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# LAND TENURE JOURNAL

# REVUE DES QUESTIONS FONCIÈRES

# REVISTA SOBRE TENENCIA DE LA TIERRA

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INTEGRATED VOLUNTARY LAND CONSOLIDATION:
A third model for land consolidation and land banking in Central and Eastern Europe

COLONISATION AGRICOLE ET ENJEUX FONCIERS DANS LA VALLÉE DE LA BOUGOURIBA (BURKINA FASO)

LES RÉFORMES LÉGISLATIVES EN MATIÈRE FONCIÈRE AU BURKINA FASO :
Entre ruptures et continuités dans l'action publique

THE POLITICAL ECONOMY OF LAND LAW REFORM IN A POST-CONFLICT COUNTRY:
Liberia on the verge of a Land Right Act

LAND OWNERSHIP SECURITY AND INVESTMENTS INCENTIVES IN MATRILINEAL SOCIAL SYSTEMS
among beneficiaries of the Community-Based Rural Land Development Project in Malawi

COMMUNITY COMMONS IN NORWAY:
The role of common property in Norwegian outfield management

## LAND TENURE JOURNAL

The *Land Tenure Journal* is a peer-reviewed, open-access flagship journal of the Climate, Energy and Tenure Division (NRC) of the Food and Agriculture Organization of the United Nations (FAO). The *Land Tenure Journal*, launched in early 2010, is a successor to the *Land Reform, Land Settlement and Cooperatives*, which was published between 1964 and 2009. The *Land Tenure Journal* is a medium for the dissemination of quality information and diversified views on land and natural resources tenure. It aims to be a leading publication in the areas of land tenure, land policy and land reform. The prime beneficiaries of the journal are land administrators and professionals although it also allows room for relevant academic contributions and theoretical analyses.

## REVUE DES QUESTIONS FONCIÈRES

La *Revue des questions foncières* est une publication phare, accessible à tous et révisée par les pairs de la Division du climat, de l'énergie et des régimes fonciers (NRC) de l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO). La *Revue des questions foncières*, lancée au début 2010, est le successeur de la revue *Réforme agraire, colonisation et coopératives agricoles*, publiée par la FAO entre 1964 et 2009. La *Revue des questions foncières* est un outil de diffusion d'informations de qualité et d'opinions diversifiées sur le foncier et les ressources naturelles. Elle a pour ambition d'être une publication de pointe sur les questions relatives aux régimes fonciers, aux politiques foncières et à la réforme agraire. Les premiers bénéficiaires de la revue sont les administrateurs des terres et les professionnels du foncier, mais elle est également ouverte à des contributions universitaires et à des analyses théoriques pertinentes.

## REVISTA SOBRE TENENCIA DE LA TIERRA

La *Revista sobre tenencia de la tierra* es una revista insignia, de libre acceso, revisada por pares de la División de Clima, Energía y Tenencia de Tierras (NRC) de la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO). Es la sucesora de *Reforma agraria, colonización de la tierra y cooperativas*, que se publicó entre 1964 y 2009. La *Revista sobre tenencia de la tierra*, cuyo primer numero apareció a comienzos de 2010, es un medio de difusión de información de calidad que proporciona opiniones diversas sobre la tenencia de la tierra y los recursos naturales. Aspira a ser una publicación líder en el sector de la tenencia de la tierra, la política agraria y la reforma agraria. Los principales beneficiarios de la revista son los administradores de la tierra y los profesionales del sector aunque también da espacio a contribuciones académicas relevantes y análisis teóricos.

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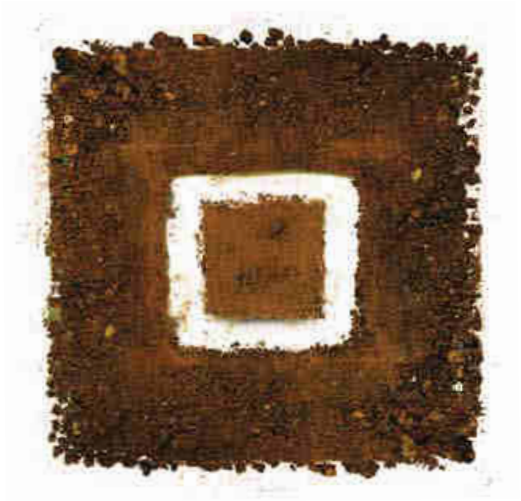

# Preface

This edition of the *Land Tenure Journal* features a selection of articles from Central and Eastern Europe to Francophone and Anglophone West Africa, through East Africa and back to Northern Europe. The focus of the topics spans land consolidation approaches in Europe, experiences of land colonization and an overview of tenure reforms in Burkina Faso, post-conflict land policy in Liberia, land reform in Malawi, and community commons in Norway. The topics reflect a wide variety of tenure governance issues that are at the core of the CFS-endorsed *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security*.

Since the early 1990s Central and Eastern European (CEE) countries have been adopting land consolidation instruments to tackle problems related to land fragmentation. Looking at the experience of Western European land consolidation approaches, CEE countries identified two land consolidation models to

# Préface

La présente édition de *Revue des questions foncières* propose une sélection d'articles, d'Europe centrale et orientale à l'Afrique de l'Ouest francophone et anglophone, en passant par l'Afrique de l'Est pour revenir à l'Europe du Nord. Les thèmes abordés couvrent des sujets tels que les politiques de remembrement agricole en Europe, des expériences en matière de colonisation des terres et un aperçu des réformes foncières au Burkina Faso, ainsi que la politique foncière du Libéria, qui sort d'un conflit, la réforme foncière au Malawi et les terres collectives en Norvège. Tous ces sujets reflètent un grand nombre de questions liées à la gouvernance foncière, qui sont au cœur des *Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale*, adoptées par le Comité de la sécurité alimentaire mondiale (CSA).

Au tout début des années 90, les pays d'Europe centrale et orientale (PECO) ont adopté des politiques de remembrement

# Prefacio

En el presente número de la *Revista sobre tenencia de la tierra* se presenta una selección de artículos provenientes desde Europa central y oriental y el África occidental francófona y anglófona hasta África oriental y Europa septentrional. Los temas se centran en los enfoques de concentración parcelaria adoptados en Europa, experiencias de colonización de tierras y un panorama sobre las reformas a la tenencia en Burkina Faso, la política agraria posterior a los conflictos en Liberia, la reforma de la tenencia de la tierra en Malawi y las propiedades comunales en Noruega. Reflejan una amplia gama de cuestiones relacionadas con la gobernanza de la tenencia que se hallan a la base de las *Directrices voluntarias sobre la gobernanza responsable de la tenencia de la tierra, la pesca y los bosques en el contexto de la seguridad alimentaria nacional,* que fueron aprobadas por el Comité de Seguridad Alimentaria Mundial (CSA).

Desde principios de 1990, los países de Europa central y oriental (PECO) han estado aplicando

consider: *simple voluntary land exchange* and *comprehensive and compulsory land consolidation*. Finding these two models poorly suited to the CEE context, Morten Hartvigsen discusses in the first article the need to develop further a third land consolidation model deemed more suited to CEE countries than the standard models: *integrated voluntary land consolidation*.

Moving southwards to West Africa, Frédéric Palé addresses the topic of land colonization in the Bougouriba Valley of Burkina Faso. Once severely underpopulated and with most of its land underutilized due to endemic *onchocerciasis* (river blindness), this valley finally experienced a dramatic increase in population thanks to a national policy for economic development for the amelioration of valleys freed from *onchocerciasis*. The policy aimed to establish a population balance between overcrowded regions with unfavourable natural conditions and less densely populated, rich, underexploited valleys. Waves of migrants in

agricole afin de répondre aux problèmes posés par la fragmentation des terres. En se basant sur les approches adoptées en Europe occidentale en la matière, les PECO ont défini deux modèles de remembrement agricole à prendre en compte: *l'échange simple et volontaire de parcelles* et *le remembrement agricole étendu et obligatoire*. Partant du constat que ces deux modèles ne sont guère adaptés au contexte des PECO, Morten Hartvigsen analyse, dans le premier article, les besoins de développer un troisième modèle de remembrement agricole convenant davantage aux PECO que les modèles habituels: *le remembrement agricole volontaire et intégré*.

En descendant plus au Sud, en Afrique de l'Ouest, Frédéric Palé aborde le thème de la colonisation foncière dans la vallée de la Bougouriba au Burkina Faso. Autrefois complètement désertée, ses terres étant en grande partie inutilisées en raison d'une *onchocercose* (ou cécité des rivières) endémique,

instrumentos de concentración parcelaria para hacer frente a los problemas relacionados con la fragmentación de la tierra. Teniendo en cuenta la experiencia adquirida sobre los enfoques de concentración parcelaria en Europa occidental, los PECO identificaron dos modelos de concentración parcelaria que deberían considerarse: *el simple intercambio voluntario de tierras* y *la concentración parcelaria completa y obligatoria.* Dado que estos dos modelos no se adaptan bien al contexto de los PECO, en el primer artículo Morten Hartvigsen debate sobre la necesidad de desarrollar un tercer modelo de concentración parcelaria que se considere más adecuado que los modelos estándares para los PECO: *la concentración parcelaria voluntaria integrada.*

Más al sur, en África occidental, Frédéric Palé aborda el tema de la colonización de la tierra en el valle de Bougouriba, en Burkina Faso. Luego de que el valle estuviera gravemente subpoblado en el pasado y que la mayoría de sus tierras se vieran infrautilizadas

search of cultivable land started to establish spontaneous settlements concurrently with the state-sponsored transfers of populations to the Bougouriba Valley. The study analyses the impact of the colonization and the land issues exacerbated by competition between different communities for access to land and its control.

Without leaving Burkina Faso, but turning to land tenure reforms, Paul Moyenga offers a socio-historical analysis of tenure administration developments in the country. The study describes the rupture points as well as aspects of tenure governance inherited from the colonial period that were maintained throughout the course of several land and agrarian reforms in the country since its independence in 1960.

Shifting to post-conflict Liberia, Susanne Mulbah examines tenure and socio-economic matters related to land policies and the proposed Land Rights Act, which strives to reconcile customary and

cette vallée a finalement connu une augmentation considérable de sa population grâce à une politique nationale de développement économique, destinée à réhabiliter les vallées débarrassées de la maladie. Cette politique visait à établir une répartition équilibrée de la population entre des régions surpeuplées aux conditions naturelles défavorables et des vallées moins densément peuplées mais plus riches et sous-exploitées. En parallèle aux transferts de populations encouragés par l'État dans la vallée de la Bougouriba, des vagues de migrants, partis à la recherche de terres cultivables, ont commencé à s'établir spontanément dans ces régions. Cette étude analyse l'impact de la colonisation et les graves problèmes fonciers engendrés par les rivalités entre les différentes communautés pour l'accès aux terres et à leur contrôle.

Sans quitter le Burkina Faso, mais en restant dans le thème des réformes foncières, Paul Moyenga propose une analyse

debido a una *oncocercosis* (ceguera de los ríos) endémica, finalmente se produjo un incremento drástico de la población gracias a una política nacional de desarrollo económico a favor del mejoramiento de los valles donde se hubiera erradicado la *oncocerciasis*. A través de esta política, se apuntó a conseguir un equilibrio de la población entre las regiones superpobladas que presentaban condiciones naturales desfavorables y los valles ricos e infraexplotados que tenían una menor densidad de población. Olas de inmigrantes en busca de tierras cultivables empezaron a asentarse de forma espontánea en el valle de Bougouriba simultáneamente a la transferencia de población apoyada por el Estado. En el estudio se analiza el impacto de la colonización y las cuestiones en torno a la tierra que se han visto exacerbadas por la competencia por el acceso a la tierra y su control entre distintas comunidades.

Sin abandonar Burkina Faso, pero volviendo al tema de las reformas a los sistemas de tenencia de la tierra, Paul Moyenga presenta un análisis sociohistórico de los

statutory tenure systems and set up an enabling environment for responsible investments and sustainable management of natural resources. Commercial interests in land have intensified in Liberia and sustainable economic development needs to entail responsible land and natural resource governance to determine how to resolve land disputes without marginalizing people living under customary land tenure and traditional governance systems.

Further south, in Malawi, Charity Chonde examines whether acquired land rights in the Community Based Rural Land Development Project influenced household heads' incentives to undertake long-term investment in land in support of livelihoods. In particular, the research sought to investigate whether newly acquired land rights by men in this matrilineal social system affected their propensity to invest in long-term agricultural enterprises. The study found that perceived tenure security influenced male household

sociohistorique de l'évolution de l'administration foncière dans le pays. Cette étude décrit les points de rupture tout comme les aspects de la gouvernance foncière hérités de la période coloniale qui ont été maintenus tout au long des nombreuses réformes foncières et agraires dans le pays depuis son accession à l'indépendance en 1960.

Puis, dans un Libéria d'après-guerre, Susanne Mulbah analyse les problèmes fonciers et socioéconomiques liés aux politiques en la matière et à la Loi sur les droits fonciers. Cette loi aspire à réconcilier régimes fonciers coutumiers et statutaires et à mettre en place un environnement favorable à des investissements responsables et à une gestion durable des ressources naturelles, les intérêts commerciaux suscités par les terres s'étant intensifiés au Libéria. Un développement économique durable passe par une gouvernance responsable des ressources naturelles afin de déterminer les moyens de régler les différends fonciers

avances del país en el ámbito de la administración de la tenencia. En el estudio se describen los puntos de ruptura así como los aspectos de la gobernanza de la tenencia heredados del período colonial que sobrevivieron a las diversas reformas agrarias y de tenencia de la tierra que se realizaron en el país desde que obtuviera su independencia en 1960.

En el contexto posterior a los conflictos de Liberia, Susanne Mulbah analiza la tenencia y los asuntos socioeconómicos relacionados con las políticas de tierras y la Ley de derecho de tierras propuesta, a través de la cual se procura reconciliar los sistemas de tenencia consuetudinarios con los estatutarios y generar un entorno favorable para las inversiones responsables y la gestión sostenible de los recursos naturales. En Liberia se han intensificado los intereses comerciales en la tierra y es preciso que el desarrollo económico sostenible conlleve la gobernanza responsable de la tierra y los recursos naturales para determinar cómo resolver las controversias en torno a la tierra sin marginar a las

heads to invest in land, and that availability of income from other economic activities enabled them to do so, while it did not encourage female household heads to invest in land because of labour and financial constraints.

The edition concludes with an article by Matthew Hoffman on community commons in Norway. The study champions community forestry because it aims to promote ecological sustainability and rural development by placing control of forest resources in the hands of local communities. The author offers a comparison between two case studies to explore the importance of local ownership in community commons *vis-à-vis* local use rights in state commons. Communities that only hold the latter have limited potential to contribute to local economic development, whereas community commons are highly regarded in terms of both forest stewardship and community development because they provide integrated management for large areas of less intensively

sans marginaliser les populations vivant sous des régimes coutumiers et des systèmes de gouvernance traditionnels.

Plus au sud, au Malawi, Charity Chonde analyse si les droits fonciers acquis lors du Projet de développement des terres rurales à assise communautaire ont incité les chefs de famille à investir sur le long terme pour venir en appui aux moyens d'existence. En particulier, ses travaux de recherche visaient à déterminer si les droits fonciers nouvellement acquis par les membres de sexe masculin de ce système social matrilinéaire ont influé sur leur propension à investir sur le long terme dans des entreprises agricoles. L'étude parvient à la conclusion que la sécurisation foncière a encouragé les hommes chefs de famille à investir dans le foncier, grâce à la disponibilité de revenus provenant d'autres activités économiques. En revanche, les femmes chefs de famille n'ont pu faire de même, en raison des contraintes liées au travail et du manque de ressources financières.

personas que viven en sistemas de gobernanza tradicionales y de tenencia consuetudinaria de la tierra.

Más al sur, en Malawi, Charity Chonde analiza si los derechos sobre la tierra adquiridos gracias al Proyecto de desarrollo de tierras rurales basado en la comunidad influyeron como motivación para que los jefes del hogar realizaran inversiones en la tierra a largo plazo en apoyo de los medios de vida. En particular, a través de este estudio se trató de investigar si los derechos sobre la tierra adquiridos recientemente por los hombres en este sistema social matrilineal afectaban la propensión de estos a invertir en empresas agropecuarias a largo plazo. El estudio reveló que la seguridad de la tenencia percibida influía en la decisión de los jefes del hogar a la hora de invertir en tierras, y que ellos podían hacerlo gracias a la disponibilidad de ingresos recabados de otras actividades económicas, mientras que no alentaba a que las jefas del hogar invirtieran en tierras debido a las limitaciones financieras y laborales a las que estaban sujetas.

managed rough hill grazing and/or forest lands (*utmark*) and keep the benefits of resource management local through local ownership and commitment to reinvestment.

We wish to express our sincerest gratitude to the authors and many others who have contributed to this edition of the *Land Tenure Journal*.

***Paul Munro-Faure***
Deputy Director
Climate, Energy and Tenure Division

Ce numéro se termine avec un article de Matthew Hoffman sur les terres collectives en Norvège. Cette étude encourage la gestion collective des forêts dans la mesure où elle vise à promouvoir la durabilité écologique et le développement rural en confiant le contrôle des ressources forestières aux communautés locales. L'auteur propose une comparaison entre deux études de cas, pour mettre en évidence l'importance de l'appropriation collective des terres au niveau local par rapport aux droits d'usage locaux des terres domaniales. Les communautés jouissant uniquement de ces derniers sont peu susceptibles de contribuer au développement économique local, tandis que les terres collectives sont bien mieux considérées en matière de gestion forestière et de développement communautaire. Elles permettent en effet une gestion intégrée de grandes étendues de pâturages naturels de montagne et/ou de terres forestières (*utmark*), gérées de manière moins intensive, et conservent les avantages d'une

Este número concluye con un artículo de Matthew Hoffman acerca de las propiedades comunales en Noruega. El estudio aboga por las actividades forestales comunitarias porque apunta a promover la sostenibilidad ecológica y el desarrollo rural poniendo el control de los recursos forestales en manos de las comunidades locales. El autor hace una comparación entre dos estudios de casos para explorar la importancia de la posesión de las propiedades comunales a nivel local frente a los derechos locales de uso de las propiedades comunales poseídas por el Estado. Las comunidades que solo poseen estos derechos tienen un potencial limitado para contribuir al desarrollo económico local, mientras que las propiedades comunales están muy bien consideradas en términos tanto de administración forestal como de desarrollo comunitario, debido a que dan lugar a la gestión integrada de extensas zonas de tierras forestales o irregulares para pastoreo de montaña (*utmark*) que requieren una gestión

gestion locale des ressources, grâce au contrôle exercé par les communautés et à leurs engagements en matière de réinvestissements.

Nous voudrions exprimer ici nos plus sincères remerciements aux auteurs et à tous ceux qui ont contribué à cette édition de *Revue des questions foncières.*

***Paul Munro-Faure***
Directeur adjoint
Division du climat, de l'énergie et des régimes fonciers

menos intensiva y los beneficios de la gestión de los recursos se mantienen en el lugar gracias al compromiso a la reinversión y la posesión a nivel local.

Quisiéramos expresar nuestro más sincero agradecimiento a los autores y a muchas otras personas que han aportado su contribución a este número de la *Revista sobre tenencia de la tierra.*

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# INTEGRATED VOLUNTARY LAND CONSOLIDATION: A third model for land consolidation and land banking in Central and Eastern Europe

# LE REMEMBREMENT AGRICOLE VOLONTAIRE ET INTÉGRÉ: Un troisième modèle de remembrement agricole et de réserve foncière en Europe centrale et orientale

# CONCENTRACIÓN PARCELARIA VOLUNTARIA INTEGRADA: Un tercer modelo para la concentración parcelaria y los bancos de tierras en Europa central y oriental



## ABSTRACT

LAND CONSOLIDATION
LAND BANKING
LAND MOBILITY
REALLOTMENT PLANNING
CENTRAL AND EASTERN EUROPE

The agricultural structures in Central and Eastern Europe (CEE) are characterized in many countries by excessive fragmentation of ownership of agricultural land and in several countries also by fragmentation of land use and small sizes of agricultural holdings and farms. In some countries this situation is a result of recent land reforms. In other countries, the structures are historically determined.

Since the early 1990s, CEE countries have started to introduce land consolidation instruments to address the problems mainly associated with land fragmentation.

## RÉSUMÉ

REMEMBREMENT AGRICOLE
RÉSERVE FONCIÈRE
MOBILITÉ FONCIÈRE
PLAN DE REDISTRIBUTION
EUROPE CENTRALE ET ORIENTALE

Dans de nombreux pays d'Europe centrale et orientale (PECO), les structures agricoles sont caractérisées par une fragmentation excessive des propriétés agricoles mais aussi, dans plusieurs pays, par le morcellement de l'utilisation des terres et des petites exploitations. Dans certains pays, cette situation est le résultat de réformes foncières récentes, tandis que dans d'autres, ces structures ont été déterminées par le cours de l'histoire.

Au tout début des années 90, les PECO ont adopté des politiques de remembrement agricole afin de répondre aux problèmes posés notamment par la fragmentation

## SUMARIO

CONSOLIDACIÓN DE TIERRAS
BANCO DE TIERRAS
MOVILIDAD DE TIERRAS
PLANIFICACIÓN DE LA CONCENTRACIÓN PARCELARIA
EUROPA CENTRAL Y ORIENTAL

Las estructuras agrícolas de Europa central y oriental se caracterizan por una fragmentación excesiva de la propiedad de terrenos agrícolas en muchos países y, en varios otros, también por la fragmentación del uso de la tierra y de granjas y explotaciones agrícolas de pequeño tamaño. En algunos países esta situación es el resultado de reformas recientes a la tenencia de la tierra; en otros, dichas estructuras se ven determinadas por su pasado.

Desde principios de la década de 1990, los países de Europa central y oriental (PECO) han comenzado a introducir instrumentos de concentración parcelaria para

A recent study documented that until now seven CEE countries have operational national land consolidation programmes and an additional 13 cases have introduced land consolidation instruments without yet having an operational programme. It can be expected that four to six, perhaps more, of the 13 cases may have operational programmes within the next four to five years. While development of land consolidation instruments is in progress in CEE, the study shows that introduction of land banking instruments has largely failed, at least as a tool to support land consolidation programmes.

Introduction of land consolidation in CEE has been inspired by Western European land consolidation approaches and countries have often felt that they have had to choose between either *simple voluntary land exchange* or *comprehensive and compulsory land consolidation*. This paper discusses the application of the two classical models in a CEE context. It is the experience in CEE that countries often cannot afford very comprehensive land consolidation projects, but also that simple and voluntary land exchange does not solve the structural

foncière. Une récente étude a montré que jusqu'ici, sept PECO ont institué des programmes nationaux de remembrement qui sont opérationnels et treize autres cas ont introduit des plans de remembrement qui n'ont pas encore été mis en place. On peut espérer qu'au moins quatre à six de ces treize cas, peut-être plus, auront un programme opérationnel dans les quatre ou cinq prochaines années. Si la mise en place de projets de remembrement est en progrès dans les PECO, l'étude montre que l'introduction des réserves foncières a totalement échoué, du moins en tant qu'outil d'appui aux programmes de remembrement.

L'introduction du remembrement dans les PECO s'est inspirée des initiatives en la matière en Europe occidentale et les pays ont toujours eu le sentiment qu'ils avaient uniquement eu le choix entre *l'échange simple et volontaire de parcelles* et *le remembrement agricole étendu et obligatoire*. Cet article analyse l'application de ces deux modèles classiques de remembrement au sein des PECO. L'expérience a montré que ces pays ne peuvent se permettre d'effectuer des remembrements

abordar los problemas que se asociaban principalmente con la fragmentación de la tierra. Un estudio reciente aportó pruebas que revelan que hasta el momento había programas nacionales de concentración parcelaria operativos en siete PECO y que otros 13 habían introducido instrumentos de concentración parcelaria, pero que todavía no contaban con un programa operativo. Es de esperarse que de cuatro a seis casos de estos 13, o tal vez más, podrán disponer de programas operativos en los próximos cuatro a cinco años. Mientras que en los PECO se están desarrollando instrumentos de concentración parcelaria, el estudio muestra que la introducción de bancos de tierras, al menos como instrumento de apoyo a los programas de concentración parcelaria, ha fracasado en la mayoría de los casos.

La introducción de la concentración parcelaria en Europa central y occidental ha tomado inspiración de los enfoques utilizados en Europa occidental al respecto y a menudo los países han tenido la impresión de que se han visto forzados a elegir entre *el simple intercambio voluntario de tierras* y



problems. The study documents the need to develop further a third land consolidation model more suitable for CEE and which the countries can draw on while preparing tailor-made solutions. Such a model – *Integrated voluntary land consolidation* – is discussed in this paper. In this model, reallotment planning is optimized compared with the simple voluntary model and conducted when

agricoles à grande échelle, tout comme l'échange simple et volontaire de parcelles ne répond pas aux problèmes structurels. Cette étude montre la nécessité de développer un troisième modèle de remembrement davantage adapté aux PECO, sur lequel les pays pourront s'appuyer pour adapter des solutions sur mesure. Ce modèle – *le remembrement agricole volontaire*

*la concentración parcelaria completa y obligatoria*. En este documento se estudia la aplicación de los dos modelos clásicos en el contexto de los PECO. Según la experiencia en esta parte de Europa, con frecuencia los países no pueden permitirse proyectos muy completos de concentración parcelaria, pero un simple intercambio voluntario de tierras tampoco resolvería los problemas

integrated with local community development planning because rural communities in CEE usually have many more development needs than the mere layout of land parcels. The reallotment process is optimized through various features such as working with a core and a secondary project area, the use of fixed parcels and the active involvement and motivation of landowners. Finally, when land mobility is low, it is recommended to establish land banks to support the voluntary land consolidation instruments.

*et intégré* – est décrit dans l'article. Il s'agit d'un plan de redistribution des terres qui a été optimisé par rapport au simple modèle basé sur le volontariat, et qui est mené en intégrant un plan de développement des communautés rurales, dont les besoins nécessitent bien souvent plus qu'un simple aménagement de parcelles. Le processus de redistribution est optimisé par divers éléments, tels que le fait de travailler à la fois avec une zone de projet centrale et une zone de projet secondaire, l'utilisation de parcelles fixes et la participation active et la détermination des propriétaires terriens. Pour finir, quand la mobilité foncière est faible, on recommande d'établir des réserves foncières pour venir en appui au remembrement volontaire.

estructurales. En el estudio se aportan pruebas respecto de la necesidad de desarrollar un tercer modelo de concentración parcelaria que sea más idóneo para los PECO y al que puedan recurrir los países en la preparación de soluciones a medida. En este documento se estudia un modelo semejante: *la concentración parcelaria voluntaria integrada*. En este modelo se optimiza la planificación de la concentración parcelaria respecto del simple modelo voluntario, la cual se realiza de manera integrada con la planificación de desarrollo comunitario a nivel local, dado que generalmente las comunidades rurales de los PECO tienen muchas más necesidades de desarrollo que la sola disposición de parcelas de tierra. El proceso de concentración parcelaria se optimiza a través de diversos factores, como trabajar con una zona central y una zona secundaria del proyecto, hacer uso de parcelas fijas y garantizar una participación activa y la motivación de los propietarios de tierras. Por último, cuando es escasa la movilidad de tierras, se recomienda establecer bancos de tierras que presten apoyo a los instrumentos de concentración parcelaria voluntaria.



## INTRODUCTION

Most countries in Central and Eastern Europe (CEE) in the last quarter of a century have introduced land consolidation instruments, mainly in response to land fragmentation problems in agriculture. Land reforms with restitution of land rights to former owners or distribution of state agricultural land to the rural population have, in most of the countries in the region, led to fragmentation of land ownership and in some countries also to excessive fragmentation of land use, hampering productivity and competitiveness of farms (Hartvigsen, 2013a; Hartvigsen, 2013b).

**Most countries in Central and Eastern Europe (CEE) in the last quarter of a century have introduced land consolidation instruments, mainly in response to land fragmentation problems**

Only very few comparative studies have been published on the introduction of land consolidation and land banking instruments in CEE after 1989 and the beginning of transition (e.g. Van Dijk, 2003; Thomas, 2006; Hartvigsen, 2006).

A recent study reviewed and analysed for the first time the experiences from introduction of land consolidation and land banking instruments in the CEE countries in a systematic way. The study found that introduction of land consolidation instruments is well underway in more than half of the countries (Hartvigsen, 2015).

In total, more than 50 international donor-funded technical assistance projects have supported the introduction of land consolidation instruments in CEE from the mid-1990s onwards. The CEE region has not yet fully found its own approaches to land consolidation and the instruments applied can, to a large degree, be traced back to the Western European countries where they were inspired. Furthermore, it is remarkable how often the CEE countries have ended up choosing between either a *comprehensive and compulsory land consolidation approach* or a *simple and voluntary approach*. FAO has applied a voluntary approach in its field projects, but in an integrated local rural development context. This study has revealed the need to develop further a third model for land consolidation in CEE, which would borrow from both classical models and which could be termed *integrated voluntary land consolidation*. The study mentioned above also documented how land banking instruments have largely failed in CEE, at least as a tool to support land consolidation instruments by making state land available for the reallotment

process and hence increasing land mobility. This is remarkable for two reasons. First, field experiences in CEE have often found that low land mobility limits the outcome of land consolidation efforts. Second, many countries in the region have a large stock of remaining state land after finalization of land reform, which represents a unique possibility for improving farm structures through land banking (Van Dijk and Kopeva, 2004).

The study of land consolidation and land banking in CEE was carried out initially through desk studies of all available relevant documents for each case. Consequently, key persons, for example from the Ministry of Agriculture, cadastre agency, academia and international and national consultants involved in land consolidation projects, were identified and 29 semi-structured qualitative research interviews were conducted with 41 key persons. The interviews were used mainly to fill the gaps in the written documentation, to verify information and to get access to the most recent development in each case, which was often not yet documented in writing. The aim of the study was to compare land consolidation and land banking activities among the countries and provide an overview.

In this paper, the experiences to date with land consolidation and land banking in CEE are presented and discussed in the second section based on the study conducted. The CEE cases are divided into three groups, i) *those already with on-going land consolidation programmes*, ii) *those where land consolidation has been introduced but not yet with a programme* and iii) *those with no or very little experience with land consolidation*.

In the third section, the suitability of the two classical land consolidation models is discussed in a CEE context based on the findings in the second section and the outline of a third and hopefully more suitable model – *integrated voluntary land consolidation* – is presented and discussed. The last section provides conclusions and perspectives.

**Outline of a third and hopefully more suitable model – *integrated voluntary land consolidation* – is presented and discussed**

Thus, this paper aims at answering the research question: *What is the main content of a model for land consolidation and land banking instruments suitable for Central and Eastern Europe based on previous experiences in the region and international best practices?*



## OVERVIEW OF LAND CONSOLIDATION AND LAND BANKING IN CEE AFTER 1989

A recent comparative study analysed the introduction of land consolidation and land banking instruments in CEE and found that seven of 25 cases studied already have ongoing national land consolidation programmes (Hartvigsen, 2015). In thirteen cases land consolidation has been introduced, often through land consolidation pilots with international technical assistance, but there is not yet a programme, and finally five countries have, to date, had very little or no experience with land consolidation. In Figure 1, the cases studied are divided into the three groups. In this section, the main findings of the study are presented for each of the three groups and an overview of experiences and lessons learned is provided.

**Seven of 25 cases studied already have ongoing national land consolidation programmes, in thirteen cases land consolidation has been introduced but there is not yet a programme**

The introduction of land consolidation and land banking in CEE has been supported by international technical assistance projects funded by international development institutions and donors. FAO has taken the lead in this process by elaborating policy guidelines for land consolidation and implementing field projects (FAO, 2003; FAO, 2004; FAO, 2008; FAO, 2012). In addition, FAO has been co-organizer of 15 regional workshops and conferences from 2002 to 2014, often with between 50 and 100 participants from 20 to 30 European countries and a unique network of experts interested in land consolidation, land banking and related topics has been created. From 2011, the network has been known as the LANDNET and is, in principle, open to land management experts throughout Europe (Van Holst *et al.*, 2014).

### Countries with ongoing land consolidation programmes

A minority of the CEE countries had national land consolidation programmes between World War I (WWI) and World War II (WWII), some even earlier, and all with the main objective to reduce land fragmentation. In Hungary, land consolidation was introduced in 1908, in Bulgaria in 1911, while Poland (1923), Yugoslavia (1925) and Estonia (1926) introduced land consolidation instruments in the 1920s around the same time as the Netherlands (1924) and Denmark (1924) adopted the first 'modern' land consolidation laws. Among the CEE countries, only Poland and some of the republics in Yugoslavia

Figure 1
**Status of the development of land consolidation programmes in Central and Eastern Europe (October 2014)**



continued land consolidation projects throughout the collectivization period after WWII. The main reason for this was that collectivization had largely failed in Poland and Yugoslavia (Hartvigsen, 2013a). In Poland, 75 percent of the agricultural land remained in private ownership as well as in private use in small-scale family farms. In Yugoslavia, the situation was similar and around 80 percent of agricultural land remained in private ownership and use. In Poland, land consolidation was implemented on an area of 10 million ha (more than half of the total agricultural land) during the period 1945–1998 (Kozlowski and Zadura, 2007). Land consolidation in both Poland and Yugoslavia was applied in a compulsory, comprehensive and top-down approach in connection with large-scale agricultural development projects such as irrigation and land reclamation and often used to consolidate collective and state farms at the expense of the small private farms. In addition, land consolidation during the socialist era often led to loss in biodiversity and landscape degradation. Thus, land consolidation was often discredited. Poland has continued its land consolidation programme without interruption, but with adjustments after 1989, while land consolidation activities in Yugoslavia, except in Slovenia, were stopped in the early 1990s because of the outbreak of violent conflicts and wars.

Currently, seven of the CEE study countries have national land consolidation programmes when assessed against minimum requirements for having an operational land consolidation programme (Box 1). Two of these, Poland and

1. Land consolidation, as a land management instrument, is embedded in the overall land policy of the country.
2. A legal framework for land consolidation has been adopted (usually in the form of legal provisions and detailed regulations).
3. A lead public agency for land consolidation has been established and delegated to manage and run the national land consolidation programme.
4. Secure funding on an annual basis allows the lead agency to plan activities for at least two to three years ahead.
5. Technical and administrative capacity has been developed to implement land consolidation projects in the field and to manage the programme.

Box 1
**Minimum requirements for having an operational land consolidation programme (*source*: Hartvigsen, 2015)**

Slovenia, had, as explained already, ongoing programmes at the beginning of transition after 1989. In three of the seven countries, the Czech Republic, Slovakia and eastern Germany, land consolidation instruments and programmes were established in the early 1990s together with the launch of land reform. In Lithuania, a land consolidation programme was initiated in 2006 after land reform with restitution to former owners was almost finalized. Finally, in Serbia a land consolidation programme was re-established in 2007 after modernization of the land consolidation instrument applied during the Yugoslavia era.

When looking at the driving factors behind introduction of land consolidation in the seven countries with land consolidation programmes, the countries can be divided into two groups. In Poland, Slovenia, Lithuania and Serbia, land consolidation was mainly introduced as an instrument to address problems with fragmentation of both land ownership and land use and thus as a tool to improve productivity and competitiveness of farms. In the Czech Republic, Slovakia, and also to some extent in eastern Germany, land consolidation has not so much been focused on improving the land use conditions as more on addressing the fragmentation of land ownership integrated with the land reform process and the building up of land administration systems (i.e. cadastre and land registration). Land consolidation in the Czech Republic and Slovakia is very much a technical exercise, with a focus on surveying and on updating cadastre and land registers. Hence, in the Czech Republic, half of the budget for land consolidation projects is spent on land surveying and improved land registration (Kaulich, 2013).

**In Poland, Slovenia, Lithuania and Serbia, land consolidation was mainly introduced as an instrument to address problems with fragmentation of both land ownership and land use**

In the Czech Republic, Slovakia and eastern Germany, an additional driving factor has been the wish to establish a land management tool for improving nature, environment and landscape as well as local agricultural and rural development needs, including new field roads and access to parcels left without road access after land reform. These countries have today very good experiences in using land consolidation instruments integrated with local rural development needs through the elaboration and implementation of a *plan of common facilities* (community development plan) in connection with land consolidation projects.

Six of the seven countries, which are European Union (EU) members, fund the land consolidation programmes and projects with EU co-funding



under the Rural Development Programmes (RDP). Serbia is the only non-EU member country with a national land consolidation programme and as an EU candidate country Serbia is still not directly eligible for co-financing of a land consolidation measure under the RDP. In addition to creating new funding opportunities, the preparation for EU accession in Poland and Slovenia especially, the two countries with programmes already during the socialist era, has turned land consolidation in a direction more friendly towards nature and the environment. Furthermore, EU accession in the six member countries has led to introduction of environmental impact assessments (EIA) of land consolidation projects as a safeguard against negative impact on nature and the environment.

Six of the seven countries, Poland, Slovenia, Czech Republic, Slovakia, Serbia and eastern Germany apply land consolidation in a compulsory approach where the projects are approved administratively when the majority of landowners in the project area accept the project. In eastern Germany simple voluntary projects are implemented (voluntary land exchange) in addition to the compulsory projects. Lithuania is the only one of the seven countries with ongoing land consolidation programmes where land consolidation is applied only in a voluntary approach. The countries with a compulsory approach were heavily inspired by the German land consolidation tradition when building up their programmes, while land consolidation in Lithuania was inspired by the voluntary Danish land consolidation tradition.

**Six of the seven countries apply land consolidation in a compulsory approach. Lithuania is the only one of the seven countries with ongoing land consolidation programmes where land consolidation is applied only in a voluntary approach**

In most CEE countries, structural problems in agriculture are caused by land fragmentation and small agricultural holding and farm sizes. However, in all six countries with a compulsory land consolidation approach, the participants, in principle, receive land of the same value as when they join the reallotment planning. The outcome of the projects is consolidation of the parcels for each owner, but the total number of owners usually remains the same. This means that the potential to use the land consolidation instruments to facilitate enlargement of agricultural holdings and farms is not utilized. Landowners and farmers interested in purchasing additional agricultural land are forced to purchase land parcels from private owners willing to sell at local land market prices, as sales and purchases between the participants are usually not facilitated by the land consolidation professionals managing the projects. In Lithuania, selling and buying is facilitated in the land consolidation process

**The potential to use the land consolidation instruments to facilitate enlargement of agricultural holdings and farms is not utilized**

and the enlargement of holdings and farms is an objective pursued through the projects with the same objective of reducing land fragmentation.

The experiences of the programme countries show that it may not necessarily have to be a very lengthy process to build up land consolidation programmes and have them operational even when starting from the ground. Thus, the Czech Republic and Slovakia managed to have operational land consolidation programmes already after a few years of preparation in the early 1990s. Lithuania's programme came from the initiation of the first small pilot project in 2000 over a second round of pilots and adoption of a legal framework. Subsequently the first 14 projects under the national programme began less than six years later in 2006. The experiences show, however, that not everything is running perfectly from day one and adjustment of the legal framework and procedures may often be necessary after a few years of field experiences.

The seven programme countries all have a considerable amount of remaining state agricultural land after finalization of their land reforms. This land stock is usually managed by state land funds. In Slovenia, around 9 percent of the total agricultural land is possessed by the state land fund. In Lithuania it is expected that 400 000 ha will remain under state ownership after complete finalization of the land restitution. The study shows that none of the seven countries use the available state land as a state land bank to support their land consolidation instruments as is the case in Western European countries such as the Netherlands, Germany and Denmark (Hartvigsen, 2015). Instead, state land is consolidated in the same way as private land. Despite the available state land, it can be concluded that land banking instruments opposed to land consolidation instruments have largely failed throughout CEE, at least as a tool to support land consolidation instruments. The availability of agricultural land from a state land bank is especially important in land consolidation projects using a voluntary approach, but also in compulsory projects when land consolidation is applied together with public area demanding projects where landowners are compensated with other land, e.g. in connection with infrastructure or nature restoration projects. Available state land increases the land mobility in the projects and thus increases the chances for successful implementation and the CEE countries are often characterized by low land mobility (Hartvigsen, 2014a).

**Land banking instruments opposed to land consolidation instruments have largely failed throughout CEE**



### Land consolidation experiences but not yet national programmes

Since the beginning of transition in 1990, in 13 of the CEE cases studied land consolidation instruments have been introduced (Figure 1) but not all the minimum requirements for having an operational land consolidation programme have been met yet (Box 1).

The driving factor behind introduction of land consolidation in this group of cases has mainly been land fragmentation and small farm and holdings sizes, and the recognition of the importance of these structural problems in agriculture among decision-makers. The integration of land consolidation with local rural development needs has only been a secondary driving factor in these cases and seems often to have been included in international technical assistance projects following the recommendation of international institutions, donors and international experts with a background in land consolidation in Western Europe.

The typical introduction of land consolidation instruments in CEE has been through international technical assistance projects funded by donors and international organizations. In total, more than 50 international technical assistance projects have, from the middle of the 1990s onwards, supported the introduction of land consolidation instruments in CEE. Projects have usually included the implementation of land consolidation pilot projects. In total, pilots have been implemented in 15 of the study cases of which 12 belong to the second group not yet with a programme and three to the group of countries already with ongoing programmes (Figure 2).

**More than 50 international technical assistance projects have, from the middle of the 1990s onwards, supported the introduction of land consolidation instruments in CEE**

In all cases with pilots, except in Estonia, the first pilots have been implemented using a voluntary approach. There are good reasons for this. First, compulsory land consolidation requires the adoption of a special legal framework, which was not in place when the first pilots were started, except in Estonia, where a law with a compulsory approach was adopted in 1995 before pilots were initiated in 1998. Second, many governments started land consolidation pilots in the 1990s and beginning of 2000s relatively shortly after private ownership of agricultural land was restored or distributed to the rural population after the decades of collectivization. In this situation, where private land ownership is not taken for granted, many among the

Figure 2

**CEE cases where land consolidation pilot projects have been implemented with international technical assistance**



rural population were afraid that they might lose their land rights through land consolidation projects and the trust in government was generally low.

Land consolidation pilots in CEE have provided valuable experiences and understanding of bottlenecks and constraints in existing procedures, and legal provisions hampering both land market development and implementation of land consolidation projects. In this way, the pilots often have documented and justified the need for land consolidation legislation in the country. This has been the case in several countries, including Albania, Hungary, Lithuania, Latvia, Croatia and the former Yugoslav Republic of Macedonia. In nine of the study cases, international technical assistance projects have supported the development of a national land consolidation strategy. The experiences gained in pilots have been feeding directly into the strategy formulation. In Lithuania and Serbia, already with ongoing land consolidation programmes, the strategy development was crucial to ensure the political support necessary to take the final steps towards operational programmes. The same is the case in the FYR of Macedonia, Kosovo and Bulgaria, all three being close to having operational land consolidation programmes.

The study reveals that five of the 13 cases with land consolidation experience, but not yet a programme, Latvia, Bulgaria, FYR of Macedonia, Kosovo and Croatia, are coming close and may be expected to have operational programmes within the next four to five years if the preparation continues to go well. Based on the study, the biggest remaining challenges in these cases are to build up technical and administrative capacity to implement land consolidation projects in the field and to manage the programmes, as well as to secure funding for the programmes. The road from the first pilot to an operational land consolidation programme is often not straight and may be paved with bumps and detours. The study demonstrates very well how political support can emerge and vanish overnight after elections or a change in minister. In Latvia and Estonia there are good examples of how interest and political support can re-emerge after being on standby for more than a decade. This gives hope for countries such as Armenia, Moldova and Albania where development towards a land consolidation programme seems to be temporarily on hold. Land consolidation is still vulnerable until national programmes are operational and the first regular projects are in progress.

**Five of the 13 cases with land consolidation experience, but not yet a programme are coming close and may be expected to have operational programmes within the next four to five years**

The need for further international technical assistance is currently moving from support to the first pilots to supporting the preparation of national programmes. Ongoing projects in Serbia and FYR of Macedonia are good examples of this.

In all countries, not only in CEE but in general, land consolidation projects and programmes are implemented in the crossover area between on the one side agricultural development and a more rational and productive land use and on the other side land administration with a focus on cadastre and land registers. As discussed above, the focus and objectives in this respect vary among countries. It is, however, crucial that land consolidation instruments are embedded in the overall national land policy and that all relevant institutions, including the Ministry of Agriculture and cadastre agency are fully involved.

### Countries with little or no land consolidation experiences

Five of the study countries have to date had little or no experience with the introduction of land consolidation and land banking. The reasons for this vary. In Belarus, where private ownership of agricultural land is still not allowed, except regarding the small household plots around villages, introduction of land consolidation and land banking is not currently relevant.

In Georgia, Azerbaijan and Montenegro, agricultural structures exist with small holdings and farm sizes and excessive fragmentation of land ownership and land use, similarly as with the CEE countries in which the same problems have been addressed by introducing land consolidation instruments. So far, land consolidation has not been a priority of shifting governments in these three countries and Montenegro is the only one of the seven parts of former Yugoslavia with no experience in land consolidation.

In Russia, most of the agricultural land has been privatized but to a large degree remains owned by the rural population through land shares. Moreover, the land is mainly utilized by large corporate farms through lease agreements with the shareholders. In this situation, with low land use fragmentation, a land consolidation instrument as applied in many Western European countries is not immediately relevant.



## MODELS FOR LAND CONSOLIDATION AND LAND BANKING IN CEE

**The CEE region has not yet fully found its own approaches to land consolidation**

The CEE region has not yet fully found its own approaches to land consolidation and the instruments can, to a large degree, be traced back to the Western European countries where they were inspired, i.e. land consolidation in the Czech Republic and Slovakia is closely related to the German tradition and land consolidation in Lithuania to the Danish. We will now, based on the experiences with land consolidation and land banking in CEE explained above, discuss the suitability of the two classical European land consolidation models; *comprehensive and compulsory land consolidation* versus *simple and voluntary land consolidation* in a CEE context.

As discussed in the previous section, six of the seven CEE countries with land consolidation programmes apply land consolidation in a compulsory and at least to some degree also in a comprehensive approach. Lithuania is the only programme country with a completely voluntary approach, while both compulsory and voluntary land consolidation is applied in eastern Germany. Hence, there is relatively little experience with simple voluntary land consolidation among the CEE programme countries. In the 15 CEE cases where land consolidation pilots have been implemented with international technical assistance, all except Estonia have applied a voluntary approach in the first pilots.

### Comprehensive and compulsory versus simple and voluntary land consolidation

The discussion on land consolidation approaches in CEE has often been limited to the two models described, which were developed in Western Europe, mainly in Germany and the Netherlands. Now, what are the strengths and weaknesses of these two classical land consolidation models in a CEE context?

The main strength of *comprehensive and compulsory land consolidation* is that all land parcels in the project area are included in the project where the old boundaries between parcels usually are 'erased' on the cadastre map and a new parcel layout designed with much fewer parcels, in principle one large and well-shaped parcel for each participating landowner. Thus, the model provides good results in terms of reduction of land ownership fragmentation.

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The model also allows for integrating the land consolidation project with local needs for agricultural and rural development, nature and landscape protection etc. through the elaboration and implementation of community development plans as described in the Czech Republic and Slovakia. Another significant advantage of the model is that cadastre and land registers are often completely renewed and updated, including new surveying works in the field.

The study shows, however, that the application of *comprehensive and compulsory land consolidation* in a CEE context also has several weaknesses. First, the model is time consuming and the process lengthy. In the Czech Republic, the duration of comprehensive projects has in recent years been five to six years, earlier even longer. In Slovakia, comprehensive projects took around ten years in the 1990s while they have been reduced to seven to eight years recently. In Poland, projects usually take four years, but in addition it often takes an additional three years to get support from the necessary majority of the landowners to begin the process. In Slovenia, projects used to take around seven years, which has now been reduced usually to around five years. The lengthy projects are also costly, at least compared with the

**The application of *comprehensive and compulsory land consolidation* in a CEE context has several weaknesses**



simple and voluntary projects. CEE countries have many urgent problems to be addressed in relation to agricultural and rural development, with usually limited public budgets and especially for the non-EU member countries without access to EU co-financing for land consolidation programmes under the RDP. These will often not be able to afford to implement comprehensive land consolidation projects at a significant scale.

Another weakness of the compulsory model is the fear among the rural population in many countries that they may end up losing their land rights in land consolidation projects. In some countries, e.g. in former Yugoslavia and Poland, land consolidation instruments are still discredited by negative experiences in the past. In the CEE countries where state land was restored or distributed to private owners within the last two decades, the rural population was often afraid to participate in a compulsory process of which they often did not know the outcome when they had to commit to participate. In such cases the trust in government is often low. Hence, decision-makers often refrain from going into discussions on sensitive land rights issues. It can also be questioned whether land consolidation with the objective of agricultural development is so important for society that it may require to threaten the land rights of the land consolidation participants in case they do not accept the elaborated reallotment plan. At least, this is worth considering.

Furthermore, in this model, all the land parcels in the project area are included in the consolidation while no parcels are included from outside the project area. In a CEE context, landowners will often own land parcels not only in the project area but also in neighbouring areas, which are not included in the project and the participants will then only partly have their fragmentation problems solved. It is either all or nothing. An obvious solution could be to increase the size of the project area, but then the land consolidation professionals may often end up with thousands of landowners, which are very difficult to handle.

Finally, the comprehensive and compulsory model, as we have seen it practised in the CEE programme countries, is not facilitating an increase in agricultural holding and farm sizes, which in addition to reduction of land fragmentation also will be needed in order to develop economically viable farms. So only half of the problem is addressed.

Figures 3 and 4 illustrate the practical application of a *comprehensive and compulsory land consolidation model* in a CEE context. Figure 3 is a fictive map of landownership in and around the project area before the land consolidation project, while Figure 4 is a fictive example of what could be the outcome of the project.

*Simple and voluntary land consolidation* in Germany and the Netherlands is usually applied with a limited number of participating landowners, i.e. up to 10–20 (Hartvigsen, 2015). The main strength of the model is that the

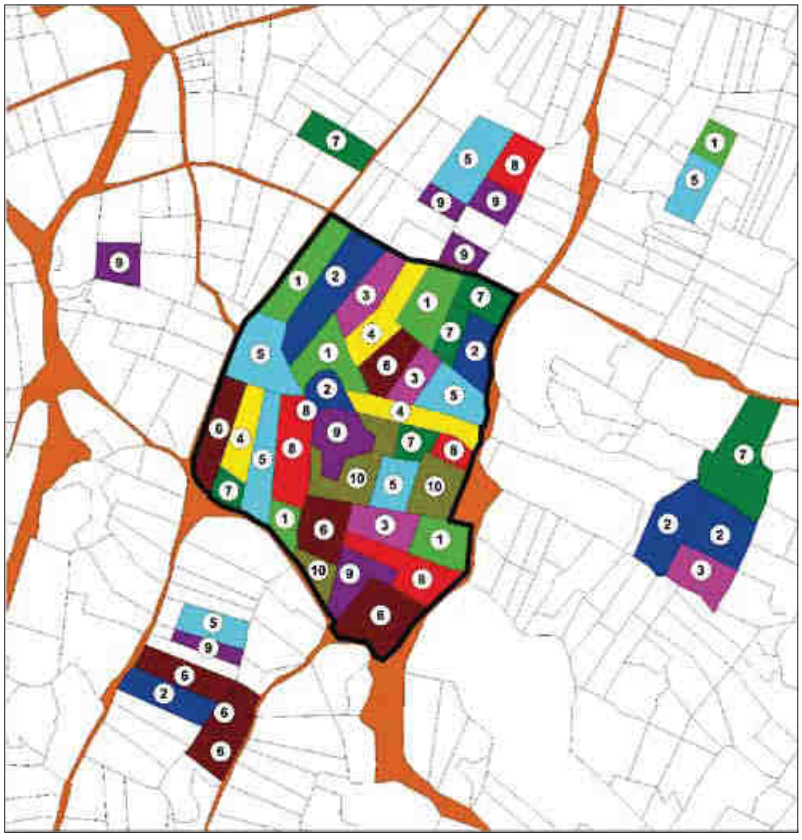

Figure 3
**Fictive ownership before a land consolidation project**
For better illustration, the project area (in black frame) and also the number of landowners involved are much smaller than will the usual situation. Ten (1-10) fictive owners are included with a total 54 parcels of which 35 are inside and 19 outside the project area.



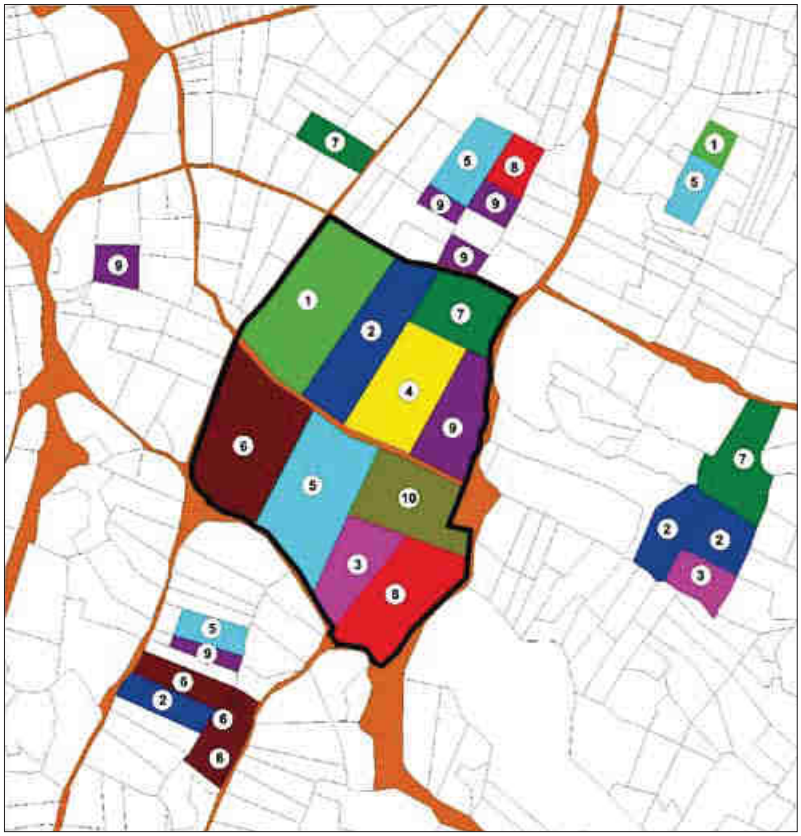

Figure 4
**Fictive ownership map (Plan 2) after comprehensive and compulsory land consolidation project**
Existing boundaries between parcels are 'erased' and a completely new parcel layout designed with fewer, larger and better-shaped parcels. Each owner has her/his land consolidated in one parcel of the same value as the parcels before the project (Figure 3). A new field road is planned and constructed to give better access to parcels.

reallotment process is fast and relatively cheap. The model also allows that some landowners chose to sell some or all of their land parcels, while others purchase additional land. In this way the model can facilitate structural development towards larger holdings and farms.

Another strength is the voluntary approach itself. Participation in the project represents an offer to the local stakeholders and they will only participate if they are convinced that they will benefit from the project, e.g. be better off with fewer and larger parcels or use the opportunity to either

sell land or purchase additional land. Finally, the model is flexible regarding local development objectives and needs and it may not be difficult to initiate a project when a few landowners and farmers can see the benefits of a project.

However, a simple, voluntary model has several limitations in the CEE context. First, the results in terms of reduction in fragmentation will often be relatively limited. The reallotment plan is negotiated and built up as a 'chain of transactions', where one agreement leads to the next, which in turn leads to another. If many landowners decide not to participate, it is difficult to find appropriate solutions for those wanting to participate. Solutions are often found among those landowners who beforehand declared their interest in participating, while other landowners, including landowners absent from the community, are not actively involved. In Central and Eastern Europe, there are examples of simple voluntary projects, e.g. in Lithuania and from pilots in Bulgaria and the FYR of Macedonia, where the reallotment planning has been carried forward only by those who signed up for the project without actively seeking to involve other stakeholders. Sometimes, the reallotment planning is not professionally facilitated but mainly left to the participants to develop the opportunities among themselves. Those who initiate the projects are usually also those who benefit from them. In the ongoing private funded land consolidation projects in Bulgaria, large corporate farms and investors purchase agricultural land from small private landowners and consolidate their holdings (Hartvigsen, 2015). Furthermore, simple voluntary land consolidation is limited to re-parcelling alone and is not integrated with local needs for agricultural and rural development.

**A simple, voluntary model has several limitations in the CEE context**

Simple voluntary land consolidation projects are vulnerable to low land mobility in the project area. If all stakeholders interested in participating want to exchange land of exactly the same value and very few want to sell and few are capable of buying, voluntary reallotment planning often becomes extremely difficult. Experiences from land consolidation pilot projects throughout the CEE region have often concerned situations of low land mobility. The outcome of this model is also hampered by a variety of existing land registration problems, which are widespread in most CEE countries. This is especially the case if the land consolidation projects are implemented following normal land transaction procedures without having a specific legal framework



for land consolidation to ensure simplified transaction procedures. Figure 6 represents a fictive example of a possible outcome of a simple voluntary project. Strengths and weaknesses of the two models in a CEE context are summarized in Figure 5.

| | COMPREHENSIVE AND COMPULSORY LAND CONSOLIDATION | SIMPLE AND VOLUNTARY LAND CONSOLIDATION |
|---|---|---|
| Strengths | → Good results in terms of reduction of land ownership fragmentation<br>→ Allows for integration with local agricultural and rural development needs<br>→ Complete renewal of cadastre and land register | → Fast process and fast results<br>→ Relatively little technical and institutional capacity and coordination between institutions needed for implementation<br>→ Low costs<br>→ Voluntary participation<br>→ Allows sale and purchase of land parcels<br>→ Flexible for local objectives and needs |
| Weaknesses | → Lengthy process (5–8 years) and slow results<br>→ High costs<br>→ High level of technical and institutional capacity and coordination among institutions needed for implementation<br>→ May create uncertainty in terms of land rights because of little trust in government<br>→ Either all or nothing<br>→ Opportunity to increase holding and farm sizes not facilitated in CEE countries with programmes | → Limited results in terms of reduction of fragmentation and increase in holding size<br>→ Only re-parcelling<br>→ More benefits to stronger farms and investors than to small-scale family farms<br>→ Vulnerable to low land mobility<br>→ Hampered by existing land registration problems<br>→ Limited facilitation of reallotment planning |

Figure 5
**Strengths and weaknesses of the classical European land consolidation models when applied in a CEE context**

Classical land consolidation models when applied in a CEE context have some strengths, but even more weaknesses. FAO has in its field projects in Armenia, Serbia, Albania and Bosnia and Herzegovina, as well as in policy guidelines, aimed at further developing the simple voluntary land consolidation towards a more comprehensive and integrated model where the reallotment

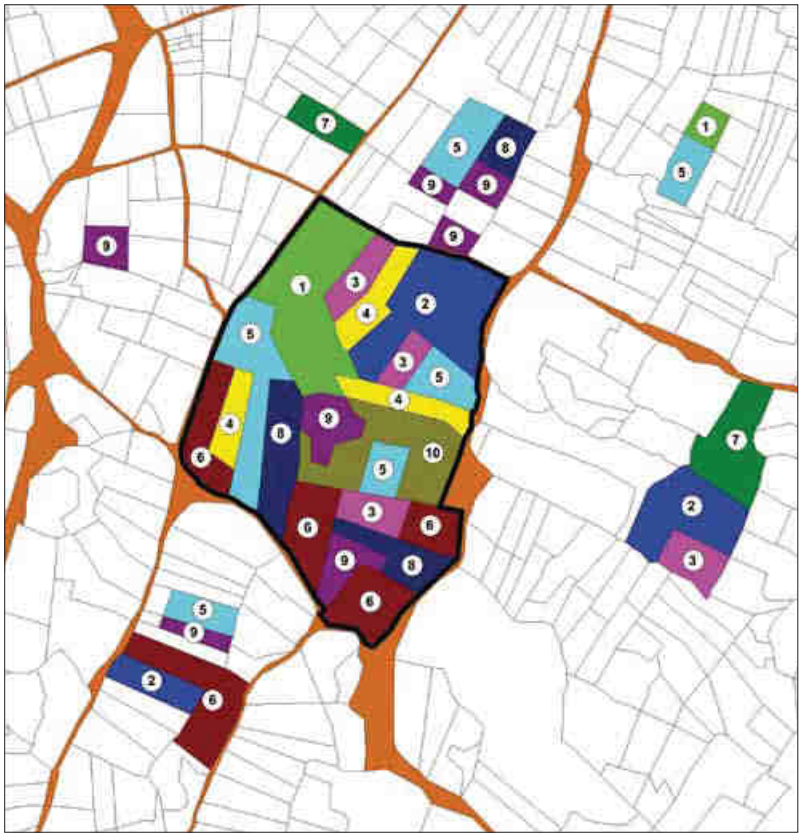

Figure 6
**Fictive ownership map (Plan 2) after simple voluntary land consolidation project**
Owner 7 sells all four parcels in the project area. Owners 1, 2 and 10 exchange parcels and enlarge holding sizes, while owners 6 and 8 exchange and maintain the same area. Owners 3, 4, 5 and 9 decide not to participate.

planning is integrated in a broader local rural development context. A similar concept has been applied in the World Bank funded pilots in Moldova. There is, however, a need to develop further a third land consolidation model more suited to CEE than the two classical models. The aim of a third model is to optimize the reallotment planning, hopefully ensuring better results through a simplified and cost-effective procedure. In the following subsection, an outline for a third model for CEE – *integrated voluntary land consolidation* – is presented and discussed.

**There is a need to develop further a third land consolidation model more suited to CEE than the two classical models**



## Integrated voluntary land consolidation – a third model

The situation in the CEE region in terms of land fragmentation, farm structures and needs for agricultural and rural development is far from homogeneous and one model will not fit all. Thus, the following proposed outline and main content of a model must be adapted to local circumstances and tailor-made solutions must be developed for individual countries. It can also be foreseen that one country may choose to apply variants of the model depending on a specific situation, e.g. one for fertile arable land and another for mountainous areas where farming conditions are completely different but development needs similar.

The model has two types of features fundamentally different from each other, those that are external to the reallotment planning and those that are internal elements in improved reallotment planning. The external features can also be seen as the framework in which the model functions. Here, an important element in the external part of the model is to integrate the reallotment planning in a local rural development context, drawing on the good experiences, e.g. from the Czech Republic and Slovakia and from FAO pilot projects where community development plans were elaborated as part of the land consolidation pilot project. Most rural communities throughout CEE have many more development needs than the structural problems caused by land fragmentation and small farm sizes. Hence, the need is greater than can be solved by land re-parcelling alone. Community development plans should be coordinated with existing development plans for the community, e.g. at municipal level. If detailed local development plans already exist, it may not be necessary to elaborate new ones as part of the land consolidation project. A participatory and community-led development approach can be achieved through active involvement of all local stakeholders and stakeholder groups. Conducting a series of community workshops will often be a good way to facilitate the process. Other elements can include focus group discussions, depending on the local situation. Also the active involvement of individual stakeholders, including landowners and farmers, is important. The aim of FAO pilots has been to interview individually all identified landowners about their interest in and hopes for the land consolidation project. The interviews are an additional opportunity to discuss with the individual landowners their

**An important element in the model is to integrate the reallotment planning in a local rural development context**

perception of needs for development, e.g. where parcels need access roads, need for renewal and new irrigation systems, etc.

A tangible outcome of the community development planning can be a catalogue of identified development projects, e.g. prioritized with a timeframe for implementation and with tentative budgets. The land consolidation project will often only have funding for reallotment planning and registration of agreed land transactions and not for local rural development needs such as roads, irrigation, etc. Additional funding, often from the budgets of local or central government or from donor projects, is necessary in an integrated model, and coordination among different institutions at national, regional and local level is crucial. In practice, this is often difficult. The reallotment planning can facilitate the implementation of the project catalogue by creating a property framework for subsequent implementation of the identified local development priorities. If, for example, it has been planned to establish a common playing field in the land consolidation project area, an objective of the reallotment planning could be to purchase the agricultural land from the current private owners and perhaps compensate them in land rather than money if possible.

Another external feature of the model can be to link access to credit for farmers willing to increase their production through purchase of additional land in the land consolidation project. Experiences from land consolidation pilots in the region have shown that it is often difficult for such farmers to get reasonable access to credit, e.g. at acceptable interest rates, because banks and credit institutions often do not accept agricultural land as collateral. In some countries, microcredit schemes or savings and credit associations exist, about which the farmers in the land consolidation projects can be informed. Generally, less fragmented and larger agricultural holdings with clear formal registration of ownership will be of higher value as collateral for future credits.

Regarding elements in the model that are within the reallotment planning, a high participation rate is crucial in voluntary re-allotment planning because the options for good solutions are greater when there are many participants. Therefore, thorough raising of awareness about the project and its expected benefits is important both at community meetings but also in direct communication with individual stakeholders. Initially it is necessary to identify all registered landowners in the project area, as in the



fictive example in Figure 3. Experiences have been good from interviewing all available landowners in the project area about their interest in and hopes for reallotment planning, e.g. if they are interested in selling, exchanging or purchasing parcels. Usually, it is a good idea to begin with the landowners and farmers present in the community because the reallotment plan, in order to be successful, will have to be built up around the interests of those able and willing to farm in the project area. Tracking down absent landowners and conducting individual interviews is time-consuming for the project team but represents the only way for dialogue with potential beneficiaries of the project. It is crucial to understand the incentives of individual landowners in order to be able to offer realistic reallotment solutions. After the individual interviews, the expected volume and outcome of the project can be assessed and the mobility of parcels illustrated on a land mobility map (Figure 7) (Hartvigsen, 2014a). The election of a local committee of stakeholders at the first community workshop, representing the general interests of the local stakeholders, can be an important intermediary step between the individual stakeholders and the land consolidation professionals. This allows participation in the valuation process in which the market price and relative values for exchange of parcels are established.

**Experiences have been good from interviewing all available landowners in the project area about their interest in and hopes for reallotment planning**

An important feature of the model is that participation of the landowners is voluntary. This is considered important, both with respect to the land rights of the owners in the project area and because it reduces time and costs of the projects. Voluntary land consolidation is often perceived to be synonymous with simple voluntary land consolidation (discussed above). There are, however, examples of voluntary land consolidation projects in CEE with many more participants. In the World Bank funded land consolidation pilot project in Bolduresti in Moldova, 1 270 owners participated (71 percent of all owners) and 1 347 parcels were involved in the process, which was implemented in only 18 months (Hartvigsen *et al.*, 2013).

**An important feature of the model is that participation of the landowners is voluntary**

The voluntary approach requires respect for those who decide not to participate, even when their decision is not based on economically rational considerations but on emotional attachment. Voluntary participation also means that planners must respect that not all parcels of those interested in participating are mobile and available for reallotment. In practice, some of the

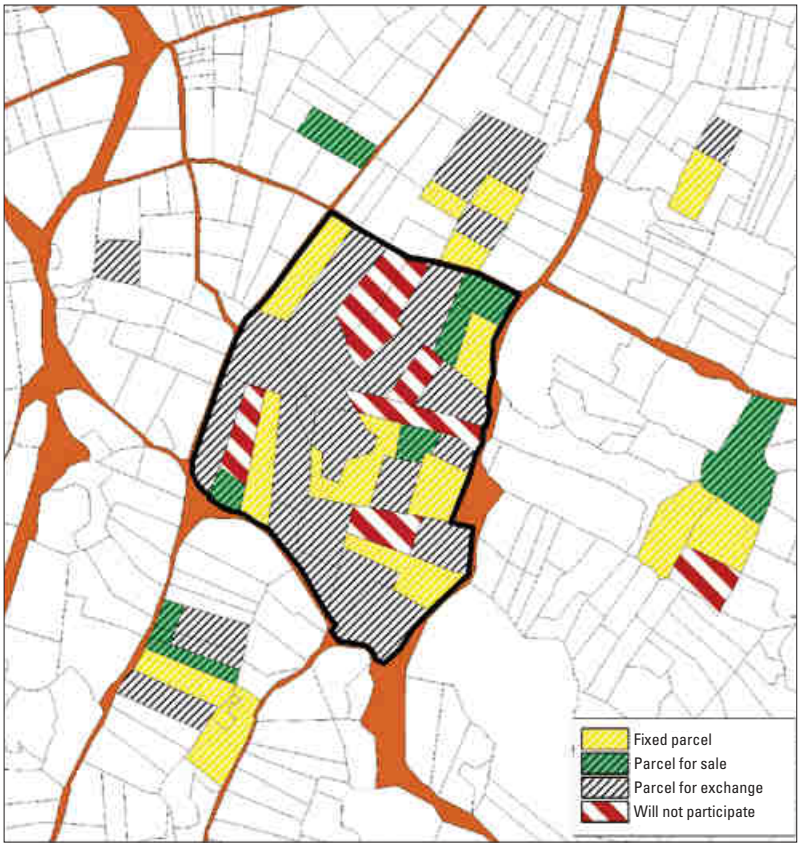


Figure 7
**Land mobility map**
Land mobility is assessed based on interviews with all available landowners: i) fixed parcels that the participants will not sell or exchange but usually consolidate around, ii) parcels for sale, iii) parcels that can be exchanged with other parcels in the owners main interest area and iv) parcels that will not participate.

parcels will be 'fixed', e.g. because they are close to the homestead of the owner, of specific value for his/her production or perhaps because of newly planted perennials in the parcel. Often, the owner will be interested in consolidating the land around the fixed parcels and enlarge an existing orchard or vineyard on neighbouring land received in the project. In this way, the fixed parcels guide the reallotment planning instead of being an inconvenience. It is usually a good idea, in liaison with the stakeholder committee, to divide the project area into sub-areas with natural boundaries such as roads, water bodies or



forest lines. For each sub-area, planners, assisted by the local committee, discuss and decide on design goals and reallotment planning based on the stated interests of the individual landowners. The design goal for a particular area can be to consolidate and perhaps enlarge the land of specific landowners, e.g. around their fixed parcels, but it can also be to purchase the private land for public needs as defined in the community development plan. The introduction of sub-areas also makes the valuation process easier and more manageable.

Another feature of the model is to work with a two-level project area. The project area (Figure 3) thus becomes the core area and the surrounding areas are secondary. Both classical models (discussed above) usually only allow land transactions inside the core area. By also allowing land transactions in surrounding areas, reallotment opportunities are significantly increased and it becomes easier to find appropriate solutions for those landowners with only one or a few parcels in the core project area and their main interest in the secondary area. By shifting their land out of the core area more solutions are open for those landowners with the core area as their main interest. To control the process better, planners can allow only targeted land transactions in the secondary area that benefit outcomes in the core project area. The possible outcome of reallotment planning under the integrated voluntary model is illustrated in Figure 8. When comparing the possible outcome of the integrated voluntary land consolidation model in Figure 8 with the outcome of the simple voluntary model illustrated in Figure 6, it is apparent that the landowner participation rate is higher in the integrated voluntary model. This indicates that additional features are applied and the reallotment planning is optimized in the model illustrated in Figure 8. In this way, the integrated voluntary model becomes more than just the simple voluntary model integrated with local rural development needs.

**A feature of the model is to work with a two-level project area**

Voluntary reallotment planning is difficult, as discussed above, when land mobility in the project area is low. This can also be a problem for *integrated voluntary land consolidation*. In regions and countries with low land mobility, it is strongly recommended to establish land banking instruments as add-ons to the land consolidation instruments. As explained in the second section, the opportunities for land banking are generally good in CEE countries because most have large reserves of state agricultural land remaining after finalization of the land reform process that began in 1990. In practice, the

**In regions and countries with low land mobility, it is strongly recommended to establish land banking instruments as add-ons to the land consolidation instruments**

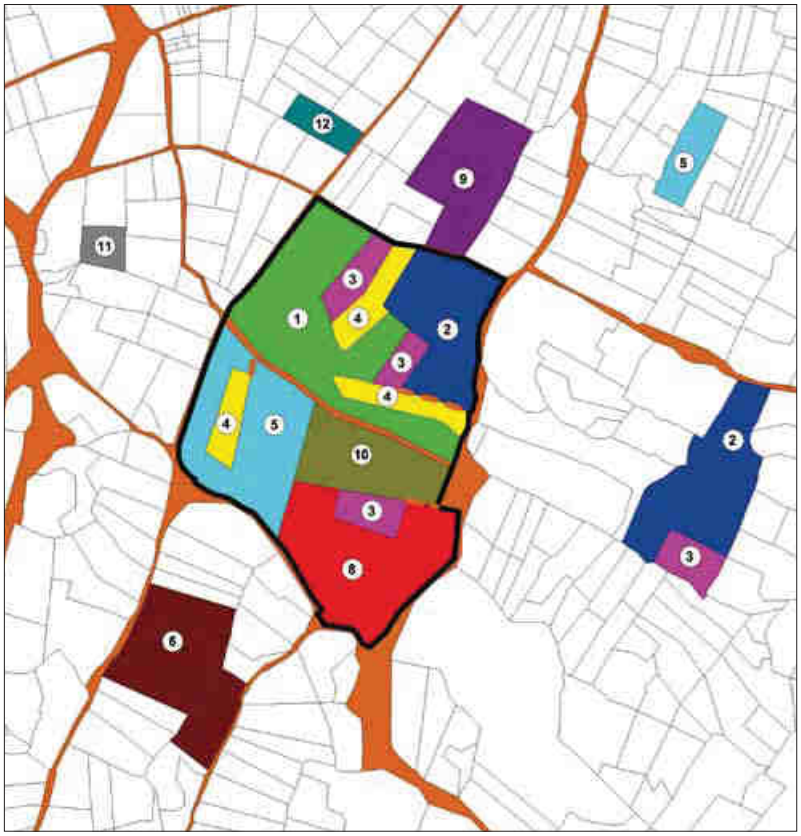


Figure 8
**Fictive ownership map (Plan 2) after integrated voluntary land consolidation project**
Owner 7 sells six parcels in the core and secondary project area. Owners 1, 2 and 8 exchange parcels and enlarge holding size, while owners 5, 6, 9 and 10 exchange and maintain the same size. Owners 3 and 4 decide not to participate. Targeted land transactions in the secondary project area include new owners 11 and 12. A new field road is planned and constructed to give better access to parcels. In addition, parcels belonging to owners 3 and 4 are allocated formal road access.

land bank can be a so-termed revolving fund, which with available start-up capital is authorized on behalf of the state to purchase agricultural land from private owners at market rates in a period of one or two years before the land consolidation project is launched. For this to work, the projects must be planned in advance and strong coordination among the involved actors is crucial, e.g. between land consolidation agency and land bank. Until the reallotment planning is finalized, the land is temporarily held by the land bank and can be leased out to private owners through a short-term agreement. When the reallotment process is initiated, the local stakeholders will be



aware that the land purchased by the land bank is available and will provide for a good project outcome. The land bank sells the land again in the land consolidation project and the revenue returns to the revolving land bank and can be used for the next project. To work in practice, the approval procedures for the land banks, purchase and sale of land must be fast and flexible and the institution must be able to act in the local land market similarly as private actors. Thus, the director of the land bank must be authorized to sign agreements on behalf of the state. When land banks are established, it is important to include safeguards against misuse. Furthermore, it is crucial that the land bank holds or purchases agricultural land, which is attractive for the potential participants in the land consolidation project, e.g. land of good soil quality and close to the village. If not, land banking will not have the intended positive effect.

If it is not possible to establish a formal land bank for political reasons, it is important that the existing state land in the two-level project area is available for the reallotment planning, at least for exchange but preferably for sale. There are very good examples of the active use of state land in land consolidation pilots in countries such as Armenia, Lithuania, Bosnia and Herzegovina even in the absence of formal land banks. The main characteristics of the integrated voluntary land consolidation model are summarized in Box 2.

Box 2
**Main Characteristics of Integrated Voluntary Land Consolidation**

The main characteristics of a third land consolidation model for Central and Eastern Europe are:

1. Voluntary participation of the landowners in the project area.
2. Land professionals facilitate the reallotment planning.
3. The active involvement of landowners and other stakeholders is encouraged in a participatory process.
4. The reallotment planning includes land transactions in surroundings when they benefit the outcome in the core project area.
5. Land banking is applied when the land mobility is low.
6. The reallotment planning is integrated in a local rural development context through the elaboration and implementation of community development plans.

## CONCLUSIONS

The development of land consolidation instruments is ongoing in many CEE countries. Seven countries have national land consolidation programmes and an additional four to six countries can be expected to have operational programmes within the next four to five years if the preparation continues to go well. Land banking instruments have largely failed in CEE countries, at least as tools to support land consolidation programmes and projects.

We established that the two classical European land consolidation models, *comprehensive compulsory land consolidation* and *simple voluntary land consolidation* each have several shortcomings when applied in a CEE context and we argue that a third land consolidation model – *integrated voluntary land consolidation* – is better suited to the CEE context.

**We argue that a third land consolidation model – *integrated voluntary land consolidation* – is better suited to the CEE context**

In this model, the reallotment planning is integrated with local community development planning because rural communities in CEE usually have more development needs than just re-parcelling. The reallotment process is optimized through various features, such as working with core and secondary project areas, use of fixed parcels and active involvement and motivation of all involved landowners. When land mobility is low, it is recommended to establish land banks to support the voluntary land consolidation instruments. Because the model is voluntary, the structural problems in the project area are not solved for those landowners who do not participate. The optimized reallotment planning applied in the model, as well as the use of a land bank, is however intended to assist in increasing the number of participants and thereby the scope of structural problems addressed in a project.

## ACKNOWLEDGEMENTS

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# AGRICULTURAL COLONIZATION AND LAND ISSUES IN THE BOUGOURIBA VALLEY (BURKINA FASO)

# COLONISATION AGRICOLE ET ENJEUX FONCIERS DANS LA VALLÉE DE LA BOUGOURIBA (BURKINA FASO)

# COLONIZACIÓN AGRÍCOLA Y CUESTIONES EN TORNO A LA TIERRA EN EL VALLE DE BOUGOURIBA (BURKINA FASO)



## ABSTRACT

DEVELOPMENT

AGRICULTURAL COLONIZATION

LAND TENURE ISSUES

BURKINA FASO

The development of the Bougouriba Valley is part of Burkina Faso's national policy for economic development. It aims to develop the valleys where river blindness (onchocerciasis) has been eradicated. The policy promotes an organized transfer of populations mainly coming from overcrowded areas of the country, notably the centre and north. This policy was justified by the need for a new balance between regions with unfavourable natural conditions, yet overcrowded areas, and the less densely occupied and underutilized regions. The Bougouriba Valley, with its immense potential and low population density, offered by far the best conditions for implementing this development strategy.

## RÉSUMÉ

AMÉNAGEMENT

COLONISATION AGRICOLE

ENJEUX FONCIERS

BURKINA FASO

L'aménagement de la vallée de la Bougouriba s'inscrit dans une politique nationale de développement économique entreprise par l'État, visant la mise en valeur des vallées libérées de la cécité des rivières (onchocercose), à la faveur d'un transfert organisé de populations venant essentiellement des régions surpeuplées du pays, notamment le centre et le nord. Cette politique se justifiait par la nécessité d'opérer un rééquilibrage entre régions aux conditions naturelles défavorables et cependant surchargées et zones moins densément occupées et sous-exploitées. La vallée de la Bougouriba, de par ses immenses potentialités et la faiblesse de l'occupation humaine, offrait de loin

## SUMARIO

DESARROLLO

COLONIZACIÓN AGRÍCOLA

CUESTIONES EN TORNO A LA TENENCIA DE LA TIERRA

BURKINA FASO

El desarrollo del valle de Bougouriba forma parte de la política nacional de desarrollo económico de Burkina Faso, que apunta a desarrollar los valles donde se ha erradicado la ceguera de los ríos (oncocerciasis). La política promueve la transferencia organizada de poblaciones que provienen principalmente de zonas superpobladas del país, en especial del centro y el norte, y se ve justificada por la necesidad de establecer un nuevo equilibrio entre las regiones que presentan condiciones naturales desfavorables, a pesar de ser zonas superpobladas, y las regiones cuya densidad de ocupación es menor y están infrautilizadas. El valle de Bougouriba, con su inmenso potencial y baja densidad de

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However, concurrent with the organized transfer of populations, waves of migrants in search of farmlands also settled the lands that were made available again through the African Programme for Onchocerciasis Control (APOC), resulting in a demographic growth that exceeded the settlement capacity of the developed space. Land tenure problems then emerged and jeopardized the potential for developing the natural resources efficiently and sustainably.

Mais parallèlement au transfert organisé de populations, des vagues de migrants à la recherche d'espaces cultivables se sont également installées sur les terres à nouveau disponibles grâce au Programme africain de lutte contre l'onchocercose (APOC), entraînant une croissance démographique supérieure aux capacités d'accueil de l'espace aménagé. Des problèmes fonciers sont alors apparus et hypothèquent les possibilités d'une mise en valeur efficiente des ressources naturelles pour un développement durable.

No obstante, de forma simultánea con la transferencia organizada de la población, en las tierras que volvieron a ponerse a disposición a través del Programa Africano de Lucha contra la Oncocercosis (APOC) también se asentaron olas de inmigrantes en busca de tierras agrícolas, lo cual dio como resultado un crecimiento demográfico que excedió la capacidad del espacio desarrollado para el asentamiento. Luego surgieron problemas en torno a la tenencia de la tierra que pusieron en peligro la posibilidad de gestionar los recursos naturales con eficacia y de modo sostenible.



## INTRODUCTION

Situé au cœur de l'Afrique occidentale, le Burkina Faso est un pays sahélien enclavé dont l'économie est essentiellement basée sur l'agriculture et l'élevage. Ce secteur occupe plus de 90 pour cent de la population et contribue pour plus de 30 pour cent au produit intérieur brut. Les ressources naturelles, en particulier foncières, base de la production agricole, représentent un capital essentiel de survie pour la population rurale. Mais de notables disparités existent dans la répartition de cette population. À côté de zones très peuplées aux ressources naturelles épuisées comme le «Plateaucentral» (ou «Plateau Mossi», appellation courante de la partie centrale du pays), existent des régions peu densément occupées qui disposent encore de riches potentialités agricoles, notamment dans le sud-ouest du pays, où se trouve la vallée de la Bougouriba (affluent de la Volta noire).

Face à ce déséquilibre hommes/ressources, l'exode rural devient un recours pour se soustraire à un environnement où les perspectives d'avenir semblent compromises. C'est pourquoi des vagues de migrants affluent dans les zones plus favorables et moins peuplées, à la recherche de terres fertiles. Ces mouvements de colonisation agricole s'effectuent généralement en dehors du contrôle des pouvoirs publics, les migrants s'adressant directement aux autorités coutumières pour leur installation.

La cause principale de la très faible occupation humaine des vallées des Voltas, au Burkina Faso, lors de son accession à l'indépendance (1960) et dans les années qui ont suivi, était due à l'onchocercose, appelée communément cécité des rivières. Cette maladie était répandue, à l'époque, le long de nombreuses rivières d'une dizaine de pays en Afrique de l'ouest.

L'onchocercose est une affection parasitaire causée par une filaire dont les femelles adultes se logent sous la peau des personnes infectées par une petite mouche noire, la simulie. Les femelles produisent des embryons (microfilaires) qui provoquent les manifestations cliniques de la maladie. Si les microfilaires atteignent le liquide intercellulaire de l'œil, la mort des filaires entraîne des réactions inflammatoires pouvant aboutir à des troubles graves de la vue, dont la cécité progressive, pour peu que la charge de microfilaires soit élevée à la suite d'une exposition prolongée à une infection massive.

Les simulies se reproduisent aux abords de cours d'eau à débit rapide et de ce fait, la maladie affecte surtout les populations demeurant à proximité de rivières aux eaux agitées. C'est pourquoi les autochtones ont évité l'installation de leurs villages dans les vallées infestées par les petites mouches noires, choisissant de se replier sur les interfluves. Le problème de santé publique que représente la cécité des rivières est l'aspect le plus désastreux de cette maladie endémique.

Autre conséquence de la menace des simulies: les populations, contraintes de se tenir à l'écart des vallées fertiles et de se regrouper en masse sur des terres surexploitées, ont provoqué la dégradation progressive de l'environnement et mis en péril jusqu'à leur production vivrière.

Grâce aux acquis scientifiques des chercheurs, on savait, à la fin des années 60, que si l'on voulait rompre définitivement le cycle de transmission de la maladie, il importait de détruire systématiquement les larves de simulie sur l'ensemble des sites de reproduction des mouches noires et cela sans interruption durant une vingtaine d'années. Comme il était impossible d'appliquer un tel programme d'élimination des gîtes larvaires à un niveau purement national – la mouche volant en deçà et au-delà des frontières politiques des États – les gouvernements des pays concernés se firent à l'idée de joindre leurs efforts pour l'exécution d'un programme de contrôle de l'onchocercose (APOC) sur l'ensemble des zones affectées de la sous-région ouest africaine.

Forts des conclusions scientifiques sur le mode de transmission de la maladie, les gouvernements intéressés par une action concertée de lutte contre la cécité des rivières prièrent les organismes du système des Nations Unies de leur accorder le soutien technique nécessaire. Le PNUD, la Banque mondiale, l'OMS et la FAO s'unirent aux pays intéressés et aux donateurs pour mettre au point et entreprendre la stratégie de lutte qu'il y avait lieu d'adopter sur le long terme, si l'on voulait juguler le fléau et rendre habitables les abords des rivières affectées. Une fois les premiers fonds réunis, les opérations de lutte contre les sites larvaires commencèrent en 1974.

Des pays membres du programme, le Burkina Faso (la Haute-Volta de l'époque) était de loin le plus affecté par l'endémie. Les zones davantage infestées par la simulie étaient situées au sud du pays – où se trouve la vallée de la Bougouriba – là où la pluviométrie dépasse les 1000 mm d'eau par an



et où le couvert végétal est assez dense. Si l'on tient compte des conditions naturelles prévalant au Burkina Faso, cette vallée apparaît comme l'une des régions du pays les plus favorisées.

Du point de vue du climat, des sols, de la végétation et des ressources en eau, le milieu physique offre d'importantes potentialités agropastorales. Malgré ses aléas, la pluviométrie est assez abondante et son étalement dans le temps suffisant pour garantir le cycle végétatif des cultures (CICRED/FAO, 1999).

Au début des activités du programme, le Burkina Faso n'avait pas de stratégie éprouvée de politiques foncières qui garantisse la continuité de la tenure à des nouveaux venus dans les zones progressivement débarrassées de la simulie. L'absence ou la précarité de garantie foncière de ces exploitants, qui n'étaient pas les propriétaires traditionnels des terres qu'ils se mettaient à exploiter, laissait également présager, d'une part, des risques de surexploitation «minière» des ressources naturelles des zones libérées du vecteur de la maladie, et de l'autre, une exploitation des terres à nouveau disponibles avec des techniques agricoles et pastorales non adaptées aux vallées humides et aux galeries forestières typiques des aires libérées.

En effet, l'hétérogénéité des populations désireuses de s'installer sur les terres reconquises, la diversité de leurs structures sociales et celle des pratiques culturales de leurs régions d'origine pouvaient également menacer la capacité de production durable des zones rendues à l'exploitation agropastorale.

C'est dans ce contexte que dès 1974, l'État burkinabé a entrepris de réguler les mouvements de colonisation agricole par la création de l'Autorité des vallées des Voltas (AVV).

La mission assignée à cette structure consistait à planifier les opérations à entreprendre ainsi qu'à encadrer les actions de mise en valeur des abords des rivières Voltas, d'une superficie totale de 47 400 km² (une superficie comparable à celle du Danemark: 43 000 km²), en voie d'assainissement, grâce au contrôle progressif de l'onchocercose, entrepris dans le cadre du programme spécifique de santé publique contre cette maladie invalidante. L'AVV devait ensuite procéder à un transfert de populations des régions surpeuplées vers ces vallées fertiles.

Le présent article dresse un bilan des résultats d'une recherche menée dans la vallée de la Bougouriba, portant sur la problématique de la dynamique démographique et le foncier, dans le cadre de la mise en valeur de ses

ressources naturelles. Il analyse d'abord l'impact de la colonisation de la vallée sur l'évolution de l'occupation de l'espace et par après, les enjeux fonciers exacerbés par la concurrence entre les différentes communautés pour l'accès à la terre et à son contrôle.

## COLONISATION DE LA VALLÉE, MISE EN VALEUR ET DYNAMIQUE DE L'OCCUPATION DE L'ESPACE

L'objectif principal de l'aménagement de cette vallée était de promouvoir le développement durable d'un espace sous-peuplé, grâce à une mise en valeur optimale des ressources naturelles et un transfert de populations venant de zones densément occupées.

**L'objectif principal de l'aménagement de la vallée était de promouvoir le développement durable d'un espace sous-peuplé**

Si l'éradication de l'onchocercose a permis de repeupler la vallée – l'AVV y a aménagé environ 68 000 hectares –, le transfert de population s'est doublé de mouvements migratoires incontrôlés, qui ont conduit à des dérives en ce qui concerne l'utilisation optimale des espaces: les migrants spontanés s'orientaient vers les villages traditionnels situés en bordure des aires aménagées car l'accès aux terres des villages de l'AVV était strictement contingenté. En contraste avec les critères imposés par l'AVV aux familles choisies pour constituer les villages nouvellement créés, les migrants pouvaient bénéficier de la souplesse des régimes fonciers locaux, qui n'opposent pas d'obstacles particuliers d'accès à la terre pour des populations à la recherche d'espaces où cultiver et n'imposent pas de techniques spécifiques d'exploitation agricole.

### Le contexte de l'aménagement de la vallée de la Bougouriba

Située au sud-ouest du Burkina Faso (cf. carte) – la région du pays la plus favorisée quant aux conditions agroécologiques – la vallée de la Bougouriba est dotée de ressources naturelles riches et diversifiées. Les précipitations y sont relativement abondantes et réparties sur cinq à six mois de l'année. Elles sont de l'ordre de 1 000 mm d'eau en moyenne par an contre 900 et 600 mm respectivement au centre et au nord du pays.

Dans l'ensemble, les sols présentent des conditions favorables à la production agricole. Les riches terres alluviales, qui couvrent une partie importante de la superficie de la vallée (environ 30 pour cent), offrent des

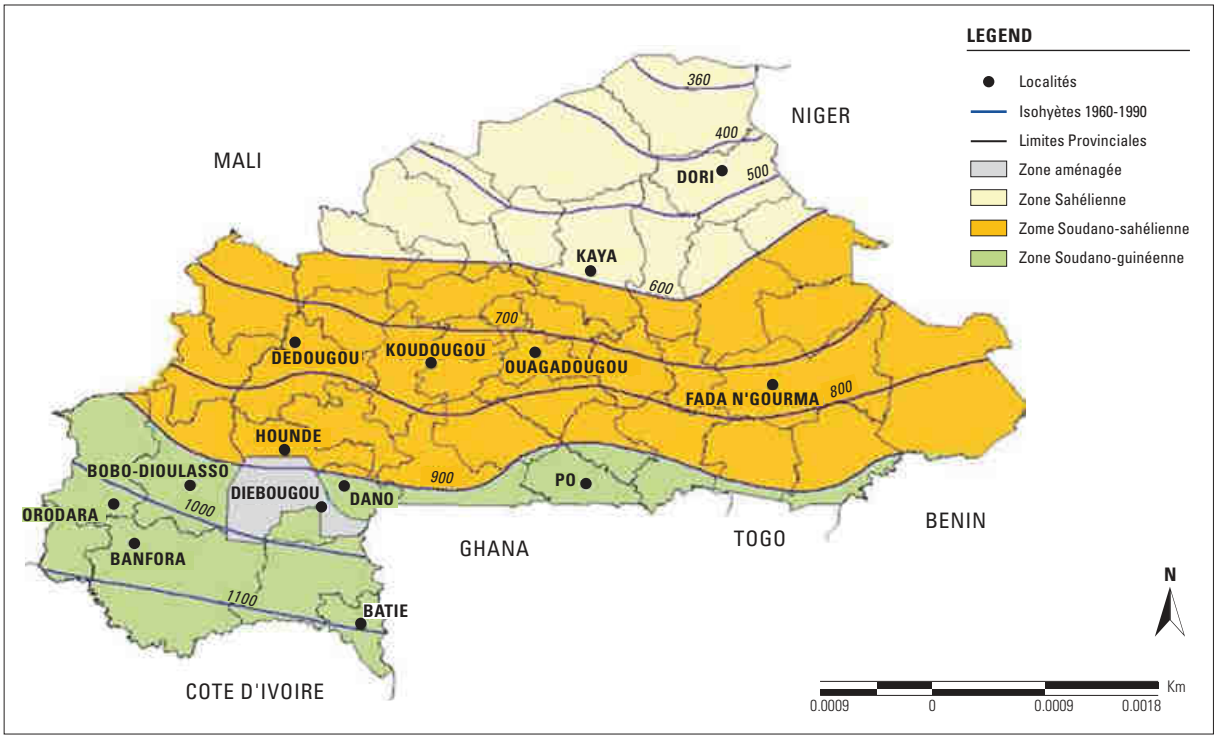


possibilités de cultures variées. Des sols ferrugineux tropicaux, de qualité moyenne mais suffisamment profonds et meubles, occupent 15 pour cent de la superficie et se prêtent bien à des cultures peu exigeantes.

Du fait de l'hostilité du milieu, essentiellement due à l'onchocercose, cette vallée était pour ainsi dire inhabitée et ses potentialités très peu exploitées. Les densités variaient entre 0 et 0,9 hab./km² (Savonnet, 1968) et le taux d'occupation des terres était estimé à 5,2 pour cent en 1974. Cela constituait

Carte

**Burkina Faso, situation géographique de la vallée aménagée de la Bougouriba (*source*: BNDT_PLUS, Sawadogo E., September 2012)**



donc un important atout pour sa mise en valeur et le transfert de populations provenant de régions surpeuplées. Seule l'onchocercose était l'obstacle qu'il fallait vaincre.

### Transfert organisé de populations, migrations incontrôlées et dérives spatiales

L'aménagement de la vallée une fois entamé, l'AVV procéda au recrutement et à l'installation des exploitants conformément à sa mission. La priorité était accordée aux paysans de régions à forte densité, notamment celle du Plateaucentral.

Au moment de l'installation, chaque famille recevait une parcelle d'une superficie de neuf hectares dont 0,5 hectare pour la construction d'une maison de type traditionnel et un hectare destiné au champ de case, jouxtant l'habitation; les 7,5 hectares restants étaient situés hors du village et répartis en six parcelles de cultures de 1,25 hectare chacune. Au total, chaque famille disposait de 8,5 hectares de terres pour ses activités agricoles. À la fin du transfert des populations sur les terres aménagées, les migrants spontanés étaient plus nombreux que les paysans officiellement installés par l'AVV. Ils représentaient 56 pour cent des exploitants de la vallée (AVV, 1991).

L'action conjuguée de la colonisation de la vallée par les paysans AVV et ceux des migrations incontrôlées a déclenché une croissance démographique accélérée (cinq pour cent par an selon les enquêtes). Progressivement, la taille des unités d'exploitation installées a augmenté, accroissant du même coup les besoins fonciers. De six personnes à l'installation, elle est passée à douze en moyenne. Cette poussée démographique s'est traduite au plan spatial par une intensification de l'occupation humaine, entraînant une forte dégradation des sols et du couvert végétal (cf. photos no 1 et 2). Dans l'ensemble de l'espace aménagé, la superficie exploitée est passée de 21 pour cent en 1956 à 27 pour cent en 1983, 44 pour cent en 1992 et 90 pour cent en 2012. La dégradation de la végétation est marquée par une régression importante de la superficie des formations denses (galerie forestière, savane arborée et arbustive).

**L'action conjuguée de la colonisation de la vallée par les paysans AVV et ceux des migrations incontrôlées a déclenché une croissance démographique accélérée**

Face à l'amenuisement des ressources disponibles, les différents utilisateurs de l'espace se livrèrent à une concurrence effrénée pour l'occupation et le contrôle du foncier, dont ils semblaient ne pas mesurer suffisamment les conséquences.







Photo n° 1
**Un champ épuisé**

Photo n° 2
**Un champ dégarni du couvert végétal**

## LES ENJEUX FONCIERS DANS LA VALLÉE DE LA BOUGOURIBA

La colonisation de la vallée de la Bougouriba, suite à l'aménagement, a abouti à la mise en place d'une population caractérisée par la diversité de ses origines et de ses valeurs culturelles. On assiste au bouleversement des structures sociales préexistantes et des modes traditionnels d'accès à la terre. Des problèmes fonciers apparaissent à la faveur d'une législation foncière confuse.

**La colonisation de la vallée, suite à l'aménagement, a abouti à la mise en place d'une population caractérisée par la diversité de ses origines et de ses valeurs culturelles**

### Ambiguïtés de la législation foncière et conceptions divergentes de la gestion du foncier

Dans l'espace aménagé, la gestion foncière se heurte à des difficultés car, en dépit d'un effritement des modes traditionnels d'accès à la terre suite à l'aménagement, le droit coutumier demeure encore vivace, au regard d'une législation moderne inadaptée. Leur coexistence suscite des interprétations et des perceptions divergentes. Cela a favorisé l'émergence de pratiques foncières hybrides, à mi-chemin entre le droit coutumier et les textes de la «Réorganisation agraire et foncière» (RAF), qui régissent le droit foncier moderne.

En 1984, pendant la période révolutionnaire, le Burkina Faso a adopté la loi sur la Réorganisation agraire et foncière. L'objectif fondamental visé était

de faciliter au plus grand nombre l'accès à la terre, de responsabiliser les acteurs et bénéficiaires, pour une gestion rationnelle des ressources naturelles.

Fort de cette loi, qui abolit les droits coutumiers sur la terre, l'État se présentait comme le principal gestionnaire du patrimoine foncier national. Mais dans la pratique, on constate un décalage entre les dispositions des textes de la RAF et les réalités sur le terrain: si l'application des textes en milieu urbain se fait sans trop de difficultés, il n'en est pas de même en milieu rural, où les valeurs traditionnelles sont encore bien ancrées dans la mentalité des populations locales.

Ainsi, dans la vallée de la Bougouriba, on note la coexistence ambiguë de deux types de législations foncières conduisant à des interprétations opportunistes et contradictoires des droits fonciers: d'un côté, le droit moderne représenté par les textes de la RAF et de l'autre, les pratiques foncières, qui trouvent leur fondement dans le droit coutumier. Dans le premier cas, il s'agit d'un droit national qui est revendiqué par les migrants et qui prédomine de ce fait dans les villages aménagés par l'AVV. Le second cas relève du droit coutumier appliqué par les populations autochtones.

Dès lors peut en découler un choix basé sur la convenance soit des textes législatifs qui régissent le foncier, soit des règles coutumières de gestion des ressources, selon les intérêts respectifs des acteurs. Les textes de la RAF sont diversement appréciés par les populations, tant dans leur application que dans leur conception. Dans les villages traditionnels, leur mise en pratique n'est pas revendiquée par tous; dans les villages aménagés, par contre, les exploitants prétendent se référer «aux lois modernes». Cette dualité en matière d'usage des terres a favorisé l'apparition de nouvelles pratiques foncières dans l'espace aménagé.

Paradoxalement, ces pratiques foncières opportunistes sont apparues à cause de l'ambivalence engendrée par la législation foncière. Le comportement des acteurs, face au dualisme droit foncier moderne/pratiques foncières traditionnelles, n'est pas guidé *a priori* par la reconnaissance définitive d'un type de droit, mais beaucoup plus par l'opportunité offerte par l'un plutôt que par l'autre de ceux-ci. Lorsque l'intérêt de l'individu n'est pas suffisamment pris en compte dans un système, l'intéressé se réfère à l'autre. Un autochtone, pour affirmer son contrôle foncier, se base sur le droit que lui confèrent les



coutumes. En tant que descendant des premiers occupants, il considère qu'il a un droit imprescriptible à faire valoir sur les terres ancestrales. De même, un migrant, pour occuper un espace, s'appuie sur la légalité que lui confèrent les textes de la RAF.

Pour lui, *«les terres appartiennent à l'État et c'est leur mise en valeur qui confère la propriété à celui qui les exploite»*. Tirant argument de ces dispositions légales, il en profite pour étendre son emprise foncière.

Les transactions commerciales sur le foncier s'inscrivent dans de nouvelles formes d'accès à la terre qui, d'une part, ne sont pas envisagées par le droit coutumier et d'autre part, sont considérées comme illégales par les autorités administratives: en régime foncier traditionnel, la terre est considérée comme un bien sacré communautaire qui n'a aucune valeur marchande. Elle ne peut donc pas faire l'objet d'appropriation privée individuelle. Dans le contexte socioéconomique de l'aménagement, au contraire, elle peut être soumise à des transactions commerciales par lesquelles la terre se vend, se prête ou se loue.

La vente ou l'échange de terres est un phénomène nouveau en voie d'officialisation qui se traduit par des dons en nature et en espèces de la part de l'acquéreur. Au fil du temps, celui-ci se ménage ainsi une position de domination. Cette situation bouleverse l'ordre social car le bien le plus précieux pour le paysan n'appartient plus qu'à des commerçants ou des fonctionnaires ayant un pouvoir d'achat relativement plus élevé.

Le prêt constitue la forme d'accès la plus fréquente. Les nouveaux installés, en signe de reconnaissance vis-à-vis de leur hôte, lui offrent des cadeaux en nature. Il s'agit, au moment de la récolte, d'une quantité importante de céréales, ce qui, dans l'esprit de l'arrivant, accentue au fil des années le sentiment d'appropriation du lopin qu'il occupe à titre de simple prêt.

Le contrat de location reste le mode de tenure le plus répandu. Apparemment simple, il est signé entre deux individus pour une exploitation à durée déterminée contre une part de la récolte ou le versement d'un montant fixe. Selon les résultats de nos enquêtes, en fonction du type de sol, l'hectare est loué pour une année entre 30 et 40 000 francs CFA (en 2013, l'euro valait autour de 650 FCFA et le dollar É.-U. environ 500 FCFA). Ce type de contrat constitue, avec la vente, le mode de transaction le plus litigieux.

### Une course effrénée pour l'accès à la terre et à son contrôle

Dans un contexte de mutations socioéconomiques mettant aux prises des populations d'origine, de culture et de traditions agricoles diverses, les enjeux fonciers sont fortement influencés par la diversité de perception des différents acteurs en présence, source d'incompréhensions fréquentes et de conflits fonciers. La dynamique foncière met aux prises des acteurs qui ne reconnaissent pas la même autorité. La concurrence pour l'accès et le contrôle du foncier qui en découle s'explique par la recherche de la sécurisation des droits d'accès et la légalité du statut foncier pour les uns, les autres visant la reconnaissance de la légitimité de leurs revendications ancestrales sur le foncier.

**Les enjeux fonciers sont fortement influencés par la diversité de perception des différents acteurs en présence, source d'incompréhensions fréquentes et de conflits fonciers**

La dynamique spatiale qui s'est opérée dans la vallée parallèlement à l'accroissement démographique a entraîné des modifications dans les modes d'occupation et de gestion de l'espace agricole. Cela se manifeste d'une part entre village traditionnel et village aménagé et d'autre part dans les villages aménagés. Pour les autochtones, c'est une stratégie visant à récupérer le contrôle foncier sur les terres cédées à l'AVV. Dans les villages aménagés, il s'agit de ne pas rester en marge d'un mouvement d'ensemble. Chaque exploitant développe des stratégies pour étendre au maximum son domaine foncier.

Dans les villages traditionnels, la stratégie adoptée par les autochtones consiste, d'une part, à ouvrir de nouveaux champs aussi loin que possible et, d'autre part, à installer des familles de migrants sur les limites intervillageoises. Dans les villages aménagés, la course pour le contrôle de l'espace est plus nette. Sous prétexte d'une baisse de fertilité ou d'une augmentation des membres de la famille, l'espace cultivé est étendu à d'autres espaces non aménagés, en s'aidant de façon astucieuse de la confusion créée par la coexistence des règles traditionnelles d'accès à la terre et de la législation foncière moderne.

Il résulte des entretiens avec les populations sur le terrain que l'idée d'«*espace fini*» apparaît comme une réalité bien présente dans les mentalités: 68 pour cent des enquêtés trouvent nécessaire de préparer l'avenir de leur postérité en agrandissant leur domaine foncier. Selon eux, la terre va manquer d'ici peu. Ils pensent que si les terres cultivables sont abondantes et vacantes, l'État peut à tout moment procéder à de nouvelles installations de migrants.



Et pour ne pas être responsable du malheur de sa famille ou du village, il faut étendre autant que possible son emprise foncière. Il s'agit d'une stratégie d'anticipation qui ne trouve sa justification que dans un contexte foncier incertain et mouvant.

Pour mieux comprendre les enjeux fonciers actuels dans l'espace aménagé, il a été nécessaire d'esquisser une typologie des acteurs en présence et notamment celle des différentes populations en concurrence pour l'accès et le contrôle du foncier. Les variables suivantes ont été prises en compte: l'activité dominante pratiquée par l'acteur (l'agriculture ou l'élevage), son origine (autochtone ou migrant) et son âge. Cela a permis d'appréhender les formes de précarité foncière auxquelles sont confrontés les différents acteurs de même que leurs besoins de sécurisation foncière.

### Les agriculteurs autochtones

Ce sont les populations anciennement installées qui détiennent les droits coutumiers d'appropriation foncière. On y trouve parmi elles des chefs de terre qui sont parvenus à s'affranchir progressivement de l'application des normes traditionnelles sur le foncier.

L'effritement de l'autorité coutumière dans le contexte socioéconomique moderne, induit par l'aménagement et l'apparition de nouveaux acteurs dans le jeu foncier, limite considérablement le pouvoir de contrôle sur la terre des familles traditionnelles. La sécurisation foncière pour les autochtones dépend de la reconnaissance de l'autorité coutumière comme garante de la gestion traditionnelle du foncier, ce qui va à l'encontre de la loi sur la réorganisation agraire et foncière. Mais mal informés et peu sensibilisés à cette loi, ils ont le sentiment d'être victimes d'une spoliation, alors même qu'il s'agit de leurs terres ancestrales. Frustrations légitimes ou injustifiées, de telles récriminations conduisent à des attitudes hostiles vis-à-vis des migrants, source, selon eux, de conflits fonciers récurrents.

### Les agriculteurs migrants

Les migrants se trouvent dans une situation d'insécurité foncière qui se manifeste par une remise en cause, par les autochtones, de leur installation sur «leurs terres». C'est ainsi qu'ils se voient souvent retirer les terres par

les autochtones, détenteurs du droit foncier coutumier pour, disent ces derniers, «garantir les besoins fonciers de leur progéniture». Pour ces migrants, la sécurisation foncière consiste à se faire reconnaître des droits d'usage permanents, afin d'être à l'abri des incertitudes et des ambiguïtés sur l'accès aux ressources foncières. Cette préoccupation se justifie d'autant plus qu'on assiste à l'apparition d'une nouvelle génération de jeunes agriculteurs autochtones qui ne reconnaissent pas les accords antérieurement conclus entre leurs parents et l'AVV, pour l'installation des migrants sur les terres des villages aménagés.

### Une nouvelle génération d'agriculteurs aux perceptions antagoniques sur le foncier

Dans le contexte traditionnel, les jeunes agriculteurs autochtones étaient marginalisés à cause de la gestion gérontocratique du foncier. À la faveur des transformations socioéconomiques, beaucoup se sont libérés de la tutelle des coutumes et accèdent à des instances de décision. En face de ceux-ci, il y a les jeunes agriculteurs migrants qui eux, ont beaucoup plus évolué dans le contexte créé par l'aménagement. Cette nouvelle génération d'agriculteurs, devenus chefs de ménage, a pris conscience des enjeux fonciers dans le processus d'appropriation et de contrôle de la terre dans l'espace aménagé.

Les jeunes autochtones se retrouvent dans un contexte où ils ont du mal à satisfaire leurs besoins fonciers à cause de la pression démographique et de la concurrence foncière. Ils ont de ce fait tendance à remettre en cause les accords précédemment conclus par leurs aînés. Ils veulent une sécurisation foncière qui devra nécessairement passer par la reconnaissance d'un droit d'appropriation sur les terres de leurs lignages ou familles. Ils n'entendent pas non plus perdre le contrôle de leurs villages car pour eux, la maîtrise sociale est un droit exclusif des autochtones.

Quant aux jeunes migrants, ils sont pour la plupart nés dans la zone aménagée. Confrontés d'une part à la rareté des terres cultivables et à la remise en cause des droits d'usage sur les terres attribuées à leurs parents, ils ont de plus en plus de mal à accéder à la terre. N'ayant d'autres terres que celles exploitées par leurs familiers, ils s'opposent aux jeunes autochtones car ils estiment que l'appartenance à un même pays et la durée de résidence



dans la localité doivent être les seuls critères d'identité. Pour ces jeunes agriculteurs migrants, la sécurisation foncière, c'est d'abord l'accès à la terre et par la suite, le droit d'appropriation et d'usage permanent.

### Les éleveurs

L'élevage est une activité qui nécessite de grands espaces. Dans le contexte de la zone aménagée, caractérisée par une pression démographique sur les terres et un rétrécissement de l'espace, les éleveurs utilisent les terres marginalisées. L'insécurité foncière, pour cette catégorie d'acteurs, présente quelques différences selon que les uns pratiquent la transhumance et les autres restent sédentaires.

Pour les éleveurs sédentaires, la réduction des aires pastorales constitue la principale forme d'insécurité, réduction due à l'accroissement des superficies mises en culture. Il s'en suit une concurrence souvent conflictuelle, dans l'utilisation de certains espaces comme les bas-fonds, favorables aussi bien à l'agriculture qu'à l'élevage.

Chez les éleveurs transhumants, c'est surtout la difficulté d'accès aux ressources, notamment l'eau et les pâturages. Ils sont confrontés à des restrictions imposées par les villages traditionnels, qui exercent un droit d'appropriation sur les espaces d'accueil. La sécurisation, pour ce groupe d'acteurs, dépend de la définition des espaces pastoraux (zones de pâturage et points d'eau), de la reconnaissance de droits d'appropriation et d'exploitation exclusifs sur ces espaces ainsi que de l'ouverture de pistes à bétail et de l'accès des troupeaux aux ressources fourragères.

### Les conflits fonciers

La pression foncière consécutive à la dynamique démographique pose le problème de la disponibilité des ressources naturelles dans la vallée aménagée. Dans un contexte juridique flou, marqué par l'affaiblissement du droit foncier traditionnel ou par une nonreconnaissance du droit foncier moderne, la concurrence pour l'accès et le contrôle des ressources naturelles est à l'origine de conflits fréquents entre les différents utilisateurs. Il existe plusieurs types de conflits, mais les plus importants, tant du point de vue de la fréquence

**La concurrence pour l'accès et le contrôle des ressources naturelles est à l'origine de conflits fréquents entre les différents utilisateurs**

que des conséquences, sont les conflits entre autochtones et migrants, les conflits agriculteurs/éleveurs et les conflits entre éleveurs eux-mêmes.

**Les conflits entre autochtones et migrants** sont strictement liés à la dynamique de la gestion foncière suite à l'accroissement démographique et aux transformations socioéconomiques. Ces types de conflits sont fréquents et opposent les autochtones et les migrants. Ils ont essentiellement pour origine des problèmes de limite des champs et la mise en cause des accords fonciers. Si le premier facteur relève des conflits de voisinage et de bornage des parcelles de culture, la remise en question des accords fonciers conclus avec l'AVV traduit la dégradation des relations entre autochtones et migrants et les tensions sociales qui existent entre ces deux communautés. Elle témoigne également de l'incapacité du droit foncier coutumier comme de la législation moderne à réguler les modes d'accès à la terre dans les zones aménagées et à en garantir la sécurisation.

**Les conflits entre agriculteurs et éleveurs** sont provoqués, le plus souvent, par les dommages causés par les animaux dans les champs. Ces dégâts sont souvent importants et concernent des plants, des épis en pleine floraison ou maturation ou encore, les récoltes entassées dans un coin du champ, dans l'attente de leur transport. Les conflits de moindre envergure sont résolus à l'amiable entre les deux parties ou les chefs traditionnels qui tranchent après audition des protagonistes. Lorsqu'ils sont importants ou lorsque le règlement à l'amiable n'aboutit pas, il est fait appel à un agent d'agriculture qui dresse un procès-verbal de constat. L'agriculteur et l'éleveur se rendent alors à la préfecture où le différend est tranché. La plupart du temps est exigé de l'éleveur le paiement à l'agriculteur de dommages en espèces.

**Les conflits entre les éleveurs** opposent les Peuhls sédentaires et les transhumants. Ce sont des conflits liés à l'accès aux pâturages et aux vols de bétail. Les ressources pastorales sont sous le contrôle des éleveurs sédentaires qui s'opposent à l'accès des troupeaux des transhumants.

Une autre source de litige provient du fait que, dans certains villages, est imposée aux transhumants une contribution financière pour l'abreuvement de leur bétail aux points d'eau aménagés.



## CONCLUSIONS

La colonisation de la vallée de la Bougouriba a entraîné des changements dans les modes traditionnels d'accès à la terre. Si la mise en valeur de la vallée a créé des opportunités de production agropastorale permettant aux populations qui s'installaient d'améliorer leurs conditions de vie, elle a également introduit une dynamique démographique dont les conséquences se sont manifestées aux niveaux de l'occupation de l'espace et des modes de gestion des ressources naturelles. La pression démographique a largement entamé la disponibilité des ressources naturelles, favorisant l'apparition de pratiques foncières qui ont engendré de nouveaux types de conflits. La persistance de ces litiges est un facteur de déstabilisation sociale et révèle une crise latente mais profonde, preuve de l'incapacité des autorités coutumières comme de l'administration locale à réguler les modes d'accès à la terre. La situation est particulièrement préoccupante avec l'apparition d'une nouvelle génération d'agriculteurs, tant autochtones qu'émigrés, aux intérêts divergents sur le foncier.

La sécurisation foncière apparaît comme un préalable à une gestion durable des ressources naturelles dans l'espace aménagé de la vallée de la Bougouriba. Elle passe nécessairement par une clarification des règles d'accès au foncier des différents acteurs. Le dualisme entre la législation moderne sur le foncier et les règles traditionnelles d'accès aux ressources naturelles ne rassure pas les exploitants, surtout les migrants, quant à leurs droits fonciers. Cela se traduit par une extension incontrôlée des superficies cultivées, sans souci de reconstitution de la fertilité des sols, n'ayant aucune garantie à longue échéance sur les terres qu'ils exploitent. La remise en cause des contrats fonciers par les autochtones et les conflits entre les nouvelles générations d'agriculteurs sont des signes de déstabilisation sociale qui ne favorisent guère un développement concerté et durable.

**La sécurisation foncière apparaît comme un préalable à une gestion durable des ressources naturelles dans l'espace aménagé de la vallée de la Bougouriba**

Cette situation nécessite l'intervention des pouvoirs publics qui ont été à l'origine de ce flou juridique, afin de déterminer quelles peuvent être les marges de manœuvre respectives des divers acteurs.

Jusqu'à présent, les relectures successives de la loi sur la Réorganisation agraire et foncière n'ont pas permis de trouver des réponses satisfaisantes aux problèmes de sécurisation foncière en milieu rural. Dans le contexte

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actuel, il est difficile de prôner le contrôle de l'État sur les terres. La gestion d'un domaine foncier national semble peu réaliste et guère souhaitable. Peu réaliste parce que l'État n'a pas les moyens financiers et logistiques pour une telle action. Guère souhaitable parce que l'État lui-même, avec son cortège d'arbitraires, est une source d'insécurité. Discuter avec les diverses populations concernées, afin de trouver des solutions négociées, adaptées aux réalités du terrain, apparaît comme l'alternative la plus efficace.



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# LAND TENURE LEGISLATION REFORMS IN BURKINA FASO: Between interruptions and continuity in public action

# LES RÉFORMES LÉGISLATIVES EN MATIÈRE FONCIÈRE AU BURKINA FASO : Entre ruptures et continuités dans l'action publique

# REFORMAS A LA LEGISLACIÓN SOBRE TENENCIA DE LA TIERRA EN BURKINA FASO: Entre las interrupciones y la continuidad de las medidas públicas



## ABSTRACT

LAND TENURE REFORMS

LAND TENURE LEGISLATION

AGRARIAN AND LAND TENURE REFORM

PUBLIC POLICIES

BURKINA FASO

From 1984 to 2012 there were four successive agrarian and land tenure reforms dictated by the pressing issues and the orientations of public policy on development in Burkina Faso. Determining land tenure and natural resources rights and addressing land tenure issues play a fundamental role in the development of African states, in which the primary sector is a leading driver. The way in which land tenure issues are understood depends on a particular vision of development by the public authorities, which must decide on the best way to capitalize on the resources, the essential basis

## RÉSUMÉ

RÉFORMES FONCIÈRES

LÉGISLATION FONCIÈRE

RÉORGANISATION AGRAIRE ET FONCIÈRE

POLITIQUES PUBLIQUES

BURKINA FASO

De 1984 à 2012, la réorganisation agraire et foncière a connu quatre réformes successives, dictées par les enjeux du moment et les orientations de l'action publique en matière de développement. Déterminant les droits sur la terre et sur les ressources naturelles, la maîtrise des questions foncières constitue un enjeu central du développement des États africains, pour lesquels le secteur primaire joue un rôle moteur. La manière d'appréhender les questions foncières est tributaire d'une certaine vision du développement par les pouvoirs publics, qui doivent décider de la meilleure façon

## SUMARIO

REFORMAS DE LA TENENCIA DE LA TIERRA

LEGISLACIÓN SOBRE TENENCIA DE LA TIERRA

REFORMA AGRARIA Y DE LA TENENCIA DE LA TIERRA

POLÍTICAS PÚBLICAS

BURKINA FASO

De 1984 a 2012 hubo cuatro reformas agrarias y de la tenencia de la tierra consecutivas que fueron impuestas por las cuestiones apremiantes y la orientación de las políticas públicas de Burkina Faso en materia de desarrollo. Determinar los derechos sobre los recursos naturales y la tenencia de la tierra y abordar los problemas en torno a la tenencia de la tierra es fundamental para el desarrollo de los países africanos, donde el sector agropecuario es el primer impulsor. La forma en que se entienden los problemas en torno a la tenencia de la tierra depende de la visión particular que tengan del

for development, in order to achieve their goal efficiently.

The content of this paper is based on data collected for the doctoral thesis prepared by Paul Marie Moyenga of the University of Ouagadougou, which from a socio-historical viewpoint analyses the changes recorded in land administration in Burkina Faso. It shows the breaking points and unchangeable elements that have survived throughout the various land tenure and agrarian reforms recorded in the country since it became independent in 1960.

de mettre à contribution ces ressources, substrat essentiel du développement, pour servir au mieux leur objectif.

La présente contribution, rédigée à partir des données collectées dans le cadre de la thèse de doctorat conduite par Paul Marie Moyenga de l'Université de Ouagadougou, fait une analyse sociohistorique des évolutions enregistrées dans l'administration foncière au Burkina Faso. Elle montre les points de rupture et les éléments immuables qui ont pu perdurer au fil des réformes agraires et foncières enregistrées dans le pays depuis son accession à l'indépendance en 1960.

desarrollo las autoridades públicas, quienes deben decidir sobre cuál es la mejor manera de capitalizar los recursos, que constituyen la base esencial para el desarrollo, a fin de lograr su objetivo con eficacia.

El contenido de este documento se basa en la información recopilada para la tesis de doctorado preparada por Paul Marie Moyenga, de la Universidad de Uagadugú, quien analiza desde un punto de vista sociohistórico los cambios registrados en Burkina Faso en el ámbito de la administración de la tierra. En él se exponen los puntos de ruptura y los elementos invariables que han sobrevivido a las diversas reformas agrarias y de la tenencia de la tierra registradas en el país desde que obtuvo su independencia en 1960.



## INTRODUCTION

Le Burkina Faso est un pays de savane où l'agriculture constitue le principal pourvoyeur de subsistance et de revenus. Les activités rurales ont toutes comme substrat la terre, ce qui en fait un enjeu de développement majeur, tant au niveau communautaire qu'au niveau national. Dans ce sens, la maîtrise des questions foncières constitue un défi pour promouvoir le développement. Les formes de contrôle et d'organisation de l'accès à cette ressource s'enracinent dans l'optique de développement de l'État qui, en fonction du contexte, décide de la meilleure façon de mettre à contribution ces ressources pour servir au mieux ses perspectives.

## L'ÉVOLUTION DES POLITIQUES PUBLIQUES EN MATIÈRE FONCIÈRE AU BURKINA FASO

L'évolution des politiques publiques en matière foncière au Burkina Faso peut être appréhendée à partir de trois phases clés correspondant à des orientations idéologiques différentes dans l'action publique en matière de gestion foncière. La première phase est celle qui s'ouvre avec l'accession du pays à l'indépendance, en 1960, et se prolonge jusqu'en 1984, année d'une réorganisation agraire et foncière, causée par l'avènement au pouvoir d'un régime révolutionnaire. Le caractère éphémère de ce régime révolutionnaire, qui a porté au jour cette réorganisation, contraste avec la longévité de cette dernière. En effet, en dépit de sa dynamique interne, sa structure centrale ne change radicalement qu'en 2007, année à laquelle le pays se dote d'une Politique nationale de sécurisation foncière en milieu rural (PNSFMR), prélude à la loi portant régime foncier rural adoptée deux ans plus tard. C'est cette dernière qui constitue la loi foncière actuellement en vigueur.

### La gouvernance foncière de 1960 à 1984, un héritage colonial

Selon l'historique de l'administration foncière au Burkina Faso dressé par Bonnet (2001), jusqu'au tournant des années 70, la législation foncière nationale est restée calquée sur le modèle français, qui affirme l'appartenance de la

terre à l'État. C'est le cas de la loi N°77/60/AN du 12 juillet 1960 portant réglementation des terres, qui faisait de l'État le propriétaire potentiel des terres non immatriculées. Ce système de gestion, s'inscrivant dans le prolongement de celui hérité de la période coloniale, ne s'arrête d'ailleurs pas là. En 1963 était promulguée la loi N°29/63/AN du 24 juillet 1963 qui, par exemple, autorisait le gouvernement à réserver à l'État une part des terres ayant fait l'objet d'aménagements spéciaux et à déclarer comme bien de l'État les terres peuplées ou éloignées des agglomérations. Cette loi constitue une formulation adoucie des dispositions coloniales qui parlent de «terres vacantes» difficiles à définir dans le contexte africain de la mise en valeur des terres. Cette loi a eu une emprunte encore visible sur la gestion foncière au niveau national, car c'est en application de cette disposition que l'État s'est approprié l'ensemble des vallées des Volta à travers son entreprise de colonisation foncière des zones libérées de l'onchocercose à partir de 1973. Cette conquête a touché près de 30 000 km², ce qui représente environ 9 pour cent du territoire national (Décret n°76/201/PRES.PL/DRET du 23 janvier 1976). En revanche, dans ce système d'administration d'inspiration coloniale, la gestion des récurrents conflits liés à l'accès et au contrôle de ces ressources s'est vue confiée aux structures traditionnelles de gestion foncière, au nom de la préservation du vivre ensemble des communautés. Mais dans la réalité, l'État n'a jamais eu les moyens, tant techniques que financiers, d'exercer ces attributions en matière de gestion des ressources naturelles. En dehors de l'appropriation foncière des vallées des Volta dans le cadre du programme d'aménagement de ces vallées, l'État n'a pas vraiment exercé ses droits, ni ses attributions en matière foncière, les populations locales n'ayant pas du tout adhéré au principe de l'immatriculation foncière qui faisait de la détention d'un titre foncier la condition d'exercice du droit sur la terre. Ceci explique qu'au cours de cette même période, le système coutumier a constitué la principale forme de régulation foncière, surtout en milieu paysan où la présence de l'État est moins ressentie.

Mais, peu à peu, l'emprise des autorités coutumières s'essouffle en milieu rural avec le développement de la production cotonnière. En effet, le secteur de la production cotonnière, du fait de l'organisation de son circuit d'écoulement et du soutien accordé dans les facteurs de production, va connaître un grand



essor dans les années 1970 dans de vastes régions du pays (au sud-ouest surtout) et un peu partout ailleurs. Cela a induit des besoins supplémentaires en terres cultivables et donc de nouveaux défrichements de la part de producteurs en mouvement (migrants) pour la recherche de bonnes terres. L'adhésion massive à cette culture a renforcé, voire introduit des enjeux fonciers qui ont donné naissance à des pratiques d'un nouvel ordre. Les transactions monétaires voient le jour, violant le principe de l'inaliénabilité de la terre qui acquiert de ce fait une valeur vénale, surtout dans les zones de forte production sous la pression de nombreux migrants agricoles. On assiste ainsi à l'affaiblissement de l'autorité des structures coutumières qui se révèlent incapables de réguler ces nouvelles pratiques, du fait des stratégies de contournement mises en place par les acteurs. Cette situation a prévalu jusqu'en 1985, qui a vu la mise en œuvre de la première réorganisation agraire et foncière du pays dans un esprit révolutionnaire, avec la prise du décret d'application de la loi portant Réorganisation agraire et foncière (RAF) adoptée une année plus tôt. Cette période de la RAF qui s'ouvre s'oriente vers une rupture complète avec l'héritage colonial qui a continué à marquer de son empreinte le système de régulation foncière dans le pays.

### Le tournant de la réorganisation agraire et foncière, de 1984 à 2007

En 1984 intervient une réorganisation agraire et foncière avec l'adoption de la loi qui en porte le nom, grâce à l'avènement au pouvoir d'un régime révolutionnaire qui décide de réorganiser les ressources du pays pour servir son ambition de bâtir un développement centré sur ses propres ressources. La RAF ainsi adoptée va contribuer à ébranler davantage les assises traditionnelles de la gouvernance foncière.

En effet, le pouvoir révolutionnaire du Capitaine Thomas Sankara a entrepris d'organiser sa politique de développement sur les ressources et les potentialités du pays pour minimiser sa dépendance vis-à-vis de l'extérieur et pour rompre avec les influences impérialistes des institutions et pays donateurs. Cette orientation idéologique a conduit à une réforme de la gestion des ressources naturelles, qui a abouti à une réorganisation agraire et foncière en 1984. De cette loi, on peut retenir plusieurs mesures «révolutionnaires»:

- la création d'un domaine foncier national regroupant l'ensemble des terres du pays ainsi que les possessions foncières du pays situées à l'étranger;

- la suppression de tous les droits fonciers détenus sur le domaine foncier national au titre de la coutume, et l'annulation de tous les titres fonciers détenus en vertu des dispositions juridiques antérieures;
- toute forme de propriété foncière est devenue impossible sur le domaine foncier national;
- ce domaine foncier national est déclaré «propriété de l'État de plein droit»;
- les institutions coutumières (chefferies politiques et chefferies de la terre) sont dissoutes;
- la mise en place, dans chaque village, d'un bureau de Comité de défense de la révolution (CDR), chargé de distribuer les terres aux demandeurs suivant leur capacité d'exploitation, et de retirer des terres le cas échéant.

Cette liste d'innovations n'est pas exhaustive. La déclaration de «propriété de plein droit» émancipait l'ensemble des terres du domaine foncier national des droits détenus par des particuliers, majoritairement au titre de la coutume. Pour que cette emprise soit totale, tous les titres fonciers ont été annulés.

Lavigne Delville décrit les conditions particulières de l'avènement de cette loi qui en montrent la forte charge idéologique:

> "Rédigée en quarante jours par un petit noyau de jeunes cadres de l'administration sankariste sensibles aux analyses marxistes et tiers-mondistes, promulguée le jour même de l'anniversaire de la Révolution et du changement de nom du pays (Lavigne Delville, 2006:4)."

Dans ces conditions, l'État était donc libre de disposer de l'ensemble des ressources foncières du pays, sans besoin d'accomplir la moindre formalité administrative, comme le rappelle la déclaration de «propriété de plein droit». L'État voulait ainsi s'approprier l'ensemble des terres pour un meilleur contrôle de la gestion des ressources naturelles. Ainsi, pour mieux asseoir son emprise et son contrôle sur ces ressources, la disqualification du droit coutumier dans l'administration foncière s'est accompagnée d'une disqualification de l'autorité coutumière elle-même, présentée dans l'idéologie révolutionnaire ambiante comme «force rétrograde», donc comme un obstacle à toute forme de progrès et de développement. Dans cette perspective, l'autorité des chefs traditionnels est combattue et «remplacée» par celle des Comités de défense de la révolution (Zongo, 2009) qui distribuaient les terres selon un mode



de distribution que la loi voulait «sans discrimination». L'ère de la RAF a vu donc s'accentuer la dynamique de contestation et de confrontation entre les acteurs fonciers. Sur tout le territoire national, et notamment dans les zones de migration agricole, des migrants ont bénéficié, par ce mécanisme, de vastes superficies de terres, sur des patrimoines fonciers de familles autochtones qui ne pouvaient assister sans réagir à la distribution de leurs ressources. La survivance des modes traditionnels, avec ses institutions, à côté de structures et de normes étatiques concurrentielles, entraîne une adhésion sélective des acteurs qui activent l'une ou l'autre source d'autorité selon les enjeux. La fin sanglante de la révolution en 1987 a sonné le glas des Comités de défense de la révolution, mais la situation de gouvernance foncière n'a pas beaucoup évolué. La renaissance du pouvoir traditionnel à la chute de la révolution a intensifié la coexistence des deux systèmes (le dualisme juridique) sur la gestion foncière dans le pays. La RAF, malgré sa non-effectivité, influence le jeu foncier du simple fait de son existence, certains acteurs n'hésitant pas à y faire un recours stratégique selon les situations. En effet, l'adage «la terre appartient à l'État» est devenu un leitmotiv dans la bouche des allochtones dans les zones de migration foncière, face aux autochtones qui affirment leurs droits ancestraux sur les terres convoitées. Ces mêmes migrants font par ailleurs accomplir les formalités religieuses nécessaires à leur installation quand ils parviennent à obtenir des terres avec la bénédiction des autorités coutumières. Dans la pratique, la RAF n'a pas connu une application conséquente, en dehors de ces usages stratégiques. La distribution des terres n'a duré que trois ans – la durée de vie des CDR. Mais la vie de la RAF ne s'arrête pas là pour autant.

**L'ère de la Réorganisation agraire et foncière a vu s'accentuer la dynamique de contestation et de confrontation entre les acteurs fonciers**

Entre 1984 et 2012, la RAF, seule législation burkinabè en matière foncière, a connu quatre versions: 1984, 1991, 1996 et 2012. Ces différentes modifications illustrent bien ce que Muller appelle le rapport «global/sectoriel», les réformes politiques et économiques et les orientations internationales dictant les aspects à promouvoir et les directives à prendre en compte dans la gestion des affaires au niveau des pays.

La version de 1991 intervient dans un contexte dit de rectification, orienté vers une plus grande ouverture en direction des principes démocratiques et de promotion des droits de l'homme. C'est également en cette même année que le pays fit son retour à une vie constitutionnelle avec l'adoption de la loi fondamentale le 2 janvier. Dans ce contexte de pacification des crispations

engendrées par l'ambiance révolutionnaire, l'autorité politique traditionnelle a été rétablie, et la RAF a été revue: elle se veut désormais un peu plus souple en matière de reconnaissance des autorités traditionnelles et coutumières et des droits ancestraux détenus sur les ressources foncières. Si le domaine foncier national reste «de plein droit propriété de l'État», les titres fonciers sont néanmoins réintroduits.

La révision de 1996 s'inscrit dans une logique de prise en compte de «conditionnalités d'aide au développement». En effet, selon Lavigne Delville (2006), la version de 1996 a permis «d'introduire une notion de propriété privée, exigée par la Banque Mondiale dans le cadre de la signature du PAS» (Lavigne Delville, 2006:4). Dans le même ordre d'idées, Dialla (2003) retient également comme élément majeur de cette révision, à côté de la redéfinition des structures de gestion foncière, l'assouplissement du monopole foncier de l'État. Il est vrai que l'État reste propriétaire de plein droit de l'ensemble des terres, mais des dispositions relatives à l'acquisition de la terre en pleine propriété ou en jouissance ont été introduites dans cette nouvelle version, un élément des conditionnalités foncières des PAS dont parle Lavigne Delville (2006).

### La fin du règne exclusif de l'État et la reconnaissance des systèmes fonciers locaux

L'année 2007 marque un tournant décisif dans l'administration foncière nationale avec l'avènement d'une nouvelle politique nationale en matière foncière. Grâce à cette nouvelle orientation politique, la RAF a été revisitée en 2012, pour la mettre à niveau avec la nouvelle direction donnée à l'action publique en matière de sécurisation foncière en milieu rural. Cette loi se veut l'expression de la volonté politique de sortir du pluralisme juridique. L'orientation de l'action publique en matière foncière au cours de cette période est celle développée plus bas (cf. *infra* II).

**L'année 2007 marque un tournant décisif dans l'administration foncière nationale avec l'avènement d'une nouvelle politique nationale en matière foncière**

En somme, on peut donc retenir de la législation foncière burkinabè dans ses versions successives la création d'un domaine foncier national. Mais l'ensemble n'est pas que continuité: des ruptures se sont installées au fil des versions, et la plus grande fracture interviendra à partir de 2007 avec l'adoption d'une Politique nationale de sécurisation foncière qui se veut une grande innovation en vue de proposer des réponses plus appropriées au besoin de sécurisation des acteurs, face aux insuffisances jusque-là observées.



## SORTIR DU PLURALISME JURIDIQUE EN RÉCONCILIANT NORMES ET PRATIQUES

Une des caractéristiques essentielles de la gouvernance foncière en Afrique de l'Ouest en général est la coexistence de deux systèmes de normes, la loi de l'État n'ayant pu se substituer aux logiques coutumières. La situation au Burkina Faso n'échappe pas à cette réalité. La RAF, dans ses versions successives, suite à de précédentes législations (décrets de loi), n'a pu imposer à l'ensemble des acteurs fonciers la logique portée par le droit moderne. Les principes coutumiers sont demeurés la principale source de droit pour l'essentiel des populations en matière d'accès, d'exploitation et de contrôle des ressources foncières. De l'avis de plusieurs spécialistes des questions foncières (notamment Ouédraogo (2008, 2009), Dialla (2003) et Lavigne Delville (1998)), les raisons de cette survivance des pratiques coutumières résident entre autres dans l'inadéquation entre l'offre de sécurisation portée par les politiques foncières étatiques et la demande des acteurs fonciers. Afin de sortir de ce pluralisme juridique, une mise en adéquation de l'offre et de la demande s'impose en vue d'acquérir l'adhésion des acteurs, ce qui requiert une connaissance des besoins réels tels qu'ils s'expriment, ce à quoi répondrait une étude diagnostique. Afin de proposer une offre de sécurisation qui réponde aux aspirations et à la demande des acteurs fonciers, l'État burkinabè procède par étapes successives: conduite d'une étude sur l'état des lieux de la sécurisation foncière en milieu rural, élaboration d'une politique nationale, adoption d'une loi spécifique portant régime foncier rural, et relecture de la loi globale portant réorganisation agraire et foncière.

### Le diagnostic de la situation de sécurisation foncière en milieu rural

En prélude à l'élaboration de la Politique nationale de sécurisation foncière en milieu rural, l'État a commandité une étude faisant état de la situation de la sécurisation foncière en milieu rural. Le rapport qui en porte le nom (MAHRH, 2005) pointe du doigt un certain nombre de situations qui concourent à rendre davantage problématique la gestion foncière en milieu rural. Ce sont notamment l'explosion démographique, la raréfaction des ressources foncières pour la population rurale, la recrudescence des conflits fonciers locaux, le développement d'un nouveau type d'acteurs entreprenant en milieu rural

(hommes d'affaires intervenant dans le secteur agroalimentaire), le contexte de la décentralisation, qui requiert que les collectivités disposent d'un domaine foncier propre à elles, etc.

À ces facteurs s'ajoute celui de la faible efficacité des mécanismes juridiques et institutionnels de gouvernance foncière et de gestion des conflits fonciers en milieu rural. En effet, la RAF qui avait cours n'était pas très opérationnelle sur les terres rurales. Elle s'est focalisée sur les terres urbaines et offrait des outils pour sa gestion à travers les lotissements et autres plans d'aménagement. Les mécanismes de gestion des terres rurales se sont révélés inopérants. Fort de ces constats, l'État a entrepris de combler le vide en se lançant dans l'élaboration d'une législation sectorielle couvrant spécifiquement le foncier rural au regard des enjeux que soulève l'administration de ces ressources pourtant indispensables à la survie et au développement de la nation. La vision globale de l'État en la matière est exposée dans un document de politique nationale (MAHRH, 2007).

### La Politique nationale de sécurisation foncière en milieu rural

La Politique nationale de sécurisation foncière en milieu rural se présente comme le fruit d'une volonté manifeste du gouvernement de «mettre à la disposition de l'ensemble des acteurs publics et privés un cadre politique cohérent de référence et un outil efficace d'aide à l'action» (MAHRH, 2007:7) et d'ouvrir par là une voie vers la promotion des investissements en milieu rural à travers la mise en place d'outils de garantie en termes de sécurisation de ces investissements.

Le document de la Politique nationale de sécurisation foncière en milieu rural est le fruit d'une longue concertation de haut niveau, tant scientifique qu'administrative, réalisée sous la coordination d'un Comité national de sécurisation foncière rurale regroupant plusieurs départements ministériels et des structures de recherche comme le Groupe de réflexion et d'action sur le foncier (GRAF). S'inspirant fortement des conclusions de l'étude sur la situation de sécurisation foncière en milieu rural, ce comité a proposé des orientations à l'État en rapport avec les attentes exprimées par les différents groupes d'acteurs fonciers en termes de besoins de sécurisation. Le défi était alors de trouver un mécanisme qui prenne appui sur les pratiques foncières locales afin de proposer un mécanisme de sécurisation qui s'intègre dans



ces pratiques, pour éviter la fracture qui a toujours été la caractéristique essentielle de la législation foncière en Afrique de l'Ouest en général. La démarche participative a donc guidé la finalisation de ce document.

En effet, des ateliers nationaux de validation ont permis aux différents groupes d'acteurs organisés de prendre connaissance de la nouvelle orientation en matière de sécurisation foncière et de faire des propositions d'améliorations au regard de leurs besoins spécifiques. À l'issue de ces concertations, une politique a été adoptée sous forme de décret (Décret N°2007-610/PRES/PM/MAHRH portant adoption de la Politique nationale de sécurisation foncière en milieu rural, du 4 octobre 2007).

Cette nouvelle direction s'inscrit dans la perspective de l'État dans cette entreprise de sécurisation qui est:

> [d'] assurer à l'ensemble des acteurs ruraux, l'accès équitable au foncier, la garantie de leurs investissements et la gestion efficace des différends fonciers, afin de contribuer à la réduction de la pauvreté, à la consolidation de la paix sociale et à la réalisation du développement durable (PNSFMR, 2007:20).

Cette approche de l'État s'articule autour de six orientations qui définissent les directions dans lesquelles doit être déployée l'action publique pour apporter des réponses appropriées à la sécurisation foncière de l'ensemble des acteurs ruraux. Il s'agit notamment de:

- reconnaître et protéger les droits légitimes de l'ensemble des acteurs ruraux sur la terre et les ressources naturelles;
- promouvoir et accompagner le développement d'institutions locales légitimes à la base;
- clarifier le cadre institutionnel de gestion des conflits au niveau local et améliorer l'efficacité des instances locales de résolution des conflits;
- améliorer la gestion de l'espace rural;
- mettre en place un cadre institutionnel cohérent de gestion du foncier rural;
- renforcer les capacités des services de l'État, des collectivités territoriales et de la société civile en matière foncière.

Chaque orientation comprend des axes stratégiques qui constituent des angles d'approche à travers lesquels ces orientations peuvent être concrétisées.

La rupture de la perspective de l'État en termes d'action publique en matière foncière s'est déjà dessinée dans ce document d'orientation avant d'être codifiée dans la loi qui s'ensuivit.

### La loi portant régime foncier rural de 2009

La Politique nationale de sécurisation foncière en milieu rural a débouché sur une loi spécialement orientée vers la sécurisation des acteurs ruraux et de leurs possessions foncières, en vue de corriger les insuffisances reprochées à la RAF, qui ne dispose pas suffisamment de modalités de sécurisation de ces espaces particuliers. Cette loi consacre la fin du monopole de l'État en tant que seul propriétaire «de plein droit» de tout le domaine foncier national en créant trois domaines fonciers (*cf. infra*). Elle se présente comme le produit d'une volonté politique de concilier les modalités de la gouvernance foncière telles que pratiquées par les populations locales et les modalités portées par l'État. De cette loi, nous examinons les points de rupture et les constantes, ainsi que les difficultés de mise en œuvre à la fin de cet historique (cf. infra, III).

Dans ce contexte d'innovation, la RAF (dans sa version de 1996) entrait en conflit avec ce nouveau régime foncier rural, elle qui déclare que le domaine foncier national est de plein droit propriété de l'État, d'où la nécessité de sa réécriture.

**La loi portant régime foncier rural de 2009 consacre la fin du monopole de l'État en tant que seul propriétaire «de plein droit» de tout le domaine foncier national en créant trois domaines fonciers**

### La nouvelle réforme de réorganisation agraire et foncière

L'inévitable relecture de la RAF intervient en 2012, afin de l'adapter aux nouvelles réformes inscrites dans la loi portant régime foncier rural de 2009. Cette nouvelle RAF a conservé son caractère de loi cadre, abordant la question de l'aménagement du territoire dans son ensemble, que ce soit en milieu urbain ou en milieu rural. Comme le précise son premier article, elle a objet de déterminer:

> d'une part, le statut des terres du domaine foncier national, les principes généraux qui régissent l'aménagement et le développement durable du territoire, la gestion des ressources foncières et des autres ressources naturelles ainsi que la réglementation des droits réels immobiliers et d'autre part, les orientations d'une politique agraire.



La relecture de cette loi s'imposait de fait, avec les changements que la Politique nationale de sécurisation foncière en milieu rural adoptée en 2007 a introduits en matière de gouvernance foncière au Burkina Faso. Globalement, elle s'aligne derrière le statut déjà consacré par la loi portant régime foncier rural, ce qui fait qu'on n'a assisté qu'à une mise à niveau des seules dispositions devenues obsolètes devant les innovations de la politique nationale en matière foncière de 2007 et la loi portant régime foncier rural adoptée en 2009. La RAF de 2012 vient donc créer un domaine foncier national au Burkina Faso (article 5) organisé en terres urbaines et en terres rurales (article 7, RAF 2012) et comprenant le domaine foncier de l'État, le domaine foncier des collectivités territoriales et le patrimoine foncier des particuliers (article 6, RAF 2012). Les titres d'occupation des terres du domaine foncier national comprennent les titres de jouissance et les titres de propriété (article 172, RAF 2012). Tout occupant d'une terre du domaine privé immobilier de l'État doit être titulaire de l'un des titres de jouissance suivants: un arrêté d'affectation, un arrêté de cession provisoire, un bail emphytéotique ou un permis d'occuper (article 173, RAF 2012). En dehors de l'arrêté de cession provisoire, tous les autres titres de jouissance cités ci-dessus peuvent être pourvus sur une terre du domaine privé immobilier des collectivités territoriales, auxquels s'ajoutent l'arrêté de mise à disposition et le permis d'exploiter (article 176, RAF 2012). Les terres et autres biens immobiliers du patrimoine foncier des particuliers sont protégés par le titre de propriété, les titres de jouissance et les droits d'usage fonciers ruraux (article 196, RAF 2012).

À partir de là, on peut déjà s'apercevoir que par rapport à l'ancienne version de la RAF, la situation a quelque peu évolué: la RAF de 1996 n'avait pas fait de spécification puisque le domaine foncier national formait un bloc unitaire appartenant à l'État seul. Cette nouvelle orientation conserve cependant certaines dispositions des versions antérieures, même si des évolutions sont à noter. On peut donc parler, dans le même temps, d'évolutions et de constantes. Ainsi, cette nouvelle approche de l'État maintient le statut de loi inappliquée qui existait dans ses précédentes versions.

## MAIS DE QUELLE ÉVOLUTION PARLE-T-ON?

Ces dernières années, l'environnement juridique a connu une évolution indiscutable dans le domaine foncier, avec comme point de repère l'adoption en 2007 de la Politique nationale de sécurisation foncière en milieu rural. Cette approche de l'État en matière de gouvernance foncière a été codifiée dans la loi qui s'en est suivie, la loi N°034-2009/AN du 16 juin 2009 portant régime foncier rural. Cette loi a comme souci majeur de réconcilier l'action publique avec la pratique des acteurs, dans l'espoir que cela facilite l'adhésion de la population aux initiatives publiques de sécurisation des droits fonciers.

### Les ruptures ou points d'innovation de la loi de 2009

Ces ruptures peuvent s'appréhender sous la forme d'innovations que nous regroupons en cinq points:

#### Les innovations induites par l'évolution du contexte institutionnel et sociopolitique national

Autour des années 2000, le cadre institutionnel du Burkina Faso a beaucoup évolué, d'où la nécessité d'intégrer ces évolutions, dans un souci d'harmonisation du cadre législatif. Dans ce sens, la politique foncière actuelle s'articule autour d'autres politiques sectorielles, notamment celles concernant la décentralisation, à travers la création d'un «domaine foncier rural des collectivités territoriales». Aux antipodes de la RAF, qui stipulait que «le domaine foncier national est de plein droit propriété de l'État», les terres rurales du domaine foncier national sont réparties, selon les termes de cette loi, entre les trois catégories évoquées cidessus.

La création d'un «patrimoine foncier des particuliers» est également une innovation qui vient reconnaître le droit des populations à la propriété, une reconnaissance différente de celle de la RAF qui, jusqu'en 2012, considérait ce droit comme un droit concédé par l'État sur un domaine foncier national «de plein droit propriété de l'État».

Le développement des agro-industries a également été présenté comme un élément de première importance dans le paysage foncier rural, qu'il fallait



prendre en compte au regard de leur emprise de plus en plus croissante sur les ressources foncières et les problèmes que cela soulève. C'est pourquoi le document de PNSFMR consacre une place assez importante à la problématique de sécurisation de ceux qu'on appelle «les nouveaux acteurs». En effet, un axe stratégique entier est consacré à leur promotion. Il s'agit de l'axe stratégique 4: «assurer la sécurisation foncière des "nouveaux acteurs et du secteur privé"». Comme élément de sécurisation de ces acteurs particuliers, l'action publique est orientée vers la clarification des conditions d'accès aux terres rurales non aménagées, l'instauration de la transparence dans les transactions foncières, la simplification des procédures d'accès aux titres de jouissance foncière et aux titres de propriété foncière. L'État prévoit également des aménagements en faveur de cette catégorie d'acteurs à travers la promotion des baux dits emphytéotiques. En réponse aux inquiétudes de la société civile et des autres acteurs ruraux qui craignent que cette promotion ne débouche sur une accumulation et une spéculation foncières en milieu rural, le gouvernement indexe des mesures de fiscalisation à travers «l'institution d'un impôt foncier local raisonnable, applicable à compter d'une superficie plancher à déterminer» (MAHRH, 2007:27). À cela s'ajoute «la limitation des superficies de terres rurales pouvant être détenues par une seule personne dans une même localité» et «l'obligation de mise en valeur effective et en totalité des terres concédées dans un délai maximum à définir» (*ibid.*).

### La recherche d'un ancrage coutumier de la loi pour un gain de légitimité

Cela a pour ambition de concilier légalité et légitimité en vue de donner une base solide aux initiatives de sécurisation portées par cette loi. L'ancrage coutumier de la loi s'organise autour de la reconnaissance des droits coutumiers. Cette reconnaissance s'est faite à un double niveau. D'un côté, les modes coutumiers sont reconnus en tant que système de régulation. En effet, les «us et coutumes locaux» sont cités soit comme point d'ancrage de la loi, soit comme norme référentielle qui complète les dispositions de la loi dans plusieurs situations. De l'autre, il y a la reconnaissance des droits légitimes détenus par les populations sur leurs ressources en tant que droits intermédiaires fondateurs de droit de propriété. En effet, s'agissant du patrimoine foncier des particuliers, la loi stipule que «les possessions foncières régulièrement établies

sont reconnues par la loi» (article 35). Dès lors que la nature et la consistance des droits coutumiers sont incontestées sur une terre rurale, cela ouvre droit à la reconnaissance de l'État qui fait constater ces droits selon une procédure publique et contradictoire. Cela revient à dire que les possessions foncières rurales, qui sont au regard des us et coutumes ce qu'est la propriété foncière au regard de la loi, constituent une condition *sine qua non* pour l'accès à la propriété consacrée par la loi aux populations.

La réhabilitation de l'autorité coutumière dans les actions relatives à l'administration foncière, notamment l'autorité coutumière en charge du foncier, participe de ce rapprochement avec les coutumes en matière foncière. Ces autorités coutumières sont citées comme membres de plein droit des commissions foncières villageoises et des commissions de conciliation foncière villageoises qu'elles président; en résumé, de toutes les instances tant locales que nationales de concertation et de suivi-évaluation de la mise en œuvre de cette politique de sécurisation foncière.

Mais les coutumes foncières sont diverses et varient d'une aire sociale à une autre. Le souci de la prise en compte de cette variation a inspiré les «chartes foncières locales». La loi définit ces dernières comme étant des conventions foncières inspirées des coutumes et pratiques foncières locales, élaborées au niveau local et visant à prendre en considération la diversité des contextes (article 6 de la loi portant régime foncier rural). Elles se veulent un moyen d'adaptation de la loi aux particularités locales et à la spécificité des besoins locaux (article 11) en vue de contribuer à l'application effective de la loi (article 12). Dans un certain sens, cela rejoint les préoccupations de Le Roy et Cubrilo (1996), qui proposaient que les normes et les sanctions portées par les lois foncières soient fondées sur des valeurs et des représentations partagées par le plus grand nombre, en vue de leur donner une plus grande légitimité.

**La modalité de reconnaissance et de protection des droits fonciers locaux**

L'innovation à ce niveau a consisté à instituer la procédure publique et contradictoire de constatation des droits débouchant sur l'attestation de possession foncière, et la formalisation des transactions foncières.

L'institution de la procédure publique et contradictoire de constatation des droits est rendue nécessaire par le fait que le droit de propriété consacré



par la loi est la mutation d'un droit coutumier qui ne dispose d'aucune autre forme de preuve que la reconnaissance unanime de la communauté. À titre illustratif, l'article 35 stipule que «les possessions foncières régulièrement établies sont reconnues par la loi», alors que l'article 6 définit la possession foncière comme «le pouvoir de fait légitimement exercé sur une terre rurale en référence aux us et coutumes fonciers locaux». Les droits ainsi reconnus ou à travers des autres moyens pourvus par la loi bénéficient de la délivrance d'une attestation de possession foncière rurale par le maire de la commune concernée, un acte administratif équivalant au titre de jouissance de la RAF. Cette attestation, qui est transmissible par succession et cessible entre vifs, peut être établie à titre individuel ou à titre collectif selon la nature des droits exercés sur le terrain.

La formalisation des transactions s'est présentée comme le moyen indispensable pour protéger les nouveaux acquéreurs et les bénéficiaires de cession ou de droits délégués sur les terres rurales contre la contestation ou tout trouble de jouissance de leur droit ou encore contre le risque d'éviction. En effet, le diagnostic sur la situation de sécurisation foncière en milieu rural, effectué pour orienter l'élaboration de la PNSFMR, a relevé les transactions foncières comme une des sources d'insécurité foncière. Du fait de l'interdiction de vente (affirmation du caractère inaliénable de la terre par le droit coutumier, la terre étant propriété de l'État selon la loi), les transactions foncières restent informelles et clandestines, un marché «incomplet», au sens de Le Meur (2002). Pour résorber cette situation, la nouvelle loi dispose que toute transaction foncière fasse l'objet d'un enregistrement dans le registre des transactions foncières rurales. En outre, aucune transaction ne sera possible sur un terrain qui n'a pas fait l'objet d'une attestation de possession, afin de s'assurer que le prétendu propriétaire en soit le vrai.

**La formalisation des transactions s'est présentée comme le moyen indispensable pour protéger les nouveaux acquéreurs et les bénéficiaires de cession ou de droits délégués**

### La mise en place de structures locales de gestion foncière

De l'avis de nombreux observateurs, la RAF (dans ses versions successives de 1984, 1991 et 1996) a péché par son caractère centralisateur et son manque d'institution foncière de proximité. En effet, après les CDR de la RAF de 1984, la RAF avait prévue des commissions villageoises de gestion des terroirs (CVGT) pour l'attribution, l'évaluation et le retrait des terres au niveau de chaque

village (article 46, RAF 1996), mais elles n'ont pas fonctionné tant pour des problèmes administratifs que pour des problèmes de légitimité. Dans le cadre de la nouvelle loi portant régime foncier rural, sont instituées des instances de gestion et de concertation foncière à tous les niveaux.

Au titre des structures de gestion foncière, il existe la Commission foncière villageoise (CFV) dans chaque village, le Service foncier rural (SFR) à la mairie de chaque commune rurale et le service domanial à la mairie de chaque commune urbaine. Excepté les situations conflictuelles, toutes les questions foncières sont traitées au niveau du village par la CFV présidée par l'autorité coutumière en charge du foncier dans le village ou par son représentant. Le Service foncier rural (SFR) est le bras technique de la commune en matière de sécurisation foncière.

Pour le compte des instances de concertation foncière, on dénombre l'instance locale de concertation foncière (qui est une instance facultative) au niveau de chaque commune, le Comité régional de sécurisation foncière en milieu rural (CORE-SFR) dans chaque région administrative, une déconcentration du Comité national de sécurisation foncière rurale (CONA-SFR) qui existe au niveau central.

### Des dispositions spécifiques au contentieux foncier rural

Les conflits fonciers sont les principaux indicateurs de la crise foncière en milieu rural. Ils causent chaque année des pertes en vies humaines, des destructions de biens et de mouvements de populations, d'où la nécessité de trouver un mécanisme efficient de gestion en vue de préserver la paix sociale. La nouveauté à ce niveau réside dans la promotion de la conciliation à travers des modes alternatifs de règlement des conflits. Cela prend forme au niveau juridique par la mise en place d'une Commission de conciliation foncière villageoise (CCFV), avec pour mandat d'assurer le règlement amiable de tous les conflits liés au foncier et à l'utilisation des ressources naturelles dans l'espace du village. Désormais, «les conflits fonciers doivent faire l'objet d'une tentative de conciliation avant toute action contentieuse» (article 96). C'est seulement en cas de nonconciliation que la partie la plus diligente peut saisir le tribunal compétent, en joignant à l'acte de saisine le procès-verbal de nonconciliation.



### Les constantes, survivances du système colonial

On peut retenir que, au-delà des évolutions ici perceptibles, des constantes demeurent. Il y a des velléités de prise en compte des logiques locales de gouvernance foncière à travers la reconnaissance des droits coutumièrement détenus, qui sont appelés, dans la législation foncière burkinabè, non pas des propriétés foncières, mais des «possessions foncières», qui ne deviennent propriétés foncières que par l'entremise de la publicité foncière issue de l'immatriculation. Par là même, on peut se rendre compte qu'en dépit de la division du domaine foncier national en trois parties, l'État demeure «le seul maître des terres» de ce domaine foncier national. C'est à lui seul que revient la prérogative de reconnaître aux autres catégories leurs droits. Ce rôle prééminent de l'État reste aussi une constante au fil des réformes. Il s'avère donc que le titrage et l'immatriculation demeurent la seule voie d'accès à la propriété foncière et le seul mode d'expression de ces droits. On se situe donc dans le prolongement du modèle colonial de la consécration des droits, lui-même dérivé de l'Act Torrens développé dans le contexte de l'appropriation foncière en Australie (Chauveau, 2006; Le Roy et Cubrilo, 1996).

**Le titrage et l'immatriculation demeurent la seule voie d'accès à la propriété foncière et le seul mode d'expression de ces droits**

Ainsi, l'immatriculation et la concession restent le modèle de gestion des propriétés foncières dont les différentes politiques ont du mal à se détacher. À titre illustratif, l'article 256 de la nouvelle RAF (version 2012) dispose que, pour permettre la publication d'un quelconque droit réel immobilier, la terre du domaine foncier national qui le supporte doit être préalablement immatriculée au nom de l'État ou des collectivités territoriales. C'est seulement après que les droits réels soumis à la publicité sont inscrits au nom des personnes physiques et des personnes morales publiques ou privées (article 262). Cela aboutit à la création d'un titre de propriété appelé titre foncier, un titre définitif et inattaquable selon les termes de la loi. Car aucun recours ne peut être exercé sur l'immeuble à raison d'un droit réel par suite d'une immatriculation; les intéressés ne pouvant, en cas de dol, qu'exercer une action personnelle en dommages et intérêts contre l'auteur du dol (article 252, RAF, 2012). La propriété, elle, reste acquise une fois pour toute.

### La nouvelle législation, entre ombre et lumière!

Les innovations saluées par plusieurs acteurs en référence à l'ancien cadre législatif ne suffisent pourtant pas à lever toutes les craintes des acteurs et des observateurs sur la question foncière au Burkina Faso. En effet, presque six ans après son adoption, la loi reste encore inappliquée sur le terrain. Pourtant, une vingtaine de décrets d'application sont pris, et tous les outils et les formulaires des actes sont disponibles.

En effet, pour que la loi fonctionne, il faut que les institutions locales de gestion foncière devant mener les différentes actions existent, notamment les services fonciers ruraux chargés de la conduite des actions et de la délivrance des actes administratifs, et la Commission foncière villageoise, auprès de laquelle sont exprimés les besoins en matière de sécurisation foncière. À ce jour, ces entités ne sont toujours pas mises en place et la loi ne peut donc pas être appliquée. L'heure en est encore à l'expérimentation à travers des projets de sécurisation foncière comme celui du Millénium Challenge Account (financé à plus de 30 milliards de francs CFA par le Gouvernement américain). Le spectre de l'ancienne RAF plane encore sur la loi portant régime foncier rural.

**Le spectre de l'ancienne Réorganisation agraire et foncière plane encore sur la loi portant régime foncier rural**

Cette situation de noneffectivité de la loi pose plus d'un problème dans le traitement des questions foncières. La loi est d'application, puisqu'elle a été non seulement adoptée mais aussi promulguée depuis 2009. Parmi les problèmes restant difficiles à traiter figurent la question des transactions foncières et celle du règlement des conflits fonciers. En effet, dans l'esprit de la loi, toute transaction foncière doit faire l'objet d'un enregistrement auprès des commissions foncières villageoises (qui n'existent pas encore), lesquelles informations doivent être répercutées au niveau du Service foncier rural (qui n'existe pas non plus) et consignées dans le registre des transactions foncières rurales. Toute transaction qui se fait en dehors de ce cadre défini par la loi constitue donc une pratique illégale. Inutile de préciser que les transactions foncières continuent de se réaliser selon les anciens canaux, comme si ces nouvelles dispositions (vieilles de six ans maintenant) n'existaient pas.

L'impasse est encore totale dans le cas d'une cession définitive de terres. En réalité, dans le cadre de cette nouvelle législation, aucune transaction foncière n'est possible en milieu rural tant que les droits prétendument



détenus sur le terrain en question ne sont pas établis, au moins sur la base d'une attestation de possession foncière rurale. La transaction s'organise donc autour de cette attestation de possession foncière, au lieu de l'établissement d'un procès-verbal de palabre comme cela était le cas sous la précédente législation. La loi parle d'un «acte de cession» établi sur un formulaire type fourni par la commune (article 46 de la loi) qui remplace le procès-verbal de palabre jusque-là utilisé lors de ces transactions. L'établissement de l'acte de cession est conditionné par la disposition préalable d'une attestation de possession sur le terrain objet de la cession, ce qui est toutefois impossible à réaliser pour le moment du fait de l'inexistence des structures dévolues à cette tâche (cf. *supra*). Face à ce vide, que faire?

Si le document de Politique nationale de sécurisation foncière en milieu rural présente une alternative à l'acte de cession au cours d'une période que l'on pourrait qualifier de transitoire, la loi n'en fait pas mention et révoque tout simplement le procès-verbal de palabre. Quelle est la force exécutoire d'une telle disposition, surtout dans un document de politique nationale, quand la loi qui lui est dévolue stipule que «à compter de l'entrée en vigueur de la présente loi, le procès-verbal de palabre est remplacé par l'acte de cession de possession foncière rurale prévu à l'article 48 ci-dessus» (article 108 de la loi), et que «pour être opposable aux tiers, la cession doit être inscrite dans le registre des transactions foncières rurales, à la diligence du cessionnaire» (article 48 de la loi)? À entendre les juristes, cette disposition transitoire introduite dans le document de politique n'a aucune validité, étant donné que le décret qui la suggère est antérieur à la loi (qui l'annule), d'autant plus qu'il n'en constitue pas un décret d'application.

Nonobstant ce contexte de blocage, des dossiers de titres de propriété (titre foncier) continuent d'être instruits sur la base de procès-verbaux de palabre en dépit de l'abrogation de sa valeur juridique, étant donnée l'impossibilité de disposer d'un acte de cession. Cette situation inquiète sérieusement quand on sait que, selon les termes de la RAF, qui constitue la loi de référence en matière de délivrance de titres fonciers au Burkina Faso, «pour permettre la publication d'un quelconque droit réel immobilier, la terre du domaine foncier national qui le supporte doit être préalablement immatriculée au nom de l'État ou des collectivités territoriales» (article 256, RAF, 2012). Cette

immatriculation «annule tous titres et purge tous droits antérieurs qui n'y seraient pas mentionnés» (article 248, RAF 2012). Son caractère définitif implique qu'aucun immeuble immatriculé ne peut être replacé sous son régime juridique antérieur (article 249, RAF 2012). Le comble est que le titre de propriété ainsi acquis est «définitif et inattaquable» selon l'article 256 de la RAF version 2012. Il forme le point de départ des droits réels et des charges foncières existants sur l'immeuble au moment de l'immatriculation, à l'exclusion de tous les autres droits non inscrits. Autrement dit, même s'il y a eu des manipulations et des manquements au cours de l'acquisition du terrain objet du titre de propriété, les victimes ne pourront jamais retrouver leur propriété. Car selon l'article 252 de la RAF version 2014, «aucun recours ne peut être exercé sur l'immeuble à raison d'un droit réel par suite d'une immatriculation. Les intéressés peuvent, en cas de dol, exercer [seulement] une action personnelle en dommages et intérêts contre l'auteur du dol». Dans ces conditions, enfreindre la loi ne comporte aucun danger pour les acquéreurs; c'est même un pari gagnant tant que cela ne les empêche pas de prétendre au titre de propriété, celui-ci constituant une couverture inviolable contre tout et tous, même les vrais propriétaires.

Il en est de même de la gestion des conflits fonciers. Comme dit précédemment, la loi dispose que tout conflit autour du foncier et des ressources naturelles doit faire l'objet d'une tentative de conciliation avant toute action contentieuse. Le problème réside dans le fait que la commission de concertation foncière villageoise commise aux tâches de la conciliation n'existe pas, alors que le procès-verbal de nonconciliation, que seule cette commission a le pouvoir de délivrer, constitue l'unique ticket d'accès aux tribunaux. Dans cette situation, comment appliquer le droit quand les conditions de la saisine ne sont pas réunies? Les acteurs de l'administration judiciaire rivalisent d'ingéniosité dans le traitement des différents dossiers qui atterrissent sur leurs bureaux. Un juge déclare puiser sa logique d'action dans «la théorie des formalités impossibles», qui lui permet de passer outre ces dispositions de la loi tout en restant dans la légalité, à partir du moment où les formalités imposées par la loi sont impossibles à remplir, alors qu'on ne saurait violer le droit d'un citoyen à la justice au nom de l'inexistence d'entités dont la mise en place ne dépend aucunement de lui. Ce qui n'enlève rien à la difficulté.



## CONCLUSION

En définitive, on peut retenir que plusieurs réformes se sont succédé dans le paysage foncier burkinabè depuis son accession à l'indépendance en 1960 à nos jours. Par ailleurs, les réformes foncières entreprises depuis 2007 s'inscrivent dans une logique de réconciliation des pratiques de l'État avec celles des communautés. Cet antagonisme a constitué la marque de la gouvernance foncière publique conduite en Afrique de l'Ouest francophone jusqu'ici, suivant une logique d'action restée longtemps prisonnière du système colonial. La nouvelle orientation adoptée intègre plusieurs aspects de la gouvernance foncière coutumière et en utilise même des outils. Mais le fait est qu'aujourd'hui encore, il n'est pas rare de rencontrer des acteurs fonciers ou de l'administration se demandant si la loi est d'application ou pas. Cela en dit long sur le sort que connaît cette loi dans un pays à grande tradition de législation foncière inappliquée, six ans après son adoption. Cela est d'autant plus préoccupant pour l'ensemble des acteurs qu'il crée des blocages suffisamment sérieux, tant pour l'administration publique (nationale et locale) que pour les différents acteurs.

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# THE POLITICAL ECONOMY OF LAND LAW REFORM IN A POST-CONFLICT COUNTRY: Liberia on the Verge of a Land Right Act

# L'ÉCONOMIE POLITIQUE DE LA RÉFORME DE LA LÉGISLATION FONCIÈRE DANS UN PAYS EN SITUATION D'APRÈS-CONFLIT: Le Libéria à la veille d'une Loi sur les droits fonciers

# LA ECONOMÍA POLÍTICA DE LA REFORMA A LA LEY DE TIERRAS EN UN PAÍS QUE ACABA DE SALIR DE UN CONFLICTO: Liberia a punto de aprobar la Ley de derecho de tierras



## ABSTRACT

**POLITICAL ECONOMY OF POST-CONFLICT LAND REFORM**

**CUSTOMARY LAND RIGHTS**

**CONCESSIONARY ECONOMIC POLICY**

**LIBERIA LAND RIGHT ACT**

The paper examines tenure and socio-economic matters related to land policies and the proposed land right act in post-conflict Liberia. By taking a historical political economy perspective, specific characteristics of land disputes and tenure conflicts are identified. Like elsewhere in Africa, in Liberia commercial interests in land have intensified. Hence, sustainable economic development needs to entail land and natural resource governance to determine how to resolve land disputes without grossly marginalizing the indigenous

## RÉSUMÉ

**ÉCONOMIE POLITIQUE DE LA RÉFORME FONCIÈRE EN SITUATION D'APRÈS-CONFLIT**

**DROITS FONCIERS COUTUMIERS**

**POLITIQUE ÉCONOMIQUE CONCESSIONNAIRE**

**LOI SUR LES DROITS FONCIERS DU LIBÉRIA**

Cet article analyse les problèmes fonciers et socioéconomiques liés aux politiques foncières ainsi que la proposition de la loi sur les droits fonciers dans un Libéria en situation d'après-conflit. Partant d'une perspective politique et historique de l'économie, les caractéristiques propres aux différends et conflits fonciers sont définies. Comme partout ailleurs en Afrique, les intérêts commerciaux suscités par les terres au Libéria se sont intensifiés. Par conséquent, une bonne gouvernance des terres et des ressources naturelles est

## SUMARIO

**ECONOMÍA POLÍTICA DE LA REFORMA DE LA TENENCIA DE LA TIERRA DESPUÉS DE UN CONFLICTO**

**DERECHOS CONSUETUDINARIOS SOBRE LAS TIERRAS**

**POLÍTICA ECONÓMICA CONCESIONARIA**

**LEY DE DERECHOS DE TIERRAS DE LIBERIA**

En este documento se analiza la tenencia y los asuntos socioeconómicos relacionados con las políticas de tierras y la ley de derecho de tierras propuesta en Liberia después de los conflictos. A través de una perspectiva histórica y política de la economía, se determinan las características específicas de las controversias en torno a la tierra y los conflictos relacionados con la tenencia. Como ha sucedido en las demás partes de África, en Liberia se han intensificado los intereses comerciales en la tierra. Por tanto, es preciso que el desarrollo económico

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population living under customary land tenure and traditional governance systems, and how to incorporate both into a concession-based economy.

indispensable à un développement économique durable, afin de déterminer les moyens de régler les conflits fonciers sans mettre à l'écart, de manière brutale, les populations autochtones qui vivent selon des systèmes fonciers coutumiers et de gouvernance traditionnelle, et définir comment incorporer ces systèmes dans une économie de concessions.

sostenible conlleve la gobernanza responsable de la tierra y los recursos naturales para determinar cómo resolver las controversias en torno a la tierra sin marginar gravemente a la población autóctona que vive en sistemas de gobernanza tradicionales y de tenencia consuetudinaria de la tierra, y cómo incorporar a ambos sistemas en una economía basada en concesiones.



## INTRODUCTION

Like elsewhere in Africa, in Liberia commercial interests in land have intensified. Hence, sustainable economic development needs to entail land and natural resource management to resolve land disputes without marginalizing the indigenous population living under customary land tenure and traditional governance systems.

In November 2014 the Liberian president requested the legislature to endorse a new Land Right Act, which aims to address the dual tenure system, in which both a statutory law system and traditional land governance control land ownership and use rights. The dual tenure, which is common in virtually all African countries, is not necessarily problematic. However, the way in which the tenure systems have discriminated against traditional customary tenure for the benefit of those in charge of the Government of Liberia (GOL) has been a source of continuing conflict concerning the management of natural resources.

**The new Land Right Act aims to address Liberia's dual tenure system, in which both a statutory law system and traditional land governance control land ownership and use rights**

The 2015 consultative constitutional review process revealed that the majority of Liberians value economic rights over political rights. The Head of the Constitution Review Committee (CRC), Gloria M. Scott, summarized the findings, "the people have indicated that the country has vast natural resources, yet they live in abject poverty, while their traditional lands are taken away with no benefits whatsoever" (The Liberian News Agency, 2015). The government's concessionary economic policy conflicts with indigenous communal land rights, which remain unprotected.

## HISTORY OF LAND DISPUTES

The significance of land reform for peace-building efforts originates from the creation of the Liberian state. The Americo-Liberian settlers had no appreciation for the communal governance concept of land ownership, while the tribal chiefs were unfamiliar with the freehold concept, although they soon realized the implications of the sale of their land to settlers (Varnie,

2004; Pham, 2006, 2009; Liebnow, 1987). The largely illiterate and poor rural population was unable to defend its traditional farmlands in the courts under the statutory legal system and the indigenous population was not granted citizenship until 1904 and the right to vote until 1946.

During the time of economic diversification in the 1960s and the 1970s, unclear land tenure and grievances over land accelerated the drift of the rural population to foreign mines, plantations and to towns, and launched the systematic acquisition of vast land holdings by elite families and foreign companies. According to the Ministry of Planning and Economic Affairs, 4 percent of the population owned more than 60 percent of the wealth. "It was popularly believed that President Tolbert and Speaker Henries owned nearly half of Bong County, and within the city of Monrovia, the Horton family owned most of the land on which the Bassa people lived" (Liebnow, 1987).

The situation was not unique. Commonly, growth-oriented governance in settler colonies entailed the creation and protection of property rights "at the expense of undermining the rights of unproductive groups". In the process, not only the property rights, but also "the lives of 'pre-capitalist' indigenous groups were eliminated" (Stiglitz in Noman *et al.,* 2012). Stigliz (2012) notes, "without a level of oppression that would itself impair development" such policies would not be considered sustainable or even feasible today (ibid.). The accumulation of rural underclass grievances produced "a crisis of agrarian institutions" (Richards, 2005).

Unlike post-colonial African states, Liberia has not experienced a period of developmentalism, a nationalist post-colonial era, or an agriculturalist era. Consequently, the country has not experimented with redistributive land reform. Land reform was an issue at the heart of the emotional and economic tensions between the Americo-Liberian elite and the indigenous population. In 1987 Liebnow observed, "Liberia did not need another donor agency 'feasibility study'; what it needed was action now" (Liebnow, 1987). Rural farmers needed the same security that was provided by the traditional tribal usufructuary rights of occupancy, or alternatively the indigenous farmers had to be included into a modern freehold tenure system.



## CONFUSING LAND TENURE SYSTEMS

The post-conflict land tenure system is complicated, to say the least. Fundamentally, the Constitution of Liberia recognizes customary law and thereby also the customary land use rights. According to Art. 65, Chapter VII (also Art. 2 and Art. 5) of the Constitution, the courts shall apply both statutory and customary law in accordance with the standards enacted by the Legislature.

Between 1924 and 1960, nearly one million hectares were registered under community ownership and notably not under chiefs' ownership. Communities solicited funds from employed relatives to register community land as their collective property and to secure Tribal Land Certificates, which were necessary in order to conduct a survey and to process a communal deed. Consequently, a significant portion of Liberia's forests is already formally titled to communities. Between 1956 and 1986 at least 19 chiefdoms bought back their land from the Liberian Government and secured it as 'collectively owned private property under Deeds of Public Land Sales'.

In 1974 a new cadastral land registration system was advised and embedded in the Land Registration Act. It reduced the legal grounds for customary ownership to 'permissive occupancy' (Wily, 2009). The main forms of various statutory entitlements to land include Land Deed, Aborigines Land Deed, Public Land Sale, Warranty Deed and Leasehold. These collective entitlements amounted to at least 2.8 to 3.5 million hectares, approximately from one quarter to one third of the total area of Liberia (Wily, 2007; Wily, 2009).

In theory deeds were recorded, but no central land registry exists. Therefore, the identification processes of the original landowners, boundaries and inheritance rights are unreliable. This further exposed the statutory system to widespread corruption and fraud (Unruh, 2009). The confused status of the key laws means that the legal status of communal and traditional rights must be speculative at best (Wily, 2007).

Both the customary law and the 1970 Land Law are still in use. In addition to conflicting laws, the definition of 'public land' remains unclear: it is not clear whether public land is state owned, owned by the nation or by a state agent, or whether public land includes unregistered land for which the owner

has no documented title. Generally, public land has been interpreted as state-owned land. This interpretation grants the state the right to natural resources without the obligation to compensate the communities that occupy the land.

In 2012 the public sentiment was that it was advisable to acquire a title to secure land rights. However, as Rawls (2011) points out, the cost of titling exceeds what the communities can afford, and in practice they sell their land rights. In 2013, in spite of the continuing land acquisition by concession companies, the president issued a moratorium to stop public land sales and the issuance of new tribal certificates (Executive Mansion, 2015, Executive Order No. 67).

## POST-CONFLICT LAND DISPUTES

In a fluid post-conflict context concessionary policies, the non-governmental organization (NGO) advocacy, and even conservation agendas, may threaten communal land rights. In the land grab that occurs immediately after a conflict, the poor tend to lose out to the wealthy and powerful and fail to recover the natural capital they lost in wartime. Therefore, the rights of poor communities to properties with natural capital, such as land, forests and fisheries, ought to be strengthened quickly with tenure reform.

In general, land conflicts in Africa are related to concentrated ownership, lack of access to land, and land disputes (Manji, 2006). Land disputes in Liberia in particular can be classified into the following categories: tenure, use and management and related social, economic and environmental grievances, loss of livelihoods, and claims of socio-cultural and political disrespect (DeWitt, 2012). The forms and functions of disputes are just as heterogeneous as the disputes themselves (World Bank, 2014). Intergenerational conflict is pronounced when a younger generation makes claims on traditional land confronting elders and traditional chiefs. Some minor ethnic disputes take place between settlers, refugees and the returned internally displaced population (IDP).

During the long conflict traditional knowledge of existing boundaries and the self-enforcing monitoring system related to crop rotation schemes were



lost, and mapping traditional land is nearly impossible without extensive on-site long-term knowledge. Increased mobility and post-conflict land sale scams have further confused both systems governing access to land. Commercial farmland owners were absent for over a decade. People have built on unoccupied lots and taken over uncultivated farms. In the post-conflict context both the occupants of abandoned land and the original owning families make claims on the land. Although individuals possessing genuine documents signed by a relevant agency of the government may sell the same parcel of land to several buyers without confirming the legitimate owners, the existing land law does not offer clear guidance in cases of re-sold land.

The definition of a 'community,' and hence the definition of 'communal land' is inherently vague. The Land Commission defines a 'community' as "a widely recognized coherent social group or groups, whether self-identified or not, who share common customs and traditions, irrespective of administration and social sub-division, residing in a particular land area over which members exercise jurisdiction communally by agreement, custom or law. A community may, for example, be a single village or town, or a group of villages or towns or a chiefdom" (Liberian Land Commission, 2014).

Further, there are inconsistencies in terms of administrative boundaries. For example, the legal framework defining land and property in 'city', 'town', 'clan', and 'chiefdom' is unclear. This amplifies the inconsistencies in jurisdiction and the overlap between the traditional governance units of chiefdoms and clans and the statutory governance of towns and cities (Government of Liberia, 2007).

Unclear land tenure policies continue to disrupt development, contribute to insecurity among the poor and breed corruption. In the absence of a local economic base, production facilities and a functional banking sector, real estate was and remains one of the few domestic investment opportunities. In the past, laws imposed specific building and agricultural requirements to discourage speculation and to encourage productive land use. Private landowners lost their ownership rights if the requirements were not met (Liberian Land Commission, 2013). Land ownership practices gave developers the right to occupy land, provided that the investment to develop the property was higher than the value of the land, and the land owner was not willing

**Unclear land tenure policies continue to disrupt development, contribute to insecurity among the poor and breed corruption**

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to compensate for the investment. In post-conflict settings, however, such laws and regulations may be exploited. In practice, those with power, money and relationships are better positioned to secure their land rights and to protect their investments. Systematic enforcement of real estate taxation as a technique to resolve land disputes and to regulate the real estate sector has been hampered by systemic corruption and resilient elite interests.

A harassment scheme was created with the post-conflict rehabilitation of roads. Traditionally, Liberians prefer to build close to the roadside. In theory, the Ministry of Public Works provides zoning records and regulations, but in practice the population is unable to access government records. Monrovia City Corporation and the Public Works mark buildings for demolition when they are too close to a road. Speculatively, the markings are used by government officials to press for bribes. Furthermore, many buildings have been bulldozed without legitimate prior warning. In January 2012, in order to prepare the capital city for an international delegation's visit, several buildings were bulldozed in Monrovia, prompting demonstrations and hostility towards the city mayor.

Land disputes are frequently politicized. In the absence of a functional judicial system, local representatives are pulled into land dispute cases. Because the national government is highly centralized, legislators and superintendents are often the highest and even the only representatives of state institutions in rural areas. Nevertheless, their involvement in land cases compromises their positions as elected representatives and government



officials. For example, in a land dispute case involving a senator and a political rival, fourteen people were killed and five went missing (UN Security Council, 2008). The case underscores the potential for local land disputes to escalate into national security crises.

In light of the political history of Liberia, land (law) reform needs to address the socio-economic issues associated with access to land and land ownership. Land-related grievances continue to perpetuate a fragile security situation and contribute to the underlying antagonism between the elite and the indigenous population (Oritsejafor, 2009; Liebnow, 1987). According to a survey conducted in 2008 by the National Truth and Reconciliation Commission (NTRC) and the European Union (EU), in 75 percent of Liberia's administrative districts, land disputes were a key threat to peace. "These disputes mirror historic tensions and so are susceptible to escalation" (International Crisis Group, 2009; BBC News, 2008).

**Land-related grievances continue to perpetuate a fragile security situation**

## LAND RIGHTS AND PERPETUATED POVERTY

Land tenure issues cut across economic development. The international aid system creates a connection between secured property rights and poverty reduction. Unclear land tenure obstructs access to capital and modern agricultural sector development (Manji, 2006). De Soto argues, "The inability of people across the developing world to secure their property rights is what prevents them from unlocking their vast capital. What is needed is a functioning and transparent legal framework so that Africans can convert that land into collateral against which they can borrow and invest" (De Soto, 2000). However, as Stiglitz points out, "the issue of property rights is more complex than the simplistic formula of defining clear and credible property rights" (Stiglitz in Noman *et al.*, 2012). Ideally, definition of property rights includes mechanisms that enable the poor to secure their land rights for a cost affordable to them, and which protect communal customary land from intensified commercial land acquisition by transnational concession companies. In essence, the enforcement of a statutory tenure system ought not to contradict the communal governance systems of customary land.

The creation of the Liberian state originated from production of rubber as a cash crop. In 1974 the agricultural annual economy per capita was less than US$ 120 while the cash crop economy was US$ 900. In comparison, the mining sector per capita GDP was US$ 2 500 (Government of Liberia, 2013).

Despite the fact that cash crops have dominated the Liberian agricultural sector, many aid agencies still view subsistence agriculture as the blueprint solution for the rural poor. For instance according to the United States Agency for International Development (USAID, 2014), "more than two-thirds of Liberians depend on agriculture for their livelihood". The USAID (2010) Country Development Cooperation Strategy Liberia, 2013–2017 claims that "growth will depend on increasing smallholder productivity to increase food production, create jobs, and generate income." According to the United Nations (UN) Security Council's 17th progress report, "one key element to improve social indicators will be to increase agricultural production, since it creates employment and income opportunities for a large part of the Liberian population" (ibid.). Conversely, the same source reports land disputes, growing marijuana production and trafficking[1], persistent food insecurity, especially in rural areas due to transportation problems, and poor infrastructure.

Subsistence agriculture is routinely linked to poverty reduction, irrespective of its actual ability to provide livelihoods. Duffield criticizes humanitarian emergency aid for stripping "away the history, culture and identity of the people concerned ... rebuilding communities and promoting the small-scale ownership of property in the interest of improved self-reliance" (Duffield, 2007). Paradoxically, instead of engaging the rural poor in national economic activities, the poor are to become self-reliant in food production, and yet their land rights remain unprotected.

Moreover, aid projects may assume an availability of communal free labour, which is most often women's unpaid labour (Manji, 2006). Hence, the promotion of smallholder subsistence farming may unintentionally

1 During the conflict marijuana was introduced to wide segments of the population. Marijuana farming has become an income source for the rural population. It is a cash crop that causes violent fights over marijuana gardens. Marijuana gardens and drug trafficking are linked to crime, illegal activities and organized cross-border criminality.



discriminate against women. Therefore, in addition to addressing the past injustices, land reform should simultaneously address the latent class, inter-generational and gender conflicts.

Access to communal land remains regulated by elders and chiefs. Therefore, because artisan subsistence agriculture is associated with lower social status, suppression by the elite and poverty, the youth prefers to pursue other survival methods. Furthermore, customary access to land creates a locally confined citizenry, which may conflict with trends in urbanization, increased mobility and modern economic activities. Land reform could have the potential to free rural citizens from locally confined citizenship and oppressive chiefs, and thereby enhance connecting poor rural areas to modern national economic activities.

Unsurprisingly, unclear land tenure and food insecurity are interlinked. Liberia has among the lowest agricultural yields and intensities of land use (Government of Liberia, 2013). Despite the excellent climatic conditions and fertile soil, less than 5 percent of the land is under permanent cultivation and less than 1 percent is irrigated. Smallholder farms have low productivity due to lack of knowledge, capital, machinery and infrastructure (ibid.). In 1990 per capita food imports were at a level comparable with those of the 1960s. In 2011 less than 50 percent of the population was food secure. Due to the low productivity and poor feeding practices more than 40 percent of children suffer from chronic malnutrition (ibid.). According to the USAID in 2014 "almost one-third of children under five remain stunted" (USAID, 2014). Up to 30 percent of under five year old deaths can be attributed to malnutrition, which additionally deprives children of cognitive development. The diminished cognitive capacity combined with substandard education perpetuates the low human capacity (Government of Liberia, 2013) and thus impedes sustainable economic development.

A poor, self-reliant agrarian class with little political or economic power on the margins of society fortifies the Liberian dichotomy of the elite versus the 'plebeian' rural population, commonly referred to as 'country people' in the 'hinterlands'. In comparison, the state elite benefits from the concessionary economic policy, which is based on rents from Liberia's vast natural resources.

## CONCESSIONARY ECONOMIC POLICY ENCOURAGING LAND ACQUISTIONS

As a term 'concessionary economy' refers to a type of state economy that is independent from domestic tax revenues but depends on revenues from concession agreements with transnational companies extracting the natural resources. Historically, concession agreements have been a cornerstone of the Liberian political economy. In general, the concessionary trend in Africa and the new wave of agribusiness is driven by the land shortage in Asia, the increasing demand for biofuels, industrial food production and globalized foreign direct investments (FDIs). Additionally, the traditional reliance on the natural resources exploitation, the capital investments required to modernize economic sectors including agribusiness, competition over FDIs, international standards on biodiversity conservation and carbon markets, and even the preservation of indigenous cultures, are factors that may drive concessionary economic policy.

Transnational agribusiness is criticized for avoiding proper codified arrangements for businesses, having weak social commitments with local communities and weak environmental plans. In the process the local population is transformed into labourers, while chiefs, community leaders and government administrators act as easily influenced agents. Local requirements are often only anecdotally fulfilled. Nevertheless, land use rights are transferred to foreign concessionary companies (Oyono, 2013) and a customary tenure is conveyed to a statutory tenure for the benefit of a concession company.

**Land use rights are transferred to foreign concessionary companies and a customary tenure is conveyed to a statutory tenure for the benefit of a concession company**

As early as the 1920s, when the Firestone plantation concession agreement was negotiated, the statutory system became the legal basis for concession agreements. The acquisition of land by Americo-Liberians intensified the transfer of communal customary land tenure into statutory freehold land tenure (Unruh, 2009). In post-conflict settings this trend is intensified by concessionary economic policy (ibid.). Traditional smallholder farmers and the emerging group of commercial cash crop farmers compete with international agroindustry and concession companies over access to land. Communities engage in hostilities against development and foreign investment projects



because they feel that their rights have been violated. On-going land disputes between communities and commercial companies continue to pose a major security risk (UN Security Council, 2008).

The post-conflict administration 'sold' gross concession areas to transnational companies largely free from any encumbrances and in some counties the area granted in concessions exceeds the total area of the county. In 2012 some predictions estimate that the GOL has issued longer term use rights over an area that corresponds with estimates from 27 up to 50 percent of the total Liberian land mass (DeWitt, 2012b). Moreover, there are large disconnects between the granted land area and the actual developed areas. For example, 650 000 acres may be claimed but only 5 000 acres may be developed (Unruh, 2009).

**The post-conflict administration 'sold' gross concession areas to transnational companies largely free from any encumbrances**

Land reform that would secure ownership rights for indigenous people was advocated by legislators.[2] While the GOL has not clearly defined untitled or traditional land as government land or nationalized indigenous land, it has indirectly accumulated benefits from the land and its natural resources in the form of concession agreements, associated taxes and payments, and from the exchange of resources for infrastructure and social commitments delivered by concession companies. The 'road-for-resources strategy' (Chester, 2010) has avoided the direct expropriation of the indigenous population, but in a way has outsourced the land acquisition process to concession companies, which are left to navigate between the conflicting land tenure systems and to negotiate land rights with communities.

Debatably, the customary system has not evolved to accommodate the changes in population density, mobility and food security, or kept up with "the ability to interact effectively with state law" (Unruh, 2009), the state law here referring to the statutory law. Unruh notes, "the isolation of the customary sector and its neglect, together with the lack of awareness of legal developments in other African countries by both the customary and formal legal domains in Liberia, has led to the stagnation of forms of law

2 During the Poverty Reduction Forum on the 13th of March 2008, Grand Bassa House Representative Smith advocated a land reform policy in which land would be given to the indigenous population so that they could use it as collateral for loans.

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and practice regarding land tenure" (ibid.). Moreover, insufficient attention has been paid to formal functions and predispositions of various government agencies (ibid.). Wily (2007) posits, "Liberia could redress land injustices more easily than almost any other country on the African continent".

In comparison, Sierra Leone, the neighbouring post-conflict country, has a customary law officer to interact between the two legal systems. In Liberia the cabinet members and the national government negotiated concessions using a non-consultative approach (Unruh, 2009) without informing, let alone negotiating with, rural communities. Consequently, the affected population's engagement in natural resources management is insufficient.

When the elected President Johnson-Sirleaf took office in 2006, all of the concession agreements that had been signed under the National Transitional Government were cancelled. Since 2008 sizable concessions have been negotiated with the oil palm, rubber, agricultural and timber industries and with some of the largest mining companies. The concession companies compensate communities for the use (lease) of land but pay taxes and land rent fees to the GOL. Although the concession agreements promise local



employment opportunities, many of the transnational companies postponed investments and job creation until after the second post-conflict elections were conducted in 2011. In general, the promised employment opportunities have not materialized (Lanier *et al.,* 2012).

In Liberia the motivation to outsource infrastructure development such as roads, rail, ports, airports, telecommunications and energy provision to concession companies is driving the concessionary practices. While the national government engages in the 'road-for-resources' (Chester, 2010) tactics, the local communities press concession companies for investments in basic infrastructure and public services, such as hand-pumps, roads, schools and clinics, which the national government has failed to provide for decades.

In summary, an economic growth strategy based on natural resources exploitation and concession agreements with transnational companies creates pressure to establish a legal framework to protect private property rights and to transfer land under statutory land tenure.

## PROTECTION OF COMMUNALLY GOVERNED LAND

Customary indigenous land is commonly governed and defined as the common pool resources (CPR) (Ostrom, 1990). Because such land is common-use property, its management is based on a different set of rules than land governed by individual use rights. The Land Commission's recommendation to keep traditional land at a clan level underscores the kinship aspect of communal land use rights. Because a village chief is always subject to a clan (Wulah, 2005), it follows that an individual village or a community cannot make decisions over land ownership rights independently from their clan. They only allocate land use rights. In general, traditional governance structures are eroded and there are significant regional and local variations. Furthermore, the fact that the chiefs are on the government payroll and report to superintendents and to the Ministry of Interior, ensure that they are more inclined to cooperate with the government than to protect the right of the communities that they claim to represent.

In the context of communal land governance, individual ownership translates to privatization of the communal land, i.e. individualized ownership of a CPR. The insistence of international actors to obtain land use rights from individual communities violates the rules of customary land governance. The 'free' concept at the individual level creates artificial private rights to CPR of land and its resources, yet simultaneously disregards the general rules and commonly known practices of the use and transfer of land (Ostrom, 1990). International standards and recommendations assume that communally managed resources should be parcelled out and individual communities should be allowed to pursue their own self-interests. Individualistic land rights artificially divide the land into smaller units, which leaves communal land rights unprotected. Paradoxically, the concept of 'free consent' over land-use rights privatizes communally governed land.

**In the context of communal land governance, individual ownership translates to privatization of the communal land**

Land acquisition by concession companies is hampered by the conflicting understanding of contractual agreements between international corporations and the indigenous population. In a traditional governance system, contractual agreements regulating the access to and management of traditional land have been verbal agreements or simply assumptions formed over time. Written or verbal agreements are only partially binding due to the weak rule of law and the lack of an equally accessible judicial system. Contractual agreements are understood as the consensual acceptance of an agreement, 'live by the decision or contract', which makes the contract or agreement enforceable. In CPR situations, if an agreement is based on incomplete or biased information, the other party determines its own contract and enforces only the agreeable portions of the contract. Consequently, traditional communities accept concession companies on their land only as long as they are satisfied with the benefits they receive in return.

The conflicting contractual understanding, in combination with the concession companies' tendency to shortcut the land acquisition process, inevitably invites conflicts. Nonetheless, it is highly unlikely that the concessions will be re-negotiated based on communal or smallholder land rights when land law reform is passed as national legislation.



## CONFRONTING THE NEED FOR LAND REFORM

Notwithstanding the relevance of land distribution for peace-building and economic development, no land reform took place during the first term of the post-conflict elected government (2005–2011). Nor did the Liberian peace agreement (2003) address natural resources governance, or the need of land reform, although both are widely acknowledged to be the root causes of the conflict.

According to the Government Reform Commission (GRC) "underpinning the discussions on land and property rights there is a need to develop a shared national vision of what land and property rights should be in Liberia in the future" (Government of Liberia, 2007). In 2007, approximately 75 to 90 percent of the cases in all statutory courts, including probate, civil, criminal, circuit and appeal courts, were land or property related (Unruh, 2009; Government of Liberia, 2007). Still no special land court has been established, one explanation being that there is no clarity about how to handle claims based on customary land tenure in the framework of the current legislation.

In January 2008, UN Habitat approved a budget of US$1 120 700 to establish a Land (Reform) Commission. In 2009, the GRC received additional donor funding for the Land Commission (LC). As a component of the Poverty Reduction Strategy (PRS), the LC, as an independent government institution, was established by the Legislative Act in August 2009, with a five-year lifespan, guided by the overarching principles of securing land rights, economic growth, equitable benefits, equal access and protection, environmental protection, evidence-based land rights and policies understandable and available to all (Liberian Land Commission, 2013).

The executive order provisionally authorised the Land Reform Commission (LRC) until June 2010. In January 2015 by the Executive Order No. 66 the president again extended the LC's tenure, during which the LC will be transformed into a new Land Agency. A bill by the executive for the legislature's consideration proposes that the overlapping and conflicting

functions of various agencies[3] in matters related to land tenure will be consolidated under the new Land Agency (The New Dawn, 2015).

The bill to establish the LC highlighted two contradictory viewpoints in terms of future land rights. On the one hand, the legislature introduced the notion of indigenous rights. It was agreed that the bill to establish the LC would grant the land ownership rights to the indigenous people who had inhabited the land for centuries. On the other hand, the executive's position was to modernize land tenure in order to attract investments, and it was agreed that foreigners would be allowed to lease land for fifty years.[4]

The dual systems of law and deep poverty have prevented the masses from accessing the statutory legal system, which regulates private property rights and commercial activities that are not labelled 'informal'. Likewise, cadastral surveys and land laws may drive the indigenous people from agriculture and construction industries. Manji (2006) argues that when land is allocated by the state, as it is when the government enters into agreements with corporations over natural resources or land leases, private citizens are required to deal with public offices and land laws become administrative laws. Land law reform assumes one central authority over land ownership rights.

In essence, the rule of law is more preoccupied with the statutory law to encourage foreign investments than distributive land law reform.

3 The initial partners of the LC included the Governance Commission, LISGIS (statistics agency), the Environmental Protection Agency, the Forestry Development Agency, the University of Liberia; five Ministries, (Agriculture; Land, Mines and Energy; Finance; Planning and Economic Affairs; Justice), UN Food and Agricultural Organization, UN Mission in Liberia and UN Development Programme.

4 President Johnson-Sirleaf observed that the constitutional clause prohibiting non-Liberians from owning land is hampering development. "Liberians lack the capital and the capability to develop and manage these lands." The leasing of lands to individuals for a number of years only for the purpose of building shops does not reflect the country's developmental agenda, and she stressed, "There should be a change." President Johnson-Sirleaf during a one-day workshop on the future of small businesses in the Liberian economy (Johnson, The News, 2008).



## TENURE AND DISTRIBUTIVE LAND REFORM

Land reform can be divided into tenure and distributive land reform. Distributive reform typically re-distributes land to the landless, whereas land tenure reform makes changes in terms related to land holdings, ownership and control, and how they are modified through the law. That is, tenure land reform is a land law reform (Manji, 2006).

Given the complexity of the land disputes and the already intensive commercial land acquisition process by concession companies, distributive land reform would be a potentially explosive and practically challenging process in Liberia. The formalization of land rights may not be the best solution everywhere. However, in Liberia, under the current dual ownership tenure, traditional land rights are not *de facto* protected under statutory law and formalizing the customary land rights could bring them under the statutory judicial system. Moreover, commercial land acquisition is already so intensive that protection of customary communal ownership without equal access to the justice system and legal protection is but a romanticized indigenization.

**Commercial land acquisition is already so intensive that protection of customary communal ownership without equal access to the justice system and legal protection is but a romanticized indigenization**

## POLICY RECOMMENDATIONS AND PROPOSED LAND RIGHT ACT

The LC's Policy Paper (2013) aims to address legal, administrative, boundary and ownership conflicts. However, the mandate of the LC does not address existing or future concessions. Like any law, the proposed Land Right Act will not be retroactive and all concessions shall "remain valid and enforceable in keeping with their existing terms and condition for the period of their initial terms and any first extension thereof" (Liberian Land Commission, 2013).

The LC's policy recommendations propose several clarifications to the current land statute. Firstly, it suggests creating a new category of government land. This public land would be defined as land that is not government owned, private or customary land. The GOL would be able to lease or sell both public and government land. It further proposes that the GOL will be able to "acquire Private Land and Customary Land through mutual agreement, eminent domain, or donation" or may "acquire Private Land, but not Customary Land, through

reversion" (Liberian Land Commission, 2013). The 2014 proposed Land Right Act (LRA) defines four categories of land: public land, government land, customary land and private land. Land that is not private, government or customary, would fall under the category of public land.

The LC's Final Policy Paper offers several policy recommendations to correct for the inadequacies in the current land law related to eminent domain. For example, various legal arrangements that apply to customary land, such as Aboriginal Land Grant Deeds, Public Land Grant Deeds and Public Land Sale Deeds would be combined into a single category of customary land. Customary land management practices that do not conflict with national land laws, the Constitution, or international legal obligations will be incorporated into the national formal legal framework. Tentatively, the statement has wider implications for a judicial reform.

Technically, the draft policy proposes equal legal status for customary land and private land, whether or not the community and its members hold a deed or a title. The customary land ownership is limited to the land but not extended to the natural resources on the land. The customary land ownership "includes ownership of natural resources on the land, such as forests, including carbon credits, and water." The GOL has exclusive ownership rights over "any mineral resources on or beneath any land or ... any lands under the seas and waterways" and the GOL has the authority to regulate the use of and access to natural resources.

The proposed LRA (2014) aims to "preserve the integrity of customary land". The LC proposes a nationwide adjudication process of the customary land. Firstly, each community with customary land or the right to own customary land should be self-identified, in a manner that a community would form a legal entity, which can enter into enforceable agreements and be held liable in courts. Secondly, the LC proposes to identify, demarcate, register and publish all customary land holdings within two years as of passing of the LRA into a law. In 2015 the LC launched a tribal certificate inventory in an effort to establish a comprehensive tribal certificate database (Liberian Land Commission, 2015). In theory, these measures clarify the vague status of customary land and bring it under the statutory system. In practice, both proposals may prove to be overly ambitious. The main criticism on the LC's



policy recommendation is that it gives the lead to market-led land acquisition and fails to protect adequately communal land rights.

In November 2014 the president asked the Legislature to endorse the LRA (The Liberian News Agency, 2015). Like the earlier Forestry Act (2007) and the Community Rights Act (2009) the proposed LRA aims to correct for past injustices and propose exemplary changes. However, the path from a policy recommendation to a new law and to its implementation will be challenged by systemic corruption and citizens' limited access to information, and ultimately by the weakness of the judicial sector.

## CONCLUSION

It appears that the fragile post-conflict security situation in Liberia is perpetuated by unclear land rights. Access to land and its resources, land tenure rights, the weak judicial sector and the fragile security situation are all intertwined, which underscores the importance of an institutional design for the post-conflict Liberian state. Beyond the security situation, the land reform is also central to the future trajectory of economic development. Land rights policies and tenure law reform are central components of the management of natural resources.

The policy recommendations of the Land Commission, although exemplary, are insufficient to address the need for distributive land reform, specifically because they provide no mechanisms to implement the recommendations. Land tenure reform, especially when it lacks the political will to recognize customary land rights, is insufficient for addressing past injustices. A land law reform led by concessionary economic policy may fail to ensure democratic and inclusive management of natural resources. In essence, a distributive land reform ought to be an inclusive political, not a technocratic, process.

**A land law reform led by concessionary economic policy may fail to ensure democratic and inclusive management of natural resources**

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# LAND OWNERSHIP SECURITY AND INVESTMENTS INCENTIVES IN MATRILINEAL SOCIAL SYSTEMS among beneficiaries of the Community-Based Rural Land Development Project in Malawi

# LA SÉCURISATION FONCIÈRE ET LES MESURES D'INCITATION AUX INVESTISSEMENTS DANS LES SYSTÈMES SOCIAUX MATRILINÉAIRES chez les bénéficiaires du projet de développement des terres rurales à assise communautaire au Malawi

# SEGURIDAD DE LA POSESIÓN DE LA TIERRA E INCENTIVOS PARA LA INVERSIÓN EN EL MARCO DE SISTEMAS SOCIALES MATRILINEALES DE MALAWI entre los beneficiarios del Proyecto de desarrollo de tierras rurales basado en la comunidad



## ABSTRACT

**LAND REFORM**

**RURAL LAND RESETTLEMENT**

**MATRILINEAL SOCIAL SYSTEMS**

**LAND OWNERSHIP SECURITY**

This study was conducted to investigate whether acquired land rights in the Community-Based Rural Land Development Project influenced household heads' incentives to undertake long-term investment in land in support of livelihoods. A mixed methods approach was employed in which data were collected through focus group discussions and a household survey. A checklist and semi-structured interviews were used in focus groups and household surveys respectively to collect data. Content analysis was employed to analyse qualitative data. Logit regression analysis was used to determine factors that influenced household heads'

## RÉSUMÉ

**RÉFORME FONCIÈRE**

**RÉINSTALLATION RURALE**

**SYSTÈMES SOCIAUX MATRILINÉAIRES**

**SÉCURISATION FONCIÈRE**

Cette étude a été menée afin de déterminer si les droits fonciers acquis lors du projet de développement des terres rurales à assise communautaire ont incité les chefs de famille à investir sur le long terme pour venir en appui aux moyens d'existence. Une approche par des méthodes variées a été utilisée, dans laquelle les données étaient recueillies à travers des groupes de discussions et des enquêtes auprès des ménages. Pour collecter les données, une liste de contrôle et des entretiens semi-structurés ont été utilisés respectivement pour les groupes de discussions et les enquêtes. Une analyse du contenu a permis un

## SUMARIO

**REFORMA DE LA TENENCIA DE LA TIERRA**

**REASENTAMIENTO EN TIERRAS RURALES**

**SISTEMAS SOCIALES MATRILINEALES**

**SEGURIDAD DE LA POSESIÓN DE LA TIERRA**

El estudio fue realizado para investigar si los derechos sobre la tierra adquiridos gracias al Proyecto de desarrollo de tierras rurales basado en la comunidad influyeron como motivación para que los jefes del hogar realizaran inversiones en la tierra a largo plazo en apoyo de los medios de vida. Se empleó un enfoque de métodos combinados que consistió en recopilar datos a través de debates por grupos especializados y encuestas por hogares. Para recopilar la información en los grupos especializados y las encuestas por hogares se recurrió a una lista de comprobación y a entrevistas semiestructuradas, respectivamente. Se realizó un análisis de los

incentives to invest in long-term agricultural enterprises. The study found that land ownership security after resettlement influenced male household heads in the matrilineal social system to invest in land, and that the availability of income from other economic activities enabled them to do so. However, land ownership security did not encourage female household heads to invest in land because of labour and financial constraints.

examen qualitatif des données. Les facteurs ayant influencé les chefs de famille à investir sur le long terme dans des entreprises agricoles ont été déterminés selon un modèle de régression logistique. L'étude a permis de conclure que la sécurité foncière, liée à la propriété après une réinstallation, a influencé les hommes chefs de famille de ce système social matrilinéaire à investir dans le foncier, incités par la disponibilité en revenus provenant d'autres activités économiques. En revanche, la sécurisation foncière n'a pas encouragé les femmes chefs de famille à faire de même, en raison des contraintes liées au travail et du manque de ressources financières.

contenidos para examinar los datos cualitativos y un análisis de regresión logística para determinar los factores que influían como motivación para que los jefes del hogar invirtieran en explotaciones agrícolas a largo plazo. El estudio reveló que la seguridad de la posesión de la tierra tras un reasentamiento influía en la decisión de los jefes del hogar del sistema social matrilineal de invertir en tierras, y que la disponibilidad de ingresos recabados de otras actividades económicas les permitía hacerlo. No obstante, la seguridad de la posesión de la tierra no alentaba a que las jefas del hogar invirtieran en ella debido a las limitaciones financieras y laborales a las que estaban sujetas.



## INTRODUCTION

Land in Malawi continues to be the most crucial productive resource and in the absence of a major reform in land tenure system and ownership, poverty reduction interventions are very unlikely to bring about their proposed effects (Chirwa and Mvula, 2003). Moreover, studies in Malawi show a provable link between poverty and landlessness, with the southern region having the highest proportion of the poor due to the small size of cropland holdings per capita, estimated at 0.178 hectares (GoM, 1999; GoM, 2002). The main recommendation from the report of the Presidential Commission of Inquiry on Land (PCIL) in 1999 was that some structure of land rearrangement is needed, mainly in the southern region where land shortage is critical (GoM, 1999). A national land policy was drafted based on the report and was publicly discussed and eventually approved by the cabinet in 2002. This approval was the starting point for important land reforms in Malawi (GoM, 2002). The drafting of the new national land policy was followed by the development of a land reform programme implementation strategy that was adopted by the government in 2003. The government appointed a special law commission to review the legal framework in light of the new land policy principles. In this context, in 2004 the government, with support of the African Development Bank (ADB), the European Union (EU) and the World Bank (WB), started implementing a series of land reform programmes. This research studied one of the projects under the land reform programme, namely the Community-Based Rural Land Development Project (CBRLDP).

### Community-Based Rural Land Development Project

The birth of the CBRLDP can be traced from the results of the PCIL that was constituted in 1996 and completed its work three years later (GoM, 1999). The results of the Commission were reinforced by different land use studies promoted by development stakeholders such as the European Union, the Department for International Development (DFID), the United States Agency for International Development (USAID) and the World Bank. These studies collectively determined the availability of underutilized fertile arable land, amounting to 2.6 million hectares, earmarked for redistribution through a

rigorously designed land reform programme. The outcome from these studies was that most of the land from large estate farms is underutilized due to substandard management and competition from smallholder burley tobacco production, resulting in dwindling gains in estate tobacco. The studies fed into the design of the land policy and the reform programme was designed to implement the land policy. The CBRLDP was a five-year (July 2004 to June 2009) pilot project of the reform programme. Sponsored by the World Bank, the key goal of the CBRLDP was to improve the incomes of about 15 000 poor near-landless rural households by applying decentralized, community-based and voluntary land reform in four pilot districts (GoM, 2005).

The CBRLDP was based on the willing-seller and willing-buyer principle of land redistribution. In order for the households to qualify for land acquisition in the project they had to form a beneficiary group termed a trust. The trust secured land that it planned to occupy and bargained for obtaining the land with the proprietor within the price confines arranged by the CBRLDP personnel. The project made available the record of farms on the market and prospective settlers selected a minimum of two farms that they were interested in. The beneficiary group subsequently submitted its plan together with the formal agreement of the sale of land for funding to the District Assembly in the district in which the farm was situated for authorization by the District Lands Committee (DLC). A minimum of two hectares of land was allocated to each household under the project following the land sale. In the household, husband and wife jointly owned the land. Ownership of the acquired land was entrusted to the trust, with the choice for individual households to title their land if they could afford to cover the charges. The CBRLDP implementation document declared that beneficiaries would choose the property regime under which they would hold the land, whether leasehold, freehold or customary estate (GoM, 2005b). In the project, two districts (Thyolo and Mulanje) were recognized as 'sending' districts because the land question is very serious in these districts as masses of land have been converted to tea and coffee estates, compelling smallholder farmers to subsist on overcrowded marginal lands (GoM, 2005a; GoM and World Bank, 2007). Machinga and Mangochi districts were identified as 'receiving districts' because land stress was at any rate controllable there. The sending districts registered very small farm sizes,



averaging 0.46 ha, which is even smaller than the average national farm sizes of 0.5 ha among smallholder farmers. The mean household land sizes were 0.71, 0.60, 1.89 and 1.28 hectares in Mulanje, Thyolo, Machinga and Mangochi districts respectively (Chirwa and Mvula, 2003). The sending districts were mostly populated by Lomwe, Yao and Mang'anja ethnic groups (Kaplan and Baldauf, 1999) while the receiving districts were mostly populated by Yaos. The ethnic groups found in these districts mainly follow matrilineal descent and inheritance rules (Mwambene, 2005).

## Land Policy Reforms

The new land policy, which was approved in 2002, introduced changes to the customary land ownership system towards stronger individualized rights where the husband and wife jointly owned land they acquired through the Malawi Land Reform Programme. The policy also altered inheritance laws to allow the surviving spouse and children, regardless of sex, to inherit land (GoM, 2002). This however, is not compatible with the traditional inheritance systems in matrilineal and patrilineal communities of Malawi. The general rule of the matrilineal social system is that females inherit and own land (Richards, 1950; Chirwa, 2008; Matchaya, 2009). Men, on the other hand, gain rights to land through marriage (Kishindo, 1993; Kishindo, 2004).

The role of men in matrilineal groups has raised arguments against matrilineal principles as being uneconomic, linking matrilineal rules of inheritance to men's (supposed) lack of incentive to invest in order to increase agricultural productivity. The situation of uxorilocally married men in matrilineal groups has been depicted as difficult and unpleasant, possibly even abnormal, by missionaries and colonial bureaucrats, anthropologists and specialists in land tenure and agricultural change (Phiri, 1983; Ng'ong'ola, 1986). Uxorilocality refers to a social system in which a married couple resides with or near the wife's parents. Simultaneously, customary arrangements of matrilineal land ownership and use have been perceived as 'uneconomic' and inappropriate for improved agricultural production. A husband relocating to the wife's family or natal village is perceived as a hindrance to economic improvement because the man is a 'stranger' in his wife's village, and consequently he is logically unwilling to invest energy and money to develop the land assigned to his procreation family (Phiri, 1983).

**The role of men in matrilineal groups has raised arguments against matrilineal principles as being uneconomic, linking matrilineal rules of inheritance to men's (supposed) lack of incentive to invest**

### Study Objective

This study sought to investigate whether the newly acquired land rights by men in this matrilineal social system affected their propensity to invest in land. The objective of the study was thus to identify whether perceived land ownership security influenced a household head's incentives to undertake long-term investment in land in support of livelihoods.

## STUDY METHODOLOGY

### Design

Resettlement of beneficiary groups by the project was done in phases between 2005 and 2007. This research studied beneficiary households that were first resettled in the area in 2005. The assumption was that the longer they stayed on the acquired land, the more secure land rights became, leading to an improvement in range of land rights, an expansion in land rights and autonomy in exercising the rights. Thus the study expected to see the development of longer-term investments in land within this group. The total number of households in this category was 914, comprised of 410 households from 12 beneficiary groups (BGs) in Machinga district and 504 households from 14 BGs in Mangochi district.

Moser and Kalton's sample size formula (Moser and Kalton, 1971) was employed to determine sample size whose data would be representative of the population as follows:

$$n = (Z) * (p)\ (1-p)/\ (e^2)$$
$$n = (1.96^2) *(0.5)\ (1-0.5)/\ (0.05^2) = 384$$

Where Z = value for selected alpha level of 0.025 in each tail = 1.96 *(the alpha level of 0.05 indicates the level of risk that the researcher is willing to take given that the true margin of error may exceed the acceptable margin of error).*

Where p (1-p) = the estimate of variance = 0.25 *(maximum possible proportion (0.5)* 1- maximum possible proportion (0.5) produces maximum possible sample size).*



Where (e) = acceptable margin of error for proportion being estimated = 0.05 *(error the researcher is willing to accept).*

Since this sample size (384) exceeds the 5 percent of the population (914*0.05 = 49.1), Moser and Kalton (1971) provide an adjustment formula to calculate the final sample size. These calculations are as follows:

**ń = (n)/ [1 + (n/N)]**
**ń = (384)/ [1 + (384/914)] = 270**

Therefore, based on the available financial resources, the sample size of 270 households was determined in order to give results of the required precision with a given chance of error (p = 0.05). However, in order to take care of non-responses, six households were added to the calculated sample size to make the study sample size 276 households.

The study employed multi-stage cluster sampling to select the sample. The first level of the multi-stage method was selection of beneficiary groups, which were resettled in 2005, comprising 14 beneficiary groups from Mangochi district and 12 beneficiary groups from Machinga district. Out of the 26 BGs, the study decided to draw the sample size in 11 BGs. This was done to minimize transportation costs that would have been incurred by visiting all the 26 beneficiary groups. The study used a probability proportional to size sampling technique to select the 11 BGs. Six BGs and five BGs were randomly sampled from Mangochi and Machinga districts respectively. This technique is most useful when populations of the sampling units vary in size and to ensure that every element in the target population has an equal chance of being included in the sample. This method also facilitates planning for field work because a predetermined number of respondents is interviewed in each unit selected and enumerators can be allocated accordingly (Bennett *et al.*, 1991). Next, the study calculated the number of interviews that would be conducted in each BG by dividing the sample size by the number of BGs (276/11), which averaged 25 interviews. Selection of households within the BG was done using simple random sampling from the household list that was prepared with key informants.

Data collection involved a mixed methods approach in which both qualitative and quantitative data were collected through focus group

discussions and a household survey. A checklist and semi-structured interviews were used in focus groups and a household survey respectively to collect data. Interviews in focus groups were digitally recorded and transcribed into Word files. The instrument for household survey data collection was a semi-structured questionnaire.

### Theoretical Model and Data Analysis

The theoretical framework for determining the effect of land ownership security on the household heads' propensity to invest in land has its roots in the evolutionary theory of land rights (ETLR). One example of the fundamental changes in the socio-cultural and economic sphere of the resettlers is the transformation of the customary land tenure system from communal to private property rights system. In the ETLR, the anticipated effect of a private property rights regime is increased individualization, which is reflected in the expansion of land holders' rights, for instance, the right to plant trees, grow perennial crops and make improvements in land (Platteau, 2000). This study regarded the adoption of tobacco farming by the resettler households as a long-term investment for the following reasons. First, since the resettlers were not familiar with the crop when they came to the area, their productive capacity in terms of the agronomy of the crop and economic gains would take the shape of a learning curve path. Resettled farmers would need some time to enhance tobacco production in their fields. Second, there were organizational affiliations established for purchasing of farm inputs and for marketing of outputs in the study area. The resettled farmers would have to enrol with the locally available tobacco associations for purchases of farm inputs and tobacco market permission. This process demands that one invests in cultivating individual relationships in the community and cash collateral as a guarantee for a loan (Place and Otsuka, 2001). Third, where trees are limited, there is an additional investment in planting trees and/or buying trees to make available poles, which are needed to build tobacco-drying barns. Based on these three reasons, farmers uncertain of their tenure security could possibly be less inclined to invest in this crop. Therefore, in analysing the effect of land ownership security on a household head's incentives to undertake long-term investment in land, the study addressed the adoption of tobacco farming investment by household heads. The decision to adopt tobacco farming



therefore depends on two mutually exclusive alternatives: either to adopt or not to adopt. The probability that an individual makes a particular choice is influenced by a vector of explanatory variables. A particular choice is made when the combined effect of the vector of the explanatory variables reaches the critical level (breaking point). Thus, a decision to adopt tobacco farming will occur only when the combined effect of the explanatory variables *(Xi'β)* reaches a certain unobservable critical value *Yi**. So that

$$Yi = 1 \text{ if } Xi'\beta > Yi^* \text{ OR } Yi = 0 \text{ if } Xi'\beta < Yi^* \quad \ldots\ldots 1$$

Where *Yi** is a latent variable and represent the unobserved level of adoption of tobacco farming.

By the application of probability theory, the probability that a given individual adopts tobacco farming is given by

$$P = Prob(Yi=1) = f(Xi'\beta) \quad \ldots\ldots 2$$

and the probability that a given individual does not adopt tobacco farming is given by

$$1 - P = Prob(Yi=0) = 1 - f(Xi'\beta) \quad \ldots\ldots 3$$

In this study, binary logit is employed to estimate the probability of adoption of tobacco farming. The logit model specified for the study is stated as:

$$L_i = \ln\left(P_i / 1-P_i\right) = Z_i = Y_i = \beta_0 + \beta_i X_i + u_i \quad \ldots\ldots 4,$$

Where: $P_i$ = the probability that an individual will adopt tobacco farming; $\beta_o$ = the constant term; $\beta_i$ = a vector of unknown coefficients of the determinants of adoption of tobacco farming; $X_i$ = a vector of independent variables that determine adoption of tobacco farming and includes age, sex, education, and access to credit among others; $u_i$ is the stochastic error term and *i = 1, 2, 3...N* observations. Simple descriptive statistics such as frequencies, percentages, means were also used to explore data.

Analysis of data from focus groups was based on the approach of content analysis using the thematic framework analysis developed by Ritchie and Spencer (1994). This involved analysing the content of the transcribed interviews by examining the underlying themes in the text material that contains information about particular research themes. In the analysis, data were sifted, charted and sorted according to the key research issues and themes using five steps: familiarization, identification of a thematic framework, indexing, charting and mapping, and interpretation. The framework analysis is thus systematic to allow methodical treatment of data and it demonstrates a high degree of flexibility to allow the researcher to conduct data analysis after collection or during the collection process (Ritchie and Spencer, 1994).

## RESULTS AND DISCUSSION

### Perceptions of Land Ownership Security Before Resettlement

| RESPONDENT CATEGORY (N) | SECURITY PERCEPTION % | | RESIDENCE ARRANGEMENT % | |
|---|---|---|---|---|
| | Did not feel secure | Felt secure | Uxorilocal | Otherwise |
| MHH (180) | 72 | 28 | 71 | 29 |
| Wives (58) | 26 | 74 | 70 | 30 |
| FHH (38) | 13 | 87 | 59 | 41 |

*Source:* Household survey

Table 1
**Perceptions of land ownership security among female- and male-headed households before resettlement**

Table 1 exposes land ownership security disparities among the respondent categories, namely male household heads (MHH), wives and female household heads (FHH). The study established that most female household heads (87 percent) and wives of uxorilocally married men (74 percent) possessed stronger land ownership security than men prior to resettlement. Findings indicate that most of the male household heads (71 percent) and the majority of female household heads (59 percent) lived uxorilocally. Women, irrespective of their marital status, perceived that their land ownership security was



strong because they inherited and owned the land that belonged to their households. Men, on the other hand, possessed weak land rights as they did not inherit land but accessed land rights through their wives. Discussions further revealed that married men were subject to the overriding power of their wives' male guardians who controlled how the men used the land. Apart from possessing weak land rights generally, married men's land rights were not considered to be long-lasting. This came about because of the fragile nature of marriages in uxorilocal residence arrangements. This shows that marriage break-up meant loss of land rights for a married man. Findings seem to suggest that prior to resettlement, security of land tenure was not an issue for women in this matrilineal group. These results agree with evidence from other studies that women from matrilineal communities in Malawi (and Mozambique) have tended to retain relative control over land even though there is less of it (Davison, 1997; Peters, 1997; Mbaya, 2002; Kishindo, 2004). Matchaya argues that even though women may be disadvantaged in other avenues of livelihoods, where culture is still venerated, matrilineal systems give them authority over land holding and bequeathal (Matchaya, 2009).

**Even though women may be disadvantaged in other avenues of livelihoods, where culture is still venerated, matrilineal systems give them authority over land holding and bequeathal**

Even though women possessed strong land ownership security, focus group discussions showed that they did not undertake long-term investments in land in their natal villages because of income shortages. Men on the other hand generated more income than their spouses but were not willing to develop their spouses' natal home because they possessed weak land ownership security. In addition to possessing weak land ownership security generally, discussions revealed other precipitating factors that hindered men's willingness to invest in their spouses' natal home. For instance, limited freedom to exercise rights meant that men could neither decide on their own to erect permanent structures on land without seeking approval from the male guardian of matrilineage nor could they prevent the frequent and sudden changes in garden ownership which hindered the planting of trees. Unacceptable behaviours presented by their spouses' relatives, such as jealousy and backbiting, contributed to existence of poor relationships, which apart from weakening their marriages, discouraged men from building permanent homes in their spouses' natal villages as divorce was very probable. Kishindo found that local jealousy is common in rural communities and that

it affects successful strangers. He observed that successful strangers tended to be resented because it showed up indigenous people as unresourceful and lazy (Kishindo, 1995). Other authors show that uncertainty bars men in uxorilocal marriages from investing in soil conservation measures such as contour bunds and terraces and from moving beyond subsistence farming (Rimmington, 1963; Lamport-Stokes, 1970). It has been argued that placing decision-making power in the husband, and control of land rights in the wife, is a hindrance to long-term investment in the land and eventually to agricultural development (Mbalanje, 1986; Nzunda, 1992; Nankumba, 1994).

**Placing decision-making power in the husband, and control of land rights in the wife, is a hindrance to long-term investment in the land and eventually to agricultural development**

## Perceptions of Land Ownership Security After Resettlement

Table 2
**Perceptions of land ownership security among female- and male-headed households after resettlement**

| RESPONDENT CATEGORY (N) | SECURITY PERCEPTION % | |
|---|---|---|
| | Felt insecure | Felt secure |
| MHH (180) | 22 | 78 |
| Wives (58) | 59 | 41 |
| FHH (38) | 13 | 86 |

*Source:* Household survey

Table 2 above shows perceptions of land ownership security of respondents after resettlement. Most of the male household heads (78 percent) and female household heads (86 percent) reported that they held strong land ownership security after resettlement. In contrast, the majority of wives (59 percent) reported weak land ownership security. Discussions revealed that land ownership security improved among female household heads after resettlement. According to them, the improvement in land ownership security came about because: firstly, their control over land increased and they were responsible for making major decisions regarding the acquired land. For example, the majority of the female household heads mentioned that in the original home, before making major decisions concerning the land, they had to consult and seek approval of the male guardian of the matrilineage; and secondly, incidences of land disputes fell. On the other hand, married women experienced a reduction in land ownership security. The study noted



that married women's rights to stay on the acquired land depended on their husbands' authority. Even though married women participated in planning and decision-making processes relating to land use, the crucial decisions on land use were still made by their husbands, reflecting an improvement in men's control and ownership security over land. The study found that strong land ownership security among men empowered them to make major decisions regarding land without interference from their spouses.

**Even though married women participated in planning and decision-making processes relating to land use, the crucial decisions on land use were still made by their husbands, reflecting an improvement in men's control and ownership security over land**

## Adoption and Spread of Tobacco Farming Among the Female- and Male-Headed Households

Table 3
**Adoption and spread of tobacco farming among the female- and male-headed households**

| (N) | ADOPTED TOBACCO % | | GREW TOBACCO | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | 2005–06 | | 2006–07 | | 2007–08 | | 2008–09 | |
| | Yes | No | Yes | No | Yes | No | Yes | No | Yes | No |
| MHH (238) | 100 (46.6) | 138 (53.4) | 17 (7.1) | 221 (92.9) | 45 (18.9) | 193 (81.1) | 73 (30.7) | 165 (69.3) | 79 (33.2) | 159 (66.8) |
| FHH (38) | 7 (18.4) | 31 (81.6) | 2 (5.3) | 36 (94.7) | 2 (5.3) | 36 (94.7) | 3 (7.9) | 35 (92.1) | 3 (7.9) | 35 (92.1) |

*Source:* Household survey

Table 3 shows that since resettlement about 47 percent of male-headed households adopted tobacco farming compared to 18 percent of female-headed households who reported likewise. The proportion of male-headed households that grew tobacco rose from 7 percent in 2005 to 33 percent in 2009, representing an average annual increase of almost 9 percent. On the other hand, the proportion of female household heads that grew tobacco rose from 5 percent in 2005 to nearly 8 percent in 2009, with an average annual increase of almost one percent. Regarding the proportion of area that was under tobacco production, Table 4 below shows that among male-headed households, the average sizes of tobacco gardens increased from 0.28 ha in 2005 to about 0.5 ha in 2009. Among the female-headed households however, the proportion of area under tobacco production staggered between the

averages of 0.23 ha and 0.27 ha and tended to decline over the same period. In terms of tobacco production, findings show that among male household heads, average tobacco production increased from 114 kg in 2005 to 276 kg in 2009. Similarly for female household heads, average tobacco production increased from 60 kg in 2005 to 179 kg over the same period.

Table 4
**Tobacco production and area under tobacco cultivation**

| (N) | MEAN AREA (HA) AND PRODUCTION (KG) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 2005–06 | | 2006–07 | | 2007–08 | | 2008–09 | |
| | Area | Production | Area | Production | Area | Production | Area | Production |
| MHH (238) | 0.28 | 114 | 0.38 | 165 | 0.42 | 201 | 0.48 | 276 |
| FHH (38) | 0.27 | 60 | 0.27 | 112 | 0.23 | 148 | 0.26 | 179 |

*Source:* Household survey

Findings show that more male household heads invested in tobacco farming than female household heads. It is also clear that male household heads allocated more land to tobacco production than their female counterparts. Consequently, male household heads reported more tobacco production than female household heads. Thus tobacco farming spread considerably more among male household heads than female household heads. Econometric evidence in the logit regression model presented later gives possible explanations for the variations in the outcome of the incentives to invest in tobacco farming.

## Variables in the Tobacco Adoption Model

Table 5 presents descriptive statistics of the variables in the tobacco adoption model. Most of the households in the sample were male-headed (86 percent), who were on average 41 years old. About 76 percent of the households in Malawi are headed by men. The study sample thus had more male-headed households than the national average. Malawi has a relatively young population with almost 48 percent of the population below 15 years old (NSO, 2012). The type of household labour most frequently used in agricultural production was family labour. This agrees with the findings of Takane (2008) who reported that farm mechanization is practically nonexistent in Malawi's



smallholder production sector and that all farm work is done manually, mostly by household members. Seventy-two percent of household heads perceived that they possessed land ownership security. In terms of human capital, about 15 percent of the household heads had no education, but a similar proportion attained some secondary education while about 69 percent attained some primary education. In Malawi, the proportion of the population aged 15 years and over that is literate is at 65 percent (NSO, 2012). The main occupation of the household heads was farming (93 percent) and 63 percent of the household heads belonged to agricultural credit clubs. In the rural areas of Malawi, nearly 90 percent of households are employed in agriculture with little economic diversification, and only 12 percent manage to access credit (IFAD, 2011). The average number of livestock per household was seven.

Table 5
**Descriptive statistics of variables in the tobacco adoption model**

| VARIABLE | MEAN | SD | MIN | MAX |
|---|---|---|---|---|
| **Sex of household head (SEX)**<br>Dummy = 1 if household head is male | 0.8623 | 0.3452 | 0 | 1 |
| **Type of labour used in agricultural production (LABOURTYP)**<br>Dummy = 1 if family labour | 0.7428 | 0.4379 | 0 | 1 |
| **Age of household head (AGE)**<br>Dummy = 1 if household head was 50 years old or less | 40.82 | 12.72 | 20 | 71 |
| **Land ownership security of household head (PERCEPTION)**<br>Dummy = 1 if household head is land secure | 0.7283 | 0.4457 | 0 | 1 |
| **Educational level of household head (EDUC)**<br>Dummy = 1 if household head attained some primary education (EDUC1)<br>Dummy = 1 if household head attained some secondary education (EDUC2) | <br>0.6850<br><br>0.1630 | <br>0.4281<br><br>0.3030 | <br>0<br><br>0 | <br>1<br><br>1 |
| **Main occupation of household head (OCCUP)**<br>Dummy = 1 if household head was a farmer | 0.9348 | 0.2473 | 0 | 1 |
| **Membership to agricultural credit clubs (CREDIT)**<br>Dummy = 1 if household head belonged to agricultural credit clubs | 0.6341 | 0.4826 | 0 | 1 |
| **Livestock number (LIVESTOCK)** | 6.7609 | 9.7296 | 1 | 48 |

*Source:* Household survey

### Determinants of Adoption of Tobacco Farming

Results in Table 6 present econometric evidence on the determinants of investment in tobacco farming in the CBRLDP. It shows logistic regression estimates for the tobacco farming investment model. The table illustrates that tobacco farming investment is related to sex of the household head, age of the household head, household head's perception of land ownership security, main occupation of household head and livestock production. The Nagelkerke R-squared figure shows that the variables in the model are valuable in predicting investment in tobacco farming. The explanatory power of the model is sensible, with an R-squared value of 65 percent. The Homer and Lemeshow test result indicates that the observed tobacco farming investment is not significantly different from that predicted by the model. Here the p-value is non-significant (0.772>0.05), which confirms that the fit of the model is good and the expected linear relationship can be supported.

Table 6
**Logit regression results for determinants of tobacco farming investment**

| VARIABLE | COEFFICIENT | S.E. | ODDS RATIO EXP (B) | T-STATISTIC |
|---|---|---|---|---|
| **SEX** | 1.264 | 0.496 | 3.538 | 2.548** |
| **LABOURTYP** | -0.090 | 0.103 | 0.914 | -0.873 |
| **AGE** | 0.019 | 0.010 | 1.019 | 1.900* |
| **LANDOWN** | 2.844 | 0.661 | 17.188 | 4.302*** |
| **EDUC1** | 0.127 | 0.396 | 1.135 | 0.320 |
| **EDUC2** | 0.714 | 0.491 | 2.042 | 1.454 |
| **OCCUP** | -0.711 | 0.551 | 0.491 | 1.290** |
| **CREDIT** | 0.305 | 0.289 | 1.357 | 1.055 |
| **LIVESTOCK** | 0.341 | 0.356 | 1.406 | 0.958* |
| **INTERCEPT** | -2.332 | 0.845 | 0.097 | -2.759*** |
| **NagelkerkeRsq = 0.65<br>Model significance = 0.0** | | | | |

Hosmer and Lemeshow Test, Chi-square = 4.864 (p<0.772)
*** significant at p<0.01
**significant at p<0.05
*significant at p<0.1



The estimated coefficient for sex was positive and significantly different from zero at $p<0.05$. Sex of household head was positively related to investment in tobacco farming. In this case, male household heads were 3.5 times more likely to invest in tobacco farming than female household heads. Most of the male household heads were married (98 percent) compared with female household heads (8 percent) (See Table 7).

Table 7
**Gender of household head and marital status**

| MARITAL STATUS | FREQUENCY (%) | | TOTAL |
|---|---|---|---|
| | MHH | FHH | |
| Married | 232 (97.5) | 3 (7.89) | 235 |
| Never married | 1 (0.4) | 1 (2.63) | 2 |
| Separated | 1 (0.4) | 4 (10.53) | 5 |
| Divorced | 1 (0.4) | 17 (44.73) | 18 |
| Widowed | 3 (1.3) | 13 (34.22) | 16 |
| Total | 238 (100) | 38 (100) | 276 |

*Source:* Household survey

One explanation that supports the involvement of male household heads in tobacco farming is that labour is pooled within a household upon marriage. Considering that tobacco farming is labour demanding, being married would seem to promote investment in tobacco farming among men. Focus group discussions revealed that the majority of female participants did not invest in perennial crops due to inadequate labour availability and financial constraints. Since tobacco farming is labour and capital intensive, it may be implied here that the same factors constrained female household heads investing in tobacco farming. This finding is supported by Barbier who argued that poor smallholders in Malawi frequently experience important labour, land and cash constraints on their ability to invest in land improvements (Barbier, 2000). In contrast, Hansen *et al.* (2005) found that land availability was not important in motivating women to plant trees and that there were other factors apart from those identified by their study.

The coefficient for age was positive and significant at $p<0.1$. This means that age was positively associated with investment in tobacco farming, implying that the younger the household head, the more likely he or she was to invest in tobacco farming. In this study, household heads aged 50 years or less were more likely to invest in tobacco farming than those above 50 years of age. Age is related to receptiveness of a farmer. Young farmers are likely to be adopters and actively involved in off-farm work. Younger farmers are more dynamic in the adoption of new farming techniques and products, while older farmers are more experienced and skilful, but less energetic (Gasson, 1988; Shucksmith and Smith, 1991; Shaha *et al.*, 1994). Considering that tobacco farming requires construction of barns, shades, laborious management practices and transportation to market, older farmers may not adopt the crop.

Additionally, smallholder tobacco farming in Malawi may be a risky venture due to unpredictability of rains, volatile tobacco prices and market delays. Considering the risky decisions of tobacco adoption, older farmers may not adopt as they tend to choose crops for assured yield and market and fast return. Younger farmers are more likely to take on a business venture that has a riskier market and more uncertain but higher returns, even in the long run.

The coefficient for household head's perception about land ownership security was positive and highly significant at $p<0.01$. Perception for land ownership security was positively and strongly related to investment in tobacco farming. Household heads that perceived that they owned the acquired land were 17 times more likely to invest in tobacco farming than those that perceived that they did not own the land. Focus group discussions revealed that, prior to resettlement, weak land ownership security among uxorilocally married men reduced their incentive to invest in tree planting, perennial cropping, permanent houses and long-term soil and water conservation measures. The discussions showed that perceived land ownership security among married men strengthened in matrilineal-neolocal residence arrangements (type of residence arrangement where a married couple resides separately from both the husband's and wife's natal villages) after resettlement. The absence of unacceptable behaviours from in-laws, restricted freedom to exercise rights and a reduction in incidences of land disputes, may all have



contributed to strengthen men's perception of their land ownership security after resettlement. This finding is consistent with evidence from a study on land rights, power and trees in rural Ethiopia, which found a strong causal link between perceived land rights and land allocated to perennial crops (Dercon and Ayalew, 2007). However a study that investigated the planting of perennial crops at 15 different sites in southern Ethiopia found that tenure insecurity had little effect on the decision of farmers to plant perennials (Holden and Hailu Yohannes, 2002).

The main occupation of the household head was negatively associated with tobacco farming and significantly different from zero at $p<0.05$. This implies that those household heads that mainly relied on off-farm work for survival were twice as likely to invest in tobacco farming than those whose main means of livelihood was farming. Involvement in off-farm work signifies the exposition of the household head to outside information, puts restriction on the use of family labour for the adoption of tobacco farming and indicates an additional source of family income outside agriculture. Access to outside information may positively influence tobacco adoption considering that the crop was new to the resettlers. Off-farm income, on the other hand, would finance the necessary management resources required to invest in tobacco farming. Discussions showed that one of the off-farm occupations that male household heads engaged in was the buying and selling of fish. Those that were involved in the occupation had to travel to the neighbouring lake district of Mangochi to purchase fish, which was sold in their home district of Machinga. As tobacco is extensively grown in Mangochi district, the fish traders were likely to acquire knowledge of tobacco farming and hence decide to adopt it. Bandiera and Rasul studied social networks and technology adoption in northern Mozambique and found that the probability of adoption is higher among farmers who reported discussing an agricultural enterprise with others (Bandiera and Rasu, 2006). Rosenzweig and Foster found that farmers might not adopt a new technology if they have imperfect knowledge about management of the new technology. They argued that adoption ultimately occurs as a result of own experience and friends' and neighbours' experiences (Rosenzweig and Foster, 1995). Similarly, Conley and Udry (2010), studying pineapple cultivation in Ghana, investigated whether

a farmer's fertilizer use varies in response to information about the fertilizer productivity of his or her neighbour. They found that farmers increased (or decreased) their fertilizer use when neighbours experienced higher than expected profits using more (or less) fertilizer than they did, indicating the importance of social learning (Conley and Udry, 2010).

The number of livestock owned was positive and significant at $p<0.1$. This means that those household heads that owned livestock had a higher probability to invest in tobacco farming than those that did not own livestock. The positive relationship could be because livestock is a highly liquid asset, thus households tend to sell their livestock when in need of money to purchase farm inputs. For each livestock type, discussions revealed that the majority of the participants owned more after resettlement than before resettlement. The reason, according to the participants, was the availability of feed and pasture. Despite a general increase in number of livestock after resettlement, it was observed that male-headed households owned more livestock than female-headed households. This could help explain why the majority of male household heads invested in tobacco farming compared with female-headed households.



## CONCLUSION

Findings determined that perceived land ownership security became stronger for both male and female household heads after resettlement. Stronger land ownership security did not encourage female household heads to invest in perennial crops and tobacco farming because of labour and financial constraints. On the other hand, strong land ownership security motivated men to invest in perennial crops and tobacco farming. Although male and female household heads were equally qualified to acquire land titles in CBRLDP, we note here that unequal access to and use of other resources is unlikely to raise productivity among women. This implies that efforts to balance land rights of men and women are unlikely to contribute towards gender equity and improved efficiency and productivity of women farmers unless other limitations faced by women are also addressed. It is therefore concluded that land ownership security after resettlement influenced men in this matrilineal social system to invest in land, and that the availability of income from other economic activities enabled them to do so. Women, on the other hand, were not affected by land ownership security because of labour and financial constraints. If rural development projects are to be helpful they should also aim at empowering women so that even in cases where men feel land insecure women should continue to use their land optimally. Specifically, in addition to strengthening existing land ownership regimes, policy makers should seek to address the many liquidity, information and transaction-cost-related factors that deter agricultural production among women.

**Efforts to balance land rights of men and women are unlikely to contribute towards gender equity and improved efficiency and productivity of women farmers unless other limitations faced by women are also addressed**

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# COMMUNITY COMMONS IN NORWAY: The role of common property in Norwegian outfield management

# LES TERRES COLLECTIVES EN NORVÈGE: Le rôle de la propriété commune dans la gestion norvégienne des espaces

# PROPIEDADES COMUNALES EN NORUEGA: La función de la propiedad comunal en la gestión del campo noruego



## ABSTRACT

COMMON PROPERTY

NORWAY

COMMUNITY FORESTRY

COMMUNITY-BASED NATURAL RESOURCE MANAGEMENT

Forests have the potential to generate a wide variety of non-commodity benefits, the provision of which can be threatened by fragmented management and the problems of collective action inherent to public goods provision. Institutions are required that can unify forest management and internalize its benefits. Proponents of community forestry are critical of the state in this regard, citing its failure in many cases to protect either forest resources or the welfare of local people. This study describes how common property in Norway serves to unify management of forest and grazing land while also, to varying degrees, enabling local communities to

## RÉSUMÉ

PROPRIÉTÉ COMMUNE

NORVÈGE

FORESTERIE COMMUNAUTAIRE

GESTION DES RESSOURCES NATURELLES À ASSISE COMMUNAUTAIRE

Les forêts peuvent générer toute une série d'avantages non marchands, dont l'apport peut être menacé par une gestion parcellaire des espaces et des problèmes d'action collective associés à la fourniture de biens publics. La mise en place d'institutions qui puissent unifier la gestion forestière et internaliser ses bénéfices est nécessaire. Les tenants d'une gestion collective des forêts sont à cet égard hostiles envers l'État, constatant son échec, dans bien des cas, à protéger aussi bien les ressources forestières que le bien-être des populations locales. Cette étude décrit comment la propriété commune en Norvège sert à unifier la gestion des forêts et des pâturages naturels tout comme

## SUMARIO

PROPIEDADES COMUNITARIAS

NORUEGA

FORESTERÍA COMUNITARIA

GESTIÓN DE LOS RECURSOS NATURALES DE BASE COMUNITARIA

Los bosques tienen el potencial de generar una gran variedad de beneficios — distintos de los productos básicos — cuya provisión puede verse amenazada por una gestión fragmentada y los problemas de acción colectiva inherentes al suministro de bienes colectivos. Hacen falta instituciones que puedan unificar la gestión forestal y asimilar sus beneficios. A este respecto, los impulsores de las actividades forestales comunitarias son fundamentales para el Estado y puede citarse en muchos casos su fracaso a la hora de proteger tanto los recursos forestales como el bienestar de las personas del lugar. En este estudio se describe cómo en Noruega la propiedad comunitaria sirve para

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capture the value of these benefits. A comparison between two case studies is used to explore the importance of local ownership *vis-à-vis* local use rights. It is found that while use rights might be sufficient at a given historical moment, ownership provides local communities with greater flexibility as land use values change over time. It is also noted that the state has an important role to play in its regulatory capacity.

elle permet, à différents degrés, aux communautés locales de tirer profit de ces avantages. Deux études de cas sont comparées pour mesurer l'importance de l'appropriation collective des terres au niveau local par rapport aux droits d'usage locaux des terres domaniales. On constate que si les droits d'utilisation peuvent être suffisants pour une période historique donnée, le contrôle des terres par les communautés locales apporte à celles-ci une plus grande flexibilité, les modes d'utilisation des terres changeant au fil du temps. Il est également à noter que l'État, par ses capacités réglementaires, a aussi un important rôle à jouer.

unificar la gestión de los bosques y las tierras de pastoreo mientras que también, a diversos niveles, permite que las comunidades locales se apoderen del valor de esos beneficios. Se hace una comparación entre dos estudios de casos para estudiar la importancia de la propiedad local frente a los derechos de uso a nivel local y se llega a la conclusión de que, si bien los derechos de uso pueden ser suficientes en cierto momento histórico, la propiedad brinda a las comunidades locales una mayor flexibilidad dado que los valores de uso de la tierra cambian con el tiempo. También se observa que el Estado debe desempeñar una función importante en calidad de ente regulador.



## INTRODUCTION

This paper introduces two of the several types of common property that exist for forest and rough grazing land in Norway. It is intended as a contribution to the search for institutions that can increase the scale of landscape management while maintaining diffuse local opportunities to share in the benefits and decision-making. It responds on the one hand to the ecological as well as the economic need to unify forest management, and on the other hand to the scepticism that proponents of community forestry express about the state's ability to do this beneficially. The community forestry literature suggests that placing greater control in the hands of local resource users will result in both better stewardship and improved opportunities for economic development. This paper describes how common property in Norway functions to achieve these goals. Through a comparison of two cases it also examines the question of whether it matters from the local community's point of view if they own the land, so long as they have secure rights to the timber and grazing.

### Forests and the Problem of Public Goods

When we think about what forests and grazing areas provide for society, we may be apt to think about the timber, milk, wool and meat that the people who manage these areas can sell in the marketplace. But there are additional benefits. Naturally vegetated landscapes protect air quality, assimilate waste, provide habitat for biodiversity and maintain water quality and supply (Libby and Stewart, 1999). Forests contribute to the prevention of flooding and erosion, and in mountainous areas are necessary for avalanche control. The high multiplier effect of small-farm agriculture makes it an important component of rural economic viability (Meter and Rosales, 2001; Green and Hilchey, 2002; Grubinger *et al.*, 2005) and the scenic and recreational values of both forests and farmland contribute greatly to the quality of rural life (Willis *et al.*, 2003; Hilchey *et al.*, 2008).

Despite the high value that people place on these benefits (e.g. Willis *et al.*, 2003), we cannot be confident that they will continue to be provided. Their provision is threatened by fragmented management and by the public

goods nature of the benefits, both of which give rise to problems of collective action. Fragmentation is a problem because most of the benefits cited cannot be provided by any one farm in isolation, but rather are the combined product of many landowners. Many important ecological functions, from hydrology to habitat, need to be managed on a large scale (Forman and Godron, 1986; Noss, 1987; Dramstad *et al.*, 1996). Likewise, many of the challenges that landowners face, such as invasive plant species, cannot be dealt with on small parcels independently, due to their mobility across property lines (Fiege, 2005). Adverse effects of resource use on large ecosystems may not be immediately apparent at the point of use (Herring, 1990) and practices that may not seem very harmful in moderation can add up to serious threats when enough people engage in them (Freyfogle, 2003). For all of these reasons, the fragmented and uncoordinated management of rural land can undermine many of its potential benefits.

The public goods nature of these benefits is also problematic. Because there is no way to exclude people from enjoying scenic views or enhanced air and water quality, it is difficult to make people pay for these services in the marketplace. Consequently, there is little financial incentive for landowners to provide these services, however much they may be desired. Ecosystem management requires a shift of focus away from the production of commodity outputs and towards the maintenance of conditions that foster the integrity of ecological processes (Zinn and Corn, 1994), but it is only the production of commodity outputs that the market rewards. As land managers employ production methods that enable them to remain financially competitive, the non-commodity benefits of forest and grazing land decline (Olsson and Rønningen, 1999; Selvik, 2004). In places where there is pressure on forest land for conversion to other uses it may be impossible for forests to continue to exist based on timber sales alone (Kline *et al.*, 2004; D'Amato *et al.*, 2010). "This gap between public good value and private profitability has become an increasing obstacle to the effective overall management of the private woodland resource. Unless the public good elements can be either given value in the market place or appropriately supported by policy, a continued reduction in public good values seems inevitable" (Slee, 2006).



## The Role of Community Forestry

The situation of a private woodland owner trying to decide whether or not to invest in the provision of public goods has been likened to a prisoner's dilemma game in which woodland owners are likely to be punished for acting unilaterally in the public interest unless there is some mechanism for mutual commitment between them (Glück, 2000). While the intervention of an external authority may seem like the simplest solution (Ophuls, 1977), in practice the interests of a leviathan are likely to differ from those of local communities (Scott, 1998). Putting too much power in the hands of the state can lead to a decline of local management institutions and result in the degradation of natural resources (Lynch and Alcorn, 1993; Pretty and Ward, 2001; Wittman and Geisler, 2005; Charnley and Poe, 2007). In response to a perception that state forest management has "failed to steward forest ecosystems and maintain vital communities" (Baker and Kusel, 2003), proponents of "community forestry" are calling for more local and democratic forest management (Brendler and Carey, 1998; Lee and Field, 2005; Charnley and Poe, 2007).

**Putting too much power in the hands of the state can lead to a decline of local management institutions and result in the degradation of natural resources**

In order to overcome the problems of collective action that inhibit the production of public goods, Glück (2000) suggested that forest resources might be most effectively managed as common property regimes (see also McKean and Ostrom, 1995; Gibson *et al.*, 2000). When large forested areas are managed as a single unit by local community members who share in the benefits and control, we might expect there to be improved opportunities for overcoming problems of fragmentation and for internalizing positive and negative externalities. In this way, common property regimes may offer a way of achieving community-based forestry's potential to move "beyond the polarization between commodity production and ecological goals" (McCarthy, 2002) without relying heavily on state intervention.

Community forestry aims to promote both ecological sustainability and rural development by placing control of forest resources in the hands of local communities (Brendler and Carey, 1998; Pagdee *et al.*, 2006; Charnley and Poe, 2007). Most recognized examples of community forestry are less than 25 years old (Charnley and Poe, 2007) and involve only partial local control (Pardo, 1995; Charnley and Poe, 2007). Of the two examples described in this study, one is more than 200 years old and the other, in its current form, is

**Community forestry aims to promote both ecological sustainability and rural development by placing control of forest resources in the hands of local communities**

more than 60 years old. The first involves complete community ownership, the second only the devolution of timber use and management. The first is an example of what I term a community commons and the second is state-owned forest where timber and grazing are managed as if they were a community commons. Both of these situations will be discussed in greater detail below.

Community commons in Norway are regarded as being highly successful in terms of both forest stewardship and community development (Bjørkhaug, 1999) and it is argued that "no other form of management has done more to create wealth and employment locally in the rural districts in relation to its resources and output than has that of the [community] commons" (Finsveen, 2000). This paper describes how these commons function to achieve the goals of community forestry and, by a comparison of two cases, examines the importance of ownership in this regard.

## RESEARCH OBJECTIVES AND METHODS

In order to understand how community commons coordinate the use and management of outfield areas in Norway and to understand the role they play in promoting conservation and community development, I spent a year in Norway identifying and reading the available literature and legal documents, engaging in extended discussions with scholars, rural planners and farmers, and conducting two qualitative case studies in eastern Norway in order to compare the effects of local and state ownership.

The two cases were chosen for being very similar in every significant respect except for one, that of ownership. They are of similar size — there are about four hundred farms with use rights in each of these commons — and are located in the same region. In both cases, local farms exercise specific use rights and participate in governance. Also, in both cases, the local commons board carries out commercial logging. The important difference is that in the case of the community commons, the land is owned by the local farms. In the case of the state commons, the land is owned by the state, although in this particular case the right to commercial timber management was devolved to the local commons board in the 1940s. It is this circumstance that makes

**In the case of the community commons, the land is owned by the local farms. In the case of the state commons, the land is owned by the state**



the case study comparison possible because it means that the only difference between these two cases in terms of institutional structure is ownership. Comparing two cases with this distinction enabled me to understand, through the eyes of interviewees, whether local ownership is important or if secure local use rights are sufficient.

Semi-structured in-depth interviews were carried out with forest managers, farmers and local officials in order to grasp their understanding of the purpose and significance of the commons and to hear from them how the commons works. Interviewees were asked, *inter alia*, about how control is structured, how sustainability is maintained, what the chief benefits are and how these are distributed. I looked for trends and discrepancies across interviews and followed up with respondents to inquire more particularly about these. Similar interview schedules were used with all informants to allow for the confirmation or disconfirmation of information. The subheadings under On-Site Interviews, below, reflect categories of questions from the interview schedule.

## FINDINGS

### Description of Norwegian commons

In order to understand common property in Norway, it is necessary to understand how the Norwegian farm is organized spatially. Typically, it is divided into two spheres of activity, the infield (*innmark*) and the outfield (*utmark*). The infield is the area closest to the house and farm buildings. It is intensively managed and receives the most investment. It is typically composed of fenced fields with planted crops. The outfield, on the other hand, is less intensively managed and receives less investment. It is usually composed of rough hill grazing or forest. To the urban gaze, the outfield may appear to be a scenic wilderness, but to the farmer it is very much a part of the farm operation. It contains important resources and its appearance is the result of centuries or millennia of human management.

**In order to understand common property in Norway, it is necessary to understand how the Norwegian farm is organized spatially. Typically, it is divided into two spheres of activity, the infield (*innmark*) and the outfield (*utmark*)**

A farm's infield is generally a sphere of private ownership and private activity. The outfield, on the other hand, is generally used and managed by multiple farms in cooperation. In some places this happens informally

where the outfield is divided into separate private parcels, but it is also frequently the case, especially in southern Norway, that the outfield is owned in common among several farms. This, however, is not technically considered by Norwegians to be a commons, or *allmenning*, since *allmenninger* include all local farms in their use and governance and are subject to special legislation. Community commons, or *bygdeallmenninger*, are incorporated as juridical persons that can own property and employ labour, so when we speak of commons in the Norwegian context, we are speaking not simply about a shared piece of ground, but of an organization. Community commons in this sense are jointly owned by local farms (see Berge, 1998 regarding the distinction between joint ownership and ownership in common). This paper deals specifically with state and community-owned commons, which will be described in greater detail below.

Formal arrangements for managing outfield resources as commons have existed in Norway since the early Middle Ages, appearing in customary law in the 10th century and in statutory law during the 13th century (Sevatdal, 1998). Since those times the commons have undergone many changes — in ownership, in the relative importance of the resources they contain and in the laws governing their use — but they remain to this day a vital way of managing resources in the outfield.

**Formal arrangements for managing outfield resources as commons have existed in Norway since the early Middle Ages**

When approaching the study of Norwegian commons, it is essential to remember that the various rights regarding resource use on a piece of land can be divided among various parties — for example, one party might have the right to harvest timber, while another party holds the grazing rights — and that these use rights do not depend on ownership of the land. A farm with grazing rights in a particular area is not necessarily one of the owners of that area. Thus, historically, the ownership of various commons has changed hands (passing, for example, from the Crown to wealthy merchants), while many of the use rights have remained in the hands of local farmers. The actual owner of a piece of land has a claim to the 'remainder', which is whatever rights are left over after all other claims have been accounted for. The value of this remainder can vary over time as new uses for land are discovered.

Two of the most discussed types of commons are state commons and community commons, although these are by no means the only types (see



Sevatdal, 1998; Grimstad and Sevatdal, 2007). 'State commons' is a direct translation of the Norwegian *statsallmenning*. I use the term 'community commons' to refer to *bygdeallmenninger*, or *bygd* commons. The word *bygd* means 'rural community'. Sometimes this type of commons is referred to in English as a 'parish commons'. I have chosen not to use this term in order to avoid any implied association between these commons and either the local church or the local public administration.

In the case of state commons, the land, originally Crown land, is today owned by Statskog, a state-owned forestry company (Berge *et al.*, 2002; Statskog, 2007). The grazing rights in state commons, and the right to both firewood and timber for on-farm use, belong to the local farming population. Any commercial logging of surplus timber is done by Statskog, which also manages hydropower, commercial tourism, mining, or any other uses of the land that do not fall within the rights of the local community. There are two types of locally-elected board for managing local use rights in state commons. One of these is the Mountain Board, which is elected by the municipal council (Norwegian statute, 1975 §3) to manage grazing and other resources that are predominantly above the tree line (Grimstad and Sevatdal, 2007). The other is a Commons Board, which is elected by and from among the use rights holders to manage rights of common in the forest (Norwegian statute, 1992b §1). Hunting and fishing are managed by the Mountain Board for the benefit of the whole municipality (Grimstad and Sevatdal, 2007). It is important to note that use rights in the commons are tied to particular farms and are spoken of as belonging to these farms rather than to particular people. These rights cannot be alienated from the farm, but a farm must be in active agricultural operation in order for its owner or lessee to exercise that farm's rights in the commons (Norwegian statute, 1975 §2; Norwegian statute, 1992b §2). Today there are 195 state commons in Norway, covering a total area of more than 26 600 square kilometres, in which approximately 20 000 farms hold use rights (Sevatdal, 1998). Seven of the state commons are managed as if they were community commons (Grimstad and Sevatdal, 2007), which means that the local commons board, rather than the state, manages the commercial logging and retains the income from it.

Community commons are owned by the local farming community, although it is not necessarily the case that all local farms have a share in the ownership. "*Bygdeallmenninger* are commons where the ownership rights belong to at least half of the agricultural properties that from old times have use rights in the commons" (Norwegian statute, 1992a §1-1, translation mine). Commons in which fewer than 50 percent of the local farms share in the ownership would be termed 'private commons'—a historical situation that is now "mostly extinct" (Berge *et al.*, 2002: 10; see also Berge and Tretvik, 2004). In most cases today, community commons are jointly owned by all of the local farms. In every case, they all have use rights similar to those enjoyed in state commons, as well as the right to participate in the governance of the commons. Community commons are managed by a board that is elected by and from among the owners and other use rights holders (Norwegian statute, 1992a §3-1, 4-1). The board is responsible for hiring a commons manager and this person is generally a qualified forester (Norwegian statute, 1992a §3-5). As the foregoing citations indicate, much of how community commons are organized and managed is guided by special legislation to this purpose, the 1992 Community Commons Act (Norwegian statute, 1992a). As in state commons, use rights are tied to farms. They cannot be sold or leased apart from the farm, and to exercise them a farm must be an active agricultural operation. Use rights are based on need, which in practice means that resources in the commons are for on-farm use only, i.e. a farm is entitled to as much firewood as it needs for its own use, but may not sell firewood from the commons. Larger farms may therefore make greater use of certain resources than smaller farms. Although farms might gather firewood on an individual basis after checking with the commons manager, all logging of timber is done on a collective basis (Sevatdal, 1998). That is to say, with the exception of some firewood harvesting, logging activities are not carried out by individual farms, but rather happen under the supervision of the commons manager, with the actual work being done either by employees of the commons or by a private contractor. Many community commons have their own sawmill and each farm's right to timber from the commons takes the form of a discount when buying lumber from the mill (Grimstad and



Sevatdal, 2007). Because the land in a community commons is owned by local farmers rather than by the state, it is these farmers who have the right to benefit from the development of hydropower, the sale of surplus timber, tourism (e.g. the leasing of cottages), and other commercial land uses. Profits from these activities go first towards the maintenance and improvement of the commons and are not normally disbursed as dividends to the owners. Surplus funds are often invested in new businesses that are owned by the commons or they may be used for community projects such as electrification or the building of a community hall (Grimstad and Sevatdal, 2007). Hunting and fishing are managed by the commons board for the benefit of the whole community. There are 51 community commons in Norway, covering a total area of 5 500 square kilometres, in which approximately 17 000 farms have use rights (Sevatdal, 1998).

## On-Site Interviews

Interviews in both locations made it clear that commons in Norway are not simply a holdover from the olden days, but represent vital institutions for outfield management today. In the words of one farmer, "If we did not inherit the commons from the past, we would have to invent it for the future." What follows is a summary of what local people involved with the commons (both farmers and administrators) have to say about the reasons for having a commons, how members participate in governance, how the commons contribute to stewardship and economic development, and what sort of changes the commons are facing.

**Commons in Norway are not simply a holdover from the olden days, but represent vital institutions for outfield management today**

**"If we did not inherit the commons from the past, we would have to invent it for the future"**

### Rationale

The main reason given by all interviewees for having a commons is efficiency of management. For forestry, hunting and grazing, interviewees told me that it is more efficient to manage large areas as a single unit. Except for some small-scale cutting of firewood for personal use, all logging in both of the commons cases is done collectively. Harvesting timber is too expensive to do on small parcels independently and farmers would lose the economies of scale necessary to log profitably if the commons were subdivided. It is also the case that many game species cannot be effectively managed on

**The main reason given by all interviewees for having a commons is efficiency of management**

small parcels of land, and hunting cannot easily be commercialized in small areas. This is significant because in one of my cases hunting has become the leading source of revenue. In terms of pasturage, any attempt to divide up the vast and rugged grazing land with fences would be extremely expensive and would interfere with the movement of wildlife. Economies of scale apply not only to the management and harvesting of resources, but to processing as well. In one location where the farmers set up their own sawmill and planer more than a century ago, I was told that such a project would not have been possible without a formal commons. Just a few farmers would not have been able to afford it and four hundred farmers would never be able to make decisions without a formally structured process.

### Governance

In both case-study locations I was told that the main way that individual farms participate in management is by voting in the election of board members. Most farmers are not directly involved in the formulation of management plans for the commons — a task that falls chiefly to the commons manager. "Some members are active and some aren't," one manager told me. Those that are active serve on the board, come to the annual meeting, and call on the phone more often. "Others I've never seen in twenty years." There are approximately four hundred farms with use rights in each of the two commons where I conducted interviews. Many of these farms are quite small. Because use rights in the commons depend on a farm being in active operation, the number of rights holders has declined as the changing structure of agriculture has tended to squeeze small farms out of production in favour of fewer, larger operations. Despite the lack of active participation on the part of most commons members, I was assured that they take a strong interest in management decisions and that they make themselves heard when there is something they do not like.

### Stewardship

Most questions put to commons managers about forest management goals or conservation were answered with reference to regulations from the state (for a discussion of Norway's long history of forest regulation, see Berge



and Tretvik, 2004). Nevertheless, interviewees did speak about differences in management based on ownership. Scale is recognized as being important, since it is easier to set aside adequate land for protection and to accommodate wildlife mobility when working with large areas. Proximity of the owner to the forest was also thought to be important and some interviewees thought that the increasing degree of forest ownership by "city people" resulted in worse management — a circumstance to which the commons is somewhat immune since a farm's rights of common depend on that farm being in active use.

I was told that a community commons invests more in the forest than either private woodland owners or the state, and that this is because the commons is associated with a different philosophy — one described simply as the farmer's imperative to leave the land in better condition than he finds it. One forester told me, "wherever there is a community commons, the forest is better managed than in a state commons." Asked if he knew of any research demonstrating this, he replied that such research is "not necessary; it's obvious to all."

One of the questions with which I approached this study was the Hardin-inspired one of how individual users are prevented from abusing the commons. In both cases I was told that there is never any problem in this regard. The reason for this appears to be how little discretion individual rights holders have regarding resource use. Both commons have a professional manager, forestry is heavily regulated by the state and individual use of the forest is limited to cutting firewood with permission from the manager. In both commons, grazing intensity was not high enough to be of concern.

### Economic Development

A recurrent theme in the responses to questions about how the commons contributes to local economic development was the importance of local ownership. Several interviewees said that state-owned commons do not put any money into the local economy, but "send it all to Oslo" instead. Community commons, on the other hand, "think more locally" and try to create jobs. According to a municipal official responsible for economic development, community commons work to keep benefits in the local economy through a commitment to local reinvestment. The community commons in this study

owns or has a share in several local businesses, including a sawmill that employs 12 people, a company that employs 18 people manufacturing pre-fabricated cabins and a company that sells tools and building supplies. Some community commons, because they are not permitted to distribute profits, will not only offer discounts on building materials, but actually subsidize building and maintenance activities on member farms.

The case of the state commons that is managed as a community commons occupies a middle ground between these two. When it was managed as a state commons, the farmers each logged individually and were only entitled to firewood and building materials according to their needs for on-farm use. The surplus increment was logged by Statskog. Since it came to be managed as a community commons in the late 1940s, all of the logging has been done under the management of the commons board. The timber gets processed at a mill that is cooperatively owned by the farmers and the farmers get a discount when they buy from the mill. Most of the lumber gets sold to the public and the proceeds are reinvested in the mill and other projects. Managing a state commons as a community commons, however, does not provide a community with all the benefits of an actual community commons due to the difference in ownership. In a community commons, income from hunting, hydropower development, cabins and other resources goes to the community. In a state commons this revenue goes to the state, even when a local commons board manages the forest.

**In a community commons, income from hunting, hydropower development, cabins and other resources goes to the community. In a state commons this revenue goes to the state, even when a local commons board manages the forest**

The two key points that continually came up in discussion of how community commons contribute to local economic development were, first, the statutory obligation of the commons to reinvest profits and second, the ability of a locally-owned commons to explore new uses for the outfield, which in a state-owned commons is a right that falls to the state.

### Change

Recent decades have seen tremendous changes in the technology used for harvesting timber and these changes have had a major impact on employment opportunities in the forestry sector. Timber in Norway is managed mostly in even-aged softwood stands that are harvested in small clear-cuts and then replanted. Approximately 90 percent of the harvesting is fully mechanized



(LMD, 2011). Sixty years ago, the community commons in this study employed 70 to 80 people cutting timber in the winter. By 1990 this number was reduced to 15 and today there are only three. A similar decline has been experienced in the case of the state commons that is managed as a community commons. In both cases this is due to increased mechanization in the harvesting process.

When asked why they would adopt technology that eliminates jobs, one forest manager told me that they had to in order to keep out of the red. They were the last commons to adopt big machines, but the price of lumber was falling and the cost of labour was rising, making it impossible to compete. Most of the lumber (60 to 70 percent) gets sold outside the commons. I am told that in some commons, private contractors are used for harvesting and other management activities, and that "technology and economy are driving this outsourcing." The mills are also employing fewer workers. At the time of these interviews, one mill had recently cut its workforce from 30 or 40 workers to somewhere between 12 and 15 due to the high labour costs. At a different mill I was told that whereas in 1954 the value of one cubic metre of timber was equal to four days' wages, currently one cubic metre of timber pays only a fifth to three-tenths of the daily wage.

In the state commons that is managed as a community commons, the most important use is grazing. This commons provides pasture to several thousand sheep and hundreds of cows, horses and goats. In the community commons, however, grazing is no longer of great importance. There the most important sources of income are hunting, cabin leases and forestry, in that order. It was frequently said that as agriculture declines, the commons must find new ways to remain a valuable resource for the community.

The symbolic importance of the commons was mentioned repeatedly during interviews with members of the community commons. I was told that many farmers take a great deal of pride in the commons, and that membership can be an important part of a farmer's identity. It was also said that the commons is tied to local identity and contributes to pride of place.

**The commons is tied to local identity and contributes to pride of place**

## DISCUSSION

Norway, with its various types of common property, provides a fascinating example of how a country may have diffuse ownership of rural land without the loss of landscape function that might result from fragmented management. The commons board provides integrated management for large areas of forest and grazing land — in which hundreds of private farms have use rights — in a way that maximizes the productivity of these areas while keeping them in the hands of the local farming community.

**The commons board provides integrated management for large areas of forest and grazing land in a way that maximizes the productivity of these areas while keeping them in the hands of the local farming community**

Although my own interest in studying common property stemmed from environmental concerns, my findings contrast sharply with Charnley and Poe's (2007) assertion that "local control over forest management appears to have more ecological than socio-economic benefits." The main reason given by all interviewees for having a commons is efficiency of management, and the main reason for having a community commons is to keep the benefits in the local community. Ecological stewardship is perceived to be important, but it is not the first thing that comes to people's minds as a function of the commons, being seen rather as a function of state regulation. In Norway it is difficult to evaluate how common property affects forest stewardship because regulation by the state has an equalizing effect on forestry practices across all tenure types. All forest owners, for example, are required to have a management plan, the substance of which is partly determined by law. It is also obligatory for all forest owners to deposit a certain percentage of timber sales revenue into a Forest Trust Fund, which they can later draw upon to pay for forest stewardship activities (Norwegian statute, 2005; LMD, 2011).

**In Norway it is difficult to evaluate how common property affects forest stewardship because regulation by the state has an equalizing effect on forestry practices across all tenure types**

Common property of all kinds in Norway maximizes the benefit of outfield areas by combining enough land to obtain a scale at which landscape functions are preserved and resources can be managed efficiently. Hunting, which in the community commons case has become the leading source of revenue, would be nearly impossible to commercialize on individual small properties. Because the management of big game needs to happen at large spatial scales, it is common in Norway even for individual private landowners to cooperate in neighbourhood groups when making game management plans. Similarly, even where grazing land in the outfield is divided into individual private properties,



farmers frequently manage this land as if it were a commons, letting their animals graze together rather than undertaking the trouble and expense of stringing fences across the rough terrain. This kind of passive cooperation can happen informally, but, as one interviewee emphasized when talking about the sawmill in his commons, getting several hundred farmers to invest in a large project requires a more formal mechanism of commitment, as well as a steering committee and a process for participation in decision-making.

While integrated management is important for maximizing the total benefit that can be obtained from outfield areas, the issue of ownership bears heavily on how that benefit is distributed, as the case of the state commons that is managed as a community commons makes clear. Having a commons board is an improvement over individual use in that it enables both collective management of the forest and collective reinvestment in projects like the sawmill, but so long as the land is owned by the state, income from hunting, hydropower development, cabin leases and other forms of new development goes to the state rather than to the local community. When forestry and grazing are the most valuable uses of the outfield, holding the rights to these might seem sufficient, but as new uses are discovered over time and the relative values of these change, a lack of ownership prevents local farms from being able to develop alternative uses and to capture the value of these.

**While integrated management is important for maximizing the total benefit that can be obtained from outfield areas, the issue of ownership bears heavily on how that benefit is distributed**

If community commons have done more than other forms of tenure to spur local economic development (Bjørkhaug, 1999; Finsveen, 2000) it is easy to see why: wealth generated by community commons must be reinvested in the commons rather than distributed as dividends. It is required by statute that sufficient funds must first be set aside for the protection and improvement of the commons, after which additional surplus may be invested in processing facilities and other projects for the benefit of the community (Norwegian statute, 1992a §3-12). In the community commons case, businesses that are owned or partly owned by the commons contribute significantly to the local economy. It is important to note here the importance of the state in its regulatory capacity: the way that the commons is organized, how it operates and the limits to how it uses surplus are all determined by statute.

The dominant philosophy of property rights in development circles has long been one that celebrates widely held private ownership (Deininger and

Binswanger, 1999), but this philosophy can be problematic in developing countries where common property is widespread and contains resources on which many of the most vulnerable people depend (CAPRi, 2010). Even in Europe the association between individual title and economic development is beginning to erode (Hoffman, 2013), but states are often blind to traditional forms of communal tenure and in many cases have absorbed them as state-owned land (CAPRi, 2010). Norway offers an example of how statutory law can respect and reinforce customary law and how, by tying rights of common to cadastral units, these rights can be kept intact and locally owned (Berge, 2007). The Growing Forest Partnerships, of which FAO is a catalytic member, has made local control of forest resources a central pillar of its development philosophy (Macqueen, 2011), which raises the question, "how much local control is sufficient?" Devolution and co-management have often left local people unable to develop the alternative income streams necessary to relieve pressure on timber resources (CAPRi, 2010), a situation to which the comparison in this study is particularly germane. While it might be thought that Norway's great wealth makes it an unhelpful example for poorer countries, it should be remembered that the country has only been wealthy for about forty years and its common property institutions are many centuries old.

That said, the country's wealth does enable people to ignore recent changes in their forest commons that should concern anybody seeking to imitate them. In both of the case studies the ability of the commons to provide employment appears to be undermined by changes in technology, which in turn are driven by changing markets. The mechanization of timber harvesting has nearly wiped out employment in the woods. Due to the steady decline in population and the presence of alternative employment, interviewees did not perceive this as a problem, but it does highlight the hazard of participation in global markets, which reintroduces the dynamic of a prisoner's dilemma game.

**The ability of the commons to provide employment appears to be undermined by changes in technology, which in turn are driven by changing markets**



## CONCLUSION

In complete contrast to the suggestion that individual ownership of resources is necessary to avoid a "tragedy of the commons" (Hardin, 1968; Smith, 1981), this paper affirms the view that because many of the benefits of good forest and wildlife management cannot be internalized on small parcels of land, it may be best to manage them as a commons (Uphoff, 1998; Glück, 2000) in order to avoid a tragedy of fragmentation. At the very least it may be said that the joint ownership of forest and grazing land by a few hundred farms does not necessarily result in the over-use of these resources, nor does it stifle enterprise. On the contrary, community commons in Norway have managed outfield resources sustainably for centuries, using the wealth they generate to foster the growth of local enterprises that add value to raw materials through processing.

In sum, community commons accomplish two important things. First, they provide integrated management for large areas of outfield, which is beneficial both in terms of efficiency and from an ecological perspective. Second, they keep the benefits of resource management local through local ownership and a commitment to reinvestment.

In light of the community forestry movement's opposition to state control (Baker and Kusel, 2003; Lee and Field, 2005) it behoves us to take specific note of the significant role played by the Norwegian state in community commons management. The way that a community commons operates, from the election of its board to the ways it may expend revenue, is determined by statute. The commons themselves were not created by statute — the law itself acknowledges that the use rights of farms are founded on ancient custom — but they are today regulated by statute, as are forestry and other land use practices.

Regulation, however, is not the same thing as ownership and it seems clear that the question of state ownership versus community ownership makes an important difference in terms of community development opportunities. This becomes especially apparent over time as uses for the commons change and the relative values of different resources in the commons change as well. Where timber and pasture were once the most important resources,

recreational hunting, the lease of holiday cabins and the generation of hydropower have become leading sources of revenue. In the state-owned commons, the benefit of new uses goes to the state. Community commons however, because they own the land, are able to capture emerging new values. Communities that only have use rights in state-owned commons do not have this same ability and this limits the potential for these commons to contribute to local economic development.

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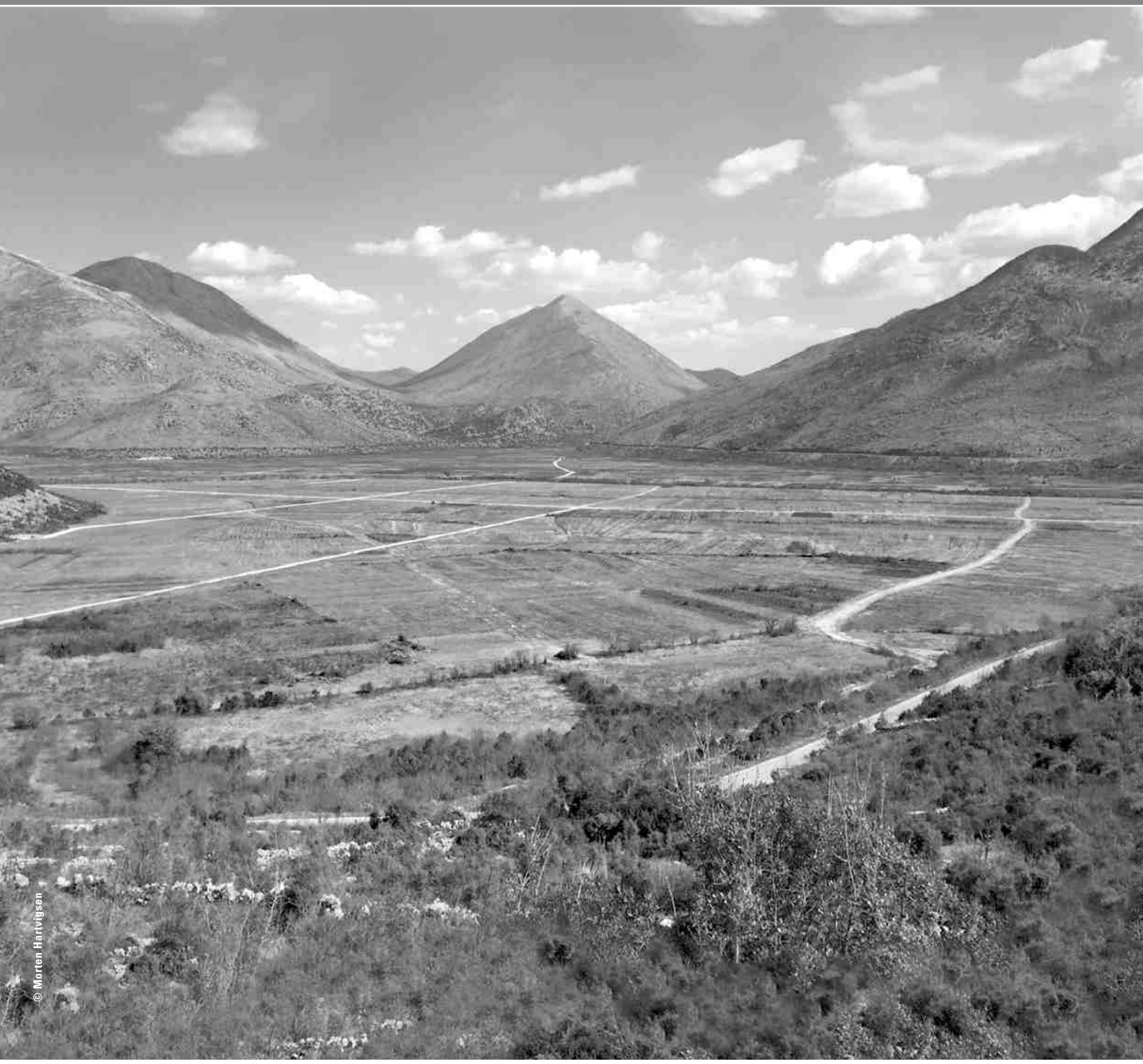

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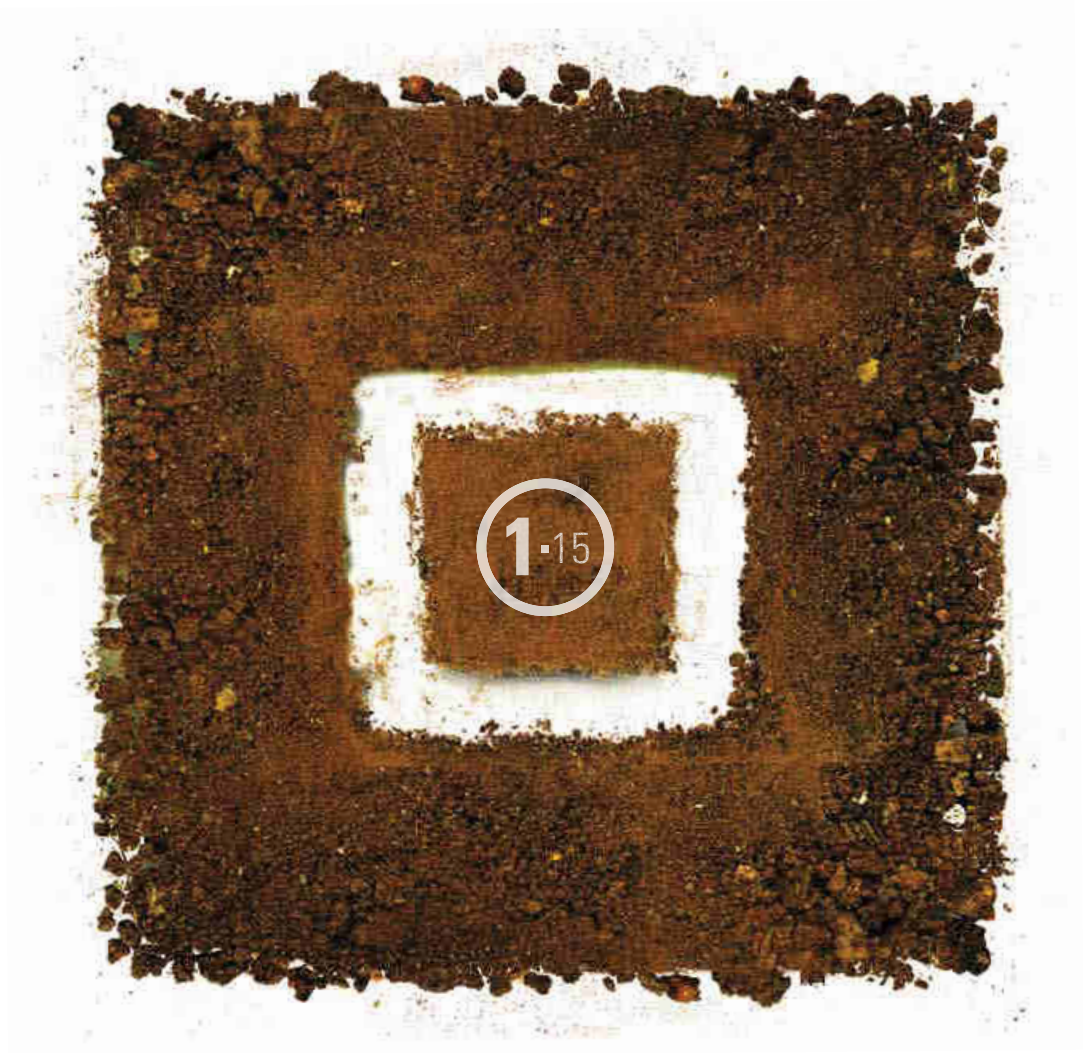


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