peasant economy: The transformation of land tenure in Barolong. In: WERBNER, R. (ed.) Land reform in the making. London: Rex Collings.

COOKE, B. & KATHARI, U. (eds.) 2001. Participation: The new tyranny?: Zed Books.

COTULA, L., DYER, N. & VERMEULEN, S. 2008. Fuelling exclusion: The biofuels boom and poor people's access to land [Online]. Rome: IIED and FAO, accessed on 2 September 2011 at: http://pubs.iied.org/pdfs/12551IIED.pdf

COTULA, L., TOULMIN, C. & HESSE, C. 2004. Land tenure and administration in Africa: Lessons of experience and emerging issues [Online]. London: IIED and FAO, accessed on 1 September 2011 at: http://pubs.iied.org/pdfs/9305IIED.pdf.

COTULA, L., VERMEULEN, S., LEONARD, R. & KEELY, J. 2009. Land grab or development opportunity? Agricultural investment and international land deals in Africa [Online]. Rome: FAO, IEED and IFAD, accessed on 2 September 2011 at: ftp://ftp.fao.org/docrep/fao/011/ak241e/ak241e.pdf. CULLIS, A. & WATSON, C. 2005. Winners and losers: privatising the commons in Botswana. In: HESSE,

C. & COTULA, L. (eds.) Securing the commons No. 9. Stevenage: International Institute for Environment and Development (IIED).

DATTA, K. & MURRAY, A. 1989. The rights of minorities and subject peoples in Botswana: a historical evaluation. In: HOLM, J. & MOLUTSI, J. (eds.) Democracy in Botswana. Gaborone: Macmillan.

DE QUEIROZ, J., S 1993 Range degradation in Botswana: Myth or reality? Pastoral Development Network Paper 35b. London: Overseas Development Institute.

DEININGER, K. 2003. Land policies for growth and poverty reduction, New York, World Bank.

DITSHWANELO. 2007. Land Rights [Online], accessed on 18 May 2011 at: http://www.ditshwanelo.org.bw/land_rights.html

ECONOMIC COMMISSION FOR AFRICA. 2004. Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa [Online], accessed on 11September 2011 at: http://www.uneca.org/eca_resources/publications/sdd/land_tenure_systems.pdf .

EUROPEAN COMMISSION 2007. Supporting Decentralisation and Local Governance in Third Countries. Tools and Methods Series: Reference Document No2. Brussels: EuropeAid Co-operation Office.

FRIMPONG, K. 1995. ;A review of the Tribal Grazing Land Policy in Botswana,' Pula: Botswana Journal of African Studies, 9, 1- 16.

GABATHUSE, R. 2010. Francistown tycoons in court over land scandal [Online]. Gaborone: Mmegi online, accessed on 8 July 2011 http://www.mmegi.bw/index.php?sid=1&aid=3932&dir=2010/August/Friday6

GRIFFITHS, A. 2010. Paper on Access to Justice and Security: Legal Pluralism and the Changing GenderedDynamics of Land Tenure in Botswana, southern Africa. Access to Justice and Security: Non-State Actors and the Local Dynamics of Ordering Copenhagen: Eigtveds Pakhus and Danish Institute for International Studies, supported by the Ministry of Foreign Affairs, Denmark, Copenhagen.

HARDIN, G. 1968. 'The tragedy of the commons,' Science, 168, 1243 - 1248.

HICKS, K. 1961. Development from Below: Local Government and Finance in Developing Countries of the Commonwealth, Oxford, Clarendon Press

HITCHCOCK, R. K. 1980. 'Tradition, Social Justice and Land Reform in Central Botswana,' Journal of African Law, 24, 1-34.

JONES, B., T. B 2002. Chobe Enclave, Botswana: 'Lessons learnt from a CBNRM Project 1993-2002.

CBNRM Support Programme,' Occcasional Paper No 7. Gaborone: IUCN/SNV CBNRM Support Programme.

KALABAMU, F. 2006. Patriachy and women's land rights in Botswana. Land use policy, 23, 237-246.

MAMDANI, M. 1996. Citizen and subject: Contemporary Africa and the legacy of late colonialism, Princeton, Princeton University Press.

MATHUBA, B. 2003. Botswana Land Policy. International Workshop on Land Policies in Southern Africa. Berlin, Germany

MAWHOOD, P. 1983. Local government in the Third World, Chichester, Wiley.

MEINZEN-DICK, R., DI GREGORIO, M. & DOHRN, S. 2008. Democratisation, pro-poor land policies and democratic governance. Consultative Group on International Agricultural Research System Wide Programme on Collective Action and Property Rights.

MGADLA, P. T. & CAMPBELL, A. C. 1989. Dikgotla, digosi and the protectorate administration. In: HOLM, J. & MOLUTSI, J. (eds.) Democracy in Botswana: The proceedings of a symposium held in Gaborone 1 - 5 August 1988. Gaborone: Macmillan.

MIRAFTAB, F. 2004 Making Neo-liberal Governance: The Disempowering Work of Empowerment. International Planning Studies, 9, 239 - 259.

MORAPEDI, W. G. 2010. 'Demise or resilience? Customary law and chieftaincy in twenty-first century Botswana,' Journal of Contemporary African Studies, 28, 215 - 230.

MOROLONG, S. T. & NG'ONG'OLA, C. 2007. Revisiting the notion of ownership of tribal land in Botswana. in: FOMBAD, C. M. (ed.) Essays on the Law of Botswana. Cape Town: Juta.

NG'ONG'OLA, C. 1992. 'Land Problems in Some Peri-Urban Villages in Botswana and Problems of Conception, Description and Transformation of

"Tribal" Land Tenure,' Journal of African Law, 36, 140-167.

NGCONGCO, L. D. 1989. Tswana political tradition: Howdemocratic? In: HOLM, J. & MOLUTSI, J. (eds.) Democracy in Botswana: The proceedings of a symposium held in Gaborone 1 - 5 August 1988. Gaborone: Macmillan.

NTEMA, O. 2011. Synoptic notes on decentralising land reforms in Southern Africa. Botswana Case. Kasane: DITSHWANELO.

NYAMNJOH, F. B 2003. Chieftaincy and the negotiation of might and right in Botswana's democracy. In: MELBER, H. (ed.) Limits to liberation in Southern Africa: The unfinished business of democratic consolidation. Cape Town: Humans Sciences Research Council.

OKOTH-OGENDO 1999. Land policy development in East Africa: A survey of recent trends. A Regional Overview Paper for the DFID Workshop on 'Land Rights and Sustainable Development in Sub-Saharan Africa'. Nairobi.

OLOWU, D. 2001. Decentralization Policies and Practices under Structural Adjustment and Democratization in Africa [Online]. Geneva: United Nations Research Institute for Social Development, accessed on 2 September 2011 at: http://unrisd. org/unrisd/website/document. nsf/ab82a680579776 0f80256b4f005da1ab/543ffcd9808693fd80256b5e00 3b4e1e/$FILE/olowu.pdf

OOMEN, B. 2005. Chiefs in South Africa: Law, power and culture in the post apartheid era, Durban, University of KwaZulu-Natal Press.

PETERS, P., E 1994. Dividing the Commons: Politics, policy and culture in Botswana. Virginia: University Press of Virginia.

PETERS, P. E. 2004. 'Inequality and Social Conflict Over Land in Africa,' Journal of Agrarian Change, 4, 269-314.

PETERS, P. E. 2007. 'Challenges in Land Tenure and Land Reform in Africa: An Anthropological Perspective,' CID Working Paper No. 141. Cambridge Massachusetts: Center for International Development at Harvard University.

PICARD, L. A 1979. 'Rural development in Botswana: Adminstrative structures and public policy,' The Journal of Developing Areas, 13, 283 - 300.

RANHEMA, M. 1993. Participation. In: SACHS, W. (ed.) The development dictionary: A guide to knowledge as power. London: Zed Books, Witwatersrand University Press.

SHARMA, K. n.d. Role of traditional structures in local governance for local development: The case of Botswana [Online]. World Bank, accessed on 10 September 2011 at: http://info.worldbank.org/ etools/docs/library/153055/BOTSWANA.pdf.

SLOCUM, R., WICHHART, L., ROCHELEAU, D. & THOMAS-SLAYTER, B. (eds.) 1998. Power, process and participation - Tools for change, London: Intermediate technology publications.

TAYLOR, I. 2005. .Growing authoritarianism in the "African Miracle" - Should Botswana be a cause for concern?' DIIS Working Paper no 24. Copenhagen: Danish Institute for International Studies.

THIRKELL, A., J 1996. 'Players in urban informal land markets; who wins? who loses? A case study of Cebu City,' Environment and Urbanization, 8, 71-90.

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME 2008. State of the World's Cities - 2008/2009: Harmonious cities. Nairobi: UN-HABITAT.

VON BRAUN, J. & MEINZEN-DICK, R. 2009. '"Land Grabbing" by Foreign Investors in Developing Countries: Risks and Opportunities,' IFPRI Policy Brief 13 April 2009.

WERBNER, R. 1982. The qausi-judicial and the experience of the absurd: Remaking land law in North

eastern Botswana. In: WERBNER, R. (ed.) Land reform in the making: Tradition, public policy and and Ideology in Botswana. London: Rex Collings. WERBNER, R. 2004. Reasonable radicals and citizenship in Botswana: The public anthropology of Kalanga elites, Bloomington, Indiana University Press.

WHANDE, W. 2009. Challenges to rural land uses and resource management: Rural - urban migration patterns and networks in Southern Africa [Online]. Cologne, accessed on 1 September 2011 at: http://www.raumplanung.tudortmund.de/rel/typo3/fileadmin/download/Conference/programme/Whande_Challenges%20for%20rural%20land%20use%20and%20resource%20%20management_16.09.09.pdf.

WHITE, R. 2009. Tribal land administration in Botswana. Policy Brief No. 31. Cape Town: PLAAS.

CHAPTER 3: MADAGASCAR
by Karin Kleinbooi

Introduction

Madagascar, off the eastern coast of Africa, is the largest island in the Indian Ocean. It extends over 58 040 km², with agricultural production occupying an estimated 5.2% (3.5 million hectares). Large-scale plantations dominate the production of sisal, sugar-cane, tobacco, bananas, and cotton, yet these farms comprise no more than 200 enterprises and occupy less than 2% of the cultivated agricultural land of the country as a whole (Minten, Randrianarison & Swinnen, 2009). Overall, Malagasy agriculture is the domain of small-scale subsistence farmers cultivating mainly rice on less than one hectare (0.86ha on average) of land (GTZ, 2009). Madagascar's economic and social charac-teristics follow most African countries' colonial legacy

of high rural poverty (Minten et al., 2009). The political instability in the country further exacerbates poverty in an already impoverished country (see box below). Both public and private investment has virtually slowed to a standstill, and lack of budgetary and external financing are impeding the delivery of public services, which have fallen into a poor state of affairs (World Bank, 2010).

Madagascar at a glance

Madagascar is a developing country. The Malagasy society is rapidly transitioning from rural to urban, with cities and towns expanding, not only in terms of population growth, but also in terms of space. With rapid urbanisation, many urban areas are expanding and spilling over into the rural areas with noticeable

Box 3: Politics

Formerly an independent kingdom, Madagascar became a French colony in 1896 but regained independence in 1960. The country went through a period 'economic decolonisation' in the 60s. In the period following independence the country went through multiple revolts as a result of ill-conceived economic policies, coups and republics with widely differing stances on land and governance. During 1992-93, free presidential and National Assembly elections were held, ending 17 years of single-party rule. In 1997 Didier Ratsiraka, the country's leader during the 1970s and 1980s, was returned to the presidency and adopted World Bank and International Monetary Fund led policies of privatisation and liberalisation. The 2001 presidential election was contested between the followers of Didier Ratsiraka and Marc Ravalomanana, nearly causing secession of half of the country. In April 2002, the High Constitutional Court announced Ravalomanana the winner. His administration pursued an agenda that sought to reduce poverty and improve governance, respect for the rule of law, economic growth, and market liberalisation. ; Yet while the economy experienced growth, the majority of the population remained poor under his rule. Notwithstanding, Ravalomanana achieved a second term following a landslide victory in the 2006 presidential elections, but was ousted in a coup in 2009.

https://www.cia.gov/library/publications/the-world-factbook/geos/ma.html, accessed 4 May 2011

Republic Of Madagascar (2005) Country Strategy Paper 2005-2009. African Development Bank African Development Fund Country Operations Department. North, East And South Regions August (2005) HYPERLINK "http://www.afdb.org/" \o "http://www.afdb.org/" www.afdb.org.pdf accessed 4 May 2011

Madagascar 2010 Comprehensive Food and Nutrition Security, and Vulnerability Analysis Mission (CFNSVA), accessed 4 May 2011

Box 4: Demography and economy

The Republic of Madagascar has an estimated population of 19,6 million inhabitants (2010 estimate). It ranks among the poorest countries in the world with 69.6% of the population living at subsistence level. While there is indication of economic growth, this benefits the elite and has bypassed the masses. The incidence of poverty is higher in rural areas where 80.1% of the population are living below the poverty line. 35% of rural households are food insecure and 48% are vulnerable to food insecurity. 2 million hectares are cultivated by 2.5 million family farms: Of the total arable land, 5.03% is used for wheat, maize, and rice, (replanted after each harvest), 1.85% is irrigated and 1.02% is under permanent crops (citrus, coffee, and rubber that are not replanted after each harvest).

Agriculture contributes 29,1% of the GDP. 58% of the cultivated land area is used for rice farming. In 2003, about 63% of Madagascar's households (of which 73% of households are in rural areas) were engaged in rice production. Rice paddies often cover no more than a few square meters. According to the Directorate General of the Economy (DGE), all these farms contribute substantially to the incomes of the majority of rural households and generate employment since the farming methods are still traditional and require a massive recruitment of hired labour.

https://www.cia.gov/library/publications/the-world-factbook/geos/ma.html, accessed 4 May 2011

Republic Of Madagascar (2005) Country Strategy Paper 2005-2009. African Development Bank African Development Fund Country Operations Department. North, East And South Regions August (2005) HYPERLINK "http://www.afdb.org/" \o "http://www.afdb.org/" www.afdb.org.pdf accessed 4 May 2011

Madagascar 2010 Comprehensive Food and Nutrition Security, and Vulnerability Analysis Mission (CFNSVA), accessed 4 May 2011

encroachment on rural and agriculturally productive land. In turn, this forces impoverished rural people to move to the cities in search of work as limited areas can be cultivated. This situation is increasing concerns of sufficient food supply (Madagascar Position Paper, 2005):

… the agricultural activities growth is very small compared with demographic growth the productions increased rate will be absorbed by the demographic growth rate…

(Rasatarisoa, 2009)

Similar to other countries in southern Africa, the land tenure and settlement history of Madagascar has combined forms of customary land holding which operate alongside the statutory Torrens system imposed by the French in a bid to protect colonial land interests. Under the principles of the Torrens system, unoccupied or unenclosed land was declared State land, and individuals could gain secured tenure by the registration of land rights via a central land registry (instead of registering title) (Healy, 1998). With a State guarantee of title, all registered owners' claims to land were enforceable against third parties, and owners could lay claim to compensation in the case of state expropriation. Only 20% of land in Madagascar is registered and held in private ownership and is mainly held by expatriates and the Malagasy elite. This constitutes 172 000 hectares of cultivated land. An ambiguous and complex relationship has developed between statutory and customary land governance and administration systems. The remainder of the land is vested in the State and large tracts of land are held and occupied in terms of locally legitimate customary tenure systems (Ramaroson et al, 2010).

The different regimes and the changes to land tenure systems in Madagascar (outlined in Table 1) have had detrimental effects on the Malagasy small farmers. Since the 1960s, small family farm plots (mainly for rice cropping) have remained the dominant feature across Madagascar, the majority of these plots being allocated and held under traditional tenure systems, which has left most of the farmers with limited security of the land they utilise.

Table 3: The different eras of land tenure in Madagascar

Period	Land Tenure and Governance	Decentralisation approach
Era of the Malagasy Monarchy (1810–1896)	The Malagasy monarchy had a significant influence upon land rights. The Monarchy era was marked by dispossession and unification of all land by passing the 1861 land act (Code des 305 articles de 1861) (Bertrand and Razafindrabe, 1997). A related law in 1896 acknowledged land that was already used by inhabitants, and from the day of proclamation, land became the legal property of the user (Rarijaona 1967).	Two types of land holding upheld: the Malagasy monarchy consolidated all land under the monarchy and consolidated control over land (Bertrand and Razafindrabe, 1997). Ancestral land was however later acknowledged and was allowed to be inherited, with customary heads recognised as a vested control (Healy, 1998).
Era of French colonisation, modernisation of land tenure and land dispossession (1896-1960)	A new law, *Article 85 de 1881*, stated that under customary law land could not be sold to foreigners. The French Colonial Government imposed Torrens registration system: the parcelling and individualisation of land into private holdings (*le décret du février* 1911). The first significant move to modify the land tenure system was an economic conference in 1919, which recommended agrarian reform under the guise of land concessions for the colonists and reserved land for the Malagasy (Rarijaona, 1967). The result of French expropriation of cultivable land held by the Malagasy removed almost a fifth of the 5 million hectares under crops (Bastian 1967). Soon after the initial period of land registration, colonial legislators passed another comparable law, *décret du 25 août* 1929, introducing the cadastre to the Malagasy Nation (Rarijaona, 1967). This legal step attempted to enforce the separation between legally occupied land prescribed by State law, against legitimately held land under traditional oral or written laws. However, this cadastral law failed to account for traditional law or the testimonies for inhabitants of the land. The result was a cadastral system, which was inalienable for the livelihoods of most farmers. Land not attributable to an individual was seen as communal lan d with legitimate rights of tenure to access and use resources, such as pasture.	The land tenure system remained centrally controlled for most parts under the colonial government. In 1924 the changed administration gave more power to the chefs de province and the local Malagasy *chefs de canton (*District Administrators). Under the law of 1926 (declaring all land unoccupied or not enclosed as the domain of the State), individuals could apply to register parcels of land within the communal lands of the *fokonolona* (village councils) although land remained under central administration. Yet traditional rights of grazing commons were conserved, and lineage or individual customary rights were respected in principal. However, traditional laws were precarious, particularly when faced with expropriation of land for concessions.

Period	Land Tenure and Governance	Decentralisation approach
Era of Independence and the nationalisation of land(1960-2002)	The government inherited a mutation of land rights. Legislation was passed to protect the rights of both public and private land and the 1896 law and the *décret de 1911*, regarding registration of land. Land registration was introduced in order to further protect public/state lands; land not registered was regarded as state land. Henceforth, an owner had only to present to the Government an endowment for the holding or lot attributed by the *fokonolona*, under l*oi du 15 février 1960* for private lands, without needing to follow the procedure of requisition for land registration (Gass 1971). The State continued to regard all land not registered as land belonging to the State, when its attempts to register customary possessions failed. In addition, in 1974, the State tried to reinforce this policy with the reintegration of under-utilised private land into State holdings, and foreign concessions were suppressed in favour of taxation of unused land, to persuade owners to surrender these areas. With the arrival of the Second Republic in 1976, many French import-export companies were nationalised under a Marxist economic policy. The impact of this led in part, to the exodus of the French and the abandonment of colonial plantations in the south-east, which were later run as state farms (Brown, 1995). In the rural areas, the Second Republic had a severe impact on the small farming communities.	Since independence, the juridical framework has been based on State monopoly and private property attested by title. Parallel to the centralised statutory system, Madagascar has a tradition of limited village self-rule, associated with the institution of the *fokonolona*. After having been alternately suppressed and encouraged by the authorities, the *fokonolona* was officially revived in 1962 in an attempt to involve local communities in plans for rural economic and social development. In 1973 the military regime further entrenched the self-rule concept by establishing self-governing bodies at the local level. Government functionaries who were formerly appointed were to be replaced by elected officials. However it was not until 1975 that the *fokonolona* was given constitutional recognition as the 'decentralized collective of the state'. No land governance mandate was officially allocated to the *fokonolona*.
Era of Land policy reform (2003-2011)	In 2003, civil society initiated national debate about the two parallel land tenure systems (privately and traditionally held tenure). It intensified the appeal for a revised and simplified registration approach that acknowledges land rights based on local allocation practices, which ensured secure tenure on land held under customary systems. A new land policy in 2005 proposed a decentralised land management system. This aimed to promote secure access to land by creating a more efficient legal and institutional environment. The land decree (2005-019, 17 October 2005-commonly referred to as the land policy letter) was promulgated, which changed the principles of the statutes governing land in Madagascar.	The new land legislation (2005–2008) introduced reforms for the modernisation of land administration and decentralisation of land tenure management to local government (communes - *communes rurales*), which mandated the legal recognition of local land rights. This new system was given effect by the creation of local land offices with representation of elected villagers and a municipal appointed official, who are responsible for the registering non-titled private property and legitimising customary holding of land (Burnod et al., 2011).

The changing approach to land decentralisation in the mid-2000s was necessary to address the completely unsuitable of the system of land governance inherited from the colonial period, which could not cope with the magnitude of demand for land rights security (Teyssier et al., 2010). These systemic weaknesses were magnified by the lack of capacity in the administration for land management functions, which contributed to the despair and disillusion of users who sought to have their rights recognized. The country was also in need of agricultural development and rural poverty reduction against the backdrop of increasing competition for dwindling land resources as a result of the rapidly growing population, urbanisation, and land degradation resulting from deforestation - mainly for charcoal production, which many people fall back on as an off-season livelihood strategy (Liversage, 2010). Former Minister of Agriculture, Livestock and Fisheries, Mr Harison Randriarimanana holds that:

Madagascar is an agricultural country and the second motivation for decentralisation was to stimulate local development through decentraliation. In rural areas most of the people live off the land and the majority of the population live as farmers. Both agriculture and local economic development needed stimulation and development.

(Pers comm, 20 April 2011)

Land tenure systems in Madagascar

The two competing systems of land tenure in Madagascar are customary recognition of land rights (a long-standing collective recollection of and use) and the centralised land registry, recognising registered title under government statute. The state system of individual land titling system, based on the law of 1960 which requires registration of land rights, has been centrally managed by government. Hence state tenure systems are governed by written laws and regulations. Communities have clearly defined rules and procedures which resolve civil conflicts, as well as disagreements over access to and control of resources.

By the beginning of the 21st century hardly any land registration had been undertaken and many farmers discovered that their traditional land rights - and their interpretation of who possesses rights to land were not legally recorded and therefore not statutorily recognised (Gezon, 1997). Similarly, numerous incidents of conflicting and overlapping formal and informal land rights were identified. Some land under conflict had been registered (usually village and urban elites) under formal state arrangements individual title but were occupied by informal land users under traditional land rights agreements. Owners of non-titled land were vulnerable to people encroaching on their property and to outsiders purchasing the land through transactions at the regional land administration offices. The lack of administration for rural local land led to parcels of land get smaller and smaller as neighbours slowly stretched the boundaries of their adjacent fields.

At the local level the registration of land was often regarded with either suspicion or indifference. (Evers et al., 2006). Land is commonly acquired through inheritance. Land may also be leased through either formal or informal channels. These formal leases afford indefinite rights to occupy and use the land. In return for leasing, the lessee gives one-third of the harvest or something of equivalent value to the owner. Under customary tenure systems, informal leasing transactions, which were under threat of loss when individual titling came into play, were not officially sanctioned and commonly consisted of a verbal agreement giving the user rights to the land.

Customary land users experienced further increased vulnerability with the intensification of foreign land sales from the early 2000s. Local transactions were then increasingly captured on paper (indicating the identity of the title holder, validation of the title by the neighbours, the estimated surface area, information on the type of land occupancy and use, and the nature of the rights). These local agreements guaranteed a first level of security to land users. So an active land market developed out of a locally developed practice that involved traditional authorities, chiefs and headmen – a system of land management from below, without notification

Box 5: Land reform problems

Over the past twenty years a huge backlog had developed with regard to the recording and processing of land titles in terms of the 1960 law. On average, about 1 500 titles were issued per year. In 2009, over 100 000 submitted requests for land titles were still outstanding. Given the limited resources and the slow rate of processing, it was estimated that the backlog would take more than a hundred years to process (Teyssier 2010). The Government was faced with a mounting land tenure crisis about unregistered occupations - both on 'illegally occupied' state land, as well as (and often overlapping), traditionally acknowledged land occupation with no formal state guarantee (Healy 1998).

to, or engagement by central government. While these local level efforts were being made to register rights, government was transacting land that it claimed formal rights to. The sale and attempted sales of occupied state owned land to external investors led to Government initated concession, such as the South Korea's Daewoo Logistics attempted deal to secure a 99-year lease on 1.3m hectares of arable land -roughly 35% of all arable land- largely for planting corn for biofuels in Madagascar's remote west). These initiatives were one of the factors in the precipitating the national political crisis in 2009, which saw the ousting of President Ravalomanana by opposition leader Andry Rajoelina who became the acting president in 2010. In reforming the land-tenure system, Ravalomanana unilaterally risked farmers' customary land rights and land access by seeking to expropriate land for land deals with companies close to the president, or large multinationals who wanted to commercialise land in Madagascar at the expense of the population.

Changing approaches to land rights and governance

Some suggestions by analysts propose that traditional land management was beginning to pull back in the face of individualisation and privatisation of land and that the Malagasy citizens turned to the State and its land tenure service to ensure their land rights (Pelerin and Ramboarison, 2006). Before land reform was undertaken in 2005, formal land management was the mandate of the Minister of Agriculture, Livestock and Fisheries in charge of the Property and Land Tenure

Services Directorate (National Land Program, 2006). The national capacity to manage land rights was not well developed and relied on the outdated Torrens-inspired land management system, which led to inadequate central state management, leading to:

- a weak and complex registry system (archives had deteriorated, land boundaries were ill defined and portions were often registered to absent and deceased owners);

- overlapping legal and customary holding of land;

- under-resourced institutional authority;

- land degradation (Jacoby and Minten, in Ramaroson 2010);

- escalation in land conflicts over rights, which created a bottleneck in the courts that were also crippled by an ineffective, poorly framed, poorly understood and out-dated legal system (Thalgott, 2009; Rakotobe, pers comm, 20 April 2011); and

- the lack of a strong land tenure system, and ill-defined property rights in general.

A gradual paralysis in registration the cumbersome system for issuing of titles, and the disjuncture between actual practice and recorded rights of title necessitated change in the land administration and governance system.

The registration of land rights was re-emphasised by government. At a local level, formal land registration revived traditional mechanisms and rules to define

community members' access and resource use, and across the country, was implemented by a local informal land right certification process which recognised rights on the basis of land use. These 'informal' certificates (*petit papers*) enabled the formalisation of land rights at the closest point to land users (Teyssier, 2010). In 2003, after a year-long public debate and calls from civil society to simplify the registration practices and recognise locally developed land use rights systems, the Ministry acknowledged these practices and supported their gradual recognition. A multi-representative land policy task force was set up and further debate followed which recognised communities and local governance structures as powerful local decision-makers, that can – in the absence of effective central land management – take responsibility for the land in their areas.

These local initiatives of certifying land rights speedily and affordably provided a positive alternative to cumbersome centralised land management. Without explicit authority or specific skills, communities managed to implement land tenure practices that acknowledge ownership being established 'from the ground up' (Comby, 1998). It was agreed that local municipalities should be granted new powers and functions to give legal effect to managing land rights and undertaking broader management of land under their jurisdiction (Teyssier, 2010).

Land reform

The Letter for Land Policy of 2005 - also referred to as the White Paper on Land Policy - resulted from task force deliberations. The land reform mandated by the land policy letter sanctioned a fundamental shift away from the century old principle of the presuming state ownership of untitled land. Until this shift, only one category of land – based on the presumption that all land belongs to the state - was uniformly applied across Madagascar. The law 2005-019 (17 October 2005) modified the principles regulating the land statutes in Madagascar. From that point on, land that was untitled but developed, cultivated and/or built upon by generations of users was no longer considered as property of the state, but rather as private property. The law recognised de facto land occupation and land use as a

form of ownership. It gave effect to land tenure reform with the announcement of a combined centralised and decentralised land rights recognition system. The centralised land administration retained responsibility for the formalisation of land by titles, while the formalisation of non-titled property through land certificates fell under the jurisdiction of local communes (*communes rurales*) or municipalities.

However the existence of a variety of different landholdings (based on the presumption that all land belong to the Malagasy people), which did not fit into this definition, required that new land categories were developed (Teyssier, 2010). The official land categorisation was amended and currently reflects four different categories of land:

- untitled state land (mainly occupied without legal recognition by the state);

- public state land (i.e. government buildings, roads, etc);

- private property (i.e. titled or cadastral land); and

- protected land (i.e. forests, reserves and lakes).

The results of the new legislation clarified that state-owned land now consists of land registered in the name of a government entity or unoccupied land on which no claims have been made. Thus the State, via the land affairs department (*services des domains*), can neither lease nor sell land that includes or encroaches upon titled or occupied land, apart from exceptional cases when the Council of Ministers can authorise expropriation and due compensation procedures (Burnod et al., 2011).

Decentralised institutional framework for land governance

Institutional shifts

Decentralising land administration was a delayed response to the overall government drive to devolve services to local levels of government. As noted above, the process of decentralisation in land governance

only got underway with a public debate in 2003 and the 2005 land policy underwriting land governance devolved services subsequently followed from this process. The process can be summarised as followed:

National Land Programme

In March 2004, the Ministry of Agriculture, Livestock and Fisheries initiated the National Land Programme referred to as the Progamme National Foncier (PNF) as the main driver to improve land management in the country. . The entire land administration decentralisation process is co-ordinated under the auspices of PNF whose objective is to strengthen not only the administrative structure of land management, but also to provide clarity concerning rights and legal property of land, and to ensure legal security on as much land as possible. Firstly, a primary objective of PNF in simplifying land registration is to create a sound environment for future investments. Secondly, PNF is tasked to reintroduce land tax. Income derived from property tax is the least significant and evasion tax remains a significant problem in Madagascar (National Coordinator of the National Land Program, Mr Rija Ranaivoson, pers comm, 19 April 2011). Lastly PNF is mandated to implement the following key land reform activities:
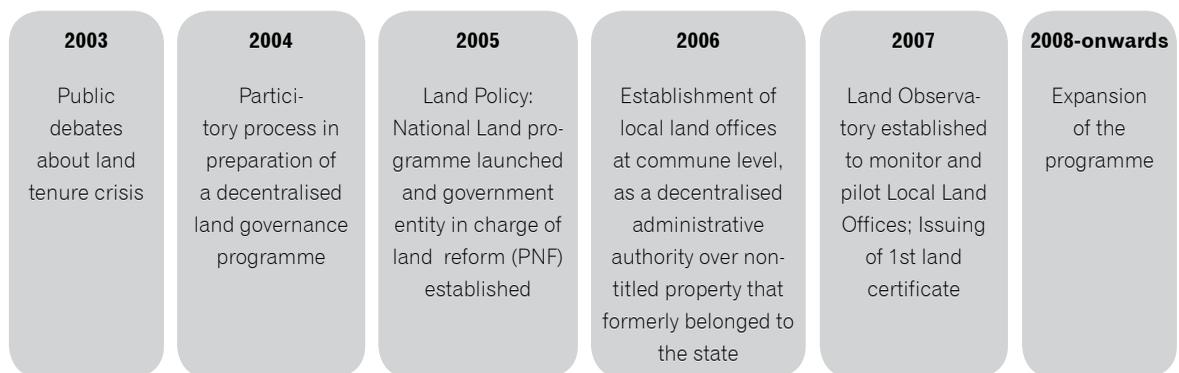
- Restructuring and modernising land registration. Modernisation involves the digitisation of archives and investment in equipment for land services.

The Malagasy Constitution in 1994 was a precursor to the political changes in land administration. This was further underwritten by a national decentralisation policy in 1994 which demanded effective decentralisation and democratisation of all aspects of governance.

- Improving and decentralising land management. This axis involves the creation of land administration at the commune level. Local customary land agreements could then be presented to a local public institution (the municipality or *fokontany*[1]) for certification. These local land offices are authorised to issue and manage land certificates according to the legal procedures, and where local land conflicts exist they are the first point of mediation.

- Renewing regulations pertaining to Crown land use and land tenure, in order to adapt legislation to a principle of decentralisation and to regularise former legal status that no longer corresponds with current land occupation (PNF 2008).

The programme was aimed at not only lifting the country out of the land and property crisis, but also developing the infrastructures for local level land administration. It gave donors an important entry point for supporting pro-poor approaches to land tenure security. Madagascar became the first of the poorest

Figure 11: Decentralised land administration process in Madagascar

2003	**2004**	**2005**	**2006**	**2007**	**2008-onwards**
Public debates about land tenure crisis	Participatory process in preparation of a decentralised land governance programme	Land Policy: National Land programme launched and government entity in charge of land reform (PNF) established	Establishment of local land offices at commune level, as a decentralised administrative authority over non-titled property that formerly belonged to the state	Land Observatory established to monitor and pilot Local Land Offices; Issuing of 1st land certificate	Expansion of the programme

[1]On average there are 10 fokontany (FKT) and 30 fokonolona (FKL) per commune (World Bank, 2003)

countries to sign a $110 million compact with the Millennium Challenge Corporation (MCC), a US foreign Aid agency. Under this agreement the four-year Millennium Challenge Account (MCA) was to focus amongst other issues, on securing formal property rights to land and modernising tenure information in Madagascar. The MCC's efforts to modernise and computerise the Madagascan land administration system were regarded as much needed and were widely welcomed (Economist 2005).

On 7 July 2005 the first Local Land Office was inaugurated. The process of awarding land rights to untitled private property was outlined in Law 2006-31 – which established the legal framework for the establishment and management of the local land offices at commune level. In February 2006 the first land certificates were delivered (Teyssier et al 2008). However, the different axes of the reform did not evolve at the same speed. An assessment of the first year's results of establishing an institutional framework and implementing decentralisation highlighted a number of concerns including:

- follow-up/evaluation of the programme;

- the institutional integration of the coordination unit;

- the role of civil-society in the implementation process (he participatory process between civil society and government were crucial for the implementation of the land policy);

- the financing of decentralized structures; and

- how to scale-up this process

(Pelerin and Ramboarison 2006).

National shifts

In 2008 PNF was institutionalised under the Ministry of Land Use Planning and Decentralisation. On a national level new institutions were put in place to implement the decentralised approach to land governance. These include the National Land Programme (PNF), and the Land Observatory. The national government provides central authority over all land and consists of the

Minister of Land Use Planning and Decentralisation and other land related departments (see Figure 1).

Madagascar's current land administration institutional framework reflects two central pillars under the Ministry's General Secretariat: central government land administration and services included under the General Directory of Land Services (concerned with titling), and the National Land Program and related directories in conjunction with the Director of Reform and Decentralisation of Land Management are responsible for the implementation of decentralisation of land governance (concerned with issuing and managing land certificates). The new institutions and the changed approached were widely welcomed because it equipped a different level of administration with mandates and it realigned government agencies to modernise land administration. The National Coordinator of the National Land Program, Mr Rija Ranaivoson contextualised the problem:

One of the big institutional problems was that land administration was regulated by different departments and we needed to stabilise the institutions to ensure the continuity of the national land program that was established by the Ministry of Agriculture… [who had] no link to the region or the commune and all the land administration services were centralised.

(Pers comm, 19 April 2011)

The director of decentralised land management pointed out this was an important shift in governance, yet he was also of the opinion that it is a long-term process and not yet complete. Local land management had not been totally devolved. The process is therefore in its early stages and viewed as an incomplete process:

Before the Government embarked on decentralisation and land reform the service of registration of land was limited to the one department of land services (i.e. registration of property was compounded in one overtaxed ministry). Between 2006 and 2008 new departments had been established to address the various aspects

Figure 12: Madagascar National Land Authority Institutional Framework
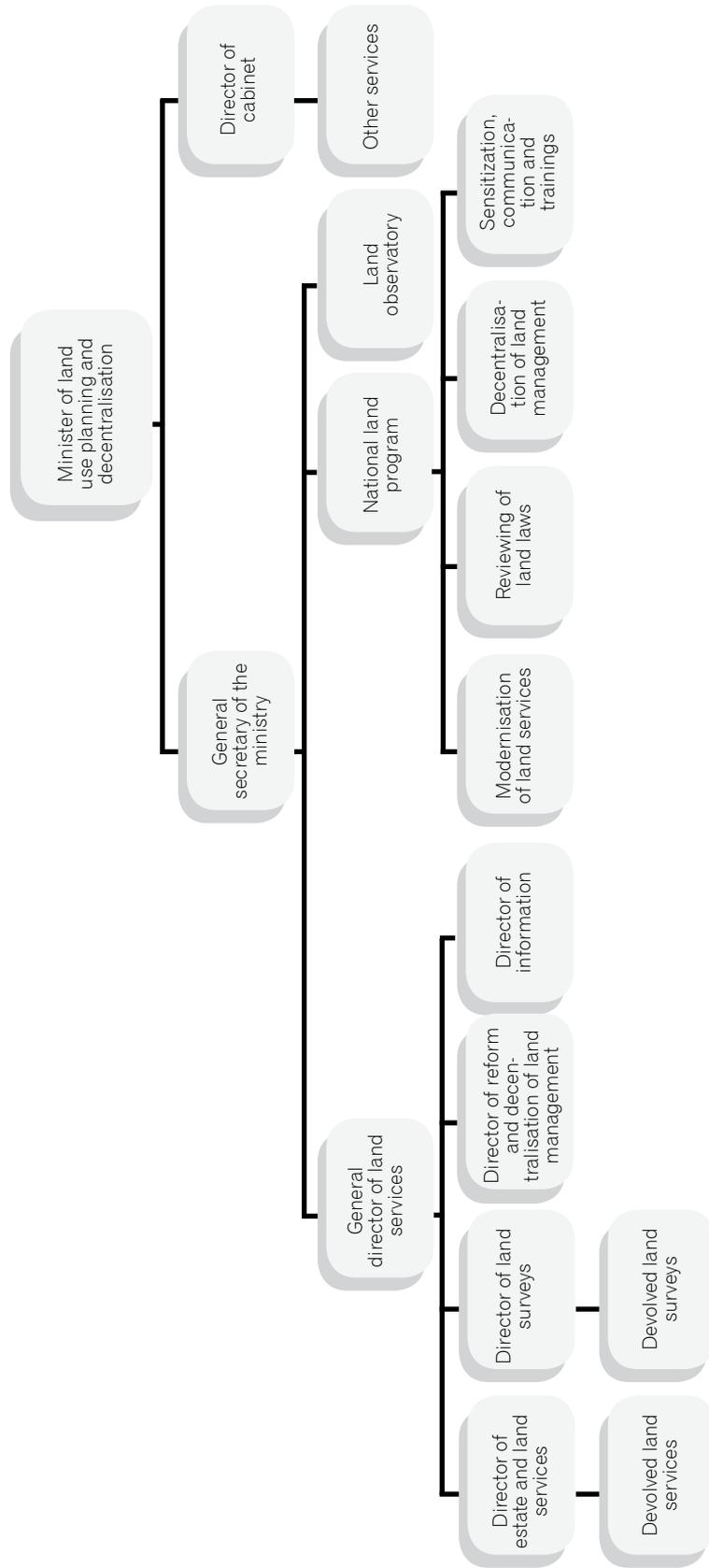
Source: Ministry of Land Use Planning and Decentralization

of registration of land and land management and governance. In the past, land surveys and land assets (real estates) were not under the same minister; some of the services are still not under one directorate but the current processes of reforming land management are aimed at bridging the institutional divides. Decentralisation is a state project and when all the necessary institutions are in place this project will come to an end. Some directorates will inevitably disappear when its objectives of decentralisation has been met. A part of the institutional framework has been set up to establish the correct regulatory bodies

(Director of Reform and Decentralised Land management, Mr Leon Randriamahafaly, pers comm, 18 April 2011)

The fragmented departments contributed to land conflicts and lack of co-ordinated services. With the new institutional framework, it was envisioned that all the different departments with their different operational mandates, would enhance efficiency and effectiveness.

The revised institutional framework further included a new regional level, to replace the former provincial ministry to which the communes would now have a functional relation as the region would be responsible for coordinating communes and deconcentrated services of development at the local level. The decentralised administration system in Madagascar expanded authority and mandates from the central government to the regions (where the land management mandate begins). These are headed by a state representative (the former 12 administrative provinces were absorbed into 22 regions in 2004), the district (where chiefs are to be appointed by the state) and local government structures (where mayors and council members of the communes are elected) are to hold jurisdiction over local land management (including traditional land allocations formerly conducted by village heads). Communes (municipalities) are divided into villages (*fokontany*). At the local level there are some 11 393 villages. The village is the smallest administrative unit, with a limited degree of self-rule under village heads and elders. In

accordance with hierarchical regulation and control, both the region and the commune were endowed a legal personality with administrative and financial autonomy. The latter however is far from devolved in the current process. *Fokontanys*, as administrative subdivisions under the control of the districts, depended on central government and donors to finance the objectives of land administration, since the region is relatively weak financially for responding to commune directives (Radison et al 2009).

The most significant shift in the management of lands was in respect of untitled land in rural areas. The governance of the rural untitled land was placed under the jurisdiction of the commune (municipality). Whereas title deeds are registered in a land register, the rights to use untitled rural land would now be recorded in a commune land use plan (see Land Local Plan for Land Occupation PLOF see pages 61-62 under 'land use planning').

The Director of Estate (state lands) and land services, Mr Petera Ratolorantsoa comments:

The (central) state no longer has direct responsibility towards rural land except in respect of titled cadastral land and disputes over lands that are not resolved at the district level.

(Pers comm, 20 April 2011)

While the process of establishing devolved institutions in all districts and communes is still incomplete, most local municipalities have established decentralised land administration services. This decentralised institutional framework is set out in the Table 2:

Local land offices

Local land offices based in the communes and accommodated by mayors serve several villages and often several communes (where local land offices had not been established yet).

Prior to the 2005 land reform, the communes (municipalities) had very few authoritive powers over land and were mainly concerned with basic service delivery.

(Mr Olivier, General Secretary of the Ministry of land Use Planning and Decentralisation, pers. comm, 20 April 2011).

All local certification processes are mandated by local land offices. For each application, a commission, made up of elected representatives of the commune and *fokonolona*, establishes an official report recording the asserted rights and possible oppositions. The local land office agent then prepares a land certificate (commonly referred to as '*petit papier*') which has to be signed by the local mayor. This process has made it possible for landowners to reduce their dependence on centralised state land-administration processes, and has cut both the costs and the time involved in obtaining legal titles.

At least twelve major donors (most notably the MCA) were involved in establishing communes, with 90% donor funding used to build infrastructure for local land offices at commune level. The local land offices are accountable to mayors who are mandated to appropriate funds for land office-functioning. Financing for local land offices is still unresolved and an ongoing challenge. Local land offices in the 257 communes that received external financing had to take charge of their own costs when international donors retreated from 2009 and extension/technical support services were not yet well-established. Therefore since 2009, government has been forced to give financial and technical autonomy to most local land offices.

Where donors were involved the implementation of the local land offices was supported for the first two years. There is a noticeable difference in the resources of local land offices equipped, where donor funding was involved. Where no donors were involved the municipality had to subsidise the local land office expenses. Where municipalities were unable to support the wages of the local land officers, these officials did in some cases not receive their wages for a long period of time.

(Mino Ramaroson – Hardi-Madagascar Director, pers comm, 18 April 2011)

In the wake of this, two-thirds of the communes had managed in 2010 to maintain their land offices, but funding for on-going technical support, monitoring and training remain crucial if there is to be a sustainable and efficient transfer of skills to the communes. Through the decentralised process, communes are equipped with tools to improve the land administration in their areas, predominantly through land tax incomes and land rights certification.

While donor funding was essential to setting up local structures, the sustainability of local land offices depends on partial or full state support became inevitable when the donor funding came to an end. The additional funding to supplement state support was then narrowly and problematically linked to the generation of local

Table 13: Decentralised institutional framework

Administrative subdivision	Land management responsibility
Central government	Ministry of land and other land related departments
Region (former provinces)	Co-ordinating role for the actors in decentralisation process – exactly what it should be has not been clarified
District	Devolved land management system (land management services)
Commune	Communal land management at municipal office/local land office (decentralised management system)
Fokontany	Elected local recognition committee

Source: Ramaroson et al ILC/PLAAS 2010

Local land offices have four main functions: they legally empower local communities to defend and protect their land rights; they strengthen the role of local government in land management; they provide maps that can help to identify land targeted by investors, competition for land use and potential links between economic activities (agriculture, cattle breeding, wood harvesting, etc.); and they provide a first recourse to authority in resolving conflicts (Burnod et al 2011).

land taxes and the income generated from local land certification. However, the incomes of local land offices vary and can be a problem, where payments for the certification process are not easily recoverable and property taxes are not properly enforced by the communes. Therefore, the main revenue source for local land offices is generated from the state fiscus. The fiscal allocation received by the commune was upgraded from 9 million Ariary (AR) (US$45 299) to 12 million (US$60 399) in the 2011 financial year for supporting the commune to fund the local land offices. The salaries of the two local office officials (around 150 000 AR (equivalent to 74US$) per month/per official - meant to be covered by the revenues raised by land tax and certification) = are increasingly the commune's responsibility although the majority of the communes do not have the financial capacity to cover salaries. However, communes did not receive clear budget prescriptions from central government and increased allocations to the communes' budgets were not always allocated to local offices. Therefore most communes did not know that the increase in the budget was supposed to benefit the local land office management. They were further confused as the communes received this increase in state funding irrespective of whether they had an existing local land office or not. The result was that many local land officers were often not paid for long periods.

Only a few communes can manage the local land office and most mayors argue they need budgetary support to manage and operate local land offices. All communes independently decide on the costs of land certificates for the recognition of land rights. As an elected candidate many mayors do not want to alienate their electorate in fear of not being re-elected and costs are reduced downwards to the detriment of the potential revenue from these land taxes. Income from land certificates is also periodic.

In rural areas many people only applying for land certificate and pay for the certificate fees during harvest periods when they generate incomes.

(Director of reform and decentralized land management, Mr Léon Randriamahafaly, pers comm, 18 April 2011).

Land Use Planning

In 2005 a national land use plan was developed to help shape regional land use planning or '*schéma regional d'aménagement du territoire*' (SRAT) for the proposed fifteen year period. The SRAT extends a mandate to the commune to ensure land use planning or '*schéma d'aménagement communal*' (SAC) and leverages interaction between regional and local levels. Each commune or municipality needs to develop a five year communal development plan or '*plan communal de développement*' (PCD) as a guideline for developing its respective land areas. This process is not yet internalised and uniformly used by all the communes. Only a few of the communes have their respective land use document available or are in a position to update it. Where municipalities have the five year communal development plan, the funding for implementing the projects inside the commune development plan remains a hindering factor. Additionally, not many mayors have the technical capacity to perform such tasks.

As an additional tool to assist communes the Local Plan for Land Occupation (*Plan Local d'Occupation Foncière* - PLOF[3]) was introduced. This tool, developed through participatory local land parcelling, can assist in creating the commune development plan. The boundaries of the certified plots are recorded on the commune PLOF. This acts as a record of the legal status of each plot, its title, and area and by default, the local land office under which it falls. The Local Land

Table 5: The research areas

Region	District	Commune	Category of commune	No. of villages	Population	Areas
Analamanga	Ankazobe	Fihaonana	2nd category (rural)	18	18 600	382km²
Analamanga	Ambohidratrimo	Ampanotokana	2nd category (rural)	29	15 757	115km²

Figure 13: The research areas

Hardi was involved in implementing the second local land office in Miadanandriana in Madagascar. The model of the local land office based on Hardi's and CFA's (Cellule Foncière Alaotra: land centre in Alaotra region) experiences helped the National land programme to promote and further develop local land offices. The implementation of the local land office in Miadanandriana helped to cement the following steps in setting up local land offices:

- Constructing and building the office;

- Data collection on the local land use/occupancy through the computerising of data as a way of record-keeping and to assist in planning;

- The data assisted in drafting a land use and occupancy plan or 'Plan Locale d'Occupation Foncière' (PLOF);

- Local land officials or agents were trained on land statute laws;

- Implementation of citizen mapping (which is a participatory mapping on land use and local land owner-ship recognised by the community); and

- Developing the local land office to look at land as a tool for local development and how to use the local land office service for local development: help in collecting land taxes, in land planning and integrated development schemes

Figure 14: Analamanga Region

Figure 15: Ankazobe district

Figure 16: Ambohidratrimo

Occupation Plan is illustrated using satellite images or aerial photographs of plot layouts, or older technology such as topography, according to reference marks such as roads, rivers, unique trees, rocks, flood banks or rice plantations (Teyssier, 2010).

PLOF gives to the mayor a global view of the area of land occupation in the commune and this is the plan that frames the commune planning for development of the commune. PLOF is also an asset for the mayor to discuss in his relation with the state and the area that can be allocated to investment, not that the mayor can authorsze

it but a dialogue with the commune and the state can be facilitated on this basis. However the PLOF requires technical infrastructure and is not available for all the communes of the country because of the costs involved to purchase the programme and training on it. It is really expensive to update the PLOF because of the lack of computerized baseline data, plans that are damaged and unfinished land surveys.

(Former Minister of Agriculture, Livestock and Fisheries, Mr Harison Randriarimanana, pers comm, 2011).

---

[3]Nearly 300 PLOFS have been developed so far.

Local case studies

Fihonana and Ampanotokana Rural Communes

Two rural communes in the Analamanga region were visited to examine the decentralised land governance system in action.

Ankazobe and Ambohidratrimo districts were visited, which are situated in the Analamanga region extending the North of the capital, Antananarivo. The Analamanga region is divided into eight districts and 134 communes. It has an area of 17 563 km² and a total population of 3 324 887 inhabitants.

Interviews were conducted with respondents from the local municipalities, the local land offices and the local recognition committee. Interviews were arranged and set up through a local land rights non-governmental or-ganisation - Hardi Madagascar - based in Antananarivo. Hardi played an instrumental role in equipping the local land office officials with technical skills through training and information dissemination, building understanding of the law and addressing of local tenure disputes.

Respondents were asked about the current situation regarding land access and security of tenure under customary land ownership, which was now legislated in legal security in the communes of Fihonana and Ampanotokana.

The two sites for the field visit were selected on the basis of their land context: land holdings are divided ac-cording to inheritance rules with share cropping and an on-going legal process to access land by legal individual land titling. Ampanotokana commune is relatively well resourced commune, while Fihonana lacked similarly adequate resource.

 The two communes included in the study are located along the national road which goes to the north western part of the country. Ampanotokana (the commune) in the Ankazobe district is situated alongside the national road, approximately 30km from Antananarivo. Fihao-nana, situated on the Ambohidratrimo district, is further inland and is approximately 60km from Antananarivo.

Commune rurale

The informality and uncertainty of land ownership prevalent today means that poor families in the communes have difficulty in transferring property and are reluctant to invest in improving the land they farm. In addition, many of the poor inhabitants lack other personal assets to enable investments, even if they are willing to do so; and inadequately recorded land assets cannot be applied as loan collateral in formal financial institutions. Consequently, producers cannot access credit to purchase supplies to expand production and reach domestic or export markets. In addition, the land registration system through the central system was an expensive and slow paper system which was largely inaccessible to people living in rural areas, and a reluctance to register land parcels are evident. In the communes, kinship relations continue to underpin local social relations and land holding strongly reflects the cultural identity of sharing land and inheritance. There is no regulation on the size of land you may hold as long as you can prove occupancy. Land parcels are often divided between roads that act as boundaries. In both communes the average landholding is approximately 2- 4hectares. The customary land in the communes is generally comprised of holdings and commons. Holdings consist of rice paddies or agricultural land, individual trees, and irrigation canals. The commons include pastureland, water resources (in some instances irrigation canals), and selected forest lands. Underexploitation of agricultural land is evident in both communes. Less than 7% of the territory from the

communes is cultivated in ther districts, although the areas have potential production development (Radison et al, 2007).

The livelihood foundation in the region is predominantly agriculture, including rice cultivation in lowland. This is also closely reflected in Fihaonana and in Ampanotokana where the most important crops are rice and potatoes, while other important agricultural products cultivated are maize, beans, cassava and sweet potatoes, some eucalyptus and wood for charcoal. Villagers have only one rice harvest per year. In general the rice fields vary from 15ha in the lowlands to an average of 3ha of highlands. Some granite exploitation also takes place. In Fihaonana the established mineral water company is a large employer through the exploitation of the Eau Vive natural mineral water sources. Ampanotokana is in close proximity to the capital and inhabitants are supplementing livelihoods with employment in Antananarivo.

Commune/Local government

At the beginning of 2007, the United States government's Millennium Challenge Corporation (MCC) and the World Bank made funding available for the establishment of 250 communes and supported 90% of the operating costs to pilot the new system (Teyssier 2010). Before the shift towards decentralisation, no land management was conducted on the local municipal level. Yet 80% of land disputes were at municipal level. The central role of the mayor under the new system of decentralised services is therefore to ensure good governance of land and hold accountability for it. There

are currently 312 local land offices for 1 410 municipalities in the country. The mayor Louisette Septor-Rasendravololona of Ampanotokana, also suggests that the new land management statutes mandate mayors to take up this role:

Mayors may be political appointments but this land management is not a political issue and mayors also need to be trained. Not all the mayors have all the information and lack the comprehension of decentralised land management and this is an unhealthy situation. Mayors need to work with the agent and control the land and make sure the sustainability of local land offices is resolved. It is important to provide the basis of decentralised land reform. The mayor may exit but the local land office and agent is a long-term institution so that the process of monitoring the work and enforcement is an important factor. To have the system sustainable and continuous it is not only financial and resources constraints that hamper certain local offices but also capacity strengthening, not only at the local land office level, but also at the municipal level. In terms of the decentralised level it is not just about the local land office service delivery but it is about the municipal approach to land in its jurisdiction. There is still a need to change the attitudes in respect of local land management and to sensitise citizens because people are still cautious and doubting the balanced value of title and certificate.

(Pers comm, 21 April 2011)

Rice paddies in the communes

Fruit stall

Local land offices

The two communes have one local land office each for their areas. The state of the local land office varies depending on the financial resources at their disposal. It was evident that the local land office in Ampanotokana is far better equipped than the local land office in Fihaonana. Local Land Offices (LLOs) are the main tools with which the communes deliver land certificates to poor farmers. Mayors play a significant role in the state of affairs of not only the land management, but also the local land offices. The more dynamic the mayor, the greater the likelihood that the financial situation will be more positive as the mayor, apart from the fiscal allocation, leverages resources from other sources such as international donors. The mayor in Ampanotokana engages Swedish donors to contribute to the operation of the commune and a portion of the funding is inserted into the operations of the local land office. Thus the inequality between local land offices is a remaining legacy from donor influence. This is also evident in the broader roll--out of the local land offices, where donors were involved in establishing the offices. These appear to be far more equipped and resourced with technology to record land pockets, develop a land use plan and keep it updated through computerised data recording, etc. Some offices are under-resourced and this is evident in Fihaonana, and both communes are overburdened and responsible for larger areas where no land office exists yet. Both offices are unable to complete the recording of land pockets and further develop land use plans as a result of incomplete cadastres.

The scarcity of resources often hampers the work of the local land offices.

Local land office in Fihaonana has no electricity and depends on a generator.

The Ampanotokana office is a well-equipped office

Local land official in Ampanotokana with a map of land use in the area in the background

Local land officer and recognition committee

Each local land office employs two officials, commonly referred to as agents by the commune. These officials receive the applications via the local recognition committee. Depending on whether land is certified or not, they would do the recording. When the application is registered it is referred to the commune with a request to the municipality to recognise the application.

Once the application is recognised, a public notice is issued at the commune and displayed in three visible places in the village:

Local recognition committees

The Local Recognition Committees in the villages in the two communes combine the local governance at the village level (where the chiefs are elected) with the state institution at a communal level (where the mayors are elected). These committees (18 in Fihaonana and 29 in Ampanotokana) adjudicate the local land rights of the villagers under their jurisdiction. These are recorded in a Local Plan for Land Occupation (PLOF) setting out certified boundaries and land use (Teyssier et al 2008).

In both communes, members consisting of both men and women are elected at the *fokontany* level, which is the lowest unit recognised by government and includes land user associations. Their election is based on their extensive knowledge of each of the areas in their respective villages and they have the ability to do the work because they are recognised authorities in their villages. The committee has a one year term.

However since election some local recognition committees have not had a re-election.

(Mayor Louisette Septor-Rasendravololona, Ampanotokana pers comm, 21 April 2011)

After the elections the local recognition committee receives a once-off training by the PNF officials. Training includes information about the land law, how the local land office operates, and their role in the land certification process. Further active knowledge transfer continues as issues arise and with the support of the appointed local land officer. The primary role of the local recognition committees is to monitor the land ownership at the local village level, justify ownership with their knowledge of the land in the area, i.e. that land belongs to applicants, record land pockets in respective villages, and mediate at local level if there are land and boundary conflicts.

Notice board at the local land office in Fihaonana

Notification of application for certification at the Ampanotokana local land office

Land application

Land application has increased substantially in the communes although continued sceptism remains about whether the process will provide 'real rights'. The process is however an open and inclusive process:

The land recognition committee is advised to do the recognition process. They are on the field to do the survey (measuring the land, register the boundaries and what is on the field). This is written in a report. When they come from the field they give fifteen) days for people to give opposition, and start the application for land certificates. If there is an opposition they call the committee and send it directly to district councillor. When they receive application they are obliged to put notice up at

Local Plan for Land Occupation in Ampanotokana

three different places. They don't have linkages with the district. If one person doesn't accept the report, that individual has to take it to them. If there is no devolved service in this district, they have to go Antananarivo.

(Local land officer, Ampanotokana, pers comm, 21 April 2011).

The application for certification involves a number of costs.

You have to pay fee for the land because it is still state land because it is 500AR [US$0.25] per acre [0.4 ha]'

(Local land officer, Ampanotokana, pers comm, 21 April 2011).

Fees payable to the local land office for application depend on the size of the land being applied for:

• From 0 -5 acre [2.0ha]costs 2000 Ariary (AR) [US$0.25]

• 6 -15 acre [2.4-6.0ha] costs 3000AR [US$1.49]

• 16 - 99 acre [6.47-40.06ha] costs 5000AR [US$2.49]

• Above one ha costs 10 000AR [US$4.97]. (However, the majority of applications are for smaller plots of ± 50 acre [20.2ha], in line with the dominant small scale subsistenCE farming in the village areas).

An additional amount of 25 000AR [US$12.44] is for the recognition process and a further 30 000AR [US$14.92] is applicable for the land certificate and notice fee. There are periods where no certification of land is requested. This falls together with the harvest seasons. Hence for many inhabitants payments of fees are problematic. While this varies, communes do make concessions and applicants are allowed to pay the total amount over 3-4 periods (normally in line with harvest periods).

This is a rural area and people depend on incomes during the harvest season. The affordability of people to do the certification is an endless problem and we are looking at options so that it is more accessible but people still say they can't afford it. Even if it is free, people will still complain about it.

(Mayor Louisette Septor-Rasendravololena, Ampanotokana, pers comm, 21 April 2011)

Land certification

If applicants wish to apply for the certification of land, the following should be presented to the local recognition committee:

- An identity card.

- Explain the location where land parcels should be certified (who are the neighbours, boundaries, etc.).

- Produce relevant documents that can verify and justify that the land belongs to the applicant, including documents that say that the parcels rightfully belong to the applicant by inheritance (e.g. documents written and signed by all the heirs, a document to prove that he is really the son/daughter/family member of the deceased and that the land belonged to the deceased, and even sometimes, the death certificate of the deceased), and receipt of taxes that were paid on the land.

- The sale contract signed at *fokontany* or commune level if the land was bought.

Certification is the main administrative role of the mayors who - mandated by a certification act - ensure

that all procedures are respected and followed before certificates are issued. To deliver a land certificate, local land officers have to receive the application for land certification, register the application with the commune, and ensure community representation takes place through local recognition committees. This entails physical visits to villages.

Communes appropriate budgets (generally the *per diem* of the recognition committees and other expected costs). The local land officers described a system of reporting to mayors and using the specific monitor tools of weekly meetings to oversee the process (these are not always possible in Fihaonana as the responsibilities of the mayor often interfere with this compliance tool) and report updates.

The report stipulates:

- when the recognition will be;

- who will be in recognition committee;

- notice about decision;

- when the notice is going to be issued; and

- the agent writing a report about conflict and process.

The mayors also monitored the duration of the process, which concluded following the recognition process when the land certificate is signed and granted, the land parcel is registered and the land certificate released. In Ampanotokana and Fihaonana the PLOF is electronically updated because of access to the topographic software.

Land certificates allow for immediate formalisation of transactions such as land sales, inheritances and leases. However the holders of land certificates are provided with opposable rights by third parties (i.e. if an opposing title exists on the land) or where the state implements expropriation (Teyssier et al 2010).

The process of local land certification has delivered, despite the challenges. Previously undocumented transactions are now recognised land transactions (Ramaroson et al, 2010):

Land certificate: cover

In Fihaonana 220 applications were filed and the local land office has delivered 77 land certificates since the beginning of 2011. At least 30 of these were certifications of land applied for by women. In Ampanotokana, 67 certificates were delivered from 91 applications between 2009 to mid-2011.
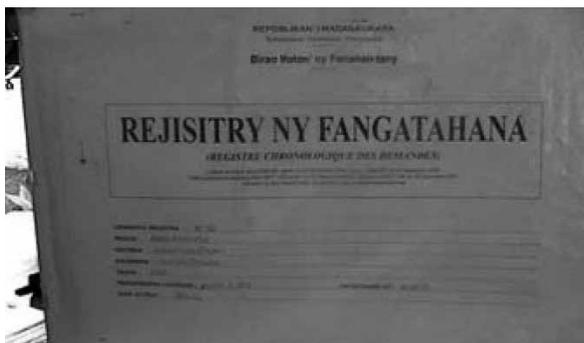
Customary recognition

In both villages local village heads traditionally held virtual control over land distribution. Villagers relied upon the opinions of the elders (mostly men) that land should benefit the whole community. The division and attribution of land were not documented and legitimacy was derived from local honour agreements:

Villagers would meet and discuss land requests and after conclusion hands were shaken and the deals were done.

(Local recognition committee member at Fihaonana, pers comm, 2011)

Land certificate: inside

This reliance on oral agreements is problematic when it comes to being recognized under modern legal land registry systems (Evers, 2006).

Under the new legal framework clarifying existing rights in their diversity and giving them legal recognition helps with the conception of local land rights. Land certificates now endorsed by local land offices are therefore viewed as a long term legal innovation, but for the innovation to contribute to rural people's livelihood it is also conditional to ensuring and crafting regulation institutions that are relevant to the local people.

(District chief, Mr Daniel Rabary, per comm, 18 April 2011).

The former first president of the Supreme Court (honorary title), Mme Rakotobe, who was instrumental in framing the new statute, confirmed that the new framework gives recognition to customary practices in the law:

Land registers at the local land office

Figure 14: Types of local level recognition of land rights

> Social recognition which is the most common form of land holding recognized in customary practices with aspects integrated into the reformed legal framework (law 2005-019), through the establishment of the local recognition committee (composed by elected and recognised elders and leaders of the community, municipal advisors and an administrator)

> Verbal agreement with witnesses: a type of verbal contract between two persons, used in case of for example leases. However this is a problematic claim as witnesses tend to rarely guarantee the transaction and vouch for its legitimacy if and when it was necessary for the social recognition of ownership

> Documented right: land certificate/*petit papiers* (little papers), signed by two parties at commune level, represent ownership of land for people at local level

The law specifically recognised the rights of individuals and groups to unregistered land and so we're seeing the concretisation of land by the users while it gives weight to the ancestor notion [of land holding]. The law on land certification recognises the rights of people who exploited land on a customary basis and provided procedures for land registration which had previously been considered state land.

Hence the decentralisation of land management and the supporting legal framework recognises customary ownership of land which is based on local, ancestral custom rules. Locally recognised use may now be turned into official land certificates and through the local custom system ancestral land can now be protect (sic) against those from outside the kinship of the village grouping who wants (sic) to alienate land. Therefore you can decrease the level of conflict like there was before. The law of 2006 however does not permit grazing land to be registered extending this recognition to grazing land.

(Pers comm, 20 April 2011)

However, at a local level as portrayed by the commune, these where contrasted by a different and sceptical response from those who stand to be affected by legitimising the customary laws as described by the local land recognition committee in Ampanotokana:

Villagers view rights as derived from the ancestors; people therefore believe they already hold 'ancestral' title. Hence for them, the ancestral customary rules and practices concerning land ownership offer sufficient security and protection and therefore they do not see the need for any official proof, particularly where there is a threat that their customary rights may be at risk of being lost where overlapping claims have been made.

Observing similar patterns in the two communes, Evers (2002) suggests that this may illustrate that people see the downside of land registration, - besides the uncertainty of inadequate provision of information about land registration on a local level where land had already been in use by the same families for generations - as a superfluous and expensive tool, which even after land registration has been completed will only lead to added costs due to a land-tax levied by the state, which may be unaffordable to people.

There are many villagers who do not see the need to certify their plots. They may be scared or they are concerned about the costs involved. There are many poor people in our village and they live from the fields.

(Local recognition committee member, Fihaonana, per.comm, 21 April 2011)

Women's access to land

The process of decentralisation holds many benefits but there are still gaps with regards to women's access to land. Customary land tenure practices traditionally resulted in land being passed from father to son. Daughters and other relatives inherited land only in the absence of sons. Although current law states that male and female children have equal rights of inheritance, it is still common for land to be given to male children (Huntington 1988). Women's access to land reflects the tradition of the various regions, e.g. in the highlands, a certain number of women may have the land jointly with husbands and there are more women with individual titles in the central island (four regions). The significance of customary practices, which are deeply rooted, and widely accepted by local population, shapes whether and how women access land. Matrilineal inheritance exists within some groups. The law N° 68-012 of 1968 on Inheritance stipulates that both daughters and sons have the right to inherit equally. Where no clear will exists to indicate inheritance succession of land, it is passed without distinction of sex in a hierarchical family order - i.e. to children; followed by grandchildren; to fathers, mothers; brothers and sisters; children of the brothers and sisters; uncles and aunts; cousins; spouses and if the family does not exist, it reverts back to the state) (Ramaroson, et al 2010). With a rapidly growing rural population, equal inheritance of land may increase land fragmentation as land parcels will have to be further divided to ensure equity. Therefore, equal inheritance is often viewed negatively (Evers et al., 2006; Freudenberger and Freudenberger, 2002).

The common practice is that, despite the legal recognition of women's tenure security, most rural women access land rights through their male relatives, such as their husband, father or brother and where they have been benefitting through inheritance, there is reluctance to take charge of the responsibility of land,and commonly such land is left in the care of brothers when they move to the husbands' villages. Nonetheless, in the event of widowhood or divorce, women retain the right to reclaim the land nonetheless (Leisz, 1998). Where women have land jointly with husbands, Ramaroson, et al (2010) highlights that:

In terms of patrimony and access to land and concerning women's rights in the civil code, it is specified that the legal and customary marriages are recognized by the law. In the law N° 67-030 on December 1967 modified by the one N° 90-014 in 1990, it is stated that in case of divorce, the wife and husband will get the same share. However, because of ignorance, the traditional division in thirds is maintained.

The decentralisation process has made an impact on women's land access and there is a noticeable increase in women's access to land. Of the 45 000 papiers issued by June 2009, 6 100 (21%) were registered in women's names (Teyssier, 2010). Both Fihaonana and Ampanotokana have been proactive and progressive on the women's statute and their rights on land at the commune level although the application of women's land rights varies from tribe to tribe. Migrants from others part of the country, such as the southern tribes, still implement their own customs in their households and smaller communities and there are still women disadvantaged in security of tenure and accessing land independently. There is, however, evidence in both communes that the customary practices have evolved and the women are able to access and own land equally through the inheritance process.

Gender equity has no link to land applications but women do apply. There are many more but not all of them have the necessary official documents such as their identity documents.

(Local Recognition Committee Member, Fihaonana, pers comm, 2011)

Women are still reluctant to certify their rights as a result of custom, but we do see women coming forward to claim certification, mostly out of fear of losing land to someone else in the family.

(Recognition committee member, Ampanotokana, pers comm, 2011)

However, there is still a need to inform some traditional authorities about the recent land reforms and statutory changes described above, and a great need to inform

women about their rights; provide the necessary training to negotiate for these rights and encourage women to make use of the local land offices (Teyssier, 2010). The dominant practice of land access and secured tenure is still viewed as men's business and between the majority of couples, lands are certified and registered in husbands' names (Mayor Louisette Septor-Rasendravololona, Ampanotokana, pers comm, 21 April 2011).

Challenges of decentralised land management highlighted by the case studies and institutional representatives

Capacity of communes

According to the directorate on land management, land management at the local level should ideally be funded 100% by registration fees and land taxation. However, the majority of the rural communes lack sufficient finances, contrary to the expectations that when the land management functions are decentralised, communes would become more self-sufficient. Currently over 70% of the resources of communes are allocated from central government which means communes need to supplement funding with municipal revenues. Yet intensifying their own revenues remains marginal for most communes. There is a constant attempt to balance the revenues with the constituency and the payment of revenues becomes a 'political playball'. The commune councils decide individually on the fees for certification and consider the affordability of this process and re-adjust it as deemed necessary. Land tax incomes are still very low and systematically under-recovered. This under-recovery is also politically motivated. In some communes mayors will retain low property taxes to retain their constituency. For decentralisation to work, revenue mobilisation at a local level is crucial or else there will continue to be a substantial differences between communes, and these local institutions will not be able to upscale local delivery (World Bank 2004). The challenge of increasing the revenue on land is a contentious issue and under regular debate:

The overhaul of this situation needs a shift in attitude and sensitisation on the level of citizenship and their obligation. Some of the revenue raised from taxes and fees is invested in developing land use plans (PLOF), demarcate the land categories and pave the way for local economic development. So in essence it hampers local development.

(Mr Eric, pers comm, 2011)

Rice paddies in Ampanotokana

The local land offices thus remain under-resourced. This is a constraint for local land officers who struggle with, amongst other things, mobility and getting to communes to be present in land meetings at the village level.

We have to go to villages to meet with the recognition committee by foot or bicycle. Some of the villages are 25-30 km from the offices. Similarly when the recognition committee needs to come here, there is not always transport available (local land officers).

(Fihaonana and Ampanotokana, 2011)

Judge Mme Rakotobe warns against the political power at play at a local level, in particular the politicisation of mayoral powers (Pers comm, 20 April 2011). Similarly, both local officials and national officials pointed to the danger of this in land administration service and the incentives to mayors that enable them to hold on to power and authority.

Most official respondents concluded that for implementation of decentralisation to be effective, laws at the local level should effectively mandate total land management at commune level, devoid of politics. In addition, the capacity of local level communes' land competence varies and needs different intensity of investments to bring all of the communes on par. The response from central government is to not completely devolve all aspects of local level land administration and they are reluctant to give up all their powers over land. These points have also been highlighted by the Director of Reform and Decentralised Land Management, Mr Léon Randriamahafaly 2011) and was amplified by the Mayor of Ampanotokana:

The decentralised policy would have to reconsider the training of the mayors, the chairpersons at municipal council level and other councillors that are involved in arbitration of land. They need to be capacitated, and supported to meet objectives or effectively apply their powers to oppose registration where necessary. At each level and for each group needs training and approach.

(Mayor Louisette Septor-Rasendravololona, pers comm, 21 April 2011)

Unresolved land categories

Municipalities have full or total autonomy over land in their jurisdiction with the exclusion of non-titled private land. In Ampanotokana 4% of the land is titled, the rest is non-titled in excess of 100km^2. Of this, 30% of the land is in a cadastral process while 20% is reserved for conservation (forestry). According to the mayor, Louisette Septor-Rasendravololona,

There is a specific landscape that gives the character to this commune and they want to preserve the character of the commune. This may create tension as some of the land that should be under conservation is already under usage and the commune may have to relocate those land users.

(Pers comm, 21 April 2011)

In contrast to Ampanotokana, the picture is relatively different in Fihaonana, where the biggest challenge is the uncertainty of more than 70% of the land in the commune ,due to incomplete cadastre processes. Of eighteen *fokontany*, eleven villages have been included in the cadastre whereas in the remaining seven villages land was part of an unfinished cadastre operation in 1935. While the cadastre is significantly out-dated, the land that has been surveyed cannot be managed by the local land office, and is still regarded as state land. The commune, with the assistance of Hardi, requested the national land authority to be granted a part of this land to be managed under the commune jurisdiction. However the process is still on-going and remains an unresolved issue. The seconded biggest challenge in the commune is the private titled land still owned by expatriates and colonial industries, many of whom left when they relocated back to their countries of origin. (Pers comm, Mino Ramaroson Director Hardi, 17 April 2011).

Land and boundary conflicts

Numerous land conflicts emanate from the local level due to overlapping rights. These include villagers

(commonly referred to as migrants) who urbanised and obtained land in the cities while retaining a hold on land in the villages. Families of such migrants or villagers access large parts of land held in this way through local negotiations by obtaining a '*petit papier*'. The first point of response to conflict is through the local recognition committee who embark on a recognition process of land rights verification based on the customary oral history. When the conflict is not resolved in this manner, the local recognition committee reports to the local land office agent who is mandated to write a report, and and another meeting is scheduled to verify the accounts of all the parties involved. The local land officers try to mediate the land conflicts in the same way.. Following this process the mayor writes a municipal judgment: 'not a decision it is more than that' (Mayor Louisette Septor-Rasendravololona, Ampanotokana, pers comm, 21 April 2011).

The mayor further elaborated that in the event of no resolution, the conflict is taken to the council members of the municipality and the designated councillors make a judgment and decide who will win or lose or they try to negotiate a win/win situation to both parties.

The local court is led by chairperson of the municipal council, two councillors and the local land agent who becomes the secretary. It's a local court and the chairperson makes sure that no one is linked to the people involved. There is no mediation but only judgement based on the document of the land officer and the subsequent mayor's conclusion. The process is fair and just and the chairperson has to be impartial and avoid links. The chairperson is obliged to give a judgment and inform the mayor of his/her decision (judgement). All the involved parties are given 20 days to make an appeal at devolved service level (district) and if there is an appeal the parties go directly to the district court.

(Pers comm, 21 April 2011)

If the conflict is resolved, following the 20 day period, the mayor will sign a land certificate with the judgement of the council chairperson.

The idea behind the decentralisation process is to ease the land certification process so we all have to respect the process. It is a strategic approach that is good for the rural person; it gives willingness to access the service at local level and avoid the time burden.

(Mayor of Ampanotokana, Louisette Septor-Rasendravololona *pers comm, 2011).*

In the event that conflicts are not resolved at commune level the process is moved to the district; if still unresolved, the dispute and legal process around the land conflict go to a court of law.

Migrants

Locally, migrants are regarded as those villagers who have migrated to the urban areas, most often the children of the villagers. They often constitute the current affluent portion of the population who left the village for fulltime, secured employment i.e. professionals, government employees, teachers, etc. While land had been allocated to these migrants ('absentee landlords') through the customary inheritance system, they have often never, or rarely occupied the land and villagers - either without permission or through local negotiations - occupied the land. As a result of their absence, migrants are regarded as 'outsiders'. Tensions between local villagers and so-called migrants have systematically increased with the introduction of local land offices. Gradually, more migrants want to secure their land and register their land rights (Fihaonana, LRC 2011). Local occupiers' security of tenure is threatened by this and these are the majority of locals who take the opportunity to secure their rights. Their claim is based on the Malagasy tradition that by their proven occupation they have been '(i) taking possession of the fruits of the land; and (ii) bearing agricultural risk' which according to their view ensures their legitimate access to the land, as direct cultivators (Bellemare, 2010).

Local judgments over land

The mayor provides the council chair with training on how to make judgements over land disputes under their jurisdiction. Currently 50 judges are looking at the local courts and how they are operating to assess how this can be formalised at local level. When there is any ambiguity in judgements, the mayor will intervene to help in clarifying issues.

Training and information dissemination

In general, all the respondents describe the laws as good laws and achieving the majority of respondents were positive that the objectives of the land decentralisation process are broadly met in its implementation, but since these laws are in the implementation stage, jurisprudence and adjustments are needed. Therefore the practical implementation of laws needs constant systemisation. The legal framework is flexible and you can make certain amendments as long as the **principles on which the decentralised legal system is founded are adhered to.** For everyone to keep up with implementation and its lessons, continued training is needed.

The lack of capacity and the need to build and strengthen capacity at local level is widely recognised as enhancing the local level responsibility and accountability. However a retention problem exists with land agents at the local offices who, after they received training and ,built their experience, leave for greener pastures.

The idea is they have to stay for longer and the land program needs to assess compulsory terms to retain the skills longer.

(Mr. Zo Ravelomanantsoa, pers comm, 19 April 2011)

The modernisation process started at a central level to ensure the land registry is updated, while at this level efficiency is enhanced with technology, local level needs to achieve the same level of efficiency on a broader base, but this is made difficult because resources and skills are not evenly distributed at the commune level. Judge Mme Rakotobe argues that land management decentralisation is in an implementation

phase and lessons are to be learned particularly where legal clarity is needed:

For change to be effective private state land needs clarification of laws. What is vague in the law is the state's right to sell land even if there are people living on the land (Pers comm, 20 April 2011.

Cost of decentralisation

Significant expectations were raised about the system of land titling in Madagascar, yet various role players and analysts articulated concerns about affordability. For a system of formal titling to be effective in rural Madagascar it would have to be inexpensive, yet cost-effective to be worthwhile (Jacoby and Minten 2005). The co-odinator of the National Programme on Land described the challenges of the costs of decentralisation:

At a central level the land reform process by PNF is currently 100% donor funded. The current funding situation is not sustainable and requires application for new funding supplements at intervals. At the lowest level it is a local service and if the management of the commune is not sustainable, the service will not be sustainable. The central state funding remains a necessity. With mayor powers there is also a need to integrate the notion of good governance. It also includes at local level and local authorities to manage their land and it is easier at each level to manage their spaces and land planning.

(Mr Rija Ranaivoson, pers comm, 2011)

The mayor commented:

With its inception land offices were funded by the donor with the goal to later pass the costs to the mayoral budget. It is the mayor who signs the land

certificate and his/[or her] budget comes from the reserves from land taxes.

(Mayor Louisette Septor-Rasendravololona, Ampanotokana, pers comm, 21 April 2011)

The former Minister of Agriculture, Livestock and Fisheries, also raised concerns about the cost-implications of the decentralisation process:

The Ministry made a good progress when they created a decree that the land office cost was tax eligible, but subsequently changed that with a decree that land offices must be subsidised by the government. Therefore the sustainability was about land tax income not about donors. Because the NFP was supposed to support communes in their local land office demands for at least 1-2 years. In 2005 the principle donor MCA retracted their funding and you can see, depending on the capacity and skills of mayor to manage his commune, many land offices are still operating, albeit not all effectively and efficiently. The truth is that the programme has slowed down because the state doesn't have resources to move forward. Creating sustainable revenue to contribute to the operation of land office land is possible when you have an annual tax every year. It needs to be considered as a citizen's obligation. This has not yet happened.

(Mr Harison Randriarimanana, pers comm, 20 April 2011)

There is a big debate in ministry about the sustainability of land office and the local management of land and whether it should be regarded as a public service or as a revenue source. At a local level the cost of land registration and the time had been reduced. Yet communes rely on the revenue from the land office which allows for the payment of salaries and increased operations.

Mr Petera Ratolorantsoa, Director of Estate (domaine: state lands) and land services suggested:

It is necessary to go back to the drawing board and we need to plan according to resources. On the one hand we have a situation where; to get a land certificate one must apply so the work of the land offices depend on demand but sometimes demand is not very big. We have to accept that some people will hold on to customary belief and not certify land for various reasons. The donor issued a lot of funding into the process so the trust and communal ownership of the process is often not there. The country should now customise their own programme and approach to decentralisation to ensure sustainable ownership.

(Pers comm, 20 April 2011)

The Deputy Director in the National land Programme: Modernisation of land services, further suggested:

MCA implemented the work, not only giving directives and plotting the process of decentralisatio,n, but were also involved in the actual implementation. It should have been meeting the communes to allow them to articulate and establish their needs. Yet it became a top-down process and there is no integration of the process by the commune.

(Mr Tiana Razafindrakotohary, pers comm, 19 April 2011)

The former Minister of Agriculture, Livestock and Fisheries, Mr Harison Randriarimanana, 2011, commented critically:

Decentralisation at local level has been started which is a good basis. But there wasn't a political willingness to do the decentralization further down to the village level because it stopped at the commune level. The fiscal decentralisation should have gone to the region but it didn't so the state and the ministry still hold on to its power. All the decisions are centralised at national level. When you look closely at it you have a reversed pyramid. We have a policy which is not effectively implemented at a local level and in a few years we will have another bottleneck.

Key lessons and reflections on decentralisation of land governance in Madagascar

National land tenure transition

The Madagascar land context required a transition in land tenure - with the strong demand for land titles (close to half a million requests for titles annually), limited capacity for deliverance services (in the last 10 years land management staff at central level declined by 25%) and an insufficient budget allocation. Only 330 000 titles had been issued since the creation of the land administration in 1896 and only 1 000 titles had been delivered in the last 15 years before decentralised land management in 2005 (Teyssier, 2010). By 2005, Madagascar was left with only 20% of the occupied land titled due to: the lack of familiarity with land laws; complexity of the individual registration process which required several steps (24 in total); long delays which often spanned several years; approximately US$350 needed to obtain a title; and the bureaucratic requirements for high level validation with too many actors involved

The increasing demand for land services could no longer be held by central government alone. While there had been stagnation at a central level, at a local level there was an active land market and customary practices prevailed in the allocation of land and the validation of land use.

Lessons learned

- A major change to the legal framework took place through a participatory process.

- Decentralisation of land management was consolidated and received a favourable reception from the public opinion.

- The reform benefited from the converging support of political leaders and financial partners. At a national level, there is better streamlining of institutions, policy and implementation processes.

- The Ministry of Land ensured that sufficient support was in place, both institutionally and fiscally, to roll out decentralised services to the lower level.

- Yet at the end of 2008, the Government still needed to resolve land rights involving former colonial plantations, which it wanted to use to develop agribusiness plots for foreign companies and to diversify the agricultural economy.

- The level of control over resources has been retained, despite the devolution of some services.

- The cost of decentralisation was underestimated.

- High cost of initial investment: cadastre, imagery and IT equipment cannot be sustained and applied across a broader base.

- Donor involvement was necessary but also had a negative impact on the process of decentralising land services. Most donors initiated it as a project and not a process.

- Legal constraints, linked to the maintenance of old land rights and the status of domains such as registered indigenous reserves and unachieved cadastral operations, which most communes still do not have the expertise to engage with effectively.

- The difficult relationship that exists between the national land administration and the local land offices, with the land offices putting pressure on the national fiscus and the tensions between power of control (at local level) and power holding the resources (at national level).

- The process is viewed as an institutional process from which lessons would have to be learned.

- Strengthen the on-going process of land reform by consolidating and expanding the network of local land offices.

- A need to modify land fees and land taxes, and the way in which they are distributed between local governments and the State.

Local land administration

The process of decentralised land management came about after a process of political and social mobilisation by the poor and civil society at large, with concerted

efforts to influence political decision-making about land rights and land ownership. Before the process of localising land management, customary authorities played a decisive role in land allocation.

The demand was to reconcile the legal and what was understood to be legitimate, to merge laws that are rarely acknowledged with common practices of 'little papers/informal land certificate' which acknowledged with common practices what had not been legally recognized to by the central land management. The expansion of land authority within local governments provided a basis for taxation. Local land governance and the forms of public participation in the economic, political and social life of the commune have already had tangible and visible impacts.

Lessons learned

- For the commune it increases their value, with increased power, but more work and challenges.

- The local actors who can respond are close to where land needs are identified: the recognition committee, the representative from the commune, and where necessary, the village chief, and all the neighbours and affected villagers are considered.

- However, certification costs are still an obstacle for the highly destitute land users, even at the local level.

- The communes' boundaries are not clearly delimited as a result of the deterioration of land records and landmark plans and this makes it difficult for the communes to identify the land covered by old titles, identify their areas of jurisdiction and agree on the delimitation of boundaries which will enable them to manage the land in their areas. It has been difficult and costly to obtain complete satellite images of some of the areas to create detailed local land-occupation plans (PLOF).

- There are rural people excluded from the process: those without birth certificates and therefore no identity cards, are not allowed to apply for land certificates without the necessary documentation.

- Collecting fees for certification is an incentive to local government to increase the revenue of the communes. This aspect still remains a difficult and contentious issue and varies from commune to commune. The study indicates very little improvement in property tax yields.

- The lack of communication and lack of knowledge of the law may lead to ineffective implementation at the commune level.

- At commune level there is an opportunity for the misuse of the power given to mayors, i.e. in cases of land conflict the procedures are clear but often ignored in an effort to prevent the social impact of land disputes.

- Lack of knowledge may also lead to corruption and exploitation of villagers.

- Weak ownership of the process by certain local land offices. Weak capacity of the communal staff to manage the land offices.

Outcomes

- Recognition of customary land rights and greater security of land.

- A new mode of recognising land rights at the local level is accessible.

- Depending on the region villagers are now able to apply to access credit with their land certificates.

- The level of land conflicts has decreased. For many Malagasy citizens the land certificate does not only provide secured tenure, but also removes the risk of conflict.

- There is a considerable reduction in resources and time, both on the part of land administration and local beneficiaries.

- From the 24 processes involved in registering individual title, the current certification process covers a minimum of 2 stages, with the average issuing time reduced from six years to 3.5 months and the average prices paid by applicants have been reduced from US$ 507 to US$ 24.

Conclusion

Madagascar's process of land tenure transition is a lengthy and statutory process, managed from the centre through a National Land Programme in its attempt to deliver prerogatives to the local level in land management. While levels of deconcentration and delegation are evident in local land management, the challenge that remains is the effective local governance of land by the local communes and their abilities to manage their local land affairs without dependence on the central government. While there is a legal and regulatory framework to implement governance over land at the local level the regulatory framework does not fully ensure accountability and transparency at local level. Notwithstanding the structural impediments to the decentralisation process, there are many positive lessons from the selected case studies which point to the potential of the decentralisation process.

This study provides insights of the role of civil society in leveraging public participation and land reform from below. The voices of local government emphasise that more can be gained from further simplifying arrangements, especially in respect of land surveys and clearer fiscal relationships to ensure sustainability of land services at the local level.

In conclusion, the study highlights voices from central officials, policy makers and implementers suggesting a need for a greater transfer of the competencies to local communes, particularly to increase the limited local revenue collection, and to provide continued and increased support across rural communes until governance over all local land has been strongly established.

The case study highlights the continued need for developing strong local institutions to implement land governance in Madagascar, further reducing central state control over local land matters. While the state, in its efforts to devolve certain functions of land governance to the local level, meets this commitment in part, advancing local democratic land governance hinges on further developing conditions to enable democratic local governance of land in Madagascar.

References

BASTIAN, G. 1967. Géographie de Madagascar. Paris, Nathan.

BROWN, M. 1995. A History of Madagascar. Great Britain, Markus Wiener Publishers.

BERTRAND, A. & Maminiaina, R. 1997. La Problématique Foncière à Madagascar. CIRAD CERG2R. Madagascar.

BELLEMARE, M. F. 2009. 'Sharecropping, insecure land rights and land tenure policies: A case study of LacAlaotra, Madagascar,' Development Policy Review 27(1):87–106. Access on 12 April 2011 at: http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7679.2009.00437.x/pdf

BURNOD, P., RIVO, A. R., AND TEYSSIER, A. 2010. 'Foreign land claims and acquisitions in Madagascar: What reality? What regulations on the ground?' International NVAS Conference on ''Africa for Sale: Analysing And Theorizing Foreign Land Claims And Acquisitions, 28–29 October, Groningen University, The Netherlands.

COMBY, J. 1998. "La gestation de la propriété", in Lavigne Delville P. dir. Quelles politiques foncières en afrique noire rurale? Réconcilier pratiques, légitimité et légalité, Paris, Ministère de la [Coopération/Karthala].

ECONOMIST, THE, 2005. 'Aid to poor countries: MCC hammered'. The Economist, 25 June 25, p.59.

EVERS, S.J.T.M. 2002. Constructing History, the Betsileo in the Extreme Southern Highlands of Madagascar. Leiden: Brill.

EVERS, S.J.T.M., VAN DEN HAAK, M., LINGNAU, I., LOKHORST, N., PRONK, C. 2006. 'National Legislation and Local Practices: Competing Jurisdictions in Land Management in Madagascar,' in: Taloha 16-17, accessed on 11 May 2011 at: http://www.taloha.info/document.php?id=336

FEDERAL RESEARCH DIVISION. 1994. Madagascar Country Studies. Washington DC: Library of Congress, accessed on 11 April 2011 at: http://lcweb2.loc.gov/frd/cs/mgtoc.html

FREUDENBERGER, M. S., AND FREUDENBERGER, K. S. 2002. 'Contradictions in agricultural intensification and improved natural resource management: Issues in the Fianarantsoa Forest Corridor of Madagascar,' in Barrett, C. B., Place, F., and Aboud, A. A. Natural Resource Management in African Agriculture: Understanding and Improving Current Practices, 181-192. Wallingford, UK: CAB International.

GASSE, V. 1971. Les Régimes Fonciérs Africains et Malgache. Evolution depuis L'Indépendance. Paris.

GEZON, L. L. (1997) 'Institutional structure and the effectiveness of integrated conservation and development projects: Case study from Madagascar,' Human Organization 56(4): 462–470.

GLOBAL HORTICULTURE INITIATIVE. 2010. Madagascar Position Paper November 30, 2010. Global Horticultural Initiative Video Conference on Urbanization: Market Opportunities for Horticultural Sector, accessed on 3 May 2011 at: http://www.globalhort.org/media/uploads/File/Video%20Conferences/VC7%20Madagascar%20Presentation.pdf

GOVERNMENT OF MADAGASCAR. 2007. Madagascar Action Plan 2007-2012. Antananarivo: Government of Madagascar, available at: www.madagascar.gov.mg/MAP

GTZ. 2009. Foreign Direct Investment in Land in Madagascar. Division 45, Agriculture, Fishery and Food, Eschborn, Germany.

HEALY, T.M., AND RATSIMBARISON, R.R., 1998. 'Historical influences and the role of traditional land rights in Madagascar: Legality versus legitimity,' Proceedings of the International Conference on Land Tenure in the Developing World, University of Capetown, 27-29 January 1998, accessed on 8 May 2011 at: http://www.geomatics.ucalgary.ca/~barry/Research/Publications/Publications%20Page/PublicationsOnWeb/capetown.PDF

HUNTINGTON, R. 1988. Gender and Social Structure in Madagascar. Bloomington and Indianapolis: Indiana University Press.

JACOBY, H., AND MINTEN, B. 2005. Is Land Titling in Sub-Saharan Africa Cost-Effective? Evidence from Madagascar. New York: World Bank, accessed on 4 May 2011 at: http://siteresources.worldbank.org/DEC/Resources/LandTitles_Mad.pdf

LEISZ, S. 1998. 'Madagascar country profile,' Research Paper 130, Country Profiles of Land Tenure: Africa, 1996. Madison: Land Tenure Center, University of Wisconsin, access on 3 October 2010 at http://pdf.wri.org/ref/elbow_98_synthesis.pdf

MDG MONITOR. 2007. Madagascar MDG profile. New York: United Nations Development Programme, available at: http://www.mdgmonitor.org/factsheets_00.cfm?c=mdg

MILLENNIUM CHALLENGE CORPORATION. 2008. Madagascar Compact Progress, January–March 2009. http://www.mcc.gov/documents/qsr-imp-madagascar.pdf (accessed 12 April 2011).

MINISTÈRE DE L'AGRICULTURE ET DE L'ELEVAGE. 2003. Monographie de la Région d'Analamanga.

MINISTÈRE DE LA DÉCENTRALISATION ET DE L'AMÉNAGEMENT DU TERRITOIRE. 2010. Schéma National d'Aménagement du Territoire, IV volumes.

MINTEN, B., RANDRIANARISON, L., SWINNEN, J. 2009. 'Global retail chains and poor farmers: Evidence from Madagascar,' World Development 37(11), pp. 1728-1741.

PELERIN É, RAMBOARISO R. 2006. 'The experience of the National Land Programme in Madagascar,' in Rapport d'activités of the International Conference on Agrarian Reform and Rural Development, Porto Alegre, Brazil, 7–10 March 2006, accessed on 1 April 2011 at: www.foncier.gov.mg

RADISON, R. C. 2005. Analyse de fonctionnement du périmètre de Mangamila –Mémoire de DEA, Antananarivo: ESSA, Université dAntananarivo.

RADISON, R. C., RAMANANARIVO, R., AND RAMANANARIVO, S. 2009. 'Strategy for sustainable development by land in the Central Highlands of Madagascar,' Territorial Approach From The Communes To The Region In Analamanga. Washington DC: World Bank.

RAMAROSON, M., RAMIARAMANANA, D., RAVONIARISOA, L. 2010. 'Promoting Women's Access to and Control Over Land in the Central Highlands of Madagascar,' Rome: International Land Coalition and Bellville: PLAAS.

RAMAROLANTO, R. 1989. L'accès à la terre en droit rural Malgache. Revue internationale de droit comparé 41(3).

RANDRIANARISOA, C. AND MINTEN, B. 2005. 'Getting the inputs right for improved agricultural productivity in Madagascar: Which inputs matter and are the poor different?,' Paper presented during the workshop Agricultural and Poverty in Eastern Africa, June 2005. Washington DC: World Bank, Cornell University and FOFIFA.

RARIJAONA, R. 1967. Le Concept de Propriéte en Droit Fonciér de Madagascar. Paris.

RASATARISOA, M. 2009. 'Prospective territoriale et commercialisation des produits agricoles urbains _ Cas du deuxième arrondissement de la commune urbaine d'Antananarivo,' Mémoire d'Ingéniorat Antananarivo: ESSA Département Agro-Management, p 53 and Annexes.

TEYSSIER, A., RATSIALONANA, R., RAZAFINDRALAMBO, R. and RAZABINDRAKOTO, Y. 2009. 'Decentralization of land management in Madagascar: Process, innovations and observations of the first outcome,' Paper presented at World Bank Conference on Challenges for Land Policy and Administration, 14–15 February, Washington DC. Washington DC: World Bank, accessed on 30 May 2011 at: http://siteresources.worldbank.org/INTIE/Resources/475495-1202322503179/LandDecentralizationinMadagascar.pdf

TEYSSIER, A., RAHARISON, H., AND RAVELOMANANTSOA, Z. 2008. 'Land reform in Madagascar, or opting for local competence,' in P. Munro-Faure, et al. (eds) Land Reform, Land Settlement and Cooperatives, 34–49. Rome :FAO, accessed on 12 September 2010 at: ftp://ftp.fao.org/docrep/fao/010/a1047t/a1047t00.pdf (accessed 12 September 2010).

TEYSSIER, A. RAMAROJOHN, L., ANDRIANIRINA RATSIALONANA, R. 2010. Des terres pour l'agro-industrie internationale ? Un dilemme pour la politique foncière malgache. Echogéo n°11, décembre 2009/ février 2010. http://echogeo.revues.org/index11649.html

THALGOTT E. 2009. Land Reform In Madagascar, Conference By Eilat 2009 – Israel, Fig Working Week, 3-8 May 2009.

WORLD BANK, 2004. Country Brief Madagascar http://go.worldbank.org/1XJIO19Z90 Accessed 10 April 2011.

WORLD BANK. 2003. Madagascar Decentralization. Report No. 25793-MAG. PREM I. Southern Africa, Africa Region. http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/12/09/000160016_20031209150657/Rendered/PDF/257930MAG.pdf Accessed 13 June 2011

WORLD BANK. 2010. Madagascar Country Brief. http://go.worldbank.org/D41QD46W10

Women paralegals trained by the CFJJ/FAO programme talking to community leaders in Manhica, Maputo Province, on land law and development questions. Photographer – Ruben Villanueva

CHAPTER 4: MOZAMBIQUE

Christopher Tanner*

Introduction

The development of the 1997 Land Law is recognised by many observers as an exemplary model in democratic and participatory law making (Tanner 2002), which in itself establishes the importance of a decentralised and inclusive process when it comes to policy making and legislative development (De Wit et al 2009). The land management and administration system launched by this innovative legislation, including the recognition of customarily-acquired rights and the mandatory 'community consultation' is also widely regarded as an innovative and progressive model for other countries,

embracing participation and negotiation between local people and outside interests, and providing for the devolution of important land and natural resources management functions to 'local communities'.

Other new legislation has in principle given local people a strong role in decisions over development and planning at local level. These laws include the 2003 Local Government Bodies Law, the 1997 Environment Law with its related regulations on Environmental Impact Assessments which require public hearings and provide for legal recourse if local environmental rights are jeopardised, and the 2007 Territorial Planning

Law which gives a role to local communities in the development of 'District Land Use Plans' or PDUTs, the Portuguese acronym.

In an ideal world, all of these measures would of course have been conceived and implemented within a single blueprint or master plan that would ensure their coordinated use and mutually reinforcing use in pursuit of a more democratic, equitable, and just society. Notwithstanding the evident goodwill of many Mozambican policy makers and political leaders, this is unfortunately not the case. In fact, it often seems as if each of these 'decentralisations' has been thought up and implemented by one ministry or department, with little regard for other decentralisation or devolved management mechanisms developed in other departments or sectors.

This chapter looks at the impact of this lack of clarity and the competing forms of 'decentralisation' on local people, using two case studies, and other research material produced in recent years. The conclusion is that there is much in Mozambique that is commendable, and which if properly used, could result in a significantly more democratic, equitable, and economically productive process on the ground. However, understanding how to make all the various forms of decentralisation work together is a major challenge for policy makers and civil society alike. This is especially important at a time when major economic interests are lining up to gain access to local land and the issue of decentralisation and local community rights is evidently something of a constraint when fast-tracking large investors onto local land.

Decentralised land management at community level

The fact that most land administration in Mozambique is handled by customary structures of one sort or another was recognised at the time of the 1995 National Land Policy which duly includes recognition of all customary rights as one of its key principles (Tanner, 2002). These customary structures could in fact be seen as the land administration of the country, with the formal state land administration being something of a bolted-on extra, which is there to respond to the needs of a very limited number of land users. These structures are by definition 'decentralised', at least in terms of the number of places and people in positions of authority – there is neither a 'national' nor provincial customary authority.

Whether or not these customary structures are really decentralised, internally, *viz-á-viz* local families and individuals, is another matter that will be discussed below. But at this point it is useful to set them against the other land administration, the state system, headed by the National Directorate for Land and Forests within the Ministry of Agriculture, and the provincial Services of Geography and Cadastre found in the capital of each province in the country. Even after many years of investment through a range of external assistance programmes, the system is weak and under-resourced, and has great difficulty in dealing with even the few thousand or so land holding units (*parcelas*) that are on official records.

These two factors together – the continuing predominance of customary land management and the weakness of the public land administration - are the reason why the 1995 National Land Policy recognised 'the customary rights of access and management of the lands of rural resident populations - promoting social and economic justice in the countryside' (Serra 2007:27). Today these two factors are still important features of the land administration landscape. The subsequent 1997 Land Law[1] then formally merged this recognition into the overall system of land management and administration, through several key articles. First, in Article 10, it determines that 'local communities' can be titleholders of the State allocated Land Use and Benefit Right (DUAT). Furthermore, all community members are co-title holders, sharing the collectively-held DUAT and also having the right to participate in how these rights are used and disposed of by following detailed provisions in a specified section of the Civil Code.

---

[1] Law 19/97 of 1 October. The 1997 Land Law is now officially translated into English (see the government website www.portaldogoverno.gov.mz) and six local languages (available through the Centre for Juridical and Judicial Training (CFJJ) in Matola, Maputo Province.

Secondly, in Article 12, the Land Law states that the DUAT can be acquired in three ways :

- occupation by individuals or local communities according to customary norms and practices (historically or culturally acquired rights);

- occupation in 'good faith' (occupation that is unchallenged for ten years); and

- a formal request to the State for a new DUAT.

In this way, rights acquired by custom and those that are allocated by the State structures are legally recognised as DUATs, and each right is identical to the others in terms of its legal weight and validity.

Thirdly, in Article 24, local communities 'participate a) in the management of natural resources; b) in the resolution of conflicts; c) in the titling process [with reference to the issuing of *new* DUATs]; and d) in the identification and definition of the limits of the land which they occupy'. The same article then adds that 'in exercising these responsibilities' they 'use, amongst other things, customary norms and practices' (Serra, 2007:21).

The entity which exercises these rights and 'manages natural resources', the Local Community, is a circumscribed territory defined in Article 1, Number 1 of the Land Law:

A grouping of families and individuals, living in a circumscribed area at the level of a locality or below, which looks after common interests through the protection of areas of habitation, agricultural areas, be they cultivated or in fallow, forests, sites of cultural importance, pasture, sources of water, and areas for expansion.

This definition of the local community is tied to the underlying notion that rights are acquired by occupation, by in effect establishing the basic parameters of 'occupation', not in a direct physical sense – cultivation or a field or the presence of a village – but by reference to the social and agro-ecological system through which this 'grouping' occupies a given area. It follows that once the limits of this system are identified (and if

necessary, registered), it can incorporate a very large area indeed, including land in fallow, communally used resources like forests, wetlands or grazing, and even 'areas for expansion'.

These articles, taken together, effectively integrate both customary rights and the management systems which allocate and administer them, into the formal land administration of Mozambique. In one sense, the line around the Local Community is the point at which the two systems merge. Indeed, it can be argued that within the Local Community, local leaders exercise a key role of the State, insofar as they allocate what are in effect DUATs to local families and individuals resident in the communities, and subject to their specific 'norms and practices'. This is indeed a highly devolved system, and if effectively implemented, should give local people considerable control over who can come into their midst and gain access to and use land.

Defining the local community on the ground

A Local Community is identified on the ground (and then registered in the Cadastre) through a highly participatory process called 'delimitation' (Tanner et al., 2009). Neither delimitation nor registration of the acquired rights that are proven and 'delimited' in this way is mandatory. However it is recommended in priority situations, including when a new investment project is planned in local community areas (Technical Annex to the land Law Regulations, Article 7). The process also confirms the legal personality of the community in a concrete and tangible form, including formally registering the name of the community. A 'local community' can subsequently enter into contracts with third parties (such as investors) and open its own bank account.

The average cost of a delimitation is around US$7 000 per community (CTC 2003). This might seem high, and a good delimitation will take some time, but it does provide low-cost protection for many households at once and for all the members of a community. Delimitation, when well carried out, is also a powerful tool in the *process* of effective decentralisation, as it identifies and consolidates a local representative structure that

must include 3-9 people chosen by the community and which must include women. These 'Land Committees' (or 'the G-9' to use a popular NGO term) do not have to be customary leaders, but chiefs are often present or delegated younger lineage members who may be literate and can deal more effectively with the outside world. The process has a strong legal empowerment and civic education impact, by making communities more aware of their rights and helping them to evaluate and plan how to use their resource base. It also offers the additional advantage of providing a perfect opportunity to draw up a local land use plan, and making communities aware of both the potential of their land for their own or investment use, and the fact that they can negotiate with outsiders over access to this land.

It is important to note that the Mozambican model does not divide the country into 'community' and non-community or 'commercial' areas. Indeed, if the definition in the Land Law is followed to its logical conclusion, then the whole country is 'occupied' by local communities, This *de jure* occupation – which by law translates into the presence of customarily-acquired DUATs in most areas – does not block investment into these areas. The so-called 'open border' model of a local community was formally adopted in a national conference in 1998, and establishes the principle that land inside a delimited community (or inside a non-delimited one for that matter) *is available to investors and others from outside the community*, subject to a community consultation being carried out and the District Administrator then determining whether or not the land request should go ahead.

The fact that an investor must carry out a community consultation is a strong, practical affirmation of the devolved management powers given to communities under Article 24 of the Land Law. Notice however, that the District Administrator in fact has the final say – the community is *consulted*, but in theory it can be overridden if the Administrator feels that there are good reasons for doing so (a project being 'in the national interest', for example). Although a clear community 'no' would be hard to ignore, this is nonetheless a clear limit on the effective level of power decentralised down to community level.

New rights requested from the state and community consultations

While Local Communities continue to manage and administer the vast majority of land rights in Mozambique, the State system does have the key and sole responsibility for allocating new DUATs to investors. These can be nationals who have no social ties to the community in which the land they want is located, or foreigners.

Land for investors has always, in effect, been removed from customary control through formal survey and registration, going back to colonial times. The 1997 law continues this approach. Investors looking for land must find an area that has already been taken out of customary jurisdiction – today these are old State farms, previously colonial plantations, and other 'properties' with their origins in the colonial era - or they must find the land they want in areas that are very likely to be community-managed under Article 24 of the Land Law.

While land that is already alienated from community jurisdiction is mainly a government-investor affair, the Land Law obliges investors to get the approval of local people in both situations. This is also important because many old properties have been abandoned for years, and have been progressively re-occupied by local residents, who always claim either a previous historical right, or a right acquired by 'good faith' occupation according to the 1997 legislation. The reality therefore is that in nearly all cases of new investment projects, the investor must initiate a process that begins with a community consultation, and if successful, will end with them being allocated the DUAT which initially was held by the local community. Note however that there is no legal guarantee that the process will result in local approval if local people need the land themselves or do not like the look of the investor.

The 'community consultation' process is laid out in the Land Law and its Regulations. It is short on detail however, and many consultations are in fact poorly carried out, with unfortunate consequences for subsequent relations between locals and their new neighbours and for the real benefits which should accrue to the

community (Tanner, Baleira et al., 2006). Concerns over the consultation process have resulted in new legislation recently being passed which strengthens certain aspects, but also weakens the decentralised power accorded to local people under the original legislation. Nevertheless, the procedure is still best understood in terms of two nested levels of engagement with the community.

At the first level of engagement, the principal objective is to ensure that the land being requested by the investor is 'free from (local) occupation'. However, most land is not in this state, if we accept the system-based definition of the local community and its subsequent 'occupation', even of apparently unused land. The process then moves on to a second level of engagement, which accepts that the land is occupied and is then intended to secure access to the land   through a consensual process that determines a 'partnership' between the investor, and the 'holders or rights acquired by occupation', or in other words, the local community and its members (Land Law Regulations, Article 27).

This process is overseen by the public land administration and the local government of the District (or Districts) in which the land is located. All DUAT requests must also be accompanied by an investment proposal or project, approved by the appropriate sector ministry and the Centre for Investment Promotion of the Ministry of Planning and Development. But most importantly, the application must be accompanied by a District Administration statement about the community consultation. This should say either that the land is 'free from occupation', or that the local community will cede its rights for an agreed package of benefits. Without this, the process cannot go ahead.

Decentralisation of Public Administration

Since the Land Law was approved in 1997, Mozambique has also been going through a long process of administrative decentralisation, formally set into motion by the 2003 Local Government Bodies Law. This legislation has introduced a series of measures to devolve certain administrative powers down to district level, and to

create local representational bodies in the form of District and Local 'Consultative Councils'. This process has also included complementary legislation, Decree 15/2000 of 20 June, which approves the way in which local government bodies and 'community authorities' interact, the latter being 'traditional chiefs, village secretaries and other leaders legitimized as such by their respective local communities' (Serra 2007:197). The Decree then goes on to say that 'once legitimized' (i.e. selected by the community), the 'Community Authorities' are 'recognised by the competent representative of the State.   They then have a kind of go-between role between the State and their 'local communities'. On the one hand, they represent community interests in dealings with the State, and on the other, they act as a conduit through which state programmes can be disseminated at local level and implemented by local people.

The district figures centrally in current government policy as the pole of development, and a number of other important initiatives have been introduced to promote this vision of locally driven development. Most significant amongst these has been the Local Initiatives Budget, popularly known as the '7 millions', which for several years now has been allocating 7 million meticais per year (about US$250 000 at current exchange rates) to every district in the country. This money is managed by the District Government and is available to both local government and the private sector for projects to address local infrastructure needs and boost the local economy.

As noted above, the 'Community Authorities' are not necessarily traditional leaders. In rural areas however, they tend to be the senior chiefs who head the various clans and ethnic groups that are found across Mozambique. In most areas these chiefs are called *regulos*, a term dating back to colonial times, but in some northern areas they are called '*sultão*', or sultan, reflecting the stronger Arab influence in the north of Mozambique. The areas under their control are thus *regulados* or *sultanatos*, respectively. Most of these senior chiefs are men, and while they are clearly more 'decentralised' than for example, the public land administration, the way in which they exercise their role is not

always that decentralised in practice. Even in smaller communities questions can be asked about how much internal 'consultation' actually goes on between these leaders and those they are meant to represent.

This is very clear, for example, in a recent research study of the consequences of a delimitation and community consultation process carried out ahead of a large forestry plantation initiative in Niassa Province. In spite of the best intentions of the investors to follow the law and work with local people, it has since become clear that the level of *internal consultation*, especially between the 'community authorities' and the more distant villages within their territory, was very weak. Conflict and tension are now very evident as the investors move in to clear local land and plant their trees (Akessön et al., 2009).

The community leadership in the administrative decentralisation context is therefore a very different creature to the locally elected 'G-9' or group of community representatives who act for the land-rights holding community in matters to do with the Land Law. To begin with, Community Authorities represent a 'local community' that is in fact much more of a political or administrative constituency, with its own specific legal definition: 'the groups of populations and collective entities found in a unit of territorial organisation, namely a locality, administrative post and district' (Serra 2007:198). Thus the Community Authority is   a public figure, doing public things, and may be quite removed from the 'Local Community' that is the DUAT holder in an area that is subject to a new land claim. Their public role is indeed confirmed by their formal recognition in a public ceremony presided over by State officials, at which they are presented with special uniforms, and various badges and other symbols of the State and of their office. This formal recognition also compromises their independence *viz-á-viz* the State, and the extent to which they are truly able to represent their constituents.

A clash of decentralisations

The distinction between public or administrative decentralisation and the land management / land rights

decentralisation of the Land Law is extremely important, and often – indeed nearly always – overlooked. There is a clear tendency to mix the two together and for public agents – the cadastral service assisted by the District Administration - to do 'community consultations' under the Land Law only with 'Community Authorities' recognised through Decree 15/2000. Indeed at one point, cadastral service officers were explicitly instructed by a previous National Director to carry out consultations only with the Decree 15/2000 community authorities[2]. In reality however, the Community Authorities are not necessarily representative of the *rights holders* of a particular land-occupying Local Community where a project is proposed. This is a significant source of conflict in areas where local people feel that they in fact have not been consulted before investors move in (Tanner, Baleira et al., 2006).

Government has also clearly been concerned by the fact that Local Communities in the Land Law context are apparently in control of very large areas, which are not wholly utilised and under more intensive forms of production. It is also evident that many in government do not understand the principle of the 'open border' and are concerned that delimited land with a community 'Land Committee' is somehow taken out of the pot of land available for investors. Delimitation, and the whole panoply of devolved land management under the Land Law is then seen, not as positive elements for equitable development, but as obstacles to investment and to getting national resources into production.

One result of this has been recent new tinkering with the legislation, introducing revisions to Article 27 of the Land Law, for example, giving what is effectively a decisive role in the community consultation process to the members of the Local Consultative Councils created under the 2003 Local Government Bodies Law. These of course, are primarily the Community Authorities chosen under Decree 15/2000 and formally recognised by the State. Therefore, although the Councils are nominally 'representing' local interests, they do not include the real leaders of the *rights holders* affected by a proposed project or investment scheme, and in fact introduce a

---

considerable element of State control or at least over-sight, into the whole 'community consultation' process. Rather than easing tensions and making consultations more effective, these changes risk worsening the situation.

Changes of a similar order have also been made in other Land Law regulations, such as revisions to Article 35, to increase the control over the State over the community rights registration process, and a new recent Ministerial Diploma (No 158/2011 of 15 of June),which details how consultations should be carried out. None of these changes has involved the same level of consultation with civil society and stakeholders that characterised the original Land Law process and all have caused considerable and negative reaction amongst NGOs and others who have worked to implement the decentralising and democratic elements of the Land Law since it was approved.

Case studies

Mozambique still offers an excellent policy and legal framework for resolving the complex relationship between local people with customary land rights and investors seeking land for new projects, often with state backing. Its rights-based and participatory approach, with a significant element of devolved management to local level, allows both negotiation and consensus building. Implementing this approach has not been easy however.

The two case studies below illustrate the potential for success and failure when the model is implemented, especially when a weak State system has the prime responsibility for making it work. To paraphrase the title of the Niassa study referred to above, the question is not 'to decentralise or not', but rather it is 'about how it is done'.

The Mahel Game Farm[3]

The Mahel area in Maputo Province is close to the border with South African and is a sparsely populated region where local people survive through a mix of rain fed agriculture and livestock with grazing over large areas. In 1999, the National Directorate for Forests and Wildlife (DNFFB) chose the area for a Food and Agriculture Organization of the United Nations (FAO)-supported Community Based Natural Resource Management (CBNRM) project. DNFFB wanted ways of involving communities in natural resources conservation and management and to see how to promote investor access to underused resources without undermining local livelihoods.

Initial evaluations included inventories of forestry and medicinal plant resources and wildlife diversity. In May 2000, an area of 30 000 hectares was delimited in the name of the Mahel Community and registered in the National Cadastre, and a Community Management Committee was established. The potential for a commercial game farm project was then evaluated. The resulting report (Anderson and Magane, 2000) concluded that:

- The Mahel offers excellent habitat for game farming.

- Effective commercially wildlife management can improve local livelihoods.

- The community must have ownership of the rights to the game farm resources.

- Viable projects should be planned in which investors form partnerships with the community and supply capital and expertise for development and management.

A project proposal was prepared, for an area of 13 500 hectares within the greater community area (Dutton 2001). A USAID project supporting business initiatives in areas around the transnational conservation area linked to the Kruger Park - now the Limpopo National Park - then supported an ecological, technical and financial feasibility study which showed that the area could support a project which would raise a mix of

---

[3] These case studies were originally written by the author for a World Bank publication on investor access to local land, soon to be published. Acknowledgement is made for allowing their use here.

cattle and introduced game animals - impala, kudu and giraffe (Estes, 2002).

The region was already attracting interest from investors, but the first concern of the DNFFB Steering Committee was the legal framework within which a partnership would operate. This was at an early stage in Land Law implementation, and new legislation on Forests and Wildlife had also only recently been approved.

The Steering Committee decided that the project would test the new laws in a practical setting and establish important precedents. A second FAO project at the Interministerial Land Commission was then asked to propose how a community-investor partnership could be established, and work in practice. The following steps were identified:

i.   Raise awareness (selling the idea to local people – all of them, not just leaders).

ii.   Identify the extent of local use rights and how the community manages them.

iii. Do a community land rights delimitation.

iv.   Clearly identify the specific area and resources to be used by the project.

v.   Obtain a title document (*título*) over this area, in the name of the community (i.e. register the customarily-acquired DUAT, which requires precise surveying and cement border markers, and is expensive).

vi.   Consider creating a community association/trust/enterprise to work with the project.

vii. Create a detailed joint-venture agreement between the association and the investor.

viii. Proceed with the investment.

ix.   Provide capacity-building to the community to manage and use income generated from the investor agreement, in pursuit of local development goals.

The FAO report (2003) also identified a series of partnership models, which were later discussed in several village-level meetings to explain the implications of each arrangement. Local people were then given the chance to discuss amongst themselves which would be the best model for the specific circumstances and existing capacity to engage with an outside investor, in what for them was a very new activity These models are still in use today (CFJJ 2011:109-111) and serve to illustrate the range of different agreements which are possible. The community response was clear: it wanted control over the process; it wanted to be able to renegotiate with, or expel, the investor if things did not work out; and they were well aware that they did not have the know-how and experience to become joint-venture partners or employ a manager. Most of all, however, they did not want to give up their DUAT. After much discussion, the community chose what was basically a long term rental agreement, which was seen as the most straightforward option (DNFFB, 2003). At the same time, the inherent weaknesses of the community were also clear, and the Steering Committee agreed that funding should be found for a community support project that would build local capacity to contribute to the agreement and to use the new resources it generated.

The assumption by the Steering Committee was that the investor would be attracted by not having to worry about finding and securing land, a point that has more recently been reaffirmed in the context of the 'Community Land Initiative' project which funds community delimitations in several key provinces (Cotula et al., 2010). Most DUAT requests involve lots of paperwork and can take years. Instead they would be able to focus on the project and their relationship with the community. This aspect has been noted in other more recent initiatives, such as the multi-donor Community Land Initiative (iTC) programme, in which community-investor partnerships are also promoted. The process was also supported by the government agency involved in investment applications, the Investment Promotion Centre (CPI) of the Ministry of Planning and Development, which saw the devolved management and local involvement in a new investment project as a way of avoiding potential conflicts and generating benefit flows for all concerned.

At this point the process stalled, waiting for higher level consent to move ahead, and the public tender to find an investor never materialised. Instead, a firm with Mozambican and South African partners was finally chosen after it had approached the local government looking for investment opportunities. This firm presented a credible proposal for a community-investor enterprise which would include payments to the community and commitments to train local people and involve them in project implementation (Ralindo, no date). A contract was signed between all parties in November 2005. DNFFB then helped the community to secure US$33 000 from a UNDP Small Grants Fund to fence the area and set up a force of community rangers (this was also seen as a community contribution to the new project).

Anecdotal accounts indicate that the community leadership was not easy to work with, but it is also clear that the firm chosen for the project failed to deliver on their promises and the partnership relationship never really took off. The community itself rescinded the contract in a letter dated 7 June 2007. The International Union for the Conservation of Nature (IUCN) then entered the picture, with resources to secure the fencing and train community members. A new Mozambican investor with close links to elite urban interests was offering a deal which would pay the community a small share of the turnover. But this share would have to cover all community costs, including ranger wages, with the lion's share of any income going to the investor. The IUCN plan aimed to boost the community contribution and secure a higher share for the community (Sitoe and Guedes, 2009).

Once again however, difficulties between the various partners obstructed progress and IUCN eventually pulled out in late 2009. At the time of writing, the project appears to have become little more than a private hunting area for elite interests from Maputo, with the local community committee securing some share of the gains from selling the meat in the urban informal market.

This process illustrates the potential of a decentralised form of land management, but also highlights the high risks involved where communities are not adequately

prepared and are faced by external interests with their own agendas and in a more powerful position, both economically and politically. The role of the Community Management Committee and how it performs is critical, and if its members become entrenched or are simply not up to the job, it is also difficult to work through the difficult challenge of reconciling the very different world views and needs of a poor rural community, an external investor, and a State keen to get resources into production. The legal framework is more than adequate, but the skills needed to facilitate this kind of agreement and then to nurture and support it to maturity, go far beyond those currently available in the land administration services. The Mahel case clearly shows the need for solid and consistent support for both the overall process of implementing a decentralised model, and the subsequent implementation of any agreements that derive from it.

Far more attention must be paid to the process and the content of the community consultation process, which also offers important opportunities for capacity building and identifying possible support options, once agreements have been reached. Presently, the usual consultation process for most land rights and forestry concession applications consists of one meeting with local leaders, with the lack of real discussion and attention to detail being a source of subsequent conflicts. (Tanner et al., 2006). Consultations also fail to involve the wider community, provoking a backlash even when serious effort has been made to include communities from the outset.

The new provisions for community consultations referred to above go some way to addressing this point, now requiring that at least two meetings take place, 30 days apart. The first meeting gives the community information about the project and identifies the limits of the land required; the second then allows the community to give its opinion about the land available for the project (MINAG 2011:282). It remains to be seen whether these new provisions will make a substantive difference, but it is clear that DNFFB and Provincial teams supporting the Mahel, and similar processes up and down the country, have been learning as they go along, with evident goodwill and commitment. But beyond the

technical issues raised above, it is also clear that they simply cannot do the kind of intensive work – field visits, follow-up meetings with both the community and investor, mediation etc - which this process demands. They continue to be seriously under-resourced and right up to the present moment, they complain that they do not have vehicles or a fuel budget that allows them to visit the community and support the process.

Coutada 9 in Macossa district[4]

Macossa is in the northern part of Manica province. Over 70% of the district is made up of two large forested hunting reserves (*coutadas*), which border the Gorongosa National Park to the east. These reserves are legally protected areas, and therefore fall within the jurisdiction of the Ministry of Tourism (MITUR). One of these, Coutada 9, is the venue for a successful community-investor partnership.

Coutada 9 covers 3 763 km2 and its natural habitat and low human population density offers great potential for conservation and wildlife management. Inventories carried out in 2003 identified many wild animal species, but numbers are low after years of heavy illegal hunting. Restocking is essential if game hunting is to be commercially and ecologically viable. In 2003, MITUR issued a management contract to Rio Save Safaris, a Mozambican-Zimbabwean safari-hunting business. Through this form of decentralised management, the state required the investor to restore the animal population as part of a conservation management plan, manage the overall resource base and the Coutada, and produce revenues for State coffers.

MITUR believed at the time that there were few if any local people living inside the Coutada area - and their position throughout has been that such communities do not have acquired DUATs under the 1997 Land Law: as 'partial protection areas', *coutadas* are considered 'public domain' and DUATs are not permitted in such areas. The law does provide for 'economic licences' however, and this is the basis for the Rio Save Safaris contract. With or without DUATs, the villages had
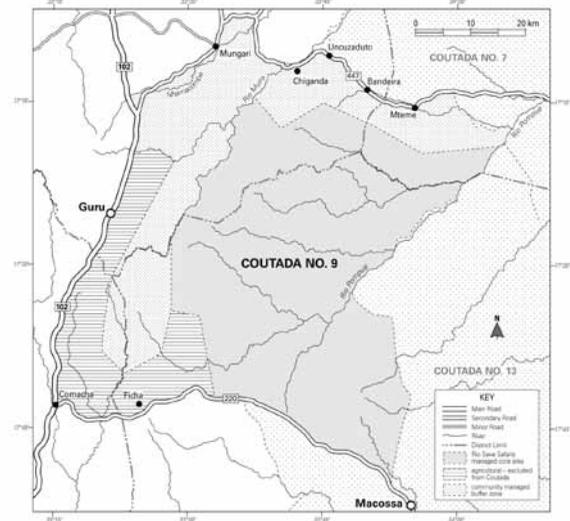
nevertheless been there for a very long time, with established leadership and resource management structures, and Rio Save Safaris quickly found significant settlements established inside the Coutada, especially in the west where deforestation and agriculture made any kind of conservation activity impossible. Through what was in effect a kind of delimitation process, they discovered that there were five communities inside the Coutada boundary, with a total population of around 17 000. Each has its own leaders, with recognised borders between each community. One of them, the Nhaunga community, covers most of the land within the Coutada area, and its chief has been formally recognised as a 'Community Authority' by the State under Decree 15/2000. Villages in the primary forest area to the east also relied upon subsistence strategies that combine forest use for hunting, medicines and honey, with agriculture near seasonal rivers. Although population density was low, these production systems extended over many thousands of hectares.

Notwithstanding the formal legal position, the de facto nature of the historical rights of the communities was clear, and even if they do not have acquired DUATs, constitutional guarantees require that their interests be taken into account, and simply moving them out was not an option. Rio Save Safaris therefore accepted the

---

[4] The author has followed this case while providing support to a FAO food security project in Macossa District. This account is based on field notes and personal interviews with the investors and FAO community outreach officers working in the district.

community presence and the need to work with local people to find a viable resource management strategy.

The first priority for the concession holder was to stop the widespread illegal hunting if they were to successfully repopulate the area with wildlife and run a viable safari business. Guards and rangers could come from the local community, but policing costs would still be high without some form of community involvement that would compensate local people for giving up hunting. Besides, they needed good relations with local people to succeed in a difficult operational environment. Rio Save Safaris came up with a pragmatic proposal for co-managing the area with the communities. Most importantly, they proposed a way for the communities to participate in the income generated by the safari business, in return for giving up, or at least significantly reducing their hunting. Local livelihoods would not be undermined, and Rio Save could implement a viable conservation and sports hunting programme.

The proposal was structured around a de facto zoning of the Coutada into areas with different levels of community participation, management responsibilities, and resource use:

-    A core, partially fenced area where the investor manages all the resources and which the communities will eventually leave voluntarily; the community will stop all hunting and will receive 25% of trophy fees generated in this area.

-    A buffer zone managed jointly by the investor and the community for two years, and thereafter by the community alone; the community will stop hunting here, but due to their greater management role, they will receive 75% of trophy fees.

-    A third area, away from the hunting and conservation areas, where local agriculture is allowed: this recognizes the reality on the ground, and gives up any pretence of preventing agriculture to restore the forest.

Rio Save Safaris would also work with the community to improve their understanding of conservation issues. As well as training local people as guards and rangers,

they would also provide opportunities for community youngsters to learn about conservation.

The firm did their own research into the socio-economic and political organisation of the communities. Crucial questions in this context were:

-    Who are the communities?

-    Who represents them?

-    What are their rights within the Coutada?

-    Do they have a legal personality allowing them to enter into contracts?

The five identified communities each had several villages and a single chief (*regulo*) and management structure. Through a process very like delimitation, a map was produced of community occupation in the Coutada and neighbouring areas and local Natural Resources Committees were established to represent the communities (Chidiamassamba, 2004: 3). The 'Community Authorities' – the local *Regulos* complete with formal regalia – have since played an effective dual role, at one moment representing 'their' community *viz á viz* the investor, and at another, acting as an advocate for the model in dealings with the State and its agents.

These arrangements have enabled Rio Save to talk to the right leaders about how the proposed scheme should work, and to address problems as they occur. The zoning and income-share agreement has since grown into a constructive relationship between Rio Save Safaris and the local communities which has produced significant results. Rio Save Safaris have trained local men as rangers and bush camp staff, and in the first year the communities received US$11 000 as their share of trophy fees. They have continued to receive similar amounts every year and are now used to the idea of working with the investor. They have built health posts and improved social infrastructure, are better organised and more able to assess their needs and decide how to use their income. The FAO food security project has also played a key role. Income diversification and agricultural activities have helped to mitigate the livelihood impact of hunting controls, and these are

now supported with income from the agreement with Rio Save Safaris.

Although the community-investor relationship is working well, there are the inevitable difficulties. Apart from the income arising from the agreement with Rio Save, under the provisions of the Regulations of the Forest and Wildlife Law, the communities also receive 20 percent of the public revenues generated by the company. These are distributed by the district administration, which has also taken on the distribution of the safari hunting income. These funds are divided equally between the communities, and both Rio Save and some local leaders complain that not all the communities stick to the agreement over hunting and agriculture controls.

Rio Save are looking at how to allocate income in relation to the effort made by each community to control illegal hunting, by creating an association of the various community Natural Resources Management Committees to allow the communities to assume greater control over the distribution and use of funds. They also hope that this might have some impact on the illegal hunting which is carried out by outsiders linked to powerful urban interests.

The reluctance of central level institutions to go along with the idea of losing control over state resources and development in general is another challenge   for devolved land management, where both investors and communities have autonomy *viz á viz* the State and can make their own decisions. Like the Mahel case, Coutada 9 also tested the legal framework to come up with an appropriate set of rules within which to formalise the community-investor agreement and regulate the relationship in the longer term.   Indeed there was considerable initial resistance from central level MITUR to some of the ideas being proposed, including the notion of zoning and downsizing the Coutada.

However, with legal and community-facilitation support from a nearby FAO CBNRM project, Rio Save went ahead with its agreement with the communities. They then went back to MITUR and succeeded in persuading them to agree to a new contract which included the

main elements of the partnership proposal and land management plan. After seeing the scheme working in practice, the Provincial Cadastral and Geographic Service and the Forest and Wildlife Service finally carried out a formal zoning of the Coutada into core, buffer and agricultural areas. Further evidence of success is the fact that Rio Save Safaris have been awarded the contract to manage the neighbouring Coutada 13. They will use the same participatory approach, and now with full MITUR support, will zone the new Coutada.

Has decentralised land management and administration worked?

The two case studies show that the practical application of principles of devolved management and community empowerment is not easy.   Several different objectives – local development, environmental conservation, and the need to get land into production – have to be pursued and harmonised at the same time. There is also the reality of the limited livelihood choices and capacity of local communities to understand and use the rights which they now have – to manage, resolve conflicts, and participate in titling, and to negotiate deals with investors.

Even where certain functions and powers are devolved to local level, there is also no guarantee that this will produce the desired outcome. The Mahel case in its latter stages reveals community leaders who have become entrenched and are blocking the kind of process that would genuinely benefit the larger community. Nor can it be assumed that local leaders in the Community Authority or even customary leadership context will effectively communicate with, and devolve powers to all their villages. This is particularly the case in *regulados* which, when delimited, are over 100 000 hectares. Their size not only raises concerns in government over the area under local control, but as the Niasa study cited above shows, it also raises concerns over the effectiveness of the devolved local management model of the 1997 Land Law and other related legislation.

There is no short-cut to the demanding processes of capacity building, civic education, and the promotion of a decentralised, participatory, multi-stakeholder process

at local level. Centralised institutional hierarchies still exist, and the Coutada 9 case effectively reveals how tensions between central level MITUR and those involved at provincial and local level threatened to upset the evolving understanding and agreement between the investor and the communities. Indeed, official opposition to the idea of zoning the Coutada was only formally overcome at quite a late stage in the process, while the main parties to the agreements simply got on with working together and tried to make the Coutada project work. Similarly, the Mahel case demonstrates how   an intensive, decentralised form of local decision-making is the only way to achieve local support and legitimacy (in this case the choice of partnership model to follow).

Comparing the two cases also underlines how important it is to find investors with goodwill who are predisposed to working with local people and dealing with the many challenges that this approach presents. But even these investors need support – not many are experts in community development, and 'decentralisation' is a complex process that requires special skills and understanding of how to work at community level. In the Coutada 9 case, the role of the FAO CBRNM project was a critical and gratefully acknowledged input to this relatively successful story.

The case studies also underline how good intentions and good ideas can be undermined by very straightforward problems. It is difficult to imagine how land administrators and local government officers, appropriately trained in participatory techniques and keen to promote devolved local management, can implement any model if they have no vehicles and or the fuel needed to visit communities and provide the kind of support needed to establish and nurture a successful community-outsider relationship.

The challenge of using both the Land Law and the decentralisation programme as they are intended, also demands new skills that are not readily available either in government or in civil society. These include mediation, business and project planning, civic education and

legal empowerment. The challenge is also immense at local level - few local communities have the necessary know-how to negotiate and to play their role as local level land and resource managers, beyond the immediate confines of their own customary systems.

It is also clear that central level structures are very wary of the whole question of devolved management; and when things go wrong, as in the Mahel case, the process can easily be 'captured' by interest groups with very different agendas. However, good examples are so important. This is shown by the way MITUR learned from the Coutada 9 case and today gives full support to this kind of initiative – the Ministry now requires all new investors in tourism to include a community participation element in their proposals.

The Consultative Forum on Land

Driven by over-arching national development and economic growth imperatives, some people in the Government and administrative hierarchy advocate measures to fast track investment and bypass the kind of inclusive, devolved model that is at the heart of the 1997 Land Law and most other natural resources legislation since then.   Public servants are clearly driven by pressures from above to find land for investors, to promote development and to facilitate the new project, even at the expense of local rights. Faced by these pressures, they are forced to compromise on the underlying principles of participation and inclusivity that are at the heart of the current legal and policy framework.[5]

---

[5] Statements from participants in training seminars on land and natural resources law implementation, with local government officers, CFJJ/FAO Paralegal Training and District Officer Seminar programme.

The reality is that decentralised and devolved models are always going to be more challenging, both to established interests whose access to centralised structures gives them clear advantages, and for communities whose basic skills and capacity require support and capacity-building. This is especially the case when, as in Mozambique, decentralised land management functions conflict with, or are even undermined by other decentralisation processes in the formal public administration arena. It is also clear that to make decentralisation work takes a lot of hard work and time. Meanwhile, Government is concerned about huge areas of land not being used to full potential, and want to see economic growth and revenues from an agricultural economy which has so far failed to take off. The attraction of major investors lining up asking for land for large scale projects is obvious, but immediately puts at risk the whole idea of a more decentralised and participatory approach.

In this context, Mozambique is facing new pressures to revise its policy and legal framework, in particular with relation to the linked issues of the transferability of DUATs, and the ability to use formal registered title to secure investment credits from the banks. To deal with this new situation, in late 2010 the Government created a new Consultative Forum on Land (CFL), which brings together several key ministries dealing with land and resources issues, and also provides for civil society and other stakeholder participation. Amongst issues already identified for Forum discussion are the consultation process, the nature of the DUAT as a strong, private right under the Constitution, and the vexed question of the transferability (through market mechanisms) of DUATs.

So far, in spite of declarations of openness and inclusivity, the new Forum is not achieving the levels of participation and devolved discussion and feedback that characterised the process over-seen by the mid-1990s 'Land Commission', when it developed the 1995 National Land Policy and the current 1997 Land Law. One example of this is the way the new decree on community consultations was developed *without* Forum intervention and with little stakeholder involvement. This reinforces the sense of a government concerned

with reining in and restricting the decentralised processes inherent in the current framework, rather enhancing them by providing the necessary resources and support they need to reach the potential illustrated by the Coutada 9 case above.

It would be a pity if this is indeed the outcome – the land policy and land law offer important and work-able instruments with *transformational* potential for development, using a range of instruments that devolve significant management functions to local people and *in so doing*, build their capacity to engage in and to benefit from the development which private investment promises to bring. The new Forum must be encouraged to look objectively at the good examples which do exist, and to reflect upon the benefits of the decentralised and devolved model of land administration and govern-ance. Fortunately there are many in Mozambique - in government and in civil society - who understand this and value this approach. The 2007 Rural Development Strategy (RDS), for instance, implemented by the National Directorate for Promoting Rural Development (part of the Ministry of State Administration), calls for the 'emancipation' of local communities   through the correct use of the Land Law.

Emancipation also comes from being given responsibil-ity, an important lesson to be learned in the Coutada 9 case, where the agreement between the investor and the communities demands for commitments on both sides. Investors too, may be obliged by the state to be more participatory. An recent important example of this is the new Resolution by the Council of Ministers which requires them to include 'the partnership terms between the holders of DUATs [acquired] by occupation in the area required by the investor', along with their investment proposals (Council of Ministers, 2008).

Conclusion

The examples provided here show that with hard work, support, time, and patience, local management and partnerships can happen, producing workable and mutually beneficial compromises between local people and outside interests. The case studies show how

important it is to have good facilitation and community development support as essential inputs to a genuine decentralisation process.

With a legal framework that supports a devolved, participatory and consensual approach to land management and land use, Mozambican communities and their rights do not have to be seen an obstacle, but rather as partners in a local development process which meets the different needs of all who depend upon land and natural resources. The role of the State and how it manages these processes is critically important however, especially at a time when major economic interests are lining up to get access to land, and concepts like decentralisation and local community rights are evidently something of a constraint on fast-tracking large investors onto local land. Government and communities are both ready to welcome investors; the government can tell them what the rules are, promote policies that begin with the recognition of local rights, and include mechanisms to involve local people, not just as wage labourers, but as active stakeholders with a say in how local development takes place in their midst.

The Mozambican experience also points to the dangers of 'multiple decentralisations'. Understanding how to make all the various forms of decentralisation work together is a major challenge for policy makers and civil society alike. Overlapping responsibilities, weak local government capacity, poorly informed local people, and a mix of facilitation and manipulation – 'facipulation' – by a range of benign and not-so-benign actors is preventing the country from achieving a powerful form of decentralised and democratic governance which could transform local economies and alleviate poverty through a more equitable distribution of the fruits of development. Access to local land is seen by all as the 'necessary condition' for development, especially in rural areas. Giving power to local people to manage that access is the best way to ensure that benefits flow in both directions.

Finally, it is to be hoped that the new Consultative Forum on Land will fully take all these points into account, and draw upon the available lessons, in order to improve the policy and legal framework, without

undermining its equity-enhancing and democratic, empowering and liberating potential.

References

AKESSÖN, G., CALENGO, A. AND TANNER, C. 2009. 'It's not a question of doing or not doing it – it's a question of how to do it: Study on community land rights in Niassa Province, Mozambique,' Swedish EIA Centre, Paper 6/2009. Uppsala: SIDA Helpdesk for Environmental Assessment, Swedish EIA Centre.

ANDERSON J. L. AND MAGANE, S. 2000. 'An assessment of the wildlife CBNRM potential of the Mecuburi and Matibane forest reserves, the Mahel pilot project and the Goba community project,' Report of Project GCP/MOZ/059/NET. Maputo: Community Management Unit, National Directorate for Forest and Wildlife (DNFFB), Ministry of Agriculture and Rural Development (MADER).

CFJJ. 2011. Manual para Paralegais na Area dos Recursos Naturais, Ambiente e Desenvolvimento. Maputo, Centre for Legal and Judicial Training (CFJJ) and Rome, FAO, Project GCP/MOZ096/NET.

CHIDIAMASSAMBA, C. 2004. 'Parcerias entre comunidade local e sector privado (Contribuição para a segurça alimentar e nutricional no Distrito de Macossa),' paper presented to the National Conference on Community Based Natural Resource Management, Maputo, 2004.

COTULA, L., DESHORMES, A., MARTINS, S., AND CARILHO, J. 2010. 'Mid term review,' presentation. Maputo, DfID, February.

COUNCIL OF MINISTERS. 2008.: Resolution 70/2008 of 30 December, Procedures for Presenting and Assessing Investment Proposals Involving Extensions of Land Greater than 10,000 Hectares. Part C, lines C and G.

CTC (2003): Appraisal of the Potential for a Community Land Registration, Negotiation and Planning Support Programme in Mozambique. Maputo,

Department for International Development (DfID). A report by CT Consulting, Cambridge, England.

DE WIT, TANNER AND NORFOLK. 2009.: Land policy development in an African context: lessons learned from selected experiences. FAO Rome, Land Tenure Working Paper 14. Rome, FAO.

DNFFB 2003. Grupo de trabalho – Projecto Mahel: Divulgação das propostas de parceria "comunidade-investidor". DNFFB unpublished technical document.

DUTTON, P. 2001. Project proposal for the development of a community support game ranch in the Mahel Administrative Locality, Magude District, Maputo Province. Unpublished report to the Ministry of Agriculture and Rural Development, National Directorate of Forests and Wildlife.

ESTES L. D. 2002. Ecological and technical feasibility analysis of the proposed Mahel Game/Cattle ranch. Report prepared for Management Systems International; and Richard Davies (2002): A Business Plan for the Mahel Cattle/Game Project. Also for Management Systems International. Reports available through Community Management Unit, DNFFB/MADER, Maputo.

FAO 2003. Propostas de Parceria 'Comunidade-Investidor'. Maputo, DNFFB, Project Mahel Steering Committee/Land Commission FAO Support Project UTF/MOZ/070/MOZ.

MINAG 2011. Diploma Ministerial No 158/2011of 15 June. Maputo, Boletim da República, I Serie, Number 24.

RALINDO. No date. Associação Comunidade de Mahel, Iniciativa de Criação de Fazenda de Bravio. Proposal by Ralindo Game Farms Mozambique, part of Ralindo Marketing Services Mozambique Lda.

SERRA. 2007.: Colectânea de Legislação sobre a Terra. Maputo, Centre for Juridical and Judicial Training (CFJJ), 2nd Edition.

SITOE, A. AND GUEDES, B. 2009. Situation analysis and Baseline data on Forest Ecosystems well being and Socio-economic well being in Mahel CBNRM Area including: rapid Forest and wildlife resources assessment; Rapid Socio-economic assessment; Development of Ecosystem well being and poverty indicators and; Inter-linkages between Human Well being and Ecosystems Well being. A report for IUCN Maputo. Also conversations with IUCN staff in Maputo and Kenya.

TANNER, C. 2002. Law Making in an African Context: the 1997 Mozambican Land Law. FAO, Rome, Legal Papers Online No 26. http://www.fao.org/LEGAL/prs-ol/years/2002/list02.htm

TANNER , C. AND BALEIRA S. WITH AFONSO, A., AZEVEDO, J.P., BILA, J., CHICHAVA, C., MOISÉS, A., PEDRO, C., AND SANTOS, J. 2006: Mozambique's legal framework for access to natural resources: The impact of new legal rights and community consultations on local livelihoods. FAO Rome, Livelihoods Support Programme Working Paper No 28, Access to Natural Resources Sub-programme.

TANNER, C., DE WIT, P., NORFOLK, S., MATHIEU, P., AND GROPPO, P. 2009. Participatory Land Delimitation: an innovative development model based upon securing rights acquired through customary and other forms of occupation. Rome, FAO, Land Tenure Working Paper No 13.

CHAPTER 5: LESSONS AND REFLECTIONS

Comparing country experiences

The table highlights the complex particularities of each country history and development trajectory, contextualises the origins of different national discourses on decentralisation.

Trends and issues

Despite the extreme diversity of the country cases, a number of crosscutting trends and issues can be identified.

The push-pull dynamics driving decentralisation

Despite significant historical differences in the political and development directions taken by the three countries, there are increasing contemporary similarities between them: all three espouse decentralisation but retain strong centralising tendencies.

The cases highlight the complex relationships between foreign donors and multilateral institutions pushing decentralisation, at the same time as forces in the central state attempt to pull power to the centre, and local actors seek to draw power down to the ground.

Analysis	Botswana	Madagascar	Mozambique
Population (2009)	1.95 million	19.62 million	22.89 million
Size	581 730km^2	587 040km^2	801 590km^2
History	1966: Negotiated transition to independence from Britain.	1960: Obtained independence from France.	Armed struggle against Portuguese colonial government.
	Multiparty democracy since Independence.	Ruled by a succession of Soviet-leaning socialist regimes.	1975: Socialist model adopted at Independence.
	Uninterrupted control by BDP ruling party until the present day.	Country experiences episodic political instability.	1980s: Destabilisation, civil war, drought and mismanagement ruin economy.
	Diamonds stimulate economic growth to transform Botswana into a middle income country, but with rapidly widening inequality.	Popular demands for democratisation mount in late 1980s.	1990: Multi-party constitution.
			1992 Peace Accord.
	Strong trends towards increased centralisation under the Presidency of Ian Khama.	1989: Democratic transition marked by considerable unrest.	Political stability and economic reforms, economic growth.
	A strong modernising thrust adopted by new government, combined with a critique of customary institutions and tenure systems which are characterised as a brake on development.	1992: New constitution after presidential elections and referendum.	Decentralisation since 2003.
		Rulers publicly espouse commitment to democracy, while attempting to centralise political control.	Poverty reducing very slowly, signs of widening wealth gap.
	Land remains vested in the State. Rights to access and improvements on the land are the subject of market transactions rather than the land itself. A range of legislation passed in immediate post independence era, including the Tribal Land Act (1968) to guarantee land rights of 'tribesmen' on Tribal Land through certificate of customary rights. Leasehold options also available.	2009: President toppled by troops leading to imposition of AU sanctions.	Uninterrupted control by FRELIMO ruling party creates culture of centralised power even in decentralised institutions.

Analysis	Botswana	Madagascar	Mozambique
Land and de-centralisation policy and legislation	Policy to expand Tribal land area while the Tribal Grazing Land Policy paves the way to granting exclusive rights to rangeland for large stockowners on the assumption that they would manage rangeland better; however no evidence to support this.	Historical development of land tenure has evolved from many influences including monarchy, colonial and state control, which created a fragmented tenure system with uncertain rights.	In the immediate post independence era Frelimo focused on big centrally planned state run estates, coupled with 'socialisation and modernisation of the countryside'. Villagisation and other measures alienate rural people.
	Exclusive rights holders retain dual rights on the commons. Subsequent policy reviews proposed that dual rights be done away with but these recommendations never approved. Legislative amendments in 1993 enable citizens to apply to access tribal and state land anywhere in the country.	Following independence the impetus for land tenure reform evolved from the tension between the ownership of untitled land asserted by the central state and the popular understanding that the land belongs to the Malagasy people, and therefore could be allocated and managed according to traditional practices and procedures.	1983: Privatisation of agriculture begins. First state farms leased to selected private national and foreign interests.
			1987: Mozambique adopted IMF Structural Adjustment Programme (SAP).
			1990: Free market economy adopted in Constitutional revision.
		Long history of political instability following independence in which conflicts over land played an important part.	Post-war discourses on land rights: - Secure subsistence base of small farmers ('land belongs to those who use it'), leaving rest in State hands for investment.
	Policy and legislative amendments recognise changing household demographics and facilitate independent access to land by women.	2005: Government moved to reform tenure system and revised the approach to land governance.	Local rights are more extensive – based on production systems – with little land free for investors, but access can be negotiated (informs 1995 National Land Policy).
	Patriarchal inheritance law and custom limit gender impacts of legislative shifts enabling female headed households to access land.	Land reform policy changes gave legal recognition to customary holding of land.	1997: Land Law creates three ways for people to gain rights
		Currently a shift to facilitate women's land access under customary practices. Women can inherit land. However a deep-rooted conservatism about women's rights persists in many rural areas. Women have access to land but their control over the land is limited.	- by customary occupation - by 'good faith' occupation for 10 years - government authorises people and compa-nies to use land for 50 years (Hanlon 2002).

Analysis	Botswana	Madagascar	Mozambique
Land and de-centralisation policy and legislation			Land Law provides equal access to land by women and men, but customary norms still work against women asserting this right.
			Constitutional base (fundamental rights) offers strong platform for pursuing decentralisation gains and participatory model.
			Customary management recognised and opens way for decentralised land management, community consultation and a single legal framework integrating local people and investors.
			Civil society support for Land Law implementation essential.
			2000 onwards: political stability, consolidation of macro-economic reforms and growing market economy create powerful forces opposing decentralisation. Implementing decentralised model is not easy, public capacity weak, communities need support.
			2010: Consultative Forum on Land created, with current discourse on land influenced by several positions:
			- 'Land belongs to State' outweighs local rights, and 'national interest' arguments threaten local rights (large investors, 'land grabbing').
			- Privatisation needed to facilitate access to credit and agricultural growth.
			- Participatory approach of Land Law still valid but requires proper implementation.
			Re-emergence of the 1995 debate with much smaller 'communities' delimited to free land for investors.
			State development imperatives undermine rights / participation.

Analysis	Botswana	Madagascar	Mozambique
	Creation of a strong administrative state but one which invests in District level governance institutions.	Creation of regions containing communes to provide local level administration. Regional capacities to support communes vary widely.	1978: Colonial local government system abolished - replaced by executive councils under central government control.
			Service delivery collapses by 1983.
Formal institutions and decentralised land governance framework	Creation of District Councils with elected representatives: • District Development Committees • Village Development Committees	Communes managed by elected mayors whose levels of authority vary across the country and land governance.	1987: New moves towards decentralisation linked to SAP (Cuereneia, 2001). However, while state institutions might appear strong, in reality local government remains weak as it is difficult to shake off the long history of powerful state, so central control is still apparent and there is a risk of central control, via weak decentralised local structures, serving external interests.
	Land Boards, Sub Land Boards and Land Tribunal established but land management is increasingly professionalised with limited local representation on Boards. However, strong upward accountability to central government has been retained.	Villages (*fokontany*) operate local village councils (*fokonolona*).	Legitimate traditional structures exist and have to be involved.
		National and local state interest in revenue from foreign investment, confusion created by incomplete cadastres and, land deals by elites threaten the authority of local communes and the still very fragile decentralised approach.	Local resource management decisions require local involvement structures/ dialogue for legitimate decisions and accountability.
			District governments are key actors, but need capacity building and awareness of rights-based approaches and participation.
		Decentralisation currently heavily dependent on external donor support, which raises questions about its sustainability.	National elites and urban interests with 'long reach' can influence decentralised structures. Some state institutions have vested interests in resisting moves to decentralise, so the goodwill and commitment of the state and private sector are important for effective decentralisation.

Analysis	Botswana	Madagascar	Mozambique
Customary institutions and land governance	Traditional leaders initially included in Land Board structures. Traditional leaders subsequently removed. However, local land overseers appointed by chief and kgotla (village assembly) play key role in day to day land management on the ground. Traditional authorities remain resilient and socially embedded in Tswana society. Contemporary resurgence of recognition of traditional leaders and decision in 2011 to re-involve them in Land Board structures.	Local village councils (*fokonolona*) remain largely preserve of elders and men, so play a limited role in securing broader participation of local population at a broader governance level. Decentralisation legitimises historic customary management by traditional village heads and locally appointed village elders overseeing local land allocations. Local agreements based on local practices involving traditional authorities are now integrated into the policy mainstream.	Traditional leaders (*reguldado*) manipulated by colonial relationships and marginalised by post-Independence ideology, yet very resilient: they survived serious challenges and are still intact in spite of war, drought and political side-lining. Field evidence proves continuing existence and legitimacy, thus recognised and built into mainstream policy (1995) and the 1997 Land Law. Customary structures can be conservative – are refreshed and strengthened by new 'leaders' ('committees', women, etc). Customary structures weak *viz- à- viz* modern challenge; therefore also need support and guidance.
Land use and control	Poor recording of pre-existing rights in land. Incomplete property descriptions in cadastre. Weak land use monitoring capability within the Land Boards.	Weak and complex registry system inaccessible to majority of land users. Absence of well defined legally supported land tenure system. Ill-defined property rights in general. Increasing incidence of land conflicts.	Continuing influence of 'central planning' mentality. Local assessment of needs and capacity a better basis for local plans and resource than higher level preconceptions of what is best. Field evidence shows that local people understand where their rights and borders are even when not officially recorded; lack of 'title' and lines on maps does not mean an absence of rights and local structures.

Analysis	Botswana	Madagascar	Mozambique
Land use and control	Allegations that outsiders increasingly gain access to land in localities without following due process.	Weakness of provisions within national law for local people to steer development options and defend their own land rights.	Production systems research underlined how local communities adaptively manage and control land and NR through indigenous institutions.
	Systemic weaknesses allow for powerful and well connected to accumulate valuable residential and grazing land.	At local level, decentralisation legitimises the historic customary management by tradition-al village heads and locally appointed village elders overseeing local land allocations.	These systems are the basis of 'occupation' and thus of acquired rights.
		Local agreements based on local practices involving traditional authorities are now integrated into the policy mainstream.	'Local communities' can be titleholders of the State allocated Land Use and Benefit Right (DUAT).
	Rising social inequality.	As a result of extreme poverty, not all villagers can afford the costs of strengthening their land rights.	Experience shows that using local structures will not necessarily guarantee equitable sharing of `decentralisation dividend'.
	People allocated exclusive rights to grazing farms retain dual rights on the commons.		
	Vulnerability of the poor to downward raiding resulting in loss of land rights.	Local and urban elite can afford to record land rights through registration in their rural communities of origin.	Even decentralised land management can be used to serve state and urban interests.
Equity, par-ticipation and accountability	State concerns about politicisation of Land Boards make land governance increasingly a technical and bureaucratic function.	Stronger regulation needed to protect local rights and take account of local interests of the poor.	Legitimate traditional structures also need regulation to ensure accountability and accessibility.
	Increasingly skewed access to productive and valuable land.		Government can play role setting rules for respect of rights; needs to do consultations, rule of law, etc.

Analysis	Botswana	Madagascar	Mozambique
	Not a major factor within the country as a whole, although of increasing significance in Chobe District.	Increased demand for land suitable for external investments.	Current market and political context tending to favour national elite and foreign interest in 'unused' land.
		Variation in nature of land deals: direct deals with local land owners (i.e. the Varun contract farming agreement with local landowners, follows an earlier deal signed between the company and the administration of Sofia Region in Madagascar.	Local rights always exist even where land not evidently used, and foreign direct investment (FDI) has to take this into account.
			Participatory model of 1997 Land Law not adequately understood and poorly implemented in practice.
Land deals		Variation in form of deals, i.e. cancelled state supported Daewoo deal was reported to involve a 99-year government-allocated lease on 1.3 million hectares of land. Green Energy Madagascar (biofuel project) deal involves no rental fees for the exclusive farming rights over 450 000ha, but undertakes to bring local development benefits and create local employment.	Cases studies show that share of benefits from investment to local people *is possible*, but requires investments in time, capacity building, and patience.
			Simple deals are best at the beginning.
			State has important role as guarantor of legality, oversight, setting rules of engagement, informing and educating local people
		Strengthening local rights through the current decentralisation of land governance may provide protection.	Decentralised legal support for communities essential.
			Legitimate traditional structures exist and have to be involved.

Links between decentralisation and power

Decentralisation initiatives frequently overlook or downplay local relations of power. In practice externally driven decentralisation and land governance pro-grammes tend to oversimplify complex local land rights realities, which 'are shot through with power relations' (Ben Cousins, Interview 2011).This raises questions about the extent to which the institutions responsible for effecting decentralisation are designed to ensure democratic decision making and to function in ways which are explicitly pro-poor.

Local institutions are not 'participatory' or 'democratic' by default and may represent conservative and deeply entrenched local interests. Democratic decentralisa-tion can have unintended consequences and create opportunities for powerful minorities to capture local land rights management institutions and take decisions which further privilege local elites.

Decentralised land governance as a technocratic exercise

Implementation of decentralised land governance frequently relies on technologies and capacities which are far removed from local resource capabilities and practice. Decentralisation initiatives are often cast as a technocratic exercise - heavily focused on the detail of institutional design and the roll out of sometimes elaborate land rights registration programmes, which are frequently dependent on foreign funding.

There is also substantial variation in the way that differ-ent understandings of decentralisation are interpreted and given meaning in the three country case study settings. This can result in a widening gap between official discourse and the actual processes of local implementation.

The importance of strong civil society organisations

It is clear that local civil society organisations are essential to provide pro-poor oversight of land govern-ance and land rights management arrangements. It

is no coincidence that the spike of interest by external investors in African land assets is closely associated with a global recession and a search for new economic opportunities offering good returns on investment. At the same time, the recession has adversely affected funding streams to southern NGOs. We were forced to accelerate our research in Botswana because the Chobe office of DITSHWANELO was due to close due to funding constraints. The erosion of this important rights protection and monitoring function further opens the door to potential abuses in the land sector.

There remains a central need to empower citizens through mobilisation, organisation and applied research. Decentralisation initiatives can create spaces for local voices to be heard, but without organisation, local knowledge and analysis, these institutional spaces will remain empty.

The alignment of multiple actors and decentralisations

Decentralisation is not a singular undertaking. Local governance institutions and local land rights manage-ment institutions have often been created side by side and are overseen by different organs of state, each with their own distinct mandate. Both horizontal and vertical alignment between initiatives and institutions originat-ing in different spheres of government has proved complex and difficult.

Ambivalence over the role of traditional authorities in decentralised land governance

Despite the ubiquity of the citizen/subject discourse in the literature, which argues that traditional leaders are an anomaly in a democratic state, evidence from the different country case studies points to the resilience of traditional leaders and institutions in rural settings, facilitated in part by the need for ruling parties to retain their political support base, as well as by local support and legitimacy. In some respects the current relationship between the State and traditional authori-ties appears not to have shifted that fundamentally between pre- and post colonial periods. The standing of

traditional authorities appears to be enjoying some-thing of a resurgence, despite moves to marginalise their roles and influence in the past – particularly in Mozambique and to a lesser extent, in Botswana. This continues to raise 'difficult questions about the role of unelected traditional authority and inherited power in a democratic society' and presents thorny political choices as to whether to 'abolish, convert, regulate', or otherwise accommodate this leadership strata - locally, 'legitimate traditional structures exist and have to be involved'. (Ben Cousins, interview 12 September 2011).

Commodification of land held by the poor

Land which is legally the property of the State, on which poor rural people hold rights in terms of customary tenure systems, is increasingly the focus of new foreign direct investment initiatives in partnership with national and local governments and economic elites. This is leading to large scale land deals which place the land rights of the poor at risk, particularly in situations where:

- central government seeks out investment and favours large-scale land deals over locally driven development alternatives;

- the underlying land rights are poorly described and supported in law or are trumped by lucrative development opportunities; and

- land governance and land rights management systems are weak.

In Botswana, such deals are associated with tourism opportunities on conservation land, but also on high value agricultural land in Chobe District. Such land deals are increasingly prevalent in Madagascar and Mozambique with a focus on securing land for bio fuels, fibre and food production. They highlight acute power disparities between local rights holders and large foreign companies, and their government and private sector partners.

Land as an asset amidst mounting resource scarcity

Attempts to decentralise land governance have to be located against the sharp resurgence of interest in ar-able land and natural and mineral resources by foreign corporations and governments. As the President of the Asian Development Bank has recently observed:

[...] the entire world is facing a new era of scarcer resources is a fact. In all areas – from clean water to food to natural capital – scarcity is the new normal.

(Kuroda 2011)

The new economics of scarcity has meant that food and agricultural markets have become the focus of intense market speculation. A World Development Movement report (Worthy, 2011: 6) examines how recently 'financial speculation has boomed, turning commodity derivatives into just another asset class for investors, distorting and undermining the effective functioning of agricultural markets'. This context places new value on resource rich land held under customary tenure systems, which until recently was deemed to be outside the economic mainstream, transforming it into a strategic resource and sustainable source of wealth waiting to be 'unlocked' by external investors who seek to externalise the lion's share of benefits.

Reflections on decentralisation practice

Four key questions continue to shape and underpin local decentralisation policies and practices:

- How are rights defined and specified?

- Who decides?

- Who benefits?

- Who regulates decision making and benefit flow?

All the cases highlight the deep persistence of central planning perspectives and the associated retention of

power and authority. Decentralised land governance involves institutional arrangements and relations between different levels and types of body, and related decision making processes and questions of account-ability. While there continues to be an emphasis, as part of national and international 'good governance' agendas, on democratic decentralisation and downward accountability to people directly affected by decisions about resources on which they depend, this focus on its own is insufficient. Both lateral and upward accountability also have to be taken into account as they provide essential checks and balances. Insufficient attention has been paid to the upward accountability relationships. These continue to be important because of the essential regulatory oversight provided through state bodies in the public interest. Cousins points out that 'You don't have property rights without authority systems to enforce those rights (Cousins interview, 12 September 2011).

Debates on tenure systems in Southern Africa may be turning full circle. Many governments and multi-lateral institutions were dismissive of or even hostile to customary tenure systems in past decades. In 2002 the World Bank and USAID called for privatisation of land in Mozambique (Hanlon 2002), yet a year later the same institutions began to acknowledge some of the strengths and adaptive capacity of these systems (Deininger, 2003).

However, in the current context of large scale land deals, the legal defensibility of the rights of the poor is key for navigating the new terrain. This has to backed by robust oversight mechanisms and the development of pro poor local institutional capacity with budgets and the human resources to provide legal support, contract analysis and management services for representative bodies of local rights holders who may be entering into negotiations with powerful investors. Developing and unlocking capacity for decentralised local govern-ance and finding the resources to build this capacity continue to be of great importance. As Cousins has observed: 'Power imbalances cannot be addressed by law alone' (Ben Cousins, interview 12 September 2011).

Conclusions

Experience in several Southern African countries draws attention to the rapidly widening asymmetries of power and the continuing imperative to resource democratic decentralisation and land governance systems which promote downward accountability to resource users, while ensuring horizontal and vertical links, and legisla-tive oversight.

The impetus for decentralisation and how it is framed are reflections of the contested politics that drive it. The externally led prescriptions and conditionalities that emanate from the World Bank and multilateral institu-tions embody an inherently conservative perspective which promotes decentralisation as part of a good governance and market friendly agenda. The alternative and more radical view of decentralisation is about the need to transfer power (and associated responsibilities and capacities) to local people and resource users in a bid to democratise society and ensure that the interests and the voices of the poor majority remain prioritised, in order to counter the intense national and global concentration of wealth and power in fewer and fewer hands.

In the current context, increasingly characterised by the speculative responses of global capital to the new eco-nomics of scarcity, pro poor land governance systems must appropriately describe and defend the rights of the poor. Such systems are essential in order to provide support for local actors in a fast changing economic environment, where productive land occupied by the poor is rapidly assuming new value as a potentially profitable commodity for international investors and their local partners.

References

CUERENEIA, A. 2001. The proces of decentralisation and local governance in Mozambique [Online]. Available: http://www.iss.co.za/uploads/BOTSWA-NASEP03.PDF [Accessed 13 September 2011].

DEININGER, K. 2003. Land policies for growth and poverty reduction, New York, World Bank.

HANLON, J. 2002. The land debate in Mozambique: will foreign investors, the urban elite, advanced peasants or family farmers drive rural development? [Online]. Oxfam. Available: http://www.oxfam.org.uk/resources/learning/landrights/downloads/debat-moz.pdf [Accessed 13 September 2011].

KURODA, H. 2011. Clean Energy: Helping Propel Asia to New Prosperity [Online]. International Institute for Sustainable Development. Available: http://climate-l.iisd.org/guest-articles/clean-energy-helping-propel-asia-to-new-prosperity/?utm_source=lists.iisd.ca&utm_medium=email&utm_campaign=Linkages+Update+-+Issue+%23175+-+14+September+2011 [Accessed 15 September 2011].

WORTHY, M. 2011. Broken markets: How financial market regulation can help to prevent another food crisis [Online]. World Development Movement. Available: http://www.wdm.org.uk/sites/default/files/Broken-markets.pdf [Accessed 15 September 2011].

Interviews

BEN COUSINS, interview 2011.

Decentralised Land Governance: Case Studies and Local Voices from Botswana, Madagascar and Mozambique reviews the literature on decentralised land governance in Southern Africa, highlighting key issues and challenges of *'land governance from below'*. The case studies illuminate decentralised land governance practices and outcomes, as located in the social, legislative and institutional contexts of Botswana, Madagascar and Mozambique. Supplementing existing research on the selected country cases, the authors undertook comprehensive and in-depth interviews with selected key informants who illuminate the problems and responses. The book provides analysis and further reflection on key lessons from the country cases.

Through a range of voices representative of key stakeholders in local land governance, the book aims to exchange knowledge of experiences and practices at country-level. *Decentralised Land Governance: Case Studies and Local Voices from Botswana, Madagascar and Mozambique* is a source for land practitioners, scholars and policy makers, stimulating informed and evidence-based policy debate – in the relevant sectors and, more broadly, in society – about the merits and demerits of decentralised land governance.

UNIVERSITY *of the*
WESTERN CAPE

PLAAS
Institute for Poverty, Land and Agrarian Studies
School of Government • EMS Faculty

Austrian
Development Cooperation